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Dinah L. Shelton **[EDITOR IN CHIEF]**

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Dinah L. Shelton

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preface

The *Encyclopedia of Genocide and Crimes Against Humanity* tackles a difficult and often horrific subject. It looks at the worst, but also the best, of human behavior. The set is designed to offer the reader information about the barbarous acts that humans have perpetrated against each other throughout history, but also at the many and sometimes heroic efforts that have been made to understand, prevent, combat, and respond to such acts through law, politics, education, the arts, and sciences. The *Encyclopedia* is intended for general readers with a high school or college level education, although many professionals working in humanitarian and human rights organizations will find much here of use and interest to them.

World War II's Holocaust brought a new language into the world, including the word genocide. In response to the horrors of that event and other crimes committed in Europe and Asia, the international community conducted trials to prosecute and punish crimes against peace, crimes against humanity, and war crimes. These terms garnered better understanding as a result, although war crimes trials had precedents from earlier conflicts. After the Nuremberg and Tokyo trials, the first half of the twentieth century ended with states adopting an international treaty, the Convention for the Prosecution and Punishment of the Crime of Genocide, which outlawed efforts to destroy a people. Subsequent agreements have further identified and defined *war crimes* and *crimes against humanity*.

Genocide and crimes against humanity are not merely historical phenomena. It is estimated that more than 250 armed conflicts have occurred since World War II, with casualties numbering upwards of 170 million people. Some of these conflicts have been genocidal or involved war crimes and crimes against humanity, such as so-called ethnic cleansing and the use of rape as an instrument of war. Indeed, nearly all uses of armed force have involved issues discussed in the *Encyclopedia.* Massive human rights abuses committed by repressive regimes, such as kidnapping and disappearance of political opponents, massacres of minorities and systematic torture also fall within the rubric of crimes against humanity and, sadly, exist in contemporary society.

Efforts to prevent and respond to genocide and crimes against humanity are evident in the development of international criminal courts, peacekeeping, and humanitarian intervention by the United Nations, and the many educational programs and cinematic representations intended to raise public awareness of the problem. In addition,

those countries throughout the world that are recovering from internal conflict or repression face the tasks of understanding the past, making appropriate redress to survivors or victims of abuse, and ensuring the accountability of those responsible for the commission of violent acts.

The topic is thus of vital importance and requires the involvement of a wide array of intellectual disciplines, professions, and skills. Historians, archaeologists, and anthropologists explain its global and temporal dimensions, identifying the past events that often led to current conflicts. Psychologists, philosophers, and theologians attempt to grapple with the reasons why human beings commit atrocities and seek to understand the responsive behavior of others, from collaboration through silence to active opposition. Lawyers and political scientists seek to construct institutions and legal structures that can impact human behavior, deterring genocide and crimes against humanity by designing effective and appropriate laws and punishment. Those in the arts educate and raise public awareness through film, music, painting, and writing. All of these disciplines appear in the *Encyclopedia.*

There are more than 350 entries in the *Encyclopedia of Genocide and Crimes Against Humanity,* arranged in alphabetical order for easy reference. In addition, an outline of contents at the beginning of volume one groups the entries thematically. The entries range in length from five hundred to five thousand words and concern historical and contemporary examples of genocide and crimes against humanity, individuals, groups, international institutions and law, theories and philosophy, prevention, prosecution, and cultural representations.

The set covers the ancient world to the present day and looks at all regions of the world. The editorial board affirmatively decided to include any event that has been publicly and reasonably debated as falling within the subject matter broadly viewed. Groups that have been the target of genocide or crimes against humanity are separately discussed, as are the known perpetrators. The various forms of reparation and redress available to victims and survivors are included, as are the courts and tribunals where the accused may be tried for their alleged offenses. Some entries describe the means used to incite public opinion toward hatred and genocidal acts, such as through advertising, radio broadcasts, and film. Short entries provide biographical information about key historical and contemporary figures, from Genghis Kahn to Simon Wiesenthal, while others describe important places such as Auschwitz and Srebrenica. Discussions of national and international policies during periods of genocide and crimes against humanity aim to provide readers with a wider perspective on the events reported.

The entries were written by experts, authorities in their respective fields. Like the topics they address, the authors come from countries throughout the world. As much as possible, the authors have used language that should be easily accessible to the public at large. The authors and editors have also attempted to be responsive to the sensitive nature of the topic, avoiding terms that may be offensive and noting where respected opinion is divided on the events or persons they describe. The result is a set of entries reflecting solid scholarship. A glossary of terms with which the reader might be unfamiliar appears at the end of the third volume, and each entry contains a bibliography to guide readers to further sources of information. Cross-references at the end of each entry refer to related topics.

The *Encyclopedia* contains historical images and contemporary photographs to illustrate the entries. Particularly for this topic, it is often difficult to visualize the reality of the events described. The editors have chosen the images carefully, not to shock but to provide further information and representation of the events and persons included.

At the end of the set, further material is included to assist the reader. In addition to the glossary, the concluding matter includes a filmography, primary source docu-

ments, and a comprehensive subject index. The primary documents may be of particular interest to those undertaking research in this field. The documents consist of key legal instruments, such as the Convention for the Prosecution and Punishment of the Crime of Genocide and the Rome Statute of the International Criminal Court, as well as several important judicial decisions.

The editorial board and contributors have all benefited from the editorial assistance given by individuals at Macmillan Reference USA, in particular Hélène Potter, Justine Ciovacco, and Shawn Corridor. Their dedication to the project and infinite capacity for work inspired everyone. We express our thanks to them and to the others who contributed by suggesting authors, entries, and materials for the set.

Dinah L. Shelton

introduction

Human beings have committed atrocities against each other, showed compassion and altruism, and both perpetrated and combated oppression for at least as long as recorded history. The archaeological record as well as recent forensic evidence reveal the burning of cities, massacres, enslavement, and fearsome tortures inflicted on captives. The preamble to the 1948 Convention against Genocide says, "at all periods of history genocide has inflicted great losses on humanity." It is also true for crimes against humanity. At the same time, religious and philosophical texts from all parts of the world contain variations on the "Golden Rule": treat others as you would be treated.

It is perhaps impossible to understand or reach conclusions about these competing strands of human history to determine whether human nature is innately good or intrinsically driven to violence and power. If it is equally impossible to document in detail the innumerable incidents of good and evil. At the same time, it is crucial to remember the dark periods when the worst traits in human beings have flourished, in order to think about and put into place means to prevent future abuses and to remember and mourn the millions of victims. The resisters and rescuers must be celebrated and the role of institutions studied, especially those that seek accountability and deny impunity for perpetrators.

These volumes are intended to be used not only as a tool to look into particular acts as well as agents of and opponents to genocide and crimes against humanity, but to understand from various angles the modes of expressions through which such acts are anticipated or ignored, articulated and covered up, understood and memorialized.

Historical Overview

Many events, persons, places, and devices that make up the historical record are included in the following three volumes. The aim is to present as factual a record as possible, noting where respected scholarship differs about the responsibility for or characterization of events. The reader may evaluate the evidence and reach his or her own conclusions. The *Encyclopedia* focuses on those acts that may fall within the definitions developed over the past century of crimes under international law: war crimes, genocide, and crimes against humanity. These labels attach to the most serious violations of the dignity and worth of each human being. Genocide itself is both a crime against humanity and the greatest of such crimes. It is appropriate to include in one encyclopedia all

crimes against humanity while featuring genocide as their most prominent and extreme expression. Further, by including all such crimes in the same encyclopedia, the understanding of their relationship becomes clearer.

At the time many of the events discussed herein took place, the protection of individuals from abuse had almost no role in international law and played little part in national or local law. Slavery was legal in most countries until the second half of the nineteenth century; colonial conquest and racial discrimination were prevalent and many indigenous groups were enslaved or annihilated by invaders. Torture and trial by ordeal were part of the criminal process by which it was assumed the truth would emerge. War was a means to gain wealth through looting and acquisition of territory. Rape, pillage, and destruction were the common features of armed conflict, with women and children considered a form of property to be taken along with works of art and other valuables.

Traditional international law regulated the international relations of states. Individuals or groups of individuals were only indirectly regulated in respect to specific matters having international consequence, like diplomatic immunities, asylum. In addition, only states could be responsible for violations of international law, except in the case of pirates who were deemed "enemies of all mankind" (*hostis humani*) and subject to prosecution by any state which captured them.

By the second half of the nineteenth century, international efforts to combat some of the worst abuses committed or tolerated by states had emerged, with anti-slavery societies and laws for the conduct of war becoming part of the national and international orders. Humanitarian law sought to protect various categories of persons not engaged in combat: prisoners of war, shipwrecked, sick or wounded, and civilian populations of occupied territories. Persons in these categories were automatically placed in a legal relationship with the foreign state having power over them, without necessarily involving any role for the state of which they were nationals.

By the beginning of the twentieth century, the development of more rapid means of communication, through invention of the telephone and telegraph, meant the public could be informed more quickly and take notice of events happening in distant parts of the world. Travel was also made easier with the use of steam and later gasoline engines. As the world grew smaller, information about massacres and other widespread abuses became harder to conceal. Public opinion emerged as a factor in law and politics. Still, the plight of the Hereros in 1904–1907 and the massacre of the Armenians somewhat later produced little concrete action, perhaps because not enough information was made available to the public to avoid a debate about whether or not genocide was taking place could not be avoided.

Atrocities at the beginning of the twentieth century paled in comparison with the Holocaust of World War II in which the deliberate and systematic effort to destroy entire groups of people because of their identity, rather than because of anything done by a particular individual, led to an unprecedented industrialization of murder. The postwar period vowed "Never Again" and took action to prosecute and punish those responsible for the worst abuses of the war. Yet, the national and international legal instruments designed to prevent genocide and crimes against humanity after World War II have not prevented these acts from continuing into the present. In 1994 in Rwanda, for example, an international military force was present and others available that might have stopped the genocide. Yet the atrocities continued without intervention until they had nearly run their course. In Cambodia (Kampuchea), as well, the world watched as mass killings gave rise to a new term: the *killing fields*. These events indicate that much greater understanding is necessary of the role of bystanders, as well as perpetrators and their victims.

Crimes and Punishment

Atrocities committed throughout history were rarely punished because the perpetrators acted with the authority and protection of governments. Only in the mid-twentieth century did the idea take hold that barbarous acts condoned by the governments where they took place could and should be punished by national or international courts.

Although the terms *genocide* and *crimes against humanity* are widely used in a colloquial sense to describe atrocities and mass killings, they also have a quite precise legal meaning. Indeed, fundamental principles of criminal law make it essential that the crimes be defined without ambiguity as a matter of fairness to all persons, who must be forewarned about the illegality of their behavior. The *Encyclopedia* retraces and explains, in depth, the evolution and terms of the body of laws in vigor now.

Many of the acts discussed in the *Encyclopedia* are considered to be crimes under international and national laws. Mechanisms of accountability seek to punish and deter perpetrators and provide redress for victims. While there are a few historical examples, accountability in both national and international law is relatively recent. Internationally, states could be held liable in some circumstances for the mistreatment of citizens of other states, but not of their own citizens. The laws of war allowed soldiers to be prosecuted for war crimes and examples of such trials date back to the late Middles Ages, but international law, generally, and treaties, specifically, demanded little in the way of accountability.

After World War I, the Allies created a commission which found that numerous acts had been committed in violation of established laws and customs of war and the elementary laws of humanity, but no international trials were held. A few individuals were tried by national courts.

At the end of World War II, the Allies brought before international tribunals the leaders and others involved in abuse of civilians and prisoners of war. Both crimes against humanity and genocide were first defined at this time, as Allied lawyers sought a basis for prosecutions of Nazi leaders. Because many of the Nazi atrocities, most specifically the persecution and extermination of the Jews and other groups within Germany, were carried out under cover of Nazi law in force at the time, it was necessary to root the war crimes in international law.

The creation of the courts at Nuremberg and Tokyo launched a half-century of advance in laws and procedures designed to restrain abuses of power. The trials emphasized that individuals, not the abstraction of states or governments, are responsible for violations of the law. The prosecutions of Nazi leaders provided the impetus for a more general recognition that such atrocities could be prosecuted by international courts, or by national courts operating on the basis of international law, even when they were condoned by the legal system of the country where they took place. It is presently widely accepted that those who order or commit such acts must be held accountable. The World War II trials helped ensure the development of the law and established the legitimacy of international criminal proceedings. The revelations about the Holocaust demanded invention of a new word to describe the scale and depth of what occurred: *genocide,* a term first proposed by Raphael Lemkin.

The Nuremberg Trial of the major Nazi war criminals established "crimes against humanity" as a general category of international offence, comprising forms of persecution, extermination, and deportation on racial, religious and political grounds. Following the trials, the newly created United Nations affirmed in 1946 the law and principles that formed the basis of the judgments and proceeded to draft the Convention to Prevent and Punish Genocide, adopted in 1948. The Convention defined genocide as the physical destruction of national, ethnic, racial, and religious groups, in whole or in part.

Genocide was in essence an aggravated form of crime against humanity. Whereas genocide involved the physical annihilation of the group, crimes against humanity covered a larger range of acts, subsumed under such terms as *persecution*. Genocide only covered groups defined by race, nationality, ethnicity or religion, whereas crimes against humanity extended to include political groups as well. But at the time they were devised in the mid-1940s, probably the most important difference was the fact that genocide could be committed in time of peace as well as during war. Crimes against humanity, though broader in scope in some respects, were also more limited, because they could only be carried out in time of armed conflict.

Another step in shifting the focus of international law from states to individuals came with the direct recognition of fundamental human rights and freedoms for all persons, independently of nationality or status under the jurisdiction of a given state. The United Nations and regional institutions in Europe, the Americas, and Africa proclaimed human rights and created international institutions and procedures where individuals claiming their rights had been violated could obtain a review of the matter. These were revolutionary developments in international law and relations, although they involved complaints brought against states and not against the individuals within the state responsible for the wrongs.

Immediately after the United Nations was founded, some members called for the establishment of a permanent international tribunal to try and punish those who commit international crimes. It took nearly half a century before the International Criminal Tribunal was in place. Indeed, for close to four decades from the 1950s, the idea was dormant. In the meantime, however, national courts became increasingly willing to prosecute crimes against humanity when committed in peacetime. In addition, when new atrocities appeared in various regions of the world—Cambodia, Yugoslavia and Rwanda—the UN responded by creating international criminal tribunals (for Yugoslavia and Rwanda) or trying to create such tribunals (Cambodia). Mixed national/international tribunals also have been created or foreseen for Sierra Leone, East Timor, and perhaps Cambodia. By the 1980s it became clear that impunity, that is, the failure to hold individuals responsible for committing atrocities, was not only encouraging further human rights violations, but that it was also a violation of the rights of the victims themselves to redress. The international community proceeded with efforts to establish a permanent international criminal court, adopting the statute of the court in 1998. The Court was formally created in 2002.

Although people still refer to war crimes trials, most international prosecutions address crimes that can be committed in peacetime. Genocide and crimes against humanity are in many ways the counterpart to the concept of gross and systematic violations of human rights, also prohibited by international law. The terms *genocide* and *crimes against humanity* are used by criminal courts to hold individuals accountable, while the phrase gross and systematic violations of human rights usually applies to acts of governments. In fact, because the acts of governments or states are committed by individuals, the terms are merely different ways to designate the same phenomenon: atrocities committed against vulnerable groups, usually racial or ethnic minorities.

Genocide and crimes against humanity often involve the participation of large numbers of individuals, making criminal prosecution difficult for political and practical reasons. A search for alternative approaches to provide accountability short of a full trial has led to the creation of truth and reconciliation commissions, before which victims and perpetrators can confront each other and attempt to find ways to coexist in post-conflict societies. Thus, South Africa in the 1990s decided not to prosecute most of those responsible for maintaining the apartheid regime, but their crimes were exposed in public and many perpetrators came forward to confess and seek forgiveness.

Presently, the law and procedures range from national to international in the fields of human rights, humanitarian law, and criminal law. The substance of the law determines the list of crimes and the definitional elements that serve to identify when a crime has been committed.

Trials that seek to bring to justice perpetrators must consider the goals of individual accountability. First, accountability can be significant to the victims and to society as a whole as a matter of justice and partial repairing of harm done. Second, accountability may deter future violations by making clear the prospect of punishment for perpetrators and more generally serving the rule of law and strengthening of institutions. Third, accountability is society's expression of moral condemnation and may contribute to rehabilitation of the perpetrator.

Accountability mechanisms often must confront efforts of perpetrators to evade justice through self-amnesties or other measures that afford immunity from prosecution. Even persons committed to the rule of law and human rights sometimes argue that the transition from repression to a democratic regime demands reconciliation and forgiveness rather than prosecution. The various goals of accountability may not always be congruent. In most instances, however, human rights tribunals have rejected amnesties because they are viewed as a violation of international obligations and the rights of victims to redress. These decisions rest on the doctrine that states have a duty to prosecute and punish the most serious violations of human rights and humanitarian law or at least to provide some mechanism of accountability.

Understanding

Efforts to understand and thus prevent genocide and crimes against humanity are not limited to laws and tribunals. Various disciplines have been used to gain some insight into the causes and interpretations of genocide and crimes against humanity. They all require documentation. All are used to educate the public on different facets of such crimes.

Modes of Memory, Commemoration, and Representation

Memorials, various modes of artistic expressions in a multiplicity of styles and media are used by witnesses and scholars to represent, re-experience, commemorate, question, and comment upon atrocities and their victims. Dance, film, music, literature, photography, drama, and paintings serve to express what cannot be transmitted solely or completely by historical documentation. The *Encyclopedia* includes entries and illustrations that indicate and reflect upon the importance of artistic expressions to convey the experience, character, and various other facets of genocide and crimes against humanity.

Those Involved

In looking at issues of genocide and crimes against humanity it is not enough to recount events. The individuals involved, whether perpetrators, resisters, victims, rescuers or scholars have been the agents. Their deeds, their motives to the extent known, and their backgrounds can perhaps shed some light on the mystery of otherwise inexplicable brutality. The *Encyclopedia* thus includes general entries covering various categories of actors, such as perpetrators, victims, survivors, and rescuers, as well as individual biographies of persons involved in or witness to the events described. In addition, the psychological and sociological theories that seek to understand, explain, or at least classify behavior are included, as they may be useful in the future.

The Editors

The composition of the board of editors reflects the necessity of an interdisciplinary and international approach to the complex subjects addressed.

Howard Adelman, a Visiting Professor at Princeton University, taught philosophy for over three decades at York University in Toronto, Canada, where he remains a Senior Scholar as well as a Senior Fellow of Massy College at the University of Toronto. He served as Director of the Center for Refugee Studies at York University between 1986 and 1993, and was editor of *Refuge,* Canada's periodical on refugees, for more than a decade. He has received numerous honors for his extensive scholarly work on conflict prevention, management, and resolution; refugees, humanitarian intervention, and genocide. His publications include *War and Peace in Zaire/Congo: Analyzing and Evaluating Intervention 1996–1997* (with Govind Rao, ed., 2003); *The Path of a Genocide: The Rwanda Crisis from Uganda to Zaire* (with Astri Suhrke, ed., 1999); and chapters in edited volumes including "Bystanders to the Genocide in Rwanda: Explanations and Descriptions" in *Genocide at the Turn of the Millenium* (Sam Totten, ed., 2004); "Cultures of Violence" in *Building Sustainable Peace* (Andy Knight, ed., 2004); and "Rwanda" (with Astri Suhrke) in the *UN Security Council: From the Cold War to the 21st Century* (David Malone, ed., 2004).

Frank Chalk is a history professor and the Co-Director of the Montreal Institute for Genocide and Human Rights Studies at Concordia University in Montreal, Quebec, where he teaches undergraduate and graduate courses on the history and sociology of genocide, the Holocaust, and the history of U.S. foreign relations. He has served as President of the International Association of Genocide Scholars and is a past president of the Canadian Association of African Studies. He has taught as a Fulbright Fellow at the University of Ibadan, Nigeria, and has been a Fellow of the Center for Advanced Holocaust Studies of the U.S. Holocaust Memorial Museum, Washington, D.C. He is the co-author (with Kurt Jonassohn) of *The History and Sociology of Genocide: Analyses and Case Studies* (1990). His most recent publications include chapters on "Hate Radio in Rwanda" (in *The Path of a Genocide,* ed. Howard Adelman and Astri Suhrke, 1999) and "Radio Broadcasting in the Incitement and Interdiction of Gross Violations of Human Rights, including Genocide" (in *Genocide: Essays toward Understanding, Early Warning, and Prevention,* ed. Roger Smith, 1999).

Alexandre Kiss is a citizen of France and Hungary. He is former director of the French National Center for Scientific Research and was a professor of law at the University of Strasbourg, France, where he was the director of the Center for Central and Eastern European Studies. He also served for ten years as the Secretary-General of the International Institute of Human Rights, and then became a Vice-President of the Institute. He is a member of the Hungarian Academy of Sciences and has been decorated by several governments and institutions. He has lectured throughout the world on issues of international law, litigated at the International Court of Justice, and is a member of the Permanent Court of Arbitration. His publications include the *Répertoire de la Pratique Française en Matière de Droit International* (7 volumes), *Abus de Droit en Droit International*, numerous works on international environmental law, and a seminal article on limitations in international human rights treaties.

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Advertising

Advertising is a paid, persuasive form of communicating a message that attempts to influence the buying behavior or thought patterns of consumers. Advertisements are also a sign of the times, reflecting what consumers find attractive or influential. Throughout modern history advertising has played a role in idealizing favored groups, and dehumanizing or stereotyping disfavored groups.

The following advertisements ran in a special issue of a leading German weekly magazine (*Illustrierte Zeitung Leipzig: Sonderausgabe 1944, Der europäische Mensch*) during the height of World War II in Nazi Germany. Each advertisement depicts a Nazi ideal, or refers to a Nazi goal.

> *Focke-Wulf has been building airplanes for 20 years.*
>
> We join in the vastly increased use of labor and technology in the German aircraft industry. We are thus helping to solve the great tasks of the day, the fulfillment of which will bring about a New Order in Europe.
>
> After the victorious end to this war for European self-determination, we will return to peacetime production. Using the knowledge we have gained, as well as our proven productivity, we will build better planes to meet the high expectations of coming European air traffic.

One of the main goals of the Nazi regime was to increase employment, but this text could also be interpreted as a reference to the slave labor provided by the concentration camp inmates. The text asserts that Germany would win the war and become the dominant economic power within Europe. The visual images used are the swastika and eagle symbol of the Third Reich.

> *Ford*
>
> On the roads of Europe, German Ford trucks testify to the work of German industry. The agile, reliable and easy to maintain Ford truck will be a welcome help in solving the major tasks that await our continent after the war.

The text of this ad assumes German domination of the continent of Europe and reflects the supposed superiority of German products and people. The ad also visually depicts Greek ruins—a theme consistent with Hitler's idealization of ancient, vast, and powerful empires.

> *UHU Glue*
>
> German children: Europe's future inventors!
>
> While courageous men are fighting on the battlefields for the victory that will crown a happy and united Europe, the German home front is already working today on plans to benefit the freed peoples. German youth are preparing for the great tasks of reconstruction and peace. They tinker and build models, engaging in guided and creative learning. Whether it is in shop class at school, evenings at home, or while participating in youth organizations, UHU is everywhere. A special glue developed by the German firm Kunststoff-Chemie, it is in demand as a dependable product.

This ad reinforces the belief that the Germans were in fact liberating Europe, and that Germany would

"[T]he photographs taken by creative Germans during their vacations . . . are convincing evidence of peace! They demonstrate our desire to peacefully enjoy all that life has to offer, to see the world's marvels, and to meet the peoples of other nations. . . . Hauff film and Hauff plates, long-tested and improved during the war, will be ready to capture these coming happy memories of peace." [COURTESY OF RANDALL L. BYTWERK AND THE GERMAN PROPAGANDA ARCHIVE (WWW.CALVIN.EDU/CAS/GPA)]

emerge as the dominant force in a united Europe. It also encourages German children to join Nazi youth organizations. The ad visually depicts the Nazi ideal of a German child—male, blonde, productive, and loyal.

Lanz

A Picture of Peace

With their peaceful work, each LANZ-tractor, LANZ-thrasher, and LANZ-harvesting machine helps to guarantee the nutrition of Europe. Our agricultural technology is already showing the way to what will happen when peace comes.

This advertisement reflects the Nazi ideal of Germans nourishing themselves from the Fatherland, getting back to a basic way of life consisting of hard work. It also refers to the German domination of Europe and characterizes Germany as the provider for the rest of Europe. The ad visually depicts an idyllic German countryside, with two farmers diligently laboring.

Other examples of popular advertising that dehumanize disfavored groups can be seen throughout the world. One familiar example is from the Jim Crow era in the United States, which extended from the mid-1870s to the mid-1960s. Many racist forms of advertising served to justify prejudice and discrimination against African Americans. The Aunt Jemima trademark, introduced in 1893 and based on an actual former slave, portrays a black "Mammy" in a kerchief as slow-witted, fat, and ugly. Childlike, subhuman portrayals such as this came to justify the denial of civil rights to blacks and supported the common misconception that blacks were intellectually inferior to whites.

SEE ALSO Art as Propaganda; Art as Representation; Deception, Perpetrators; Incitement; Propaganda; Television

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Amy W. Leith

African Americans

Article 7 of the Rome Statute of the International Criminal Court (ICC) enumerates two crimes against humanity—enslavement and apartheid—whose delineation as crimes against humanity could have applied to the treatment of African Americans by the United States government, state governments within the United States, and the states' colonial predecessor regimes. Article 7 defines *enslavement* as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such powers in the course of trafficking in persons, in particular women and children." The crime of *apartheid* refers to "inhumane acts . . . committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime." As set forth in Article 7, other crimes against humanity (e.g., murder, imprisonment, and torture) that have been committed against African Americans within the context of enslavement and/or apartheid are ancillary to the crimes of enslavement and apartheid.

Enslavement and apartheid (as well as other crimes against humanity) have long histories within the United States and North America. Slavery's tenure in the United States extended across roughly 225 years (c. 1640–1865), beginning in the colonial period and ending with the Civil War. Although some African Americans living in the South experienced a measure of racial equality during the brief period known as Reconstruction (1867–1877), most lived under an oppressive system of apartheid that defined racial relations for the next one hundred years (1877–1972). The duration of the two crimes against humanity suggests that they were not episodic in character, but, instead, were systemic. They were part of the "normal" way in which American society functioned, and were operative almost from the beginning of the colonial regime.

Slavery

The exercise of ownership and control over a human being by another human being—in other words, *chattel slavery*—has deep roots in Western civilization. Virtually every Western society has condoned slavery, and most have practiced it. Slavery, however, took on a unique form when it became established in the New World (the Americas and West Indies) by the Portuguese in the fifteenth century.

Most important, the element of "race" (i.e., skin color) was introduced into the master/slave relationship as slavery was practiced in the New World. For the first time in the history of slavery, dark skin became the marker that gave the slave his or her cultural status and identity. To rationalize the new face of slavery, the enslavers and their supporters created a race-specific ideology of white superiority and of black inferiority. It was argued that chattel slavery and, more generally, white hegemony were part of the natural order of things, that the white race was innately superior to all other races. It was further argued that this racial hierarchy was not the design of human beings but, rather, was ordained by God and/or nature. Similarly, it was part of the human condition—and something that mere mortals ought not to disturb. This racist rhetoric was not only devoid of empirical support or logic, but it also had an unprecedented effect on chattel slavery. Because skin color had become the sine qua non of bondage, the condition of the slave of the ancient Mediterranean world whereby a slave could become a senator, a teacher of the slaveholding class, or even his master's master was annulled. Nor was it possible for a slave to become related to his master by way of marriage or adoption—events unremarkable in the ancient Greek and Roman civilizations.

But what is perhaps most pernicious about the rhetoric that was used to justify chattel slavery in the New World is that it has outlasted slavery itself. Racism continued to make life perilous for African Americans long after 1865. In the early twenty-first century, components of U.S. culture (specifically, the belief that African Americans have a pathological values system) are often used as a proxy for racism. Whether it is old-fashioned racism (white supremacy) or the new form of racism (culture), the rhetoric has the same ring: it subordinates and stigmatizes African Americans, maintaining the system of race-based advantages (for whites) and disadvantages (for blacks) that began during slavery. To the extent that the ideas and concepts used to justify slavery have outlived slavery, it can be argued that slavery's rhetoric is in the final analysis more productive of harm than slavery itself.

Although reinforced by racist ideology, the enslavement of African Americans was initiated and sustained by quite a different motivation—profit. Indeed, if chattel slavery had been less profitable, it could

not have endured nor would even have come into existence. But in fact slavery was enormously profitable; the demand for cheap labor needed to harvest the riches of the New World grew each decade. Chattel slavery, then, was part of an international economic network. That network, called the Atlantic Slave Trade, consisted of a triangular trade route that involved Africa, the New World, and Europe. The first leg of a typical trade route—commonly referred to as the Middle Passage—consisted of the passage from Africa to the New World; the second leg, from the New World to Europe; and the third, from Europe to Africa. Slaves were transported from the west coast of Africa to the Americas and West Indies, where they were auctioned off to the owners of plantations and small farms and other individuals. Sugar, tobacco, cotton, and other goods harvested and/or produced by slave labor were sent to Europe in exchange for cash and such items as textiles and hardware. Ships full of rum and iron would then set sail for Africa, where these goods would be used in the bartering for slaves.

Viewed from the perspective of the slave, the Atlantic slave trade was nothing less than a brutal, even diabolic process of human bondage that consisted of capture, the Middle Passage, the auction block, and plantation life (or the *peculiar institution*). Together, the four stages bring to light the contradictory nature of chattel slavery within a (putatively) free society.

Capture

Kindnapping and the taking of prisoners by the victors of intertribal wars were the primary methods used in the procurement of Africans for the Atlantic slave trade. Victorious African tribal chiefs used defeated enemies, traditionally regarded as the spoils of war, as currency for the acquisition of iron products (e.g., guns and ammunition), rum, and other goods. A tribal leader sometimes waged war for the sole purpose of taking possession of persons, who could then be commodified and sold for profit. Wars were sometimes waged against distant tribes even in instances in which the tribes posed no reasonable threat to the aggressors' security. As Charles Ball, the author of a slave narrative, recounted of his experience while still in Africa: "It was not the object of our enemies to kill; they wished to take us alive and sell us as slaves" (1854, p. 158).

There is some question as to whether the African chieftains understood that they were participating in a system of slavery very different from the one to which they were accustomed. Did they understand that their transactions with proprietors of the Atlantic slave trade were not "business as usual"? Did they have knowledge of the likely fates of their captives? Had they known what lay ahead for the Africans being put on ships, might they have banded together to resist the white slave traders? Could the system have operated for as long as it did without African complicity? These are perhaps unanswerable questions.

Captives were sometimes force-marched across interior regions of Africa to the villages of victorious tribes or armies. From there, they would continue on to the shores of the Atlantic Ocean. Some offered resistance by fleeing from slave forts on the West African coast. But most were less fortunate, and were forced to board ships to begin the infamous Middle Passage.

Middle Passage

The Middle Passage was, without a doubt, the most arduous part of the slave experience. Once on board sailing vessels, individual slaves were allotted spaces no larger than coffins. Some captives mutinied. It is estimated that as many as one-third of all slaves transported to the Americas and the West Indies died en route. Some died by suffocation; others from sickness that had been brought on by conditions on board ship and mistreatment by the slave traders. Babies who were thought to be incapable of surviving the passage were sometimes thrown overboard by ship captains. Mothers often leapt overboard in futile attempts to rescue their babies. It was not uncommon for a mother to hold her child to her bosom and cast herself into the ocean, choosing death over enslavement for herself and her child. It is estimated that from 14 to 21 million Africans endured the Middle Passage during the nearly four centuries of slavery in the New World.

Auction Block

At the conclusion of the Middle Passage, slaves faced the auction block. Before being put on display, slaves were cleaned up. These grooming gestures were not acts of kindness, but acts guided by self-interest, calculated toward the reaping of profit. The healthier a slave looked, the higher his or her selling price. Once spruced up, slaves were marched into a public square, put on display, inspected by prospective buyers as though they were livestock, and sold to the highest bidder. Families were often broken up on the auction block. Children were ripped from the arms of their parents, wives were taken away from husbands, and siblings were separated from each other—never to be rejoined.

Plantation

From the auction block, slaves were taken to the properties of their new masters—usually the plantations and farms of the American South. There they became slave laborers, forced to toil for the rest of their lives

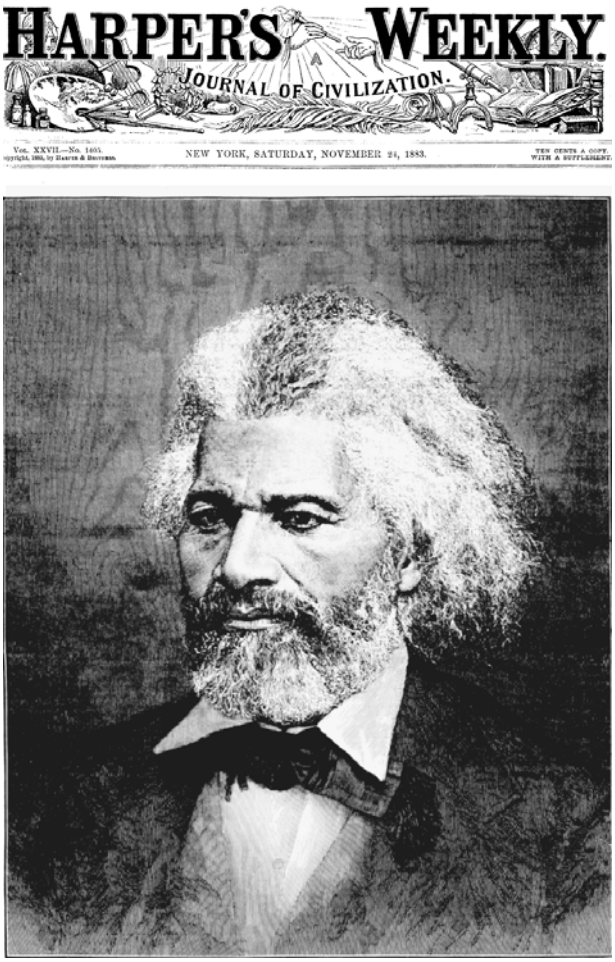
and for the aggrandizement of others. A child born into slavery remained a slave for life.

Southern states had precise laws that governed the freeing of slaves for fear of creating a large free black population. Free blacks in slaveholding states were regarded by whites living in those states as threats to the security of the white population. It was thought that the mere presence of free blacks would be an incitement to slave revolts. Some slaves did, however, succeed in gaining their freedom—in a variety of ways, such as reward for having provided "exceptional service" to their masters and, for those slaves who were allowed to hold assets, self-purchase. Slaves were sometimes freed upon the deaths of their masters, usually via provisions in their masters' wills. For example, George Washington, who predeceased his wife, stipulated in his will that his slaves were to be freed upon his wife's death.

Slaveholders would often give accounts of the peculiar institution that tended toward the purely fictional. They strove to portray themselves as benevolent slave masters in pursuit of the noble goal of bringing civilization and Christianity to the lives of savages. Southern historians, in their accounts, frequently added to this falsification during the nineteenth century and well into the twentieth century. In so doing they ignored concrete evidence of slave accomplishments, as well as of slave resistance—including evidence that showed that many slaves ran away to live among Native Americans and to live in free states or in Canada, as well as evidence that it was not uncommon for slaves to revolt openly, to feign sickness (in order to evade degradation), and to participate in work slowdowns.

In the second half of the twentieth century scholars were providing far more accurate accounts of the peculiar institution. Much of the new historiography was based on primary source materials that scholars had previously ignored—the *slave narratives,* which are autobiographical accounts of the slave experience. Slave narratives provide a vivid panorama of the horrors of human bondage. Although many slave narratives were committed to writing after slavery had ended in the United States, a good many of them came into existence during the period of slavery, often with the help of the abolitionists who wished to use the documents in their fight against slavery. Frederick Douglass's narrative, *Life and Times of Frederick Douglass: His Early Life as a Slave, His Escape from Bondage, and His Complete History,* is perhaps the best known of this genre.

The enslavement of Africans in America in all its cruel dimensions—capture, Middle Passage, auction block, and the peculiar institution—would not have been possible were it not for the imprimaturs given to slavery by U.S. governments, both before and after the Revolutionary War. Laws that recognized or even made mention of the institution of slavery did not exist in 1619 when Africans first arrived in what was to become the United States. These Africans (all twenty of them) were put ashore at Jamestown, in the colony of Virginia, by the captain of a Dutch frigate. They had not entered his country (the Netherlands) as slaves, nor had they ever been treated as such. Most were indentured servants at the time of their arrival in Virginia (as were some of the white arrivals), and were listed as such in the Jamestown census counts of 1623 and 1624. After their periods of service had expired, the African settlers were "assigned land in much the same way that it was being assigned to whites who had completed their indenture" (Franklin and Moss, 1988, p. 53). Those Afri-


HARPER'S WEEKLY.
JOURNAL OF CIVILIZATION.
NEW YORK, SATURDAY, NOVEMBER 24, 1883.

In the nineteenth century Frederick Douglass (c. 1818–1895) was the world's most famous African American. He remains the most influential orator and lecturer in U.S. history. Here, a head-and-shoulders drawing of Douglass adorns the cover of *Harper's Weekly,* November 24, 1883. *Harper's Weekly* was a progressive magazine, yet some of its former content (pertaining to African Americans) would be considered offensive by today's standards.

can settlers who were not indentured were not slaves and were not treated as slaves by the colonists. Over time, however, slavery reared its head and became institutionalized in the North American colonies—first by custom, in the New England colonies in 1638, and then by law, in Massachusetts in 1641. From the vantage point of the slave owner, the enslavement of Africans was more cost-efficient than that of Native Americans or poor whites, because the Africans' general unfamiliarity with the land (and the skin color that was making them conspicuous) made it difficult for them to hide or to escape.

Once slavery had taken hold in colonial America, African Americans had no legal rights with which to protect themselves from enslavement. The U.S. Supreme Court made clear this vulnerability when, in 1857, it summarized (in the famous *Dred Scott* decision) the legal status of slaves and free blacks alike under colonial laws and the laws that existed at that time. Writing for the court, Chief Justice Roger B. Taney observed that African Americans were ". . . regarded as beings of an inferior order . . . unfit to associate with the white race" and, as such, ". . . they had no rights which the white man was bound to respect." Accordingly, "[T]he negro might justly and lawfully be reduced to slavery for his benefit" (*Dred Scott v. Sandford* [1857]).

This grim assessment of the U.S. Supreme Court has antecedents in the U.S. Constitution of 1787. No less than five provisions of the Constitution unambiguously sanction and protect slavery. Article I, Section 2, Paragraph 3 (the "three-fifths clause") ruled that a slave counted as three-fifths of a person in the calculation of a state's population for purposes of congressional representation and any "direct taxes." Article I, Section 9, Paragraph 1 (the "slave-trade clause") prohibited Congress from ending the slave trade before the year 1808, but did not require Congress to ban it after that date. Article I, Section 9, Paragraph 4, somewhat redundant of the three-fifths clause, ensured that a slave would be counted as three-fifths of a person if a head tax were to be levied. Article V, Section 2, Paragraph 3 (the "fugitive-slave clause") required the return of fugitive slaves to their owners "on demand, " and, finally, Article V prohibited Congress from amending the slave-trade clause before 1808.

These constitutional directives—plus about a dozen others that indirectly support slavery—made the Constitution of 1787 a slaveholder's constitution. William Lloyd Garrison, the nineteenth-century abolitionist, was not exaggerating when he referred to the Constitution as "a covenant with death," "an agreement with Hell," and "a pro-slavery" Constitution (Finkelman, 1996, p. 3). Modern historians, overwhelmingly, are in agreement with this view. Civil war scholar Don Fehrenbacher, for example, asserted, "prior to 1860, the United States was a slaveholding republic" (2001, p. 5). Similarly, historian David Brion Davis argues: "The U.S. Constitution was designed to protect the rights and security of slaveholders, and between 1792 and 1845 the American political system encouraged and rewarded the expansion of slavery into nine new states" (2001, p. 134).

Slavery ended on the battlefield rather than in the statehouse or the courthouse. The Union's defeat of the Confederate States of America in the Civil War brought down the peculiar institution. The U.S. Congress and the individual states then codified that victory with the ratification of the Thirteenth Amendment to the Constitution, which abolished slavery and involuntary servitude. President Abraham Lincoln's Emancipation Proclamation, signed on January 1, 1863, did not and could not free all slaves. It stated that "all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free." Thus, the Proclamation did not purport to free slaves in states that were not in rebellion against the United States, nor did it have the power to free the great majority of slaves who were under subjugation by the Confederacy. But the Emancipation Proclamation did have the effect of transforming the Civil War from a war to save the Union, which is how Lincoln and the North initially characterized the war, to a crusade to free the slaves, with Lincoln as the commander-in-chief of the liberation force.

After 1865

Following the Civil War, Congress passed a great many laws intended to reshape the South into a more democratic, racially inclusive society. These laws included the *Reconstruction Acts,* a series of acts that began with the Reconstruction Act of March 2, 1867. The purpose of these acts was to "provide for the more efficient government of the rebel states"—in other words, to facilitate restoration of the war-torn South. Congress also enacted legislation establishing the Freedmen's Bureau, a U.S. government bureau that helped the freed slaves adjust to a new life.

Early Civil Rights Gains and Losses

The Party of Lincoln spearheaded ratification of the Thirteenth (1865), Fourteenth (1868), and Fifteenth (1870) Amendments to the Constitution. These amendments abolished slavery and involuntary servitude; established citizenship for the freed slaves, plus guaranteed them due process and equal protection of

[1890 CONSTITUTION OF MISSISSIPPI. ADOPTED NOVEMBER 1, 1890]

ARTICLE 8—EDUCATION. Sec. 243. A uniform poll tax of two dollars, to be used in aid of the common schools, and for no other purpose, is hereby imposed on every male inhabitant of this State between the ages of twenty-one and sixty years, except persons who are deaf and dumb or blind, or who are maimed by loss of hand or foot; said tax to be a lien only upon taxable property. The board of supervisors of any county may, for the purpose of aiding the common schools in that county, increase the poll tax in said county, but in no case shall the entire poll tax exceed in any one year three dollars on each poll. No criminal proceedings shall be allowed to enforce the collection of the poll tax.

Sec. 244. On and after the first day of January, A. D., 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, A.D., 1892.

the laws; and granted them the right to vote, respectively. Federal troops were sent into the South to enforce these rights. A number of civil rights laws that protected the rights of the freed slaves were also passed by the Republican Congress. These laws were mainly a response to the "Black Codes" that had been enacted in most Southern states—laws that, like the Jim Crow laws that would come later, sought to return the newly freed slaves to a slavelike existence. The most important of the laws that were a response to the Black Codes were the Civil Rights Act of 1866 and the Civil Rights Act of 1871, the latter of which was enacted in response to the emergence of the Ku Klux Klan in 1868 (and thus is also known as the Ku Klux Klan Act of 1871). Congress also passed the Civil Rights Act of 1875, which the Supreme Court effectively overturned in a series of decisions it made in 1883 (the cases collectively known as the Civil Rights Cases).

As a result of this action, African Americans enjoyed degrees of freedom that were unprecedented, which they used to garner economic prosperity, not only for themselves but for the region as a whole. For the first time in U.S. history, African Americans were elected to Congress and state legislatures. But this era of racial progress turned out to be short-lived, and abruptly ended with the Compromise of 1877.

The Compromise of 1877 decided the outcome of the disputed U.S. presidential election of 1876, which had been a contest between the Republican candidate, Rutherford B. Hayes, and the Democratic candidate, Samuel L. Tilden. The popular vote favored Tilden, but twenty Electoral College votes, representing four states, were in dispute. An ad hoc electoral commission, composed of Republican and Democratic leaders, decided, as a way of ending the stalemate, that the Republicans would be given the presidency and Southern Democrats would gain control of the South. In other words, it was agreed that the new president would remove all federal troops from the South. With the removal of federal troops, Southern whites were given free reign to reestablish white hegemony—marking the end of Reconstruction and the beginning of Jim Crow.

Lasting for approximately one hundred years, Jim Crow was America's age of apartheid. It was a time of legalized racial discrimination and segregation—a time in which African Americans lived under the yoke of white supremacy and were accorded second-class citizenship under the law. During the years of Jim Crow African Americans inhabited a world of limited opportunities and fear. They were vulnerable to beatings, maimings, lynchings, murders, and a constant stream of indignities.

African-American Disfranchisement

To lend legitimacy to this regime of racial repression, whites in positions of power devised stratagems to wrest from African Americans rights they had already been given, including the right to vote. Without this right, without political power, without access to the power of government, African Americans would then be powerless to prevent the erosion of other basic rights. To fulfill their agenda, Southern whites found ways to circumvent the Fifteenth Amendment (which had given African Americans the right to vote).

With African Americans constituting a majority of its population, Mississippi became the first state to move toward this disfranchisement. A state constitutional convention was convened in 1890. The delegates to the convention made their intentions clear: they had come together for the express purpose of disfranchising all African-American residents who had attained any measure of socioeconomic status. In the words of a delegate to the convention:

> "I am just as opposed to Booker Washington [the leading African American figure of the day] as a voter, with all his Anglo-Saxon re-enforcements, as I am to the coconut-headed, chocolate-

> colored, typical little coon, Andy Dotson, who blacks my shoes every morning. Neither is fit to perform the supreme function of citizenship" (Brooks, 1999, p. 395).

Accordingly, the Mississippi constitution was amended to include the establishment of a $2 poll tax and a literacy test as preconditions to exercising the right to vote. The latter required the prospective voter to read a section of the state constitution selected by an election official (who was invariably white) and/or to answer questions in such a way as to prove to the official that he had understood what had been read. As a result of these constitutional amendments, scores of African Americans who had been eligible to vote during Reconstruction were suddenly ineligible.

Other states followed the lead of Mississippi. South Carolina disfranchised African Americans in 1895, by adopting amendments to its constitution that called for a two-year residence test, a $1 poll tax, a literacy test, and a property-ownership test. The property-ownership test established ownership of property in the state valued at $3000 (or greater) as another prerequisite to voting. Similarly, Louisiana amended its constitution in 1898 by adopting a new stratagem of disfranchisement called the grandfather clause. Under this clause, any male citizen whose father and grandfather had been qualified to vote on January 1, 1867 (just before the start of Reconstruction), was automatically eligible to vote, regardless of his ability to pass any of the new eligibility tests or to pay the poll tax. Prior to January 1, 1867, African Americans had not been eligible to vote in Louisiana. Thus, it was established that African Americans would be required to comply with the various eligibility tests and pay the poll tax in order to exercise their Fifteenth Amendment right to vote in Louisiana.

By 1910 African Americans were effectively disfranchised by constitutional amendments in North Carolina, Alabama, Virginia, Georgia, and Oklahoma, and other Southern states. The campaigns to reestablish white hegemony were often buttressed by violence. Race riots flared up—in Wilmington, North Carolina, in 1898; in Atlanta, Georgia, after an election in 1906; and in other cities. Dozens of African Americans died in their attempts to exercise their Fifteenth Amendment rights.

Effectiveness of Disfranchisement

The disfranchisement of African Americans yielded the sought-after results. For example, 130,344 African Americans were registered to vote in Louisiana in 1896 and constituted voting majorities in twenty-six parishes. But in 1900, just two years after the adoption of the new state constitution, only 5,320 African Americans were registered to vote. Similarly, of 181,471 African Americans of voting age in Alabama in 1900, only 3,000 were eligible to vote under that state's new constitution.

The disfranchisement of African Americans was hailed throughout the South as a furtherance of progressive statesmanship. African Americans were viewed as too ignorant, too poor, and/or too inferior to participate in their own self-governance. Those who were in basic agreement with this credo would have taken comfort in the 1910 edition of the *Encyclopedia Britannica,* which provided "scientific" justification for the systematic, government-sanctioned exclusion of African Americans from mainstream society. According to its editors: "[T]he negro would appear to stand on a lower evolutionary plane than the white man, and to be more closely related to the highest anthropoids." In response to such charges, African Americans pointed to the exemplary record of African-American achievement during Reconstruction, which included innovative achievements in public finance, building construction, and public education. Indeed, African Americans had been responsible for the establishment of the first public school systems in many Southern states. But no quantity of truth or logic was going to persuade white Southerners to abandon their designs.

Jim Crow Appears

The major push for the installment of Jim Crow laws in the South came after Reconstruction; especially after the state constitutions had been amended so as to remove the only obstruction to the creation of Jim Crow laws that had remained (the authority of politically powerful African Americans). These laws were established throughout the South. They mandated racial segregation in all public facilities, including hotels, restaurants, theaters, schools, vehicles of public transportation, and other places of public accommodation. Jim Crow laws denied African Americans employment and housing opportunities. Worse, African Americans were often arrested under local vagrancy and peonage laws, and subsequently hired out by sheriffs, who made tidy profits in the ventures. Thus, having enshrined white supremacy in new constitutions—the fundamental laws of the states—Southern states securely established the color line as the point at which African Americans and whites would be segregated.

The federal government was more than complicit in the apartheid system that became established in the South. In *Plessy v. Ferguson* (1896), the Supreme Court upheld the separate-but-equal doctrine as the federal constitutional underpinning of the Jim Crow laws. De-

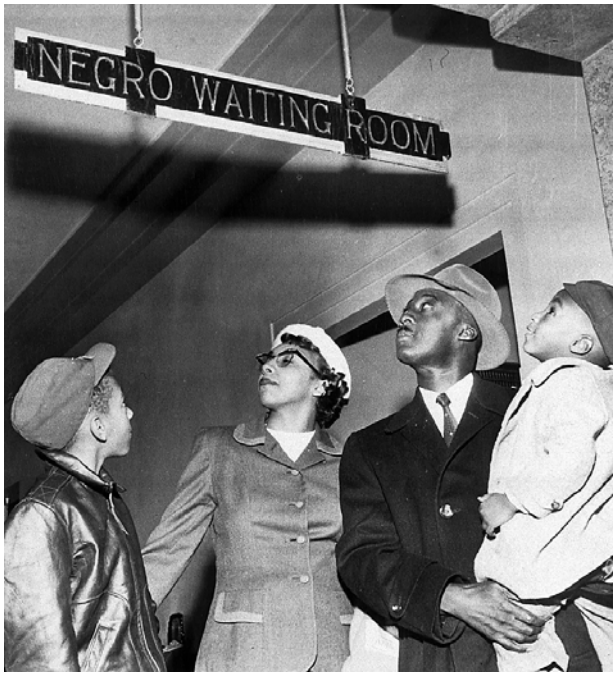
spite passage of federal civil rights legislation, Congress continued to segregate Washington, D.C., and refused to pass an anti-lynching law—something that African-American activist Ida B. Wells had fought for so courageously. Wells had been galvanized into action by the ritualized lynching of African Americans (mostly male African Americans).

Lynchings began in the South shortly after the Civil War. They were an effort to terrorize the newly freed slaves—an attempt "to keep them in their place"—and continued well into the twentieth century. Indeed, at the start of the twentieth century, there were in the public record 214 lynchings from the first two years alone. Before the end of Jim Crow thousands of African-American males and females would die by lynching. So rampant and targeted were the lynchings (often taking place in carnival-like atmospheres) that a white poet and songwriter, Abel Meeropol (also known as Lewis Allan), was motivated to write a musical protest song entitled "Strange Fruit." Made famous in 1939 by Billie Holiday, an African-American blues singer, the ballad gives a mock-lyrical description of black bodies left hanging from trees for all to see. The lyrics include: "Southern trees bear a strange fruit / Blood on the leaves and blood on the root / Black body swinging in the Southern breeze / Strange fruit hanging from the poplar trees."

Although the Jim Crow ethos manifested itself in the form of rigid, racially repressive laws in the South, it reared its head in the North mainly in the form of social norms. Though the norms in many ways required less segregation than the laws, they were rigorously enforced and often just as racially repressive. Both the laws and the social customs denied opportunities to African Americans. As one white Southerner observed of his first visit to the North in the 1930s: "Proudly cosmopolitan New York was in most respects more thoroughly segregated than any Southern city: with the exception of a small coterie of intellectuals, musicians, and entertainers there was little traffic between the white world and the black enclave in upper Manhattan called Harlem" (Brooks, 1999, p. 396).

Death of Jim Crow

Jim Crow began its death march in 1954, when the Supreme Court handed down its decision in the case of *Brown v. Board of Education* (actually four similar cases that the court decided to hear simultaneously). This decision, quite simply, changed forever the course of race relations in the United States. In the *Brown* decision, Chief Justice Earl Warren, writing for a unanimous court, held that "in the field of public education the doctrine of separate but equal has no place." With those carefully chosen words a judicial decision that had to do with public education became the most important action of the U.S. government since the Emancipation Proclamation.



Jim Crow in bold relief. Dr. and Mrs. Charles Atkins and their sons Edmond and Charles Jr. wait inside a train depot in Oklahoma City, November 1955. [AP/WIDE WORLD PHOTOS]

In banning racial segregation in public schools, the Supreme Court sought nothing less than to use society's most basic outpost of acculturation as the setting in which African Americans and whites (indeed all races, ethnic groups, and cultures) could be brought together for a lateral transmission of values. Hence, much more than school segregation was at stake in *Brown*. The court had been called upon to pass judgment on a morally corrupted way of life that the nation had known in one form or another since its inception—indeed a regime of racial domination and subjugation that predated the republic itself. The Supreme Court, thereby, placed itself in the vanguard of a third American revolution—the revolution that followed behind the Revolutionary War and the Civil War.

This third revolution was engineered by a team of lawyers from the National Association for the Advancement of Color People (NAACP). The lawyers included Charles Hamilton Houston, Thurgood Marshall (who would later become the first African American to sit on the Supreme Court), Constance Baker Motley, and Robert Carter. Carter, who along with Motley would later become a federal judge, summarized the signifi-

cance of *Brown* when he observed that the case had transformed the legal status of African Americans from that of "mere supplicants seeking, pleading, [and] begging to be treated as full-fledged members of the human race" to persons entitled to equal treatment under the law.

Although *Brown* did not put an end to Jim Crow in 1954, it was a stimulus to the burgeoning civil rights movement of the 1950s and 1960s. Martin Luther King's famous "I Have A Dream" speech, which so galvanized the supporters of the civil rights movement who had gathered at the Lincoln Memorial in 1963, was a stab in the heart of Jim Crow—its norm of white supremacy—no less than was *Brown*. Both struck strong blows for racial equality. Certainly, the civil rights legislation enacted by Congress in the 1960s and early 1970s—beginning with the Civil Rights Act of 1964 and ending with the Equal Opportunity Act of 1972—would not have been possible without *Brown*. It is doubtful that, in the absence of the *Brown* decision, a racially skittish Congress would have passed civil rights statutes in contravention of the constitutional principle of separate but equal.

In the South and the North, African Americans were a subordinated people in the Jim Crow era. As during the period of slavery, African Americans during Jim Crow were targets for ill treatment and exploitation, singled out for invidious discrimination. They were abused physically and psychologically. They were the victims of a "crime against humanity." Neither *Brown,* the civil rights movement, nor the civil rights legislation of the 1960s and 1970s has fully repaired the damaged visited upon African Americans by three and a half centuries of criminal treatment.

SEE ALSO Racism; Rosewood; Slavery, Historical; Slavery, Legal Aspects of

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Roy L. Brooks

African Crisis Response Initiative

The history of mass murder in Central Africa has been traced to the colonial era when Belgian colonialists massacred more than ten million people during their occupation and pacification of the Congo in the 1890s. Adam Hochschild's *King Leopold's Ghost* documented this period of genocide, a central aspect of colonial expansion. The European powers defined their mission as the civilization of "uncivilized" peoples, elimination of slavery, redemption of souls through conversion to Christianity, and expansion of international commerce, all the while insisting that the key conflicts in the region related to tribal hostility.

The genocide and mass murder perpetrated within the Congo set the stage for a century of mass slaughter throughout Africa, with the killings in the German pro-

tectorate of Namibia in a sense serving as the rehearsal for the Holocaust during World War II. The Nazis' annihilation of some six million European Jews brought the issue of genocide to the center of international concern.

The U.S. government established the African Crisis Response Initiative (ACRI) force in September 1996, during the Clinton administration, to respond in a timely fashion to humanitarian crises and develop peacekeeping missions on the African continent. The possibility of a major genocide in Burundi, along the lines of what had occurred in Rwanda in 1994, was the principal reason for the creation of this force. However, after the ACRI was formed, these murders continued and the force never officially intervened. As of mid-2004, with the mass murders occurring in the Darfur province of the Sudan, the U.S. government had yet to deploy the ACRI force to put an end to genocide in Africa.

Episodes of ethnically organized and targeted massacres have been constant in Burundi since 1965, with large-scale massacres documented for 1969, 1988, 1991, 1993, 1996, and 1997, and an actual genocide in 1972. Throughout this period the United States continued to provide military assistance to the Burundi government, the agent of the genocide. In fact, while the African Union and Nyerere Foundation labored to establish peace and demilitarization in Burundi, the official U.S. government, despite its statements calling for humanitarian intervention in Africa as outlined in the ACRI's founding articles, did not actively support these efforts.

The formation of the ACRI was interpreted by some African leaders, such as South African Nelson Mandela, as a cynical attempt by the U.S. government to repair its image in the wake of the Rwandan genocide. Although the United States had been willing to mobilize the United Nations (UN) to stop mass murders in Bosnia, it aggressively intervened to ensure that the UN did not send troops to end the Rwandan genocide in 1994, often regarded as the "fastest" genocide in history as it took place over the course of several days. While graphic images of the genocide dominated the media, the U.S. government remained reluctant to even use the term *genocide* to characterize what was unfolding in Rwanda. It simply declared, "acts of genocide may have taken place."

The experience of the U.S. military in Somalia is directly relevant to the creation of the ACRI. After the fall of the Siad Barre regime in Somalia, the United States, in 1992, chose to send in military forces in a humanitarian operation called Restore Hope. However, the mission soon took on other dimensions when U.S. foreign policy began to move in the direction of restructuring Somalia's government. Before long tensions erupted between U.S. forces and local military entrepreneurs. In 1993 the Battle of Mogadishu resulted in the death of several U.S. troops and the dragging of their bodies through the city's streets. The humiliation of this incident led the U.S. State Department to pressure the UN against intervening in the 1994 genocide in Rwanda.

An international panel of experts assembled by the Organization of African Unity (OAU) investigated the genocide in Rwanda and concluded that during the period of civil war, genocide had indeed occurred, and a high degree of tolerance for genocidal violence committed by African leaders seemed to exist. In calling its report *Rwanda: The Preventable Genocide,* the panel drew attention to the possible culpability of the United States and UN in this tragedy.

Regional leaders such as Michel Micombero of Burundi, Emperor Bokassa of the Central African Republic, Idi Amin of Uganda, and Mobutu of Zaire (now the Democratic Republic of Congo) directly and indirectly contributed to the perpetuation of war and genocide by supporting, tolerating, or adopting a stance of indifference toward state-implemented criminal prescriptions originating from extremist political elements that exploited myths of Tutsi and Hutu origins.

SEE ALSO Burundi; Early Warning; Humanitarian Intervention; King Leopold II and the Congo; Prevention; Rwanda

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Horace Campbell

Aggression

Theologians and moralists have long attempted to restrict the use of force by states through elaborating the concept of just and unjust wars, condemning those deemed unjust. Legal efforts to outlaw recourse to war came much later, mostly dating from World War I.

December 6, 1939: The Nazi *Blitzkrieg* (lightning war), begun in September, continued in Warsaw, Poland. A section of the city was set afire by bombs dropped from Nazi planes. [BETTMANN/CORBIS]

Until that time, international law placed certain limitations on and pre-requisites to warfare, but did not prohibit it altogether. War was still perceived as a legitimate means of achieving political objectives.

From World War I to Nuremberg

World War I ("the war to end all wars") left ten million deaths in its wake, eliminating an entire generation of young men in Europe. This catastrophe led countries to seek ways to ban war as an exercise of State sovereignty. U.S. Secretary of State Frank Kellogg, the French Minister of Foreign Affairs Aristide Briand and the German Minister of Foreign Affairs Gustav Stresemann spearheaded negotiations to conclude a treaty that would achieve this aim. On August 27, 1928, in Paris the Kellogg-Briand Pact was signed and opened for adherence by states. By virtue of Article I of this short text, the forty-five State parties "condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy;" in Article II they "agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be . . . shall never be sought except by pacific means."

As a corollary to the Pact, a subsequent American Secretary of State, Henry Stimson, enunciated the doctrine of non-recognition of international territorial changes effectuated by force. This doctrine was a response to Japan's unilateral seizure of Manchuria in September 1931. The Stimson doctrine was subsequently incorporated in several international declarations, including a League of Nations resolution of March 11, 1932; the Inter-American Pact of Rio de Janeiro of October 10, 1933; and the Budapest Articles of Interpretation (September 10, 1934) of the Kellogg-Briand Pact.

Germany and Italy were among the state parties to the Pact, but this did not prevent the outbreak of World War II, in which Hitler was the principal, but not the

only aggressor. The Soviet Union, for instance, joined Germany in attacking Poland in September 1939, pursuant to a secret treaty signed by foreign Ministers Ribbentrop and Molotov, in which they divided Poland between the two countries. In October 1939 the Soviet Union occupied and annexed the three Baltic States of Estonia, Latvia and Lithuania. In November 1939, it took 18,000 square miles of Finnish territory and forced 450,000 Finns to resettle elsewhere. For the latter aggression the Soviet Union was formally expelled from the League of Nations in December 1939.

Following German capitulation in May 1945, the Allies adopted the London Agreement of August 8, 1945, which contained the Charter of the Nuremberg Tribunal. Article 6(a) of this charter provided for prosecution for crimes against peace: "namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing." Many Nazis leaders were indicted and convicted of this offence, seven of whom were sentenced to death. Despite the adherence of Germany to the Kellogg-Briand Pact, controversy emerged over whether or not the inclusion of "crimes against peace" amounted to the enunciation of new law and made the prosecutions contrary to norms of justice prohibiting punishment for offenses *ex post facto*. It is clear that the Kellogg-Briand Pact prohibited recourse to war, but it did not include any reference to personal responsibility or international crimes, so the issue remains subject to debate.

Whatever the legal position before the London Charter, the illegality of aggression was settled in its aftermath. By virtue of General Assembly Resolution 95(1) of December 11, 1946, the Nuremberg judgment, including the condemnation of aggression, was recognized as binding international law. At the same time, the International Law Commission was entrusted with drafting what became known as the "Nuremberg Principles," which were adopted in July 1950, and included a definition of the crime against peace.

In General Assembly Resolution 177(II) of November 21, 1947, the International Law Commission was further mandated to prepare a code on offences against the peace and security of mankind. After nearly forty years of effort, the International Law Commission adopted in 1996 a "Draft Code on Crimes Against the Peace and Security of Mankind" (not yet approved by the UN General Assembly). Article 16 of the draft code contains the following statutory definition: "An individual who, as leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State shall be responsible for a crime of aggression."

Defining Aggression

General Assembly Resolution 3314 (XXIX) of December 14, 1974, constitutes the most detailed statement of the United Nations on aggression. The resolution defines aggression in its first articles. Article 1 provides:

> Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

Article 2 stipulates:

> The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Article 3 lists a series of acts which, regardless of a declaration of war, would constitute aggression, including the invasion or attack by the armed forces of a state of the territory of another state, bombardment by the armed forces of a state against the territory of another state, the blockade of the ports or coasts of a state, and the sending of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another state.

Article 5 warns that "no consideration of whatever nature, whether political, economic, military or otherwise may serve as a justification for aggression. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful."

Article 7 explains, however, that "nothing in this declaration . . . could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of persons forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination, nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration."

The UN General Assembly has reaffirmed the consensus definition in several declarations, including the Declaration on International Détente (Res.32/155 (1977)) the Declaration of Societies for Life in Peace (Res. 33/73 (1978)), the Declaration on the Non-Use of Force (Res. 42/22 (1988).

UN Efforts to Combat Aggression

The United Nations was founded "to save succeeding generations from the scourge of war" (preamble), and Article 1, paragraph 1 of the Charter establishes its mandate "to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression. . ." Article 2, paragraph 3 imposes an obligation to resolve international disputes peacefully: "All members shall settle their international disputes by peaceful means." Finally, Article 2, paragraph 4 specifically engages States to "refrain in their international relations from the threat or use of force."

The Charter prohibition of force has been repeated in countless resolutions of the Security Council and of the General Assembly. It is detailed most importantly in GA Resolution 2625 (XXV) of October 24, 1970, *Resolution on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,* which solemnly proclaims that

> Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues. A war of aggression constitutes a crime against the peace, for which there is responsibility under international law. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

The Security Council has, however, avoided labeling breaches of the peace as acts of aggression. Even in a case as clear as the 1990 aggression toward Kuwait by Iraq, the Security Council condemned it merely as an "invasion and illegal occupation" (Res. 674/1990), and decided that "the annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void" (Res. 662 (1990)). However no reference was made to the application of Article 3(a) of the definition of aggression, or to the penal consequences pursuant to Article 5.

Other uses of force since World War II could be measured against the standards laid down by the UN Charter, the Nuremberg Principles and the Declaration on the Definition of Aggression. These incidents include Dutch "police actions" in Indonesia (1947–1950), the French Indochina wars (1952–1954), the French-Algerian conflict (1954–1963), the sinking of the Greenpeace vessel "Rainbow Warrior" in Auckland Harbour in New Zealand, the war over the Belgian Congo (1960–1962), the Indian-Pakistani war 1970–1971, the Warsaw Pact's invasion of Czechoslovakia in 1968, the Soviet Union's occupation of Afghanistan in 1980, the Iraq-Iran War (1980–1990), the Turkish invasion of Cyprus in 1974 and the Vietnam War.

Justifications for the Use of Force, Self-Defense

There are, of course, some justifications for the use of force which are legitimate according to international law. Article 51 of the UN Charter stipulates: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

The application of this provision is, however, strictly limited by the over-all obligation to negotiate set forth in Article 2, paragraph 3, and the prohibition of the threat of or the use of force in Article 2, paragraph 4 of the UN Charter. In his address to the General Assembly on September 23, 2003, Secretary General Kofi Annan stated: "Article 51 of the Charter prescribes that all states, if attacked, retain the inherent right of self-defence. . .until now it has been understood that when states go beyond that, and decide to use force to deal with broader threats to international peace and security, they need the unique legitimacy provided by the United Nations." The International Court of Justice has specified the situations in which Article 51 can be invoked, most recently in an advisory opinion of July 9, 2004. The consensus of international law experts is that preventive or pre-emptive war is not compatible with article 51 of the charter, which requires an existing "armed attack" and places overall responsibility on the Security Council.

Humanitarian intervention is another possible justification for the use of force, and it remains the responsibility of the Security Council to legitimize or not a given military intervention. For example, approval was given in Resolution 688 of April 5, 1991, with respect to the necessity to create safety zones for Kurds and other minorities in Iraq. Humanitarian intervention would also have been possible in order to stop the

genocide in Cambodia (1975–1979) or in Rwanda (1994).

While humanitarian intervention may be an international duty in order to stop genocide and crimes against humanity, it must not become a cloak or an excuse for military interventions responding to other political agendas. For instance, Human Rights Watch recently conducted a study of the arguments advanced by the United States as justification for the war on Iraq begun in 2003, and concluded that the U.S. intervention did not satisfy the constitutive elements of a humanitarian intervention.

Individual Responsibility

Aggression is not only an internationally wrongful act giving rise to State responsibility and the obligation to make reparation; it is also an international crime giving rise to personal criminal liability. The Diplomatic Conference of Rome adopted on July 18, 1998 the Statute of the International Criminal Court, which defines the jurisdiction of the Court in its Article 5, including with respect to the crime of aggression. Paragraph 2 of Article 5, however, stipulates: "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime." This delay in the exercise of the Court's competence with regard to aggression is primarily attributable to the opposition of the United States. However, since the United States has indicated that it will not ratify the treaty, the assembly of States parties to the Rome Statute is now free to adopt a definition consistent with the judgment of the Nuremberg trials.

None of the Special Tribunals created since have jurisdiction over the crime of aggression, neither the International Tribunal for the Former Yugoslavia, nor the International Tribunal for Rwanda, nor the Iraqi Special Tribunal. Precisely because no international tribunal has been given competence to try aggressors for the crime of aggression, a number of representatives of civil society have organized "People's Tribunals."

Notable among these are the Russell Tribunal on the Vietnam War, organized by British pacifist Bertrand Russell and French philosopher Jean Paul Sartre (held 1967 in Sweden and Denmark) and the Brussels Tribunal on the Iraq War organized by former Attorney General Ramsey Clark (April 2004). The latter was conducted with the participation of two ex-United Nations humanitarian coordinators for Iraq, Dennis Halliday and Hans von Sponeck. Both tribunals condemned the United States as an aggressor in Vietnam and as an aggressor in Iraq. There is also a "Permanent People's Tribunal" (Fondation Internationale Lelio Basso), which has held more than 30 sessions, one of them in Paris in 1984, devoted to the genocide against the Armenians, and one held in Rome in 2002 devoted to international law and the new wars of aggression.

A Human Right to Peace

The international prohibition of aggression may also be viewed as asserting a human right to peace. On November 12, 1984 the United Nations General Assembly adopted Resolution 39/11, annexing the Declaration on the Right of Peoples to Peace. This declaration reaffirms that "the principal aim of the United Nations is the maintenance of international peace and security" and the "aspirations of all peoples to eradicate war from the life of mankind and, above all, to avert a world-wide nuclear catastrophe." By virtue of operative paragraph 2, the declaration proclaims that "the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State." In paragraph 3, the declaration "demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means."

This declaration has been reaffirmed in resolutions of the General Assembly and of the United Nations Commission on Human Rights. In its Resolution 2002/71 of April 25, 2002, the Commission linked the right to peace with the right to development and affirmed that "all States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries." The resolution urged "the international community to devote part of the resources made available by the implementation of disarmament and arms limitation agreements to economic and social development, with a view to reducing the ever-widening gap between developed and developing countries."

In a world of weapons of mass destruction, it is imperative to strengthen the early warning and peaceful settlement mechanisms of the United Nations. In view of the human consequences of war, aggression must be prevented through international solidarity. The idea that has become the norm is that no country can take the law in its own hands. Force can only be used as a last resort and only with approval of the UN Security Council.

SEE ALSO Humanitarian Law; International Criminal Court; Peacekeeping; United Nations Security Council; War; War Crimes

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Alfred de Zayas

Algeria

Since the end of France's occupation of Algeria in 1962, there has been little debate about the French colonization campaign in North Africa and its subsequent efforts at maintaining the colony. Very few people have dared to re-examine the atrocities committed by colonizing states in many parts of the world in the last two centuries. Among the worst atrocities were those committed by France in Algeria between 1830 and 1962.

France invaded Algiers in June 1830 under the excuse of fighting piracy and avenging an affront caused by Hussein Dey's reprimand of the French ambassador over the failure to pay a long-standing debt owed to the Algiers regency, which was recognized as a sovereign state by the United States and most of Europe. According to many historians, the main reason for the military assault on Algiers was the need of French ruler Charles X to build up his weak popularity and power at home. After Algiers fell to the invading forces, it took more than forty years of violent and highly destructive military campaigns to control the rest of the country.

The French occupied Algeria for 132 years and imposed a series of policies which aimed at controlling the territory and its people by all means possible, opening the country to European settlers, and extracting substantial economic and geostrategic benefits. These policies, which were systematically and violently implemented, had devastating human, social and economic consequences.

The "Pacification" of Algeria: Massacres and Dispossession

In the late 1830s French rule in Algeria was entrusted to the military, which was ordered to pacify the country by all means and to facilitate the immigration of European settlers (mainly from France, Italy, and Spain). Command was given to General Thomas Bugeaud, who was named Governor General of Algeria in 1840. His army of 108,000 troops tracked down Algerians, tortured, humiliated, and killed them, or expelled them from their lands and villages. He conducted a long military campaign against the Algerian resistance, which was led by Emir Abdel-Qader. Bugeaud finally defeated this early resistance, but not without allowing and encouraging his troops to commit horrible crimes against the Algerians.

The crimes associated with this "pacification" campaign reached their peak in 1845, when hundreds of people were burned alive or asphyxiated in caves where they sought refuge from the advancing French troops that were conducting large scale *razzia* (systematic raids on villages). The raiding French troops burned, destroyed or stole property, food, and animal stocks; they also raped women and killed villagers in great numbers. The violent acts committed at that time against the indigenous population, and which today would constitute internationally recognized crimes, were documented in several witness accounts and reports such as the one issued by a royal commission in 1883.

> We tormented, at the slightest suspicion and without due process, people whose guilt still remains more than uncertain [. . .]. We massacred people who carried passes, cut the throats, on a simple suspicion, of entire populations which proved later to be innocent. . . . [Many innocent people were tried just because] they exposed themselves to our furor. Judges were available to condemn them and civilized people to have them executed. . . . In a word, our barbarism was worse than that of the barbarians we came to civilize, and we complain that we have not succeeded with them!

This policy of racism, wide-scale massacres, and scorched earth, enabled France to win the war of conquest by the end of 1847, and Algeria was annexed to France in 1848. In the years that followed, colonization increased the destruction of local social and economic structures and worsened the impoverishment of the indigenous population through property confiscation and forced mass migration from fertile lands. The worsening situation stimulated several attempts by the Algerians to end colonial rule. Some attempts were purely political, and aimed at achieving inclusion in the politi-

cal process and changes in legislation. Others were mass actions, demanding independence.

In 1871 a mass rebellion led by El-Mokrani challenged the occupying forces in the Kabylie region, east of Algiers. This rural rebellion, the largest since the surrender of Emir Abdel-Qader, was crushed by the French and followed by the imposition of very heavy punishments on the entire indigenous population, including further land confiscations; new, onerous taxes, and a tighter control of the people. According to historian Charles Robert Ageron, in his book *Modern Algeria: A History from 1830 to the Present* (1991), this punishment "was intended to terrorize the natives into submission once and for all—also to procure lands and money for colonization" (p. 52).

In 1871 right after the ill-fated El-Mokrani rebellion, a group of notables published a text, *Colonisation de l'Algérie par le système de colonisation du Maréchal Bugeaud,* assessing the policy of Bugeaud. They declared that

> the empire has done in Algeria what it would never dare do in France. It has committed against the Arabs a crime against humanity and against the army, that of offering the elite of its officers to the monstrous appetite of the leaders (p. 13).

Alexis de Tocqueville, a member of the French Parliament who had just written his famous book *Democracy in America,* supported not only colonization itself, but also the means used by Bugeaud's army to achieve it:

> As for me, I often heard in France men, whom I respect but do not agree with, who found it bad that we burned crops, emptied stock silos, and took unarmed men, women, and children. For me, these are unfortunate necessities which any people that want to wage war against the Arabs is obliged to do (de Tocqueville, 1988, p. 77).

Although the 1871 rebellion did not succeed, it paved the way for the final assault on the colonial system, which occurred in 1954. Between these two dates, the Algerians made many peaceful demands for the end of colonial control, but to no avail.

The Massacres of May 1945

At the end of World War II in Europe, large-scale, peaceful demonstrations were organized, and on May 8 demonstrators throughout Algeria voiced their demands for independence. The most notable demonstrations took place in the northeastern cities of Setif, Guelma, Kherrata, Bejaia, Annaba, and Souk-Ahras. The demonstrators were met with hostile gun fire and physical attacks, both from settlers and from the French security forces. An Algerian carrying the then-prohibited Algerian flag was shot to death in Setif by a policeman, touching off riots. General Duval, commander of the military division of the province of Constantine, called in the air force and paratroopers, who responded to the demonstrators with such extreme violence that 45,000 Algerians were killed within a few days.

The Algerians began a well-coordinated push for independence, while France employed every means available to quell the uprising, including military repression, collective punishment, torture, and even concentration camps. The irony of the situation was not lost on some observers. Writing in *Le Monde Diplomatique,* Pascal Blanchard, Sandrine Lemaire, and Nicolas Bancel observe:

> Of course, one cannot compare colonialism to Nazism, but the contradiction was reinforced between a France that celebrates the victory of democratic nations over a genocidal state and its maintaining, by military means, the submission of a population that was subjugated for over a century (pp. 10–11).

State-Sanctioned Torture

In 1957 the International Red Cross disclosed the widespread use of torture by the French army and police against thousands of Algerians. After that, information about the French treatment of Algerians became available to the wider public. The torture techniques used by the French included electricity applied to the most sensitive parts of the body, near drowning in water, sodomy with glass and wood objects, hanging by the feet and hands, and burning with cigarettes.

It was not until the early 2000s, forty years after Algeria achieved independence, that some of the aging French colonels and generals who served in Algeria finally admitted the horrors that they, their colleagues, or their subordinates had committed in Algeria. Among them were Generals Marcel Bigeard, Jacques Massu, and Paul Aussaresses. In his book, *Services Spéciaux 1955–1957,* Aussaresses admits to a specific act of torture: "It was useless that day. That guy died without saying anything . . . I have no regrets for his death. If I regretted something, it was the fact that he did not speak before dying." He also tells of how he ordered and watched many cold-blooded killings of prisoners, just because he did not have enough room to keep them. The International Human Rights Federation indicated that the general should be charged with crimes against humanity, but the French government chose not to prosecute him and others like him because of a 1968 law that absolves everyone for acts committed during the war. This protection disregards the dispositions of Article 303 of the French penal code, which sanctions any person who engages in torture.

The Algerian War of Independence (1954–1962), a guerrilla-style struggle between the French army and pro-independence Algerians, left in its wake over a million Algerian citizens (both military and civilians) dead and the widespread destruction of the land. Here, a resting Harki soldier gazes on a devastated Algerian village, 1960. [MARC GARANGER/CORBIS]

According to most accounts, the political leaders of France were well aware of the crimes committed by the military they sent to quell the rebellion that began in November 1954. General Aussaresses admitted that Justice Minister Franìois Mitterand (who became France's president in 1981) knew about and approved the methods used by the Special Services of the army. In other words, the military were given *carte blanche* to do whatever they saw fit in combating the Algerian nationalists. In 1955, when evidence of torture in Algeria started becoming bothersome for France (which had just abandoned Vietnam), the government of Prime Minister Pierre Mendès France ordered an immediate study of the issue. However, that study was intended to dismiss the accusations rather than to confirm them. The ensuing Roger Willaume Report, which referred mostly to "violence" (*sévices*) rather than torture, did in fact find that the police used "violent methods that were 'old-established practice'" and that "in normal times they are only employed on persons against whom there is a considerable weight of evidence or guilt and for whom there are therefore no great feelings of pity" (Maran, 1989, p. 48). Even though this report was not dismissed by the government, its findings had no effect on the use of torture by the French police and army in Algeria. As Rita Maran points out: "In the colonial milieu, the application of the ideology of the civilizing mission had failed a crucial test, through the barbarous behavior of the police trained by France. The 'rights of man' were not merely neutralized in the colonial situation, they were actively violated" (Maran, 1989, p. 51).

Violence against Algerians was not limited to Algeria proper. Immigrant workers in France were also punished for their sympathy for their embattled compatriots in the homeland. Beginning in August 1958, and using what he had learned during his service in Algeria, Parisian chief of police Maurice Papon rounded up more than 5,000 Algerian immigrants because of suspicion of support for the nationalists. In 1959 he created an internment (concentration) camp at Vincennes, just outside of Paris, where hundreds of Algerians were jailed without trial and were subjected to terrible treatment. On October 17, 1961, Algerian nationalist militants held a peaceful march in Paris to

demand the independence of Algeria. Unfortunately, that peaceful show of solidarity quickly turned into a bloodbath. The police charged the protesters with gunfire and night sticks, killing more than 200 immigrants, many of whom were thrown into the Seine river. Papon's culpability for crimes was not limited to his treatment of Algerians. He was tried in the year 2000 for having helped deport Jews to Nazi Germany during World War II.

Economic and Social Destruction

The horrific violence used by France against Algerians in the context of colonization did not limit itself to physical brutality and cruelty. It also came in the form of humiliation, economic dispossession, and social dislocation. After France decided to colonize Algeria and transform it into a French land, its military repression was complemented by a series of actions and policies that disrupted the lives and livelihoods of several generations of the indigenous population.

During the repressive "pacification" of Algeria's population, the colonization of the land also went forward, involving the destruction of the existing social structures and economic system. This was done by force and by passing laws, such as the *sénatus-consulte* and the Warnier law of 1873, which dispossessed rural families and communities of ancestral land that was not alienable under the existing Islamic and customary laws. General Bugeaud summed up France's interest in the land: "What is to take in [Algeria] is only one interest, the agricultural interest. . . . Oh, yes, I could not find another way to subdue the country other than take that interest" (Stora, 1991, p. 25). The expropriation of land was massive, and most Algerians found themselves deprived of their main mean of subsistence. Those who were lucky found insecure employment in the new large European-owned properties. Collective punishment was also used a regular means to take more land away from the local population. This happened after the El-Mokrani upheaval, in which 500,000 acres of land were confiscated. This punishment was accompanied by a total denial of due process and the 1881 imposition of harsh common law sanctions formulated in the Code de l'Indigénat (laws for the natives).

When France lost Alsace-Lorraine to Germany in 1871, thousands of residents of that region were resettled in Algeria and awarded land confiscated from the Algerians. By the end of the century, over half of Algeria's arable land was controlled by the Europeans. The few Algerians who had retained their land were so heavily taxed and victimized by so many natural and bureaucratic calamities that they could barely subsist. This condition led Alexis de Tocqueville—who wrote a blueprint for colonization—to observe in 1847 "we have rendered the Muslim society a lot more miserable, more disorganized, more ignorant, and more barbarian than what it was before it knew us" (p. 170).

Between 1830 and 1860 there were 3 million Algerians, 3.5 million by 1891 and 5 million in 1921. In 1886 there were 219,000 French settlers and 211,000 other Europeans (Spaniards, Italians, and Maltese). The total European population reached 984,000 in 1954, while the Algerians numbered 6 million. Yet the European minority controlled not only most of the country's wealth, but also the fate of those they had subjugated in their own land.

Using the "divide and rule" principle, the French created through the 1870 Crémieux Decrees, which extended French citizenship to Algerian Jews and European settlers while excluding Muslim Algerians from citizenship. The French also created a distinction between Arab and Berber Algerians, and promoted Berber over the Arabic language because the latter was a unifying medium for Algerian nationalism. The social schisms thus created among Algeria's peoples continued to have a negative legacy into the twenty-first century, more than 40 years after Algeria's independence.

Violence at Independence and Beyond

The war of independence waged by the Algerians for more than 7 years (1954–1962) left 1.5 million Algerians dead and substantially weakened the already meagre economic and social infrastructure. Eighteen months after coming to power in 1958, retired General Charles de Gaulle understood that the war in Algeria no longer served France's interests. In 1960, negotiations with the Algerian nationalists (National Liberation Front) began for a "clean" and orderly exit of France from Algeria. A referendum in Algeria and France gave an overwhelming support to de Gaulle's policy with regard to Algeria. The Evian Accords between France and the Algerian nationalists sealed the final terms for Algeria's independence in July 1962. However, the hardliners among the French settlers in Algeria did everything possible to resist such an outcome. They disobeyed orders from Paris, and even threatened to invade the motherland and take control for the sake of maintaining Algeria as a French possession. In a last desperate attempt, they created the Organization of the Secret Army (OAS) which would use terror to try to stall the independence momentum. Led by General Raoul Salan, this organization engaged in terrorist actions not only against Algerians, but also against French individuals and public offices deemed sympathetic to Algeria's independence. A few months before Algeria regained its sovereignty, French radical

settlers and disenchanted members of the military engaged in a systematic campaign of murder and destruction. Hundreds of people were killed in the midst of burning towns and cities.

In June 1962 French settlers began their exodus, returning to France by the thousands each day, leaving behind them death and destruction. France was exiting Algeria the same way it had entered, with a widespread terror and scorched earth policy. On July 1, 1962, a referendum in Algeria showed that 91.23 percent of voters supported independence.

The Harkis

In 1954, France managed to entice thousands of Algerians to collaborate with its forces with the promise of assimilation and better treatment by the colonial administration. They became known as the *harkis* and served mostly as self-defense groups aiding the colonial forces against the nationalists. According to a report sent the United Nations in 1961, there were 263,000 pro-France Algerians, of whom 58,000 were *harkis*.

When the French began to withdraw from Algeria, they knew that the *harkis* were in imminent danger of being slaughtered by fellow Algerians for treason. Nonetheless, French officials did not seem too concerned with the fate of their erstwhile allies. Thousands of *harkis* were left behind to die within the first weeks of independence. According to a 2003 book, *Un Mensonge Français* (A French Lie) by Georges-Marc Benamou, the government of Charles de Gaulle explicitly refused to repatriates the bulk of the *harki* population. Legal representative of thousands of *harkis* that managed to reach France in 1962 began a lawsuit in November 2003 against the surviving members of De Gaulle's government, accusing them of crime against humanity and ethnic cleansing.

The colonial venture in Algeria thus closed with yet another massacre that France could have avoided. Many of those responsible for the crimes committed in Algeria escaped persecution because of French amnesty laws protecting them and because of the resistance of French officials to open the files of colonization for an objective analysis and evaluation of that painful past.

Violence in Independent Algeria

After 132 years of colonial subjugation and a bloody seven-year war for independence, Algeria went through a period of relative peace and economic development that lasted almost three decades. However, the country entered into another troubled era in the 1990s. As one of the nationalist leaders, Larbi Ben M'Hidi was quoted as saying to his compatriots in the 1950s: "the easiest part was to regain independence and the toughest one comes after that." The economic and political systems that were established in independent Algeria failed. This led in the early 1990s to a social rebellion headed by Islamist groups, which, after having been denied a legitimate electoral victory in 1991, opted for armed rebellion against the state. However, the war they waged for a decade extended also to the civilian population and foreigners. Between 1992 and 2002, over 150,000 people were killed, entire villages were abandoned, and the economic infrastructure was badly damaged. While most of the violence is attributed to the Islamists, the government also committed repression and reprisals and is responsible for the disappearance of thousands of people. Many also accuse the Algerian security service of using French-style torture and of the summary execution of suspected Islamist rebels or their supporters. Because there has not been a full and independent inquiry of the massacres and other violations committed during this internal war, the whole truth about the ongoing tragedy in Algeria remains unknown.

SEE ALSO France in Tropical Africa; Harkis

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Azzedine Layachi

Alien Tort Statute

Survivors of genocide and crimes against humanity often find it impossible to obtain compensation for the harms they have suffered and only rarely are the perpetrators punished for their crimes. In the United States victims and their families may be able to file civil lawsuits in federal court against those responsible, relying on a 200-year-old statute, the Alien Tort Statute (ATS) (codified as U.S. Code, vol. 28, sec. 1350). The ATS, enacted in the late eighteenth century, was one of the first laws approved by the newly established U.S. Congress. The Statute's use as a remedy for human rights abuses dates from a 1980 court decision recognizing that it authorizes civil lawsuits for violations of international law. In 2004 the U.S. Supreme Court upheld this use of the statute to seek redress for human rights violations. The ATS offers a potentially powerful tool to those seeking redress and accountability for gross human rights abuses, including genocide and crimes against humanity.

Criminal Prosecutions versus Civil Claims

In many countries efforts to seek justice for human rights abuses focus on criminal prosecution of the perpetrators. In the United States redress often involves a civil lawsuit filed by victims or family members. The line distinguishing criminal prosecutions and civil litigation varies among different countries and even among different U.S. states. Government prosecutors usually file criminal charges and generally seek to punish the defendant through a prison sentence or monetary fine. Civil lawsuits such as those authorized by the ATS are filed by private parties and cannot lead to imprisonment. Instead, they seek financial compensation for the injuries suffered by the plaintiffs along with punitive damages intended to sanction the defendant and deter others from similar misbehavior.

Civil litigation in the United States thus has certain advantages over criminal prosecutions: A civil lawsuit can be filed by a victim or family member, whereas a criminal case would depend on the government prosecutor's decision to take action. Moreover, any financial recovery in a civil lawsuit is paid to the plaintiff. Thus, although the defendant in a civil lawsuit does not face the possibility of a prison sentence or the moral sanction of a criminal conviction, some survivors and their families view civil litigation as an important means of seeking redress.

History of the ATS

The ATS, enacted by the first U.S. Congress in 1789, states that the federal courts have jurisdiction over a "civil action by an alien for a tort only, committed in violation of the law of nations." The goal of the statute seems to have been to strengthen the enforcement of international law by U.S. courts.

In the eighteenth century the founders of the United States recognized international law as a form of natural law that was binding on all governments. Moreover, violations of international rules often triggered reprisals, including war. During the early years after independence the European military powers repeatedly threatened retribution for violations of international law, particularly when the state courts refused to prosecute wrongdoers. Many commentators have concluded that the ATS was designed to ensure that foreigners could obtain redress for violations of international norms from federal courts, rather than being relegated to a less predictable fate in the state courts.

Although no early cases directly applied the ATS, mention of it in the writings of the period support the view that the ATS provided a remedy for foreigners complaining of violations of internationally protected rights. In 1795, for example, the U.S. attorney general stated that the ATS authorized a civil lawsuit by British citizens who were attacked in violation of international rules governing neutrality. Over the next two centuries, however, the statute was rarely mentioned.

Modern Revival

The ATS was revived by a case decided in 1980, *Filártiga v. Peña-Irala.* Joelito Filártiga, the son of a prominent opponent of the military regime in Paraguay, was tortured to death by a Paraguayan police officer. In the face of an international outcry the Paraguayan government spirited the officer out of the country; the Filártigas later discovered him living in New York City and filed a lawsuit against him under the ATS. Their claim was initially dismissed by a trial court judge who ruled that international law did not apply to the actions of a government against its own citizens. On appeal, however, a federal appellate court held that the "law of nations" in the statute refers to international law as that law has developed over time. Since international law had come to prohibit a government's torture of its own citizens, the court held that the ATS allows a federal court to judge a claim that a Paraguayan official tortured a Paraguayan citizen. Following this decision the lower court awarded over $10 million in damages to the Filártiga family, although they were unable to collect the judgment.

Over the next twenty-four years, federal courts applied the ATS to permit claims such as torture, execu-

Dolly Filartiga holds a photo of her brother, Joelito, who died after being tortured in 1976 in Paraguay. Filartiga won a $10.4 million judgment in U.S. courts against the man she blames for her brother's death. [AP/WIDE WORLD PHOTOS]

tion, genocide and slavery against a range of defendants, including commanders, government officials and corporations. Despite the virtual unanimity of the courts, a dispute developed among commentators about the validity of the *Filártiga* interpretation of the statute. Although the administrations of former presidents Jimmy Carter and Bill Clinton supported the *Filártiga* approach, president George W. Bush argued that the statute as applied infringed on the foreign affairs powers of the executive branch. The central point of contention was whether the ambiguous language of the eighteenth-century statute should be interpreted to permit individuals to sue for damages for violations of modern international law norms

The U.S. Supreme Court resolved the simmering debate in 2004, endorsing the *Filártiga* approach in the case of *Sosa v. Alvarez-Machain*. Humberto Alvarez-Machain was kidnapped in Mexico and taken to the United States to face criminal prosecution, but later acquitted of the criminal charges against him. He won a lower court decision awarding him damages for arbitrary arrest and detention. On appeal, the Supreme Court held that the ATS permits private individuals to file claims for international law violations that satisfy a strict standard of international consensus and clear definition. The Court ruled against Alvarez-Machain, however, holding that his brief detention in Mexico, followed by an immediate transfer to lawful authorities in the United States, did not constitute a violation of a core international norm.

Current Applications

The Supreme Court decision validates post-*Filártiga* federal court decisions that applied the statute to permit aliens to sue for genocide and crimes against humanity, as well as for other egregious abuses such as war crimes, disappearance, torture, summary execution, and slavery. Each of these abuses meets the Supreme Court's requirement of international concensus and clarity of definition.

Lawsuits under the ATS may be filed in the U.S. courts even though the events took place entirely in another country: The statute does not require that the human rights violations have any connection to the United States. The U.S. Constitution, however, requires that the defendant have ties to the United States. Although most such cases have been filed against U.S. residents or United States–based corporations, several have involved defendants who were served while traveling in the United States, or foreign corporations subject to suit because of their U.S. business contacts.

Early court decisions made clear that the Statute permits a suit against commanders whose forces commit human rights abuses, as well as against the actual torturer, as in the *Filártiga* case. For example, a series of cases filed against an Argentine general held him liable for executions, torture, and disappearances committed under his command. Similarly, a Guatemalan general was held liable for the atrocities committed by his troops against indigenous Guatemalans. In both cases the plaintiffs demonstrated that the generals had planned and directed campaigns of violence against civilians.

A similar case filed in 1993 against Radovan Karadzic, the leader of the Bosnian-Serbs, sought damages for genocide and crimes against humanity committed against Bosnian Muslims following the break-up of the former Yugoslavia. Although Karadzic argued that he was not a government official and therefore could not violate international law, the court held that certain norms of international law apply to private par-

ties as well as government officials. In particular, the United Nations Convention Against Genocide makes clear that genocide is a crime when committed by private persons. The court also ruled that Karadzic could be held liable as an accomplice to abuses committed in complicity with officials of other governments.

These holdings paved the way for lawsuits against private parties such as corporations. In the 1990s several civil claims were filed against banks, insurance companies, and other businesses for crimes committed during World War II. Most of these lawsuits ran into difficulties because of the years that had elapsed and because the U.S. government insisted that all outstanding claims had been resolved through negotiated diplomatic agreements. Despite these difficulties several such lawsuits were settled for significant amounts of money.

A claim filed in 2001 charged the Talisman Energy Corporation with responsibility for genocide and crimes against humanity committed by the government of Sudan. The case addressed widespread abuses committed against the non-Muslim inhabitants of southern Sudan as the government sought to extract oil from the region. Alleged abuses included killings, forced displacement, destruction of property, kidnapping, rape, and the enslavement of civilians, amounting to attempted genocide. The plaintiffs claimed that the company had helped to plan the government's campaign of ethnic cleansing and supplied the funds to finance it. In an initial decision filed in 2003 the court held that the corporation could be held liable for the abuses if it had knowingly provided "practical assistance, encouragement, or moral support that had a substantial effect on the perpetration" of the human rights abuses.

Benefits of Civil Litigation

In the case against Talisman and in similar cases against oil companies for abuses committed in Burma, Nigeria, and other countries, a victory for the plaintiffs would most likely result in a large monetary judgment that can be collected. Cases litigated against private individuals are less likely to produce enforceable judgments, yet plaintiffs continue to file such lawsuits despite the probability that they will not collect any money.

Carlos Mauricio, a survivor of torture in El Salvador and a successful plaintiff in a case against two Salvadoran generals, explained that part of his reason for suing was that the lawsuit gave him the opportunity to talk about his ordeal. Mauricio was a professor in El Salvador in 1983 when agents of the military government then ruling his country kidnapped him from his university office. He was detained and brutally tortured for two weeks. Upon his release he fled El Salvador and settled in the United States. For many years he told few people about his ordeal. "One of the facts from torture is that they make you not want to talk about it," Mauricio said in 2002. "It took me 15 years to be able to tell my story. I realized that telling my story to others is important, not only because it's important to know what happened in El Salvador, but also because in that way you are really out of prison" (Center for Justice and Accountability website).

Other survivors stress the value of a judicial forum in which they can obtain formal recognition of their suffering and of the culpability of the defendants. Many also see their litigation as contributing to the movement to enforce and strengthen international human rights norms in their home countries, in the United States, and around the world.

Related Statutes

Three other modern statutes offer a basis for civil lawsuits for human rights violations. The Torture Victim Protection Act, enacted in 1992, provides aliens or U.S. citizens a cause of action for torture or extrajudicial execution committed "under color of foreign law." The Anti-Terrorism Act, originally enacted in 1990, authorizes civil suits by U.S. nationals who are victims of terrorism. Finally, an exception to the Foreign Sovereign Immunities Act (FSIA) permits U.S. citizens to sue a handful of foreign governments for torture, extrajudicial killing, and other abuses; it applies only to governments on the U.S. State Department's list of "state sponsors of terrorism." Although none of these statutes specifically permits suits for genocide or crimes against humanity, a broad claim under the ATCA will often be joined with a specific claim under one of these statutes.

Conclusion

The Alien Tort Statute permits aliens to file civil lawsuits for genocide and crimes against humanity committed anywhere in the world, if the U.S. courts have jurisdiction over the defendants. Such civil litigation for human rights abuses permits survivors of egregious abuses to seek justice, through an award of damages as well as through a formal judicial process that enables them to obtain a judgment confirming the responsibility of the perpetrators.

SEE ALSO Compensation; Reparations

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Beth Stephens

Almohads

The Almohad movement originated with the preaching of Ibn Tumart (died 1130 CE), a Berber religious reformer who was considered an Islamic messianic figure (*al-Mahdi*). Ibn Tumart found military support among his Masmuda tribesmen to fight Almoravid rule in the Maghreb (Morocco). One of his closest disciples (the so-called Ten) was ʿAbd al-Mu'min (ruled 1130–1163), a Berber of the Zanata tribe who after Ibn Tumart's death became the political leader of the movement and defeated the Almoravids, establishing a new dynasty (the Mu'minids) and adopting the caliphal title (*khalifat Allah,* vicar of God).

The name of the movement, *al-muwahhidun* (Almohads), means "the Unitarians," that is, those who proclaim the absolute unity of God (*tawhid*). The name had a polemical overtone, as the Almohads legitimized their bid for power by accusing the previous dynasty, the Almoravids, of having indulged in anthropomorphism (*tajsim*) on the basis of the latter's doctrine on God's attributes. This accusation shed doubts on the Islamic belief of the Almoravids and opened the door to the possibility of declaring them unbelievers, thus encouraging their annihilation or subjugation as legal.

The establishment of the Almohad empire, covering what is now Morocco, Algeria, Tunisia, and the western part of Libya, as well as al-Andalus (the territory of the Iberian Peninsula under Muslim rule), involved armed conflict with the Almoravid rulers, lasting a period of some twenty years from the first attack against the Almoravid capital, Marrakech, until its capture in 1147. Internal purges among the followers of Ibn Tumart also occurred later at the directive of the first Mu'minid caliph.

Ibn Tumart's life is described by Almohad sources as closely resembling that of the Prophet Muhammad. Like him, Ibn Tumart emigrated or retreated (*hijra*) to escape Almoravid persecution, settling with his followers in Tinmal, about 75 kilometers south of Marrakech, in 1123. The original population in Tinmal was massacred, replaced by followers of the Mahdi. One of the Ten who protested the massacre was killed and crucified.

Some years later (c. 1128), the methodical elimination of real or suspected dissidents (*tamyiz*) within the Almohads themselves took place for reasons difficult to ascertain, given the nature of the sources, but which must have been related to internal tensions within the movement. As pointed out by J. F. P. Hopkins, the tamyiz was immediately followed by a campaign directed against the Almoravid capital, which indicates that the tamyiz could have consolidated the movement's strength or perhaps it aroused such resentment that a diversion of interest became necessary. This great purge was carried out by a close associate of Ibn Tumart, a man called al-Bashir who was alleged to be a soothsayer and dream interpreter, able to distinguish sincere believers from hypocrits.

The conquest of Morocco by ʿAbd al-Mu'min was especially brutal. The famous scholar Ibn Taymiyya (died 1328) later condemned the massacres and persecutions of the civilian population carried out by the Almohads, accusing them of having killed thousands of good Muslims among the Almoravids and their supporters. The Almohads considered it legal to kill those who did not belong to their community of true believers, and this has been interpreted as reflecting a Kharijite influence among the Almohads, Kharijism having spread among the Berber population during the first centuries of Islamic rule in North Africa. However, the will to kill was probably just one aspect of the revolutionary character of the Almohad movement. The most famous episode was the "examination" (*iʿtiraf*) that took place between 1149 and 1150, when ʿAbd al-Mu'min gave to the Almohad shaykhs lists of those who must be killed among the tribes that had previously rebelled. The number of those executed is said to have reached more than 32,000. Official Almohad chronicles state that, thanks to this great purge and the

terror it entailed, peace was established and the divergence of opinion eliminated.

In regard to Almohad policies toward Jews and Christians, there were deportations of Christians from al-Andalus to North Africa, as well as forced conversions of Jews and Christians. ʿAbd al-Mu'min, in fact, is said to have abolished the statute of *dhimma* that allowed the coexistence of Jewish and Christian communities in Muslim territory. Christian communities almost completely disappeared in the territory under Almohad rule. Many Jews emigrated to Christian territory or other regions of the Islamic world (the famous Jewish scholar Maimonides, who died in 1204, settled in Egypt). Forced Jewish converts were obliged by the Almohads to dress differently from Muslims. However, when the Almohad caliphate disappeared and the Marinids assumed power, Jewish communities again sprang up in the Islamic West.

SEE ALSO Forcible Transfer; Persecution; Religious Groups

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Maribel Fierro

Altruism, Biological

In biology an altruistic act increases the reproductive fitness of a member of the same species (a conspecific) while reducing the reproductive fitness of the one committing the act. Reproductive fitness refers to the differential ability of an organism to influence gene frequencies in future generations. Altruism is distinguished from mutualistic behavior, which increases the reproductive fitness of others as well as the actor. Altruism also is distinguished from selfishness, which benefits the actor and either does not benefit or harms others' reproductive fitness.

In characterizing behavior as biologically altruistic, the issue of intention is not relevant as it is in the related but not identical meaning in moral philosophy, in contrast, an altruistic act is defined as one undertaken with the intention of helping another with the anticipation that it will incur or risk harm to the actor. In principle, the benefits rendered may be psychological or objectively beneficial in the sense that they prolong life or improve the material well-being of the beneficiary of the action. Similarly, the costs to the donor may be psychological or objectively verifiable as posing risk to life or limb. Altruistic acts can include affirmative acts of assistance as well as restraint where preemptively harming another might prevent or reduce the risk of attack from the individual harmed.

Humans are potentially dangerous to one another, and since they care about their own survival we might expect them to attack others when it is potentially beneficial for them to do so. Yet this is more the exception than the rule, a reality consistent with a wide range of experimental evidence showing that many humans are prepared to cooperate in one-shot or one-time prisoner's dilemma games. In such games, an actor has two choices: He or she can either defect or cooperate. Defecting can be understood here as engaging in preemptive attack, a strategy considered strictly dominant because if the other player cooperates, one is better off defecting, and if the other player defects, one is also better off defecting.

But to choose defect is to preclude any possibility of continuing mutually beneficial interaction. Cooperation, on the other hand, is altruistic in the biological sense, and arguably in a morally philosophical sense, because it provides a benefit to one's counterparty at potential cost to oneself. If both players cooperate, of course, the outcome that is most beneficial jointly results, and it is this strategy profile alone that opens the door to additional plays of the game.

Although it remains quite controversial, the most straightforward explanation of the origin of human predispositions to refrain from attacking nonkin (as well as our weaker inclination to provide affirmative assistance) is that human evolutionary history has been influenced by selection at multiple levels, including levels above the individual organism. Such an evolutionary account, which can be made completely consistent with the proposition that genes are the ultimate loci of selection could also explain our inclinations to devote disproportionate energy to detecting violators of social

rules and engage in costly punishment against violators.

The complex of behavioral inclinations that enables human society to interact also has a dark side: in addition to underlying our ability to make peace, it also is behind our ability to wage organized war. In conjunction with the ease with which humans can define some as members of their own group and others as outsiders, altruistic behavior on behalf of other members of one's group may also entail preemptive violence against a feared other, thereby providing a biological underpinning for genocide. The fluidity with which the boundaries between the in group and out group can alter or be altered, however, gives hope that the frequency of genocide may be reduced. Genocide is not inevitable, and biology leaves intact our responsibility for all harms visited upon others.

SEE ALSO Altruism, Ethical; Rescuers, Holocaust

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Alexander J. Field

Altruism, Ethical

Altruism is sometimes defined very broadly so that it refers to all human behavior not motivated by the self-interest of the agent. In this use of the term, human actions are either egoistic or altruistic—there is no third alternative. However, such a broad definition may not be very useful. One reason is that many human actions have mixed motives—one acts in a way that benefits other people, but does so partly because one expects benefits in return, if not immediately, then at some time in the future. Such behavior is sometimes described as *reciprocal altruism*: It is not motivated just by self-interest, but neither is it pure altruism whereby the only concern is the interests or well-being of the recipient.

Another reason for narrowing the definition of altruism is that one may want to exclude actions that are motivated by respect for agreements, rules, social expectations, and so forth, even when their motivation is unselfish. One would not normally describe keeping a promise or fulfilling the requirements of a job as altruistic. This suggests that altruism is best understood as describing actions which are (1) intended to meet the needs or promote the welfare of people other than the agent and (2) not actions that the agent must perform by virtue of the rules and institutions to which he or she is subject.

Many everyday examples of altruism involve actions that deliver small benefits at little cost to the person who performs them—for example, helping an elderly person across the road, or taking time to give directions to a stranger who has lost his way. But more interesting issues arise when the benefit is much greater, but so, correspondingly, is the potential cost—for example, rescuing someone whose life is in peril, with the rescuer also running the risk of death or serious injury. Here, one encounters the paradox that the altruistic agent may believe and state that he had no choice but to carry out the rescue, whereas a third-party spectator would say that it was up to the agent whether to attempt the rescue or not—he was under no obligation to do so. How is one to understand this contrast between the agent's perspective and the spectator's?

A relevant observation here is that in many cases in which altruism is needed, a surplus of potential agents exists. Empirical studies have shown that when someone requires help, increasing the number of potential helpers diminishes the likelihood that any single person will intervene. No one is individually responsible for the plight of the victim, and so no one feels under an obligation to act. If some individuals do choose to intervene, however, then by the same token they have chosen to make themselves responsible, and will see the altruistic action as one that they are required to perform. But they will not blame others who made a different choice.

One might think that some people are simply altruistic by nature while others are not, and attempts have thus been made—for example, in the case of those who sheltered Jews from the Nazis, a paradigm example of an altruistic act with a potentially high cost—to identify the worldview of those who helped. But although personality must play some part in explaining altruistic behavior, the contingency of being selected as the responsible agent is also an important factor. A study of people who rescued Jews from the Holocaust highlighted the importance of being asked by an intermediary to shelter a Jew (Varese and Yaish, 2000). This takes one back to the idea of personal responsibility. Sometimes, people who behave altruistically do so because they are the only ones able to help—the responsibility is theirs by the very nature of the situation. But more often there are many potential helpers, and then what matters is whether someone is selected as the person

to assume responsibility—either because she makes this choice herself, or because someone else, the person in need or a third party, asks her to act. Tragedies can occur when this mechanism breaks down: Many people would be willing to act if asked, but because responsibility is diffused, nobody in fact intervenes.

Altruism is a vital component of a good society precisely because one cannot anticipate all the occasions on which people may need to be helped, and therefore cannot formally assign duties to help. Examples of heroic altruism abound; so do cases in which altruism fails because people do not regard themselves as having responsibility for the problem they confront. Humans need to find better ways of sharing the burden of altruism so that everyone helps sometimes, and no one is required to sacrifice himself completely to altruistic causes.

SEE ALSO Altruism, Biological; Bystanders; Rescuers, Holocaust

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David Miller

Amazon Region

The decimation of the Amazon's native people over the past four centuries illustrates two patterns outlined in the seminal 1985 report by Benjamin Whitaker, the rapporteur on genocide for the United Nations Commission on Human Rights. Paragraph 41 (p. 20) states: "A conscious act or acts of advertent omission calculated neglect or negligence may be sufficient to destroy a designated group wholly or partially through, for instance, . . . disease [and] may be as culpable as an act of commission." Paragraph 33 (p. 17) discusses "the definition of genocide or 'ethnocide', the destruction of indigenous cultures," and "also 'ecocide'—adverse alterations, often irreparable, to the environment—for example . . . destruction of the rain forest—which threaten the existence of entire populations."

The Portuguese Colonization

The first Europeans to penetrate the Amazon basin were part of a Spanish expedition led by Francisco de Orellana in 1542. Hoping to find the fabled lands of El Dorado and La Canela, Orellana and his men set out from Quito, Ecuador, descended the Napo River to its confluence with the Solimões, the Amazon's upper region, and continued down the river for fifteen hundred miles to the Atlantic. At that time several million people were living in the Amazon Valley. They belonged to some two hundred tribes and ethnic groups in four linguistic families—the Gê, Tupi, Carib, and Arawak.

Starting with the Omagua, an intelligent, orderly people of the Solimões who farmed river turtles and wore cotton robes, the expedition passed one prosperous community after another. So rich were the resources of the *várzea,* or floodplain, that some of the close-packed lines of houses continued without interruption for days. The level of civilization of some of the riverine tribes was on a par with the Incas', although the materials they built and worked with were perishable, and few artifacts, besides their extraordinarily refined ceramics, survive.

Organized campaigns to exterminate the Indians, sponsored by the colonial administration and carried out by Portuguese colonists, had been taking place in northeastern Brazil, to the east, since 1500, and spread as colonists began settling the lower Amazon in l620. So-called ransoming expeditions were in fact slave raids, initiated under the pretext of rescuing captives from tribes that were supposedly planning to eat them (in some cases they actually were). In the absence of gold, the colonists went after what was commonly referred to as red gold—the forced labor of Indians. The ransomed Indians were descended down the river and kept in tightly packed riverine pens called *caiçaras,* sometimes for months. Many died in battle, or in captivity, either losing the will to live and wasting way, or from European diseases that they had no genetic defenses against. Contagion, or smallpox, was the big killer, but influenza, pneumonia, the common cold virus, measles, chickenpox, and dysentery from the unhygienic conditions of their captivity also took a devastating toll. Malaria, syphilis, and tuberculosis reached the valley in the seventeenth century. In addition, many Indians became addicted to, and died as a result of their dependence on, *cachaça,* or rum.

The populous tribes of the Amazon were quickly extinguished, like the Tapajós or the Tocantins, who are simply remembered by the tributaries named after them; later, as the ransomers moved up river, the Manau followed them into oblivion, with only their name remaining, designating the largest city in the

The effects of gold mining in Venezuela's Amazon rain forest are shown in this 1997 photo of the Las Cristinas gold mine. [AP/WIDE WORLD PHOTOS]

middle Amazon. By 1750 the Native population had been reduced by two-thirds, and the *várzea* was almost completely depopulated. Those who had not been killed by "advertent omission" and "calculated neglect," in Whitaker's terms, melted into the forest and fled up north- and south-flowing tributaries, above the unnavigable rapids, to the Guyana and Brazilian shields, where they regressed into hunters and gatherers and lost the civilization they had developed on the várzea.

The Jesuits

The Indians' only champions were the Jesuits, who gathered them into missions that were organized along military lines to keep them from being dragged off into slavery. David Putnam's film, *The Mission,* portrays the heroic efforts of the Jesuits to protect the Guarani in the Paraná-Paraguay basin, south of the Amazon. The Jesuits in the Amazon were more exploitative, however, and the Indians in their *aldeias,* or mission villages, on Marajó Island, at the mouth of the river, became peons who took care of their vast herds of cattle. Indians were forcibly baptized and catechized, and became detribalized "shirt Indians." With the colonists taking their most beautiful women, there were almost no pure-blooded Indians on the river by the time the Jesuits were expelled from Latin American in l760; only *cablocos* or mestizos, remained. Miscegenation also played a major role in diluting and breaking down the cultural identity and physical distinctiveness of the Amazon's Natives. The offspring with Portuguese were known as *mamelucos,* and those produced with African slaves as *cafuzos.*

The Jesuits were replaced by directorates, and an imperial proclamation declared the end of the enslavement and forced labor of Indians. They were now free, but the pitiful remnants of once-proud peoples were open to other forms of exploitation. Unpacified and assimilated groups continued to be rounded up and massacred by the *bandeirantes,* or pioneers, who forged deep into the interior. Only a few tribes, such as the Kayapo in the upper Xingu Valley and Waimiri Atroari in Roraima, put up such fierce resistance that they managed to withstand the encroachment and invasion of their land until the late twentieth century.

The Rubber Boom

Starting in 1850 rubber became a hot new commodity in the industrializing countries of Europe and North America, and the Amazon's monopoly on the so-called black gold to be tapped from *Hevea brasiliensis* trees scattered throughout the rain forest spawned what contemporary Brazilian writer Euclides Da Cunha (*Amazon Frontier,* p. 293) called "the most criminal organization of labor ever devised." A Peruvian rubber baron named Julio Arana founded the Peruvian Amazon Rubber Company and grew fabulously wealthy by exploiting the Bora, Witoto, Andoke, and Ocaina on the Putumayo River, which forms the border between Peru and Colombia. Reports of systematic torture, an orgy of sadism, the perverted mutilation of men, women, and children; and women being kept as concubines by the Indian and Barbadian *muchachos,* or captains, of the rubber gangs reached Roger Casement, who had exposed similar atrocities ten years earlier in the Congo. By the time Casement reached the area, three-quarters of the population on the Putumayo had been wiped out in the previous six years, and there were only 8,000 to 10,000 left. Casement was knighted for his work as the main author of the l912 *Blue Book on the Putumayo,* a precursor of present-day reports on human rights abuses, but later his journals revealed that he was a pedophile and had participated in the muchachos' orgies. In the early twenty-first century the culturally degraded descendants of Arana's Bora and Witoto rubber collectors live in villages above Iquitos, Peru, where they dance, usually drunk, for tourists from cruise ships and jungle safaris.

The Last Hundred Years

The same year that Casement's shocking report was published, the rubber boom abruptly collapsed, outcompeted by plantations in Malaya started from seeds smuggled out of the Amazon by the Englishman Henry Wickam. The exploitation of Indians for black gold did not end completely, however. In l948 the newly contacted Kaxinawa in the state of Acre were forced into a brutal rubber-collection system. A genocidal massacre exterminated 75 to 80 percent of the group three years later, and by l968 there were only 400 to 500 Kaxinawa left.

On the Amazon's southern frontier, colonists hired professional Indian killers, or *bugreiros,* who presented ears instead of scalps for payment, adorned their Winchester carbines with Indians' teeth, and poisoned the drinking pools in Indian villages with strychnine. By l910 the remaining Indians had been reduced to a pathetic minority on the fringes of a burgeoning postcolonial society. Now that they were no longer a threat, they were embraced and romanticized by Brazilian urban intellectuals. An Indianist movement was born, and an extraordinary champion for the country's Native peoples surfaced, Colonel Cândido Rondon, who founded the Indian Protection Service, or SPI, in 1910. Rondon and the SPI's *sertanistas,* or field agents, contacted isolated tribes such as the Nambikwara and tried to protect them from the diseases, culture shock, invasion, and massacre to which their encounter with the national society would expose them. Their motto was "die, if necessary, but never kill." But by now the demographic catastrophe of the Native population was irreversible. It had plummeted from about 3.5 million in l500 to 2 million by the expulsion of the Jesuits, and was approximately a million in the early twentieth century. By l979 it would decline to 100,000. Of the 230 tribes that existed in l900, the anthropologist Darcy Ribeiro could only count 143 in l957, and half of them were represented by only a few hundred individuals.

The SPI's career was checkered. Although it undoubtedly saved the people, culture, and land of many tribes, it was dissolved in disgrace in l969 after a 7,000-page report to the Brazilian congress documented the involvement of hundreds of SPI officials, ministers, governors, and generals in the homicide, machine-gunning, prostitution, and financial exploitation (to the tune of $60 million) of the people it was charged with protecting. A new agency, the Brazilian National Indian Foundation, or FUNAI, was created, and while many of its anthropologists and other employees were dedicated to the Indians' well-being, atrocities that the government turned a blind eye to or participated in continued to take place in the Amazon. The Brazilian Air Force bombed uncontacted villages of Waimiri Atroari; soldiers drove Macuxi out of their villages on the Brazil-Venezuela border.

In the early 1970s a network of highways pushed into the Amazon wilderness. A growing awareness of its untapped mineral wealth unleashed a new siege on the last remaining isolated Indians, and the innermost recesses of the valley where they lived were finally penetrated, with the usual lethal consequences. One of the most tragic stories was that of the Kreenakrore, a seminomadic group on the Iriri River, a tributary of the Xingu. For ten years during the l960s the legendary *sertanistas* Claudio Villas Boas and Francisco Meirelles had made futile attempts to contact them. An expedition had been attacked and several of its members killed. Finally, as the new Cuiabá-Santarem Highway approached to within two kilometers of their village, several Kreenakrore, reduced by culture shock to eating dirt and the *urucu* seeds with which they painted their faces, appeared on the highway, begging for food from the road crews. Between 1969 and 1972 forty died

of pneumonia contracted from the workers, and by 1974 the tribe was down to seventy-nine individuals. Villas Boas moved them to Xingu National Park, which had been set aside for other tribes. By l976 the Kreenakrore numbered sixty-three, and only ten women could bear children who would be socially acceptable according to the tribe's rules of kinship and marriage. Nonetheless, the Kreenakrore slowly recovered and as of 2004 were holding their own.

The construction of the Perimetral Norte on the Brazil-Venezuela border had similar results for the Yanomami, who were still living in the Neolithic and are the only tribe, except for the Tukuna on the Solimões, with more than five thousand members. Gold was discovered and *garimpeiros,* wildcat prospectors from Brazil's huge marginalized poor population, poured into the Yanomami's homeland and massacred them, raped their women, and infected them with various diseases. AIDS is the latest disease with which the tribe must contend. An epidemic of measles also broke out when the Yanomami were made guinea pigs for a vaccine from a virulent strain of the microbe not appropriate for use in a population with no prior exposure to it.

Sixty-two percent of the tribes tested positive for a new strain of malaria introduced by the *garimpeiros.* By l993 some two thousand Yanomami had been killed, but after a global outcry over the massacre of twenty-three tribe members in the upper Orinoco basin, a measure of protection was established for these Natives.

Similar horrors played out in the state of Rondônia (named for Rondon) during the l980s. Some newly contacted Cintas Largas were massacred with the alleged complicity of the Summer Institute of Linguistics, an American evangelical group that placed missionaries with forty-three tribes in Brazil and was subsequently expelled because of suspected ties with the Central Intelligence Agency (CIA) and American oil and mineral interests.

That decade a monumental, incredibly misguided resettlement program for two million families of landless peasants, sponsored by the Brazilian government and financed by the World Bank, brought a lethal combination of ecocide, genocide, and ethnocide to Rondônia—massive deforestation and roadbuilding, the construction of *agrovilas,* vast agricultural communities laid out on grids, and massacres of isolated groups of Cintas Largas and Urueuwauwau. Satellite images of thousands of burning fires horrified the European and North American public, already apprehensive about the carbon dioxide and other greenhouse gases being released into the atmosphere. Anthropologists and other Western sympathizers rallied behind the Indians, secured intellectual property rights for their knowledge of medicinal plants with possible pharmaceutical applications, and pushed for the demarcation and protection of their lands.

The last ten years have led to a huge, belated victory for the remaining Native peoples of Amazonia, even though during the l990s Occidental and other companies drilling for oil brought ecocide and ethnocide to eight thousand U'wa on the Colombia-Venzuela border and the Huaroni, a nomadic people of the Ecuadoran Amazon who tried to drive off the drilling crews with spears. In general, the demarcation of Indian lands in the Brazilian and Peruvian Amazon is proceeding well. Twenty percent of of Brazilian Amazonia is now recognized by the government as indigenous territory. This is the largest area of protected rain forest in the world; when FUNAI replaced SPI in l968, only a fraction of Native lands were protected. Small remnant groups remain at risk of being driven from their land or massacred for individual, political, or racial motives. The Yanomami homeland has been almost completely demarcated, but is still being invaded by *garimpeiros.* Efforts to complete demarcation for other tribes in Roraima are meeting with heavy resistance from local politicians.

Despite continuing difficulties the Native population in the Amazon region has rebounded to 325,000. A new generation of young, educated Brazilians realizes that their indigenous cultures and rain forest represent a unique and precious heritage. It can be said with some confidence that the tide has finally turned, although the future of the Amazon forest itself is not encouraging, with the Brazilian Congress's new law to open half of it to agriculture, cattle ranching, and multinational chip mills.

SEE ALSO Catholic Church; Developmental Genocide; Indigenous Peoples; Whitaker, Benjamin

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Alex Shoumatoff

Amnesty

In order to end an international or internal conflict, negotiations often must be held with the very leaders who are responsible for war crimes and crimes against humanity. When this is the case, some argue that insisting on criminal prosecutions can prolong the conflict, resulting in more deaths, destruction, and human suffering. Reflecting this view, peace arrangements reached over the past two decades in Argentina, Cambodia, Chile, El Salvador, Guatemala, Haiti, Sierra Leone, South Africa, and Uruguay have granted amnesty to members of former regimes who allegedly had committed international crimes. With respect to Cambodia, El Salvador, Haiti, and South Africa, the United Nations pushed for, helped negotiate, and/or endorsed the granting of amnesty as a means of restoring peace and democratic government.

The term *amnesty* is derived from the Greek word *amnestia,* meaning forgetfulness or oblivion. Legally, amnesty is an act of sovereign power immunizing persons from criminal prosecution for past offenses. The practical equivalent of amnesty occurs when asylum is granted to a former leader by a neighboring state, as in the case of former Ugandan ruler Idi Amin in Saudi Arabia, former Haitian leader Jean Claude "Baby Doc" Duvalier in France, former Ethiopian leader Megistu Haile Mariam in Zimbabwe, former Haitian leader General Raoul Cedras in Panama, and former Liberian leader Charles Taylor in Nigeria.

Interests Favoring Amnesty

The leaders of all parties to a conflict must agree to cooperate in order to end the fighting and halt violations of international humanitarian law. However, they have no incentive to agree to a peace settlement if, following the agreement, they could find themselves or their close associates facing potential life imprisonment. Three case studies—Haiti, South Africa, and Liberia—show that the offer of amnesty or asylum may induce human rights violators to agree to peace and to relinquish power.

Haiti

From 1990 to 1994 Haiti was ruled by a military regime, headed by General Raoul Cedras and Brigadier General Philippe Biamby that executed over three thousand civilian political opponents and tortured hundreds of others. The United Nations mediated negotiations at Governors Island in New York Harbor, during which Haiti's military leaders agreed to relinquish power and permit the return of democratically elected President Jean-Bertrand Aristide in exchange for a full amnesty for the members of the military regime and a lifting of the economic sanctions imposed by the UN Security Council. Under pressure from the UN mediators, Aristide agreed to the amnesty clause of the Governors Island Agreement. The UN Security Council approved the agreement, which it later said, "constitutes the only valid framework for resolving the crisis in Haiti." When the military leaders initially failed to comply with the Governors Island Agreement, on July 31, 1994, the Security Council took the extreme step of authorizing an invasion of Haiti by a multinational force. On the eve of the invasion, September 18, 1994, General Cedras agreed to retire his command "when a general amnesty will be voted into law by the Haitian parliament." The amnesty permitted Aristide to return to Haiti and reinstate a civilian government, the military leaders left the country, much of the military surrendered their arms, and most of the human rights abuses promptly, if temporarily, ended.

South Africa

Until 1994 black South Africans were routinely abused under the then-operative, segregationist system known as apartheid. Facing the prospect of civil war, the outgoing administration, then headed by F. W. de Klerk, made some form of amnesty a condition for the peaceful transition of power. The leaders of the majority black population decided that the commitment to afford amnesty was a fair price to pay for a relatively peaceful transition to full democracy. In accordance with the negotiated settlement between the major parties, on July 19, 1995, the South African Parliament created a Truth and Reconciliation Commission, consisting of a Committee on Human Rights Violations, a Committee on Amnesty, and a Committee on Reparation and Rehabilitation. Under this process, amnesty would be available only to individuals who personally applied for it and who fully disclosed the facts of their apartheid crimes. After conducting 140 public hearings and considering 20,000 written and oral submissions, the South African Truth Commission published a 2,739-page report of its findings on October 29, 1998. Most observers believe the amnesty in South Africa helped to defuse tensions and avoid a civil war. Others believe it was a means for both sides to cover up crimes they had committed.

Human rights activists around the world were jubilant when British law enforcement officers arrested Augusto Pinochet in 1998. A year later more than one thousand people attended this demonstration in London, calling for Pinochet's extradition to Spain, where he would face charges of genocide and torture. Pinochet's prosecution in Chile had been hampered by the Amnesty Law of 1978. [ALIANA/GAMMA]

Liberia

Beginning in 1980 Liberia experienced a series of bloody coups. Factional fighting repeatedly flared up during the 1990s. Conflict under the presidency of Charles Taylor left more than 100,000 Liberians dead between 1997 and 2002. In August of 2003, Taylor was indicted by the Special Court for Sierra Leone on the charge of "bearing the greatest responsibility" for war crimes and crimes against humanity in Sierra Leone, which shares a border with Liberia. With rebel troops on the verge of taking over the populous Liberian capitol of Monrovia, Taylor was induced to relinquish power and leave Liberia in return for a guarantee of asylum in Nigeria. This action immediately brought the fighting in Liberia to a halt, and thereby may have saved the lives of hundreds of thousands of civilians in Monrovia who otherwise would have been caught in the crossfire had Taylor and his supporters been forced to make a last stand against the rebels.

Amnesty with Accountability?

As in both Haiti and South Africa, the offering of amnesty may be tied to accountability mechanisms. Sometimes the concerned governments have made monetary reparations to the victims and their families, established truth commissions to document the abuses (and sometimes identify perpetrators by name), or instituted employment bans and purges (referred to as "lustration") that keep such perpetrators from positions of public trust. While not the same as criminal prosecution, these mechanisms may encompass much of what justice is intended to accomplish: prevention, deterrence, punishment, and rehabilitation. Indeed, some experts believe that these mechanisms do not merely constitute "a second best approach" when prosecution is impracticable, but that in many situations they may be better suited to achieving the aims of justice.

The Benefits of Prosecution

Although providing amnesty or asylum to perpetrators may sometimes be seen as necessary to achieve peace, there are several important countervailing considerations favoring prosecution. In particular, prosecuting persons responsible for violations of international humanitarian law can serve to discourage future human rights abuses, deter vigilante justice, and reinforce re-

spect for law and the new democratic government. Although such prosecutions might initially provoke resistance, many analysts believe that national reconciliation cannot take place as long as justice is foreclosed. Professor Cherif Bassiouni, chairman of the UN investigative Commission for Yugoslavia and author of *Searching for Peace and Achieving Justice: The Need for Accountability,* has said that "if peace is not intended to be a brief interlude between conflicts," then it must be accompanied by justice.

Failure to prosecute leaders responsible for human rights abuses may breed contempt for the law and encourage future violations. The UN Commission on Human Rights and its Sub-Commission issued a Report on the Consequences of Impunity, in which it concluded that impunity is one of the main reasons for the continuation of grave violations of human rights throughout the world. Fact-finding reports on Chile and El Salvador indicate that the granting of amnesty or impunity in those countries had led to an increase in abuses.

A new or reinstated democracy needs legitimacy, which in turn requires a fair, credible, and transparent accounting of what crimes may have taken place and who was responsible during the pre-democratic regime. Criminal trials, especially in cases involving widespread and systematic abuses, can generate just such a comprehensive record of the nature and extent of violations, how they were planned and executed, the fate of individual victims, who gave the orders, and who carried them out. While there are various means to develop the historic record of such abuses, the most authoritative rendering of the truth occurs through the crucible of a trial that accords full due process. United States Supreme Court Justice Robert Jackson, who served as Chief Prosecutor at the Nuremberg Trials, underscored the logic of this proposition in his Report to the President, in which he stated that the most important legacy of the Nuremberg trial was the documentation of Nazi atrocities "with such authenticity and in such detail that there can be no responsible denial of these crimes in the future." According to Jackson, the establishment of an authoritative record of abuses that would endure the test of time and withstand the challenge of revisionism required proof "of incredible events by credible evidence."

There is also a responsibility to provide justice to the victims and their families. Serious crimes against persons, including rape and murder, require holding the violators accountable for their acts. Prosecuting and punishing the violators gives significance to the victims' suffering and serve as partial remedy for their injuries. Moreover, prosecutions help restore the victims' dignity and prevent private acts of revenge by those who, in the absence of justice, might take it into their own hands.

Failure to punish former leaders who were responsible for widespread human rights abuses encourages cynicism about the rule of law and distrust toward the political system. To the victims of human rights crimes, amnesty represents the ultimate in hypocrisy. When those with power are seen to be above the law, the ordinary citizen will never come to believe in the principle of the rule of law as a fundamental necessity in a democratic country.

Finally, amnesty risks encouraging rogue regimes in other parts of the world to engage in gross abuses. Richard Goldstone, the former prosecutor of the International Criminal Tribunal for the Former Yugoslavia has concluded that the failure of the international community to prosecute Pol Pot, Idi Amin, Saddam Hussein, and Mohammed Aidid, among others, encouraged the Serbs to launch their policy of ethnic cleansing in the former Yugoslavia with the expectation that they would not be held accountable for their international crimes. When the international community encourages or endorses an amnesty for human rights abuses, it sends a signal to other regimes that they have nothing to lose by instituting repressive measures—if things start going badly, they can always bargain away their crimes by agreeing to peace.

Overriding the Grant of Amnesty

In a few narrowly defined situations there is an international legal obligation to prosecute and failure to prosecute can itself amount to an international wrong. An amnesty given to the members of a former regime could be invalidated in a proceeding before the state's domestic courts or an international forum. Moreover, it would be inappropriate for an international criminal court to defer to a national amnesty if the amnesty violates obligations contained in the very treaty that makes up the subject matter of the court's jurisdiction.

The prerogative of a state to issue an amnesty for an offense can be circumscribed by treaties to which the state is a party. Several international conventions clearly include a duty to prosecute the humanitarian or human rights crimes defined therein, including the grave-breaches provisions of the 1949 Geneva Conventions, the Genocide Convention, and the Torture Convention. When these Conventions are applicable, the granting of amnesty or asylum to persons responsible for committing the crimes defined therein would constitute a breach of a treaty obligation for which there can be no excuse or exception.

The 1949 Geneva Conventions

Each of the four Geneva Conventions negotiated in 1949 contains a specific enumeration of "grave breaches," which are war crimes for which there is individual criminal liability and for which states have a corresponding duty to prosecute or extradite. Grave breaches include willful killing, torture, or inhuman treatment, willfully causing great suffering or serious injury to body or health, extensive destruction of property not justified by military necessity, willfully depriving a civilian of the rights of fair and regular trial, and unlawful confinement of a civilian.

Parties to the Geneva Conventions have an obligation to search for, prosecute, and punish perpetrators of grave breaches of the Geneva Conventions, unless they choose to hand over such persons for trial by another state party. The Commentary to the Geneva Conventions, which is the official history of the negotiations leading to the adoption of these treaties, confirms that the obligation to prosecute grave breaches is "absolute," meaning that signatories to the conventions can under no circumstances grant perpetrators immunity or amnesty from prosecution for grave breaches of the conventions.

States or international tribunals may prosecute persons who commit war crimes in internal armed conflicts, whereas the duty to prosecute grave breaches under the Geneva Conventions is limited to the context of international armed conflict. There is a high threshold of violence necessary to constitute a genuine armed conflict, as distinct from lower level disturbances such as riots or isolated and sporadic acts of fighting. Moreover, to be an international armed conflict, the situation must constitute an armed conflict involving two or more nations, or a partial or total occupation of the territory of one nation by another.

The Genocide Convention

Most of the countries of the world are party to the Genocide Convention, which entered into force on January 12, 1952, and the International Court of Justice has determined that the substantive provisions of the Convention constitute customary international law that is binding on all states. Like the Geneva Conventions, the Genocide Convention imposes an obligation to prosecute persons responsible for genocide as defined in the Convention. It says that all persons who commit genocide shall be punished, irrespective of their official position. Furthermore, states are required to enact legislation and to provide effective penalties for criminal prosecutions of genocide.

The Torture Convention

Although the Torture Convention entered into force in 1987, it has not been widely ratified and currently has less than ninety state parties. The Torture Convention requires each state party to ensure that all acts of torture are offenses under its internal law, establish its jurisdiction over such offenses in cases where the alleged offender is present in a state's territory, and if such a state does not extradite the alleged offender, the convention requires it to submit the case to its competent authorities for the purpose of prosecution. Although there is no comparable treaty requiring states to prosecute crimes against humanity generally, where there are specific allegations that the crime against humanity included systematic acts of torture, and where the relevant states are parties to the Torture Convention, the granting of amnesty or asylum would violate the treaty's clear duty to prosecute or extradite.

General Human Rights Conventions

General human rights conventions include the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights. Although these treaties do not expressly require states to prosecute violators, they do obligate states to ensure the rights enumerated within the conventions. There is growing recognition in the jurisprudence of the treaty bodies responsible for monitoring enforcement of these conventions and the writings of respected commentators that the duty to ensure rights implies a duty to hold specific violators accountable for at least certain kinds of violations.

Yet, a careful examination of the jurisprudence of these bodies suggests that methods of obtaining specific accountability other than criminal prosecutions would meet the requirement of ensuring the rights enumerated in the various conventions. This jurisprudence indicates that a state must fulfill five obligations in confronting gross violations of human rights committed by a previous regime:

1. investigate the identity, fate and whereabouts of victims;
2. investigate the identity of major perpetrators;
3. provide reparation or compensation to victims;
4. take affirmative steps to ensure that human rights abuse does not recur; and
5. punish those guilty of human rights abuse.

Punishment can take many noncriminal forms, including imposition of fines, removal from office, reduction of rank, and forfeiture of government or military pensions and/or other assets.

Universal Jurisdiction

In the absence of a treaty containing the duty to extradite or prosecute, so-called universal jurisdiction is generally thought to be permissive, not mandatory. Yet, several commentators and human rights groups have recently taken the position that customary international law not only establishes permissive jurisdiction over perpetrators of crimes against humanity, but also requires their prosecution and conversely prohibits the granting of amnesty to such persons.

Commentators often cite the UN Declaration on Territorial Asylum (UN General Assembly Resolution 2312) as the earliest international recognition of a legal obligation to prosecute perpetrators of crimes against humanity. The declaration provides that "states shall not grant asylum to any person with respect to whom there are serious reasons for considering that he has committed a . . . crime against humanity." Yet, according to the negotiating record of this resolution, as discussed in the United Nations Year Book of 1967:

> [t]he majority of members stressed that the draft declaration under consideration was not intended to propound legal norms or to change existing rules of international law, but to lay down broad humanitarian and moral principles upon which States might rely in seeking to unify their practices relating to asylum (p. 759).

This evidences that, from the onset, the General Assembly resolutions concerning crimes against humanity were intended to be aspirational, not binding. To the extent any state practice in this area is widespread, it is the practice of granting amnesties or de facto impunity to those who commit crimes against humanity. That the United Nations itself has felt free of legal constraints in endorsing recent amnesty for peace deals in situations involving crimes against humanity confirms that customary international law has not yet crystallized in this area.

Amnesty and the International Criminal Court (ICC)

At the preparatory conference for the establishment of the permanent international criminal court in August 1997, the U.S. Delegation circulated an informal proposal (or "nonpaper") suggesting that the proposed permanent court should take into account amnesties in the interest of international peace and national reconciliation when deciding whether to exercise jurisdiction over a situation or to prosecute a particular offender. According to the U.S. text, the policies favoring prosecution of international offenders must be balanced against the need to close "a door on the conflict of a past era" and "to encourage the surrender or reincorporation of armed dissident groups," thereby facilitating the transition to democracy. While the U.S. proposal met with criticism from many quarters, the final text of the Rome Statute contains several ambiguously drafted provisions which, for better or worse, could potentially be interpreted as codifying the U.S. proposal.

The preamble of the Rome Statute suggests that deferring a prosecution because of the existence of a national amnesty would be incompatible with the purpose of the ICC, namely to ensure criminal prosecution of persons who commit serious international crimes. Yet, notwithstanding this preambular language, there are several articles of the Rome Statute that might be read as permitting the court under certain circumstances to recognize an amnesty exception to its jurisdiction. The apparent conflict between these articles and the preamble reflect the schizophrenic nature of the negotiations at Rome: The preambular language and the procedural provisions were negotiated by entirely different drafting groups, and in the rush of the closing days of the Rome Conference, the drafting committee never fully integrated and reconciled the separate portions of the Statute.

With respect to a potential amnesty exception, the most important provision of the Rome Statute is Article 16. Under that article, the international criminal court would be required to defer to a national amnesty if the Security Council adopts a resolution under Chapter VII of the United Nations Charter requesting the court not to commence an investigation or prosecution, or to defer any proceedings already in progress.

The Security Council has the legal authority to require the court to respect an amnesty if two requirements are met. First, the Security Council must have determined the existence of a threat to the peace, a breach of the peace, or an act of aggression under Article 39 of the UN Charter. Second, the resolution requesting the court's deferral must be consistent with the purposes and principles of the United Nations with respect to maintaining international peace and security, resolving threatening situations in conformity with principles of justice and international law, and promoting respect for human rights and fundamental freedoms under Article 24 of the UN Charter.

The decision of the Appeals Chamber of the Yugoslavia Tribunal in the case of Dusko Tadic suggests that the ICC could assert its authority to independently assess whether these two requirements were met as part of its incidental power to determine the propriety of its own jurisdiction. Jose Alvarez, a commentator writing of the Tadic appeal decision, has said that this decision "strongly support[s] those who see the UN Charter not as unblinkered license for police action but as an

emerging constitution of enumerated, limited powers subject to the rule of law" (1969, p. 249). It is possible, then, that the international criminal court would not necessarily be compelled by the existence of a Security Council Resolution to terminate an investigation or prosecution, were it to find that an amnesty contravenes international law.

While an amnesty accompanied by the establishment of a truth commission, victim compensation, and lustration might be in the interests of justice in the broad sense, it would nonetheless be in contravention of international law where the grave breaches provisions of the 1949 Geneva Conventions or the Genocide Convention are applicable. It is especially noteworthy that the Geneva Conventions require parties "to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the Convention," the Genocide Convention requires parties "to provide effective penalties for persons guilty of genocide," and the Torture Convention requires parties "to make these offenses punishable by appropriate penalties which take into account their grave nature."

This would suggest that the International Criminal Court might not defer to the UN Security Council under Article 16 of the Rome Statute where the accused is charged with grave breaches of the 1949 Geneva Conventions, the crime of genocide, or torture. Yet, a counter argument can be made that the Rome Statute codifies only the substantive provisions of the 1949 Geneva Conventions and the Genocide Convention, and does not incorporate those procedural aspects of the Conventions that require prosecution. Accordingly, the nature of the charges might constitute a factor to be considered, but would not necessarily be a bar to recognizing an amnesty.

Where the UN Security Council has not requested the international criminal court to respect an amnesty and thereby to terminate a prosecution, the court's prosecutor may choose to do so under Article 53 of the Rome Statute. That article permits the prosecutor to decline to initiate an investigation (even when a state has filed a complaint) if the prosecutor has concluded that there are "substantial reasons to believe that an investigation would not serve the interests of justice." However, the decision of the prosecutor under Article 53 is subject to review by the pre-trial chamber of the court. In reviewing whether respecting an amnesty and not prosecuting would better serve the interests of justice, the pre-trial chamber would have to evaluate the benefits of a particular amnesty and consider whether there is an international legal obligation to prosecute the offense.

When neither the UN Security Council nor the prosecutor have requested the International Criminal Court to defer to a national amnesty, the concerned state can attempt to raise the issue under Article 17(1)(a) of the Rome Statute. That article requires the court to dismiss a case where "the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution." It is significant that the article requires an investigation, but does not specify that it be a criminal investigation. The concerned state could argue that a truth commission (especially one modeled on that of South Africa) constitutes a genuine investigation. On the other hand, subsection (2) of the article suggests that the standard for determining that an investigation is not genuine is whether the proceedings are "inconsistent with an intent to bring the person concerned to justice"—a phrase which, read together with the Preamble to the Treaty, might be interpreted as requiring criminal proceedings.

Conclusion

Nearly a decade ago, David J. Scheffer, then U.S. Ambassador-at-Large for War Crimes Issues publicly remarked: "[o]ne must understand that amnesty [and asylum] are always on the table in [peace] negotiations." In his view, there are frequently no legal constraints to the negotiation of an amnesty for peace deal. This is because the international procedural law imposing a duty to prosecute is far more limited than the substantive law establishing international offenses. But there are situations, such as the cases of Slobodan Milosevic of Serbia and Saddam Hussein of Iraq—each accused of grave breaches of the Geneva Conventions and genocide—where the international procedural law would rule out amnesty or asylum as a legitimate option for the peacemakers. Moreover, even in situations where amnesties do not contravene an applicable international obligation to prosecute, peacemakers must recognize that amnesties vary greatly. Some, as in South Africa, which are closely linked to mechanisms for providing accountability and redress, may be a legitimate diplomatic tool; others, as with the grant of asylum in 2003 for Charles Taylor in Nigeria, may be widely viewed as just another case of former leader "getting away with murder."

SEE ALSO Impunity; National Laws; Prosecution; Sierra Leone Special Court; Truth Commissions; Universal Jurisdiction

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Michael P. Scharf

Ancient World

Genocides, one can surmise, may be as old as civilization itself. The many ancient cases of disappeared peoples and cultures may not always point to genocide, but the possibility that many of these peoples were the victims of genocide seems very likely. The reason for this is that awareness of genocide was widespread in antiquity and the frequent reports of its occurrence indicate that genocide was commonplace.

In Homer's *Iliad,* the Greek forces invading Troy have no qualms about planning the total destruction of its people. In Book IV, Agamemnon rouses Menelaus:

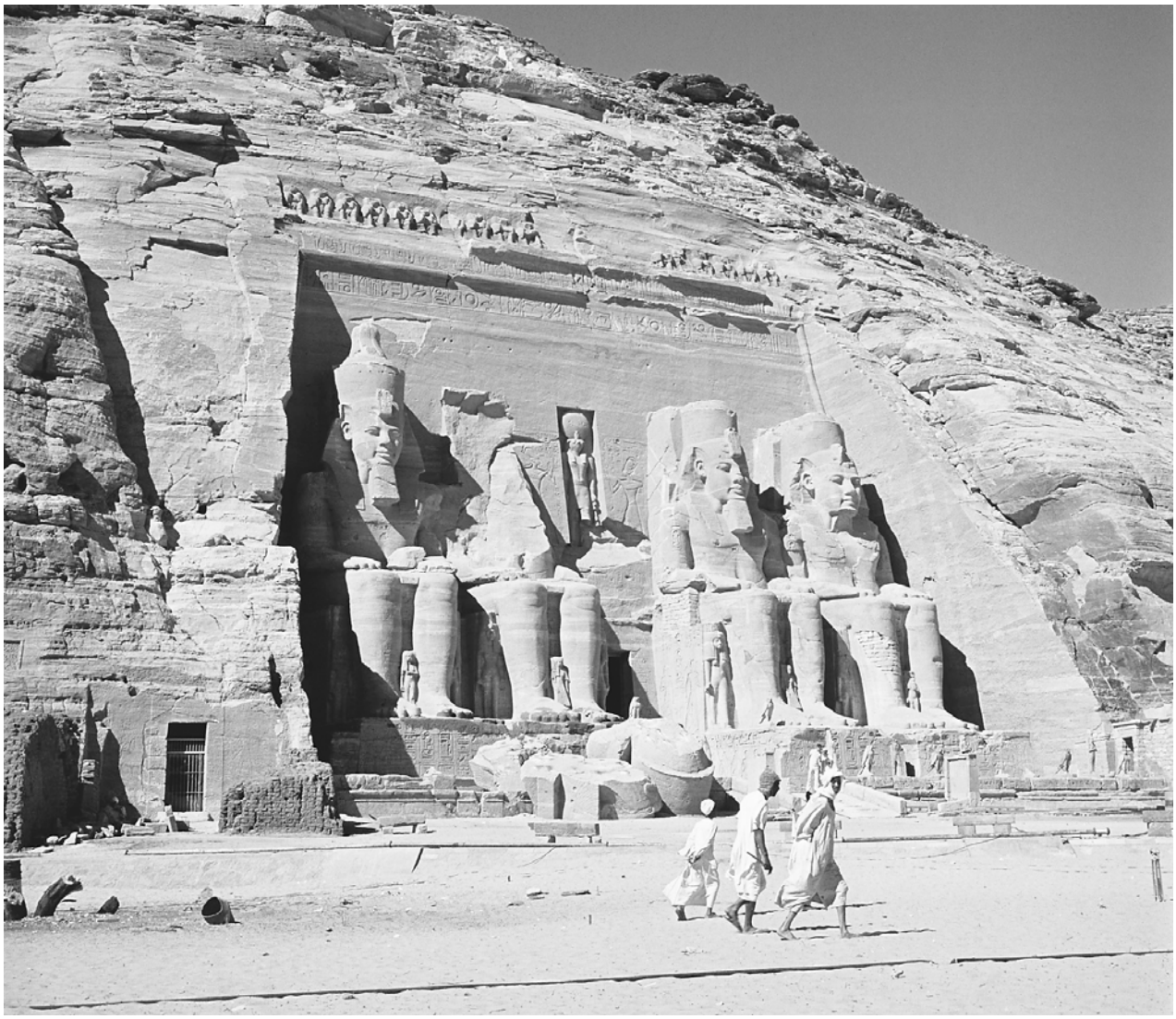
> My dear Menelaus, why are you so chary of taking men's lives? Did the Trojans treat you as handsomely as that when they stayed in your house? No; we are not going to leave a single one of them alive, down to the babies in their mothers' wombs—not even they must live. The whole people must be wiped out of existence, and none be let to think of them and shed a tear.

Putting to one side the question of whether or not the inhabitants of Troy actually suffered this fate, what one finds in Agamemnon's words is the casual acceptance of genocidal warfare as legitimate and commonplace. In a world where the ruling elites exploited the lower classes to finance the building of great palaces and temples or to wage war against enemies (of the elites), the fate of an enemy city's inhabitants meant very little. Histories were written about kings, priests, and ruling elites, and heroic battles between the armies of kingdoms and/or empires. There were no histories written about ordinary men and women. As a result, we may never have enough information for a decisive analysis of many suspected cases of genocide.

From time to time, one does come across an account of a historical event in which the fate of common people is mentioned, giving us a rare glimpse, not only of the event itself, but also of patterns of thought that were prevalent at the time of the event. An example is the bloody battle of Kalinga (in India). Asoka (299–237 BCE) was the third emperor of the Mauryan dynasty of India and the best-known ruler of ancient India. In 260 BCE Asoka attacked Kalinga; the campaign was successful but resulted in a tremendous loss of life. Asoka's brutality in warfare and the slaughter of his enemies are legendary. But his brutality is cited in texts, not because the event of slaughtering hundreds of thousands of people was so egregiously horrific, but because Asoka came to regret his actions and converted to Buddhism. In these texts the fate of Asoka's victims is noteworthy only because his guilt at having committed genocidal crimes led to his religious conversion, not because of a sense of bereavement for the people he victimized.

Although we often lack information for many of the instances of suspected genocide, the accounts of mass killings for which we have relatively more information must still be called into question, as that information may be exaggerated. Sennacherib, king of Assyria (705–681 BCE) waged wars against Babylonia, Phoenicia, and Philistia, as well as several cities in Judea. In 689 BCE Sennacherib captured and destroyed Babylon, slaughtered all its inhabitants, and diverted rivers of water into the city.

Do we absorb this information as factual, in the absence of any other corroborating evidence? Obviously,



Pertaining to genocidal crimes of the ancient Mediterranean world, there is more speculation than hard evidence. The historical record is often slight. During the reign of Ramses II, the struggle between Egyptians (under Ramses) and Hittites for control of Syria culminated in a battle that was fought in Kadesh, Syria. Although Ramses claimed a great victory (and that version of events was much promulgated for centuries), in fact neither power was able to defeat the other. In this photo, the great temple of Ramses II (completed c. 1250 BCE) at Abu Simbel, Egypt. [**HULTON-DEUTSCH COLLECTION/CORBIS**]

there were surviving Babylonians after 689 BCE, as both historical and archaeological evidence suggests that the Babylonians subsequently took revenge on Assyria. This question aside, the interpretation of such data (coming out of antiquity) is inherently problematic, as much of the data was obtained from inscriptions that were not intended for mortal eyes and were sometimes far from truthful. Records of a king's "heroics" were inscribed on the peaks of mountains or the foundations of buildings—all for the gods to see. Moreover, a king would record only his accomplishments, and never his failures, and what he chose to record might bear little relation to actual events.

One such example (of the erratic and undependable character of ancient historiography) is the story of the victory of the Egyptian pharaoh Ramses II over the Hittites (a nation of Asia Minor). The story of the Egyptian victory was for centuries relied on as historically correct, until an archaeological discovery in the late nineteenth century proved that not only did the Hittites win this battle, they also signed a peace treaty with the Egyptians. An interesting feature of the Hittite society is the way they are alleged to have treated their enemies. Unlike the Assyrians, who had a reputation for widespread brutality, the Hittites apparently did not commit genocide. Once an enemy was defeated, the in-

habitants of the conquered nation would be taken into custody and distributed as slaves among the Hittite elites.

That the Hittites were at variance with the (presumed) general atmosphere of genocidal warfare in antiquity is subject to argument. In the ancient Mediterranean world, it was the reputation of Medes and Babylonians to have possessed no aversion to using exceptionally lethal techniques in warfare. There are several accounts of Medes and Babylonians (independently and jointly) slaughtering the inhabitants of enemy cities, but perhaps the most famous account would be that of the assault on Nineveh, the capital city of Assyria, in 612 BCE, wherein Medes and Babylonians united to destroy the city. After a two-month siege, the city was pillaged, severed heads were put on display at its main entrance, and the city itself was reduced to rubble.

A detailed source for accounts of warfare in antiquity would be the Old Testament. It is a record of many events that might be viewed as genocidal. In *Joshua* the Israelites are portrayed as annihilating towns in fulfillment of their divine providence; *Deuteronomy* and *1 Samuel* both prophesize the annihilation of the Amalekites. Egyptians and Assyrians alike professed to carry out the complete destruction of their foes. Yet there is little archaeological evidence to support Old Testament accounts of the widespread destruction of cities that took place during the Exodus period (1200–1100 BCE). It is helpful to examine these accounts, not because of any historical authenticity that they might possess, but because of the casual way in which acts of genocidal aggression are reported: a further argument that ancient peoples were not unacquainted with the concept of genocide.

Although the term *genocide* is a modern one that conjures up images of carnage in the aftermaths of twentieth-century conflicts, the slaughter of enemies has ancient roots—an examination of which is a necessary part of the quest to understand the historical development of genocide and the meaning of the term itself. All the instances of genocide or presumed genocide cited above have entailed the targeting of noncombatant men, women, and children for extermination. Regardless of whether the accounts of genocide are truthful, the manner in which they have been reported strongly suggests that genocide was widely practiced, and that awareness of its existence spanned many ancient cultures. A study of suspected genocides of antiquity is pivotal to an understanding of the development of genocide, what it is, and how it arises.

SEE ALSO Archaeology; Athens and Melos; Carthage; India, Ancient and Medieval; Sparta

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Karin Solveig Bjornson

Anthropology, Cultural

Anthropology, the study of human beings through time and across place, is characterized by the concept of culture, a particular set of methods (ranging from anatomical analysis to ethnographic fieldwork), and a holistic perspective. Most anthropologists also adhere to the principle of relativism, which holds that one must at least temporarily suspend judgment and comprehend behavior from the perspective of the people studied to combat human tendencies toward ethnocentrism and naive realism—the view that, at root, everyone views the world in a similar manner. Although a relativist stance might seem problematic in the face of genocidal horrors, few anthropologists adhere to a fanatical relativism, which argues that "anything goes." Relativism is nevertheless essential to the ethnographer's attempt, as one of the founding figures in anthropology put it, "to grasp the native's point of view, his relation to life, to realize *his* vision of *his* world" (Malinowski, 1984, p. 25). This anthropological perspective is of enormous importance to human attempts to understand genocide, which occurs in a variety of cultural contexts.

Given the broad scope of the discipline, it is not surprising that, particularly in recent years, anthropologists have engaged in a wide range of projects related to genocide, such as defending indigenous peoples, leading forensic investigations, consulting United Nations (UN) tribunals, assisting refugees, helping victims cope with trauma, promoting conflict resolution, participating in the reconstruction, and arguing against so-called primordialist explanations.

One key area in which anthropologists have contributed to human understanding of genocide is in

helping to explain why people participate in mass murder. Perpetrator regimes—particularly those involved in "ideological genocides" (Fein, 1984, p. 1)—often rise to power as "revitalization movements" (Wallace, 1956, p. 1) that gain support in situations of rampant social, political, or environmental change which undermine local structures of meaning. Such upheaval provides a foundation for the emergence of radical ideologies and charismatic leaders whose blueprints for renewal require the elimination of those labeled as undesirable in the population.

To facilitate this project, genocidal regimes are centrally concerned with "manufacturing difference" (Hinton, 2004). As they reconstruct and crystallize boundaries of difference, for example, genocidal regimes set perpetrators and victims apart, marking the latter in dehumanizing discourses that facilitate their annihilation. Thus, Germans are split off from Jews, who are depicted as a disease that threatens to contaminate and even destroy the Aryan race. In a similar manner, Hutus have been divided from Tutsis, Bosnian Serbs from Muslims and Croats, Turks from Armenians, colonizers from indigenous peoples, and so forth.

Such genocidal ideologies are not constructed in a vacuum: They are located in particular places at a given moment in time. To motivate their minions to kill, genocidal ideologues forge their messages of hate out of a blend of the new and the old, thereby enabling them to tap into local knowledge that has deep ontological resonance for the actors. Examples range from the Hamitic hypothesis in Rwanda to the Khmer Rouge manipulation of local understandings of disproportionate revenge and Nazi invocations of anti-Semitism and the German Volk.

Besides revealing much about such boundary construction and ideology, anthropologists have also shown how violence is culturally patterned. In Rwanda, for instance, Hutu acts of violence, ranging from stuffing Tutsis into latrines to bodily mutilation, resonated with local understandings linking bodily health to proper blockage and flow. This "bodily inscription of violence" (Hinton, 2004) can be seen in a wide range of cases, from the torture chambers of the Khmer Rouge to the murder of so-called savage Putumayo in Colombia at the turn of the twentieth century.

Such violence always occurs in a social context. Anthropologists have examined a number of crucial group dynamics, such as kinship relations, liminality and rites of passage, socialization into microcultures of violence, ritual process, and local understandings of status, honor, face, and shame. Confronted with Putumayo who had been manufactured into beings classified as savage, ignorant, and wild, rubber traders engaged in ritualized murder, sometimes burning or crucifying the alleged infidels in a liminal locale where a microculture of brutal violence had emerged. Anthropology, of course, does not explain everything, but it provides a crucial level of analysis that may be fruitfully combined with insights garnered from other disciplines.

SEE ALSO Archaeology; Forensics; Sociology of Perpetrators; Sociology of Victims

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Alex Hinton

Anti-Semitism

Anti-Semitism is hatred, fear, and hostility that harms, has harmed, or has the potential to harm Jews. The term *anti-Semitism* was coined in 1879 by German anti-Semitic agitator Wilhelm Marr, who claimed that the term was based on "science," rather than religious concepts that would have justified antagonism toward Jews. Yet antipathy toward Jews (sometimes known as Jew-hatred, Judaeophobia, or "the longest hatred") is centuries old, and centuries ago became elaborated into an ideology. Anti-Semitic ideology, whose adherents have drawn and continue to draw on anti-Jewish myth and legend, has led to social and legal discrimination, demagogic political mobilization, and spontaneous or state-sponsored violence that has striven to isolate, expel, or annihilate Jews as Jews. That ideology considers the Jewish character as permanently and unreformably degenerate. And as per that ideology, Jews, no matter how few or assimilated, are perpetually engaged in conspiracies that seek to dominate, exploit, and destroy society or the world, and hence are menaces to society. Although some Greek and Roman authors (most notably Tacitus) expressed hostility toward Jews, no anti-Semitic ideology emerged in antiquity.

The New Testament and the Middle Ages

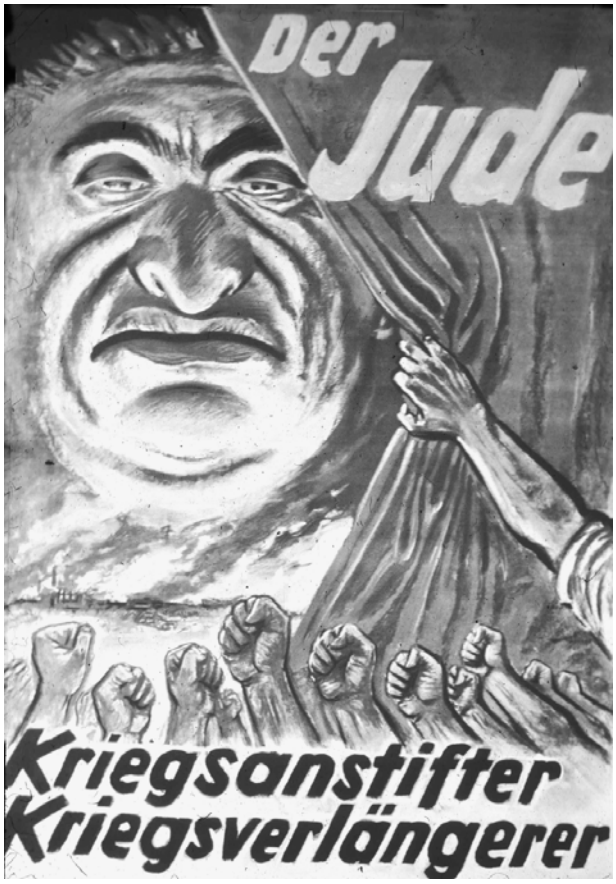
There are competing schools of thought as to the origins of anti-Semitism. One of these schools of thought holds that the roots of anti-Semitism are religious, that anti-Semitism derives from the narrative of the trial and crucifixion of Jesus Christ in the four New Testament gospels. Expressions of anti-Semitism that are essentially nonreligious (except perhaps racialist language) are transformations, secularizations, extensions, and "new" applications of the religious original.

Christianity is the only world religion that accuses another religion of murdering its god. Owing to Christian allegations that Jews are culpable for the crime of deicide, or Christ-killing, Jews are—in many settings—defined as criminals linked to the anti-Christ, a Jewish son of Satan who thwarts the Second Coming and will rule the world via a reign of terror that will mean affliction for all Christians. Also adumbrated in the New Testament is the myth of the Wandering or Eternal Jew. (See John 18:4–10, 20–22, parallels in Matthew 26:51, Mark 14:47, Luke 22:50–51) The Wandering Jew, supposed to be emblematic of the Jewish people, is doomed to wander to the end of time, homeless, alienated, unable to die, fated to live in misery, and suffering repentance for his unforgivable crime of having mocked Christ.

The medieval accusation of ritual murder is also adrumbrated in the gospels. In Matthew (27:23–26) the Jews of Jerusalem cry out to Pontius Pilate: "Crucify him. . . . His blood be upon us and our children." Thus are Jews made to pronounce an eternal curse on themselves. The most pernicious anti-Semitic motif in the gospels is the demonization of Jews. In John (8:44–47) Jesus excoriates the Pharisees (one of several Jewish parties or sects, and other Jews present):

> Your father is the devil and you choose to carry out your father's desires. He was a murderer from the beginning, and is not rooted in the truth; there is no truth in him. When he tells a lie he is speaking his own language, for he is a liar and the father of lies.

And so Jews became alleged to be pledged in allegiance to Satan's superhuman powers and to be devoted to his work of subversion and overturning God's plan, echoed (many centuries later) in Shakespeare's describing his character Shylock (in *The Merchant of Venice*) as a "fiend" and the "very devil incarnal." The putative capacity of Jews to lie, deceive, and manipulate is rooted in the same ideology as the image of the Jew as standing menace and arch-conspirator. That the origins of anti-Semitism are economics-related (a "doctrine" that tends toward the portrayal of Jews as greedy Judases, carnal, antispiritual, and rejected by God—and of the Jew as Shylock, financial wizard, and huckster) finds its New Testament foundation in the story of Jesus expelling the moneychangers from the temple and Judas' betrayal of Jesus for thirty pieces of silver.



"The Jew: The Inciter of War, the Prolonger of War." This poaster was released in late 1943/early 1944. [GERMAN PROPAGANDA ARCHIVE (WWW.CALVIN.EDU/CAS/GPA)]

The Church Fathers (theologians, whose beliefs and writings are termed *patristic*) of the third to the seventh centuries wove anti-Semitic New Testament passages into an intellectually sophisticated ideology. For St. Augustine (354–430), Jews—as he stated some twenty times in his influential *Treatise against the Jews* and elsewhere—are the "witness people," fated to exist as suffering Cains (in collective punishment for the crime of deicide) until the Last Judgment. His writings strove to justify the degradations to which Jews were subject, but at the same time may have helped to shield them from genocidal aggression—by advocating that limits be set on their persecution. Augustine wrote in his *Reply to Faustus the Manichanean*: "The continued preservation of the Jews will be a proof [of the truth of Christianity] to believing Christians." St. John Chrysostom (c. 347–407), the most vituperatively anti-

Semitic of the Church Fathers, gave expression to almost every allegation that was part of the anti-Semitism of his day. In his writings Jews were devil-possessed, "impure, criminal, impious," their religion a "disease." And "Like an unruly draft animal, the Jews are fit for killing. And this is what happened to the Jews: while they were making themselves unfit for work [by rejecting Christianity], they grew fit for slaughter" (Perry and Schweitzer, 1994, 114–115). The need to shun Jews and to regard them as dangerous, polluting, and corrupting was a patristic teaching.

It was a staple of medieval Christian folklore that Jews suffered from terrible physical maladies and needed the blood of Christian children to carry out their medicinal and magical arts—or would simply exact that blood as revenge. According to the fable known as blood libel: Each spring a band of Jewish conspirators selected a town in which a Christian child was to be kidnapped. That child was sacrificed (a reprise of the crucifixion), and the child's blood was used in the making of matzohs and wine, to be consumed at Passover. As part of the aftermath of an accusation of ritual murder, Jews were expelled from cities and towns, their properties were expropriated, or they were massacred. Typically, a shrine to the "martyred saint" was erected. The first blood libel is supposed to have taken place in Norwich, England, in 1144; this species of slander became common all over Europe, and lived on into the twentieth century.

A parallel anti-Semitic fable is host desecration. As part of Christian dogma, a consecrated or "transubstantiated" host is the equivalent of the flesh of Christ. Mostly in Germany during the late Middle Ages, Jews were accused of stealing consecrated hosts, of "torturing Jesus again"—by stabbing, beating, boiling, or burning hosts, thereby causing hosts to "bleed" or cry out. Jews who had been accused of host desecration were made to confess and suffered the same consequences as the victims of blood libels. Unlike ritual murder accusations, which several medieval popes condemned, the host libel myths flourished with papal blessing. Almost all Protestant denominations condemned transubstantiation; hence, allegations of host desecration disappeared from Protestant countries, but lived on in Catholic areas until Vatican Council II (1962–1965).

Another expression of popular anti-Semitism was the passion play, a genre that originated in the church's liturgy of holy week. An early dramatization was the elaboration of the gospel narratives into an oratorio, combining singing and acting. There was clerical resistance to such developments on the grounds that dramatic performance is pagan and improper (the Latin for play, *ludes,* has the same root as lewd). But with the heightening of religious emotion that accompanied the Crusades, such inhibitions ended. There were also the precedents of liturgical plays (many included anti-Semitic motifs) dealing with the Nativity, Jesus' miracles, anti-Christ, the second coming, and the end of the world.

From the twelfth century, Christian art and drama dwelled on Jesus' suffering—mocked and pilloried, beaten and tortured, bleeding and tormented by the villainous Jews, with Judas and Caiphas prominent as Satan's evil-doing minions, and as greedy, bloodthirsty, power-hungry conspirators. The earliest manuscript of passion play dates from the mid-twelfth century. The first recorded performance occurred in Siena, Italy, c. 1200. By the fourteenth and fifteenth centuries, almost every town and hamlet in Europe—and many a local parish—put on its version of the story. The Protestant Reformation, except for the Calvinists and later Puritans, did not object to the performance of passion plays. They went on in England throughout the sixteenth and seventeenth centuries, as elsewhere in Europe and especially Germany (503 examples have been traced in southwest Germany alone in the early sixteenth century). Throughout all these centuries the fear and hatred unleashed by such productions meant that performances were often followed by Christian attacks on the community's Jewish ghetto, resulting in sack, arson, pillage, massacre, and expulsion. So often did such mayhem ensue that town ordinances required guards to be placed in defense at the ghetto gates, or performances were barred, as at Freiburg in 1338, Frankfurt in 1469, and Rome in 1539.

The most famous passion play, *Oberammergau,* dates from 1634, but that Bavarian village was the scene of similar performances centuries before; for all its elaboration and dramaturgical finesse, it closely resembles its medieval anti-Semitic archetypes and, notoriously, won the admiration of Adolf Hitler.

During later medieval centuries in Europe, Jews were isolated in ghettos and were required to wear badges and clothing that would identify them—indignities receiving the solemn sanction of church councils. Ordinances forbade Christians to associate with Jews, including marriage between Christians and Jews, eating with or buying food from Jews, or frequenting Jewish physicians (who were alleged to poison their patients). During the Black Plague (1347–1350) Jews were scapegoated and sometimes massacred; they were expelled from cities and towns for poisoning the air and water. In the theology of St. Thomas Aquinas (1225–1274), Jews were to be tolerated—however he went beyond the condemnations of

the Church Fathers in his denunciations of "usury" and of Jews who were usurers. As part of that worldview Jews were "destined to absolute servitude" and rulers might confiscate their property—"treating Jewish goods as their own" (Perry and Schweitzer, 2002, p. 17). The Vatican cited Aquinas when it gave its approval to the anti-Semitic laws of Vichy France during World War II.

During the twelfth and thirteenth centuries Christian theologians discovered the great body of Jewish biblical commentary and interpretation known as the Talmud. Christian theologians and even some popes believed that Jews had replaced the Bible with the Talmud, and that Judaism had ceased to be biblical. In the view of these Christian scholars and ecclesiastics, Judaism was heretical and "of earth." Jews thus forfeited their right to be tolerated in Christendom and were a proper focus for the Inquisition courts (Roman Catholic courts set up in several European countries to punish heresy, most notably in Spain under royal auspices from 1378 on). For many Christian theologians, the Talmud and other Jewish texts affirmed Christ as the messiah. Accordingly, the lying Jews had concealed this revelation—which was justification for the involuntary progressions of Jews toward the baptismal fount. The Dominican and Franciscan friars were fanatical in their efforts to compel Jews to convert to Christianity, confiscating their books and forcing them to listen to conversionist sermons. The end result was forced conversions en masse, the best known of which occurred in the Spanish kingdoms in the century that followed 1391.

Many of these forced converts, known variously as crypto-Jews, New Christians, *Conversos* (converts), or *Marranos* (swine), and/or their descendants became steadfast Christians; others secretly remained steadfast Jews. *Conversos* became successful in all walks of life (as the laws that had discriminated against them were withdrawn). Before long, however, envied and under suspicion of "Judaizing," they were ruthlessly scrutinized and abused by Spanish and Portuguese Inquisition authorities for centuries. Anticipating the anti-Semitism of Nazi Germany, Spanish and Portuguese laws established "purity of blood" requirements for numerous kinds of employment, which had the intended effect of excluding *Conversos* from many occupations.

Other readers of the Talmud purported to find that its text enjoined Jews, as part of their religious duty, to malign, rob, maim, enslave, and kill Christians; to undermine Christian belief; to bankrupt and destroy the church. Copies of the Talmud were seized and burnt; consequently few copies of the Talmud survived into the more tolerant Renaissance period. By the end of the Middle Ages, western Europe was essentially barren of Jews, who had either fled (mostly to Poland and the Ottoman Empire) or, fleeced of their property, been expelled—from England in 1290, France in 1306, Austria in 1421, and Spain in 1492. The *Summa Angelica* of the fifteenth-century Italian theologian Angelo di Chivasso epitomized the church's position: "To be a Jew is a crime, not, however, punishable by a Christian" (Poliakov, 1974–1985, vol. 3, p. 6). In practice, however, fifteenth-century Christian rulers, crusaders, ecclesiastics, and municipalities did punish Jews because they were Jews.

Economic Anti-Semitism

Jewish literacy and erudition (often acquired under the religious obligation to know Torah) long conferred economic advantages on Jews. However, their alleged mental and intellectual superiority—a weapon Satan reputedly bestowed on Jews—became an anti-Semitic stereotype: "Intelligence—that is the mortal sin of the Jews" (Weiss, 1996, p. 157). Because Jews in Christian Europe were normally excluded from owning land and barred from the crafts, their academic distinction and literacy would often enable them to become prominent in trade, and, later, finance, callings deemed disreputable and unprestigious by Christians during the Middle Ages and after. Socioeconomic standing enabled some Jews (most were poor) to play prominent roles in the commercial, financial, and industrial expansion of Europe.

Jewish emancipation, beginning in revolutionary France in 1790, and the more secular attitudes that obtained in Europe in the nineteenth century enabled many Western Jews to prosper as never before. Anti-semitic explanations of Jewish prosperity abounded. Karl Marx equated Jews and Judaism with capitalism (so-called mammonism) and claimed that money-worshipping Jews had invented capitalism and had "Judaized" Western society because "Jewish" capitalism rose there and became the dominant economic system. Accordingly, capitalism would not end until Judaism, its source, ended. Marx pronounced this goal of Jewish annihilation in his essay of 1843, "The Jewish Question." The German economic historian and eventual Nazi Werner Sombart published an influential book, *The Jews and Modern Capitalism* (1911), which allegedly proved Marx's contentions.

Modern Period: Luther to Hitler

The acolytes of Reformation Calvinism were not obsessed with the strengthening of Christianity via the persecution of Jews and even tended toward philo-Semitism. In contrast, the Catholic Counter-Reformation and Lutheranism upheld the tradition of

anti-Semitic persecution. Martin Luther, contemptuous of and dismissive of Judaism, was intent on converting Jews to Christianity. Frustrated by the failure of his attempts at conversion and fearful of accusations of "Judaizing," Luther vented his wrath against Jews in letters and pamphlets, in which age-old anti-Semitic calumnies were spewed. In his treatise *On the Jews and Their Lies* (1543), he delivered an edict: Burn their synagogues and homes, their prayer books, and Talmuds; on pain of death forbid rabbis to teach; outlaw Jews and exempt them from any protections afforded to travelers on highways; bar them from all financial and banking activity and confiscate their money; ostracize them; make them "earn their bread in the sweat of their brow"; treat them "as a physician treats gangrene—without mercy, to cut, saw, and burn flesh, veins, bones, and marrow" (Luther, 1971, pp. 268–274, 292). Much later German nationalists exploited Luther's hatred of Jews, and the Nazis reissued his diatribes as endorsements of their anti-Semitic ideology. In 1938 a Lutheran bishop published excerpts from the 1543 treatise and extolled Hitler and Martin Luther as Germany's "greatest anti-Semites" (Perry and Schweitzer, 2002, p. 83).

Voltaire was perhaps the most celebrated exemplar of the distinctly secular eighteenth-century Enlightenment philosophy (and its secular anti-Semitism). In his attacks on Christianity, he condemned Judaism as its source and denounced both religions as "superstitions." In his view Jews were avaricious and detestable. He informed his readers: "Still, we ought not to burn them." His instruction to Jews: "Renounce your sacred books" (Levy, 1991, pp. 41, 46). Thus, would Jews cease to be Jewish; Voltaire had proposed a form of cultural annihilation comparable to medieval forced conversions and later European nationalists' demands for Jewish assimilation. The nineteenth and twentieth centuries were periods of intense nationalism in Europe, and the particular forms of nationalism that had evolved fostered perceptions of Jews as foreigners and aliens who could never become true nationals.

As theories of "race" came to the fore, perceptions of Jews as inassimilable strangers and dangerous polluters grew in intensity, as racialist phobias and biological pseudoscience became conflated with hypernationalism. As distinct from Christian teaching, according to which baptism effaced Jewishness, "racial science" decreed that race (and separateness) could never be changed. The composer Richard Wagner expressed his own paranoia in this regard in his adoption of the neologism *Verjudung* ("Jewification," similar to Marx's "Judaizing"), which denoted the danger of "infection" by the Jewish spirit of German culture, German institutions, or the German soul. In his essay "Jewry in Music," he pronounced his verdict of annihilation in the form of a command: "Go under."

Adherents to the political anti-Semitism that emerged in Europe in the nineteenth century strove to curtail Jewish emancipation, to expel Jews from cities, towns, and neighborhoods on racialist grounds, and to require their conversion and assimilation—and, more generally, to combat political and social liberalism as a manifestation of Jewish influence. On the continent the ideologies and platforms of virtually all major political parties were tainted with anti-Semitism. For many years the members of left-leaning, socialist, and/or social democratic parties were prone to making an equation between Jews and "the capitalist enemy" (in the manner of Marx), and were slow to rid themselves of this bias. A pioneer of political anti-Semitism was the Lutheran pastor and German court preacher Adolf Stoecker, who founded the German Christian Social Workers' Party in 1878. In 1892 Germany's Conservative Party absorbed several anti-Semitic splinter parties by pledging itself "to battle against the manifold aggressive, decomposing, and arrogant Jewish influence" (Weiss, 1996, p. 116). In France in the 1890s and after, the Marquis de Morés and Édouard Drumont led the Anti-Semitic League, which elected a dozen or so deputies to the National Assembly and which was clamorously active during the Dreyfus Affair (centered on the 1895 treason conviction of Army captain Alfred Dreyfus, who was innocent but not acquitted until 1906—and whose accusers were motivated by anti-Semitism). In the late nineteenth century the governments of Romania and Russia were overtly anti-Semitic, and encouraged pogroms against their Jewish citizens. Although a short-lived organization called the International Anti-Jewish Congress held yearly conventions in the 1880s, a most negative portent was the coming to power of the Austrian Christian Social Party (the lone example of an anti-Semitic party winning elections and holding power over a span of several years). The party's leader was the demagogue Karl Lueger, who became mayor of Vienna in 1897 after gaining a clear majority in Vienna's city council elections; his anti-Semitic tactics and demagoguery were greatly admired by the young Hitler. In between the two world wars Europe's fascist parties (except Italy's before 1938), flourishing under the aegis of Adolf Hitler prior to and during World War II, were virulently anti-Semitic.

A noteworthy example of anti-Semitic hate literature is the Russian document *The Protocols of the Learned Elders of Zion.* Written in France in the l890s at the behest of the Russian secret police, it sought to justify the tsarist regime's anti-Semitic policies and po-

groms. Intended for the credulous, and recapitulating anti-Semitic mythology almost in its entirety, it is supposed to be the secret minutes of a conclave of Jewish elders meeting in the ancient Jewish cemetery of Prague and plotting to take over the world. To implement their plan, the Jewish conspirators employ every imaginable weapon. Acting like the evil god Vishnu with a hundred hands, they undermine religion; hatch revolutions (the French Revolution and all since); manipulate stock exchanges; ignite class warfare; set off economic crises; maneuver sources of power (judicial, parliamentary, the press, institutions of learning, and money—"over which [Jews] alone dispose"); dominate workers through socialism and trade unionism; promote alcoholism, prostitution, pornography, and humanism in order to befog the minds of non-Jews; and create anti-Semitism in order to bind the Jewish masses to their cause until the plot is fulfilled. Then the elders will eliminate all religions except Judaism and thus "shall determine the destiny of the earth." First published in Russia in l903, the *Protocols* won the enthusiasm of Tsar Nicholas II at the time of the catastrophic Russo-Japanese war—a time when Russia was quaking with impending revolution. Nicholas blamed these catastrophes on the Jews, and joined with Kaiser Wilhelm II of Germany in signing the treaty of Björkö, in which they pledged to form a "continental league" to combat revolution and international Jewry. The next year Nicholas signed a secret agreement (which reads like the *Protocols* and was probably based on it). Nicholas envisioned a great alliance whereby combined powers would engage in "an active joint struggle" to avert "the impending general European revolution" and fight the "Judaeo-Masonic" conspiracy. No part of this plan materialized, but it is illustrative of how unconcealed anti-Semitic ideology could enter into the highest-level diplomatic exchanges and provide a basis for treaties and policy aims. Deploying the *Protocols* in the public arena for the first time, Nicholas exhibited the credulousness of most European minds and the willingness of those minds to believe bizarre myths about Jews, as well as his belief in the utility of anti-Semitism (as Hitler believed) in furthering the aims of foreign and domestic policy. Since 1918 the *Protocols* has remained a staple of anti-Semitic discourse worldwide—millions of copies in many languages continue to circulate in print and on the Internet—despite the fact that it was demonstrated to be a forgery and nothing other than paranoiac hate literature as early as 1921.

Hitler was immersed in the mental universe of the *Protocols* all his life. His speech before the German Parliament in January 1939 contained a prophecy: "If international Jewry . . . succeeds in plunging the peoples into another war, then the end result will not be the Bolshevization of the earth and the consequent victory of Jewry but the annihilation of the Jewish race in Europe" (Cohn, 1967, p. 190). His belief that Jews were menaces and a highly organized race of evil-doing supermen was a modern, secularized version of the medieval idea of the demonized Jew. He spoke in medieval accents when he declared: "The struggle for world domination will be fought between . . . Germans and Jews. We are God's people. Two worlds face one another: the men of God and the men of Satan." And: "The Jews . . . invented capitalism . . . an invention of genius, of the devil's own ingenuity" (Rauschning, 1940, p. 237–238). There is nothing original about Hitler's version of anti-Semitism except his political genius in promoting anti-Semitism. He feared Jews—they were "the people of Satan," people who conspired to enslave and rule the world through communism, socialism, capitalism, internationalism, democracy, pacifism, biological degeneration, and disarmament. In his eyes Jews were "culture-destroyers"; they embodied everything he feared, hated, and sought to destroy. Other high-ranking Nazis shared these views—an amalgamation of medieval, racial, and *Protocols* anti-Semitism. The demagogue Julius Streicher, publisher and editor of anti-Semitic newspapers and part of Hitler's inner circle, promulgated an anti-Semitism that was as much medieval and religious as it was modern and secular. He scoured specious texts such as J. A. Eisenmenger's *Judaism Uncovered* (1700), Theodor Fritsch's *Handbook of the Jewish Question* (1887), novels such as Gustav Freytag's *Debit and Credit* (1885), and forgeries such as *Protocols* (1903) as part of an attempt to prove (in his own words): "This satanic race really has no right to exist." He was perhaps the first Nazi to invoke and articulate the concept of a Final Solution, saying in a 1925 speech before a mass audience in Nuremberg: "[F]or thousands of years the Jew has been destroying the nations . . . [W]e can annihilate the Jews." Since the 1870s there had been many calls for the destruction of the Jews; until 1914 these calls had been more pervasive and vehement in France, Russia, Romania, and Austria-Hungary than in Germany, but it was Hitler's Germany that carried out what many in Europe believed to be history's mandate and science's dictate.

Contemporary Anti-Semitism

Holocaust denial is a new from of anti-Semitism, but one that hinges on age-old motifs. Another new form of anti-Semitism is that sponsored by the Nation of Islam (an anti-white supremacist movement founded in the United States in the 1930s) and its leader, Louis Farrakhan, who has employed a wide range of anti-Semitic propaganda weapons in his demagoguery. The Nation of Islam fabricated the myth that Jews originat-

ed and dominated the 400-year Atlantic slave trade, profited immensely from it, owned disproportionate numbers of slaves, and were the cruelest of slave masters. *The Secret Relationship between Blacks and Jews* (1991), with authorship attributed to the Historical Research Department of the Nation of Islam, purports to provide the evidence of Jewish culpability for "the black Holocaust." That some Jews were involved in slave trading is well-known, but their participation, when compared to that of many Muslims, Catholics, Protestants, freed blacks, and black Africans, was minuscule.

Since the 2001 terrorist attacks on the United States, there has been a media focus on Muslim anti-Semitism and on radical Islam or Islamism (distinct from Islam and characterized by deep antagonism toward non-Muslims and the West). Muslim hostility toward Jews has its origins in the Qur'an, in which several passages express hostility toward Jews and in which Jews are described, variously, as "the worst enemies of the Muslims," a "cursed people," "slayers of prophets," "perverters of scriptures," and "apes and swine" (Suras 2:73, 88; Qu'ran 5:60–65, 78–82). Jews lived for many centuries in Muslim lands as *dhimmis* (Jews or Christians living in Islamic countries as protected minorities), and were subject to governments that sought to degrade and humiliate them; there were pogroms and periodic forced conversions. Since the 1870s there has filtered into the Middle East the entire range of Christian/European/German/Nazi anti-Semitic beliefs, the principal intermediaries having been Christians who live in the Middle East. The principal literary sources for anti-Semitic ideologues living in the Middle East have been the *Protocols,* Hitler's *Mein Kampf,* Henry Ford's *International Jew,* and the churchman August Rohling's *Talmudic Jew* (which attempts to prove the myth of ritual murder; translated into Arabic by 1899). Some scholars have argued that Muslim anti-Semitism is essentially a byproduct of the Israeli-Palestinian struggle, and that when that struggle is concluded, Islamism will evaporate. Yet Islamism, which predates the founding of Israel by twenty years, contains a hatred so vile that Muslim anti-Semitism is unlikely to wane anytime soon. The "moderate" ex-president of Iran, Hashemi Rafsanjani, in a speech of December 2001 at Teheran University, urged Muslim countries to develop nuclear weapons: "It is theologically imperative. . . . Nothing will remain after one atom bomb is dropped on Israel. . . . The founding . . . of Israel is the worst event in all history." Islamism shares with mid-twentieth-century fascism ideological fanaticism, genocidal anti-Semitism, and terrorists' indifference to human life.

For half a century after 1945 anti-Semitism was disreputable in Western countries. Since 2000, however, exacerbations of the Israeli-Palestinian conflict have generated a resurgence of anti-Semitism in Europe. The Israeli military campaign in the West Bank in the spring of 2000, a response to suicide bombings in Israel, provoked a rash of anti-Semitic incidents in several parts of the world: Cemeteries were vandalized, Holocaust memorials defaced, synagogues torched, buses carrying Jewish children stoned, Jews beaten. Muslim fanatics were the main perpetrators of the violence. In protests against the military campaign, whether coming from the political right or the left, Israel was attacked as a belligerent, uncompromising, imperialistic state. At rallies and demonstrations in many cities of Europe, crowds shouted: "Death to the Jews!" Britain's *Guardian* proclaimed: "Israel has no right to exist." The Vatican's *L'Osservatore Romano* attacked Israeli "aggression that turns into extermination." A 2003 European Union poll reported that a majority of citizens believe that Israel is the greatest threat to world peace.

Communism and fascism have gone, but anti-Semitism remains and is again becoming socially and intellectually acceptable—although it often rears its head under the cover of anti-Zionism, or anticolonialism, or antiglobalism. In reportage on Israel, the European news media are biased to varying degrees against that nation and its people. They continue to rely on anti-Semitic stereotypes. These media, in their analyses of Israeli government actions (which include no comparisons to other bloody conflicts), dredge up ancient anti-Semitic *topoi,* a shared body of half-conscious, half-remembered motifs. All the European countries, despite some constructive efforts, remain shackled to age-old anti-Semitism. Almost all the European countries are burdened with the heritage of the Holocaust and a reluctance or unwillingness to face up to their collaborations with the Nazi regime. This is most clearly visible in France, where memory of the Vichy regime lingers on and recent anti-Semitic violence has been the worst.

SEE ALSO Catholic Church; Ethnic Groups; Hate Speech; Heydrich, Reinhard; Himmler, Heinrich; Hitler, Adolf; Holocaust; Inquisition

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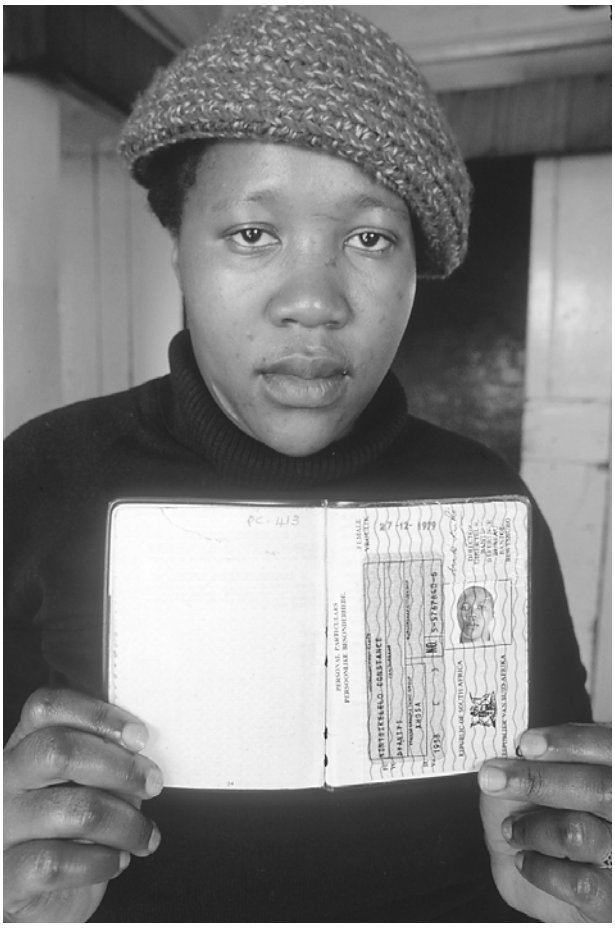
Frederick M. Schweitzer

Apartheid

Apartheid, the Afrikaans word meaning separateness (literally, apartness), was coined during the 1930s by the Stellenbosch-based South African Bureau of Race Relations (SABRA) to denote the separate development of the races living in South Africa. It has subsequently come to be associated with the racial policy implemented by the National Party government of the Republic of South Africa during its rule in the period 1948 to 1994.

Concept of Apartheid

Perhaps the best synopsis of the policy of apartheid is to be found in the United Nations International Convention Against Apartheid in Sport of 1985:



Under apartheid, black Africans had to have special permission to enter and remain within urban areas and were required to carry "interior passports" at all times. In this photo, a woman holds up the so-called dom pass. [ALAIN NOGUES/CORBIS SYGMA]

> The expression "apartheid" shall mean a system of institutionalized racial segregation and discrimination for the purpose of establishing and maintaining domination by one racial group of persons over another racial group of persons and systematically oppressing them, such as pursued by South Africa.

Apartheid, as advocated and practiced in South Africa, was structured on three distinct bases:

- *separation* of sections of the population along racial lines (segregation);
- *exploitation* of persons of color for the benefit of a privileged white elite (discrimination); and
- *repression* of opposition to the policy seeking to implement the above (persecution);

Apartheid does not denote the racist sentiments and practices that linger in the hearts and minds and in the personal conduct of many people living in plural

When high-school students in Soweto demonstrated on June 16, 1976, against a government ruling that had named Afrikaans as the language of education, the police responded with tear gas and gunfire. Over the course of several days, the demonstrators were joined by angry Soweto residents who set fire to buildings. The government sent in more police and quelled the escalating violenceat the cost of several hundred black African lives. In this photo, demonstrators come up against soldiers and police. [**HULTON-DEUTSCH COLLECTION/ CORBIS**]

societies, but is confined to institutionalized racism—that is, racial discrimination imposed by the laws and enforced practices of a political community. Race is here the essential criterion of enforced differentiations in the social, economic, political, and legal structures within an apartheid society. Racial distinctions constitute a particular modality of social reality and must not be confused with those distinctions founded on national, ethnic, or religious grounds. A racial group is conventionally defined on the basis of "the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national, or religious factors" (*Prosecutor v. Jean-Paul Akayesu,* Case No. ICTR-96-4-T, para. 513 [September 2, 1998]).

Historical Perspective

Of all pluralist communities, South African society is perhaps the most diverse. Segregation of the races has been part of the social structure of South Africa ever since the Dutch East India Company, seeking to establish an outpost that would provide the company's fleet with fresh produce while en route to its trading partners in the Far East, took possession of the Cape of Good Hope in 1652. In 1911 Lord Henry de Villiers (Chief Justice of the Union of South Africa) described the racial pattern within the social structures of the country in compelling terms:

> As a matter of public history we know that the first civilized legislators in South Africa came from Holland and regarded the aboriginal natives of the country as belonging to an inferior race, whom the Dutch, as Europeans, were entitled to rule over, and whom they refused to admit to social or political equality. We know also that, while slavery existed, the slaves were blacks and that their descendants, who form a large propor-

> tion of the coloured races of South Africa, were never admitted to social equality with the so-called whites. Believing, as these whites did, that intimacy with the black or yellow races would lower the whites without raising the supposed inferior races in the scale of civilization, they condemned intermarriage or illicit intercourse between persons of the two races. . . . These prepossessions, or, as many might term them, these prejudices, have never died out, and are not less deeply rooted at the present day among the Europeans in South Africa, whether of Dutch or English or French descent (*Moller v. Keimoes School Committee & Another,* 1911 A.D. 635, at 643).

During the mid-twentieth century two sets of circumstances were decisive in prompting the National Party of Dr. D. F. Malan (1874–1959) to select racial segregation as the political mandate it would seek from the predominantly white electorate in the forthcoming elections of 1948. General J. C. Smuts (1870–1950), Prime Minister in the United Party government, was a man of mature years, and it was rumored that he favored Jan Hofmeyr (1894–1948), an outspoken liberal known for his nonracist ideology, to become his successor. The second decisive circumstance derived from South Africa's resolve to incorporate South West Africa (Namibia) into the Union of South Africa. South West Africa was placed under South African control in 1919 as part of the mandate system of the League of Nations, and Smuts in 1946 informed the United Nations (UN) of his government's intention to bring the mandate to fruition by transforming South West Africa into a province of the Union. Within the UN India raised objections to this incorporation of South West Africa into South Africa based on South Africa's treatment of Indians and other people of color, under the prevailing laws of the country. The UN offered its good offices to secure a solution to the South African–Indian dispute. In order to gain the support of India for the incorporation of South West Africa, Smuts proposed to extend political rights to South African Indians (the Indians had been disfranchised by the British colonial authorities in 1896). The National Party therefore decided to exploit "the racial scare" as its election strategy and proposed apartheid as a feasible solution to the problem of race relations. To everyone's surprise, it won the 1948 elections, albeit by a narrow margin, and apartheid thus became the official policy of the newly elected government.

Implementation of the Apartheid Policy

In terms of the Population Registration Act of 1950, all South Africans were classified for legal purposes according to the racial categories of white, black, and colored, with the Indian population group constituting a distinct section within the colored community. The racist laws of apartheid South Africa never attempted to define race as such and applied different criteria so as to be able to allocate racial classifications to all its citizens. Being "white" depended on a person's appearance and general acceptance by other members of the white community, whereas being Native/Bantu/black/African depended on a person's belonging to an aboriginal race or tribe of Africa. A "colored person" was defined as someone who was neither white nor black. It is perhaps interesting to note that although Chinese persons were classified as colored, Japanese persons were classified as white.

Based on this classification, apartheid was particularly noted for the totalitarian interference of the state in the private sphere of peoples' day-to-day lives. In apartheid South Africa, the state prescribed, with race as the prime criterion, whom one could marry, where one could reside and own property, what schools and universities one would be allowed to attend, and which jobs were reserved for one. The state dictated to sports clubs whom they could admit as members, and against whom they were permitted to compete. The sick had to be conveyed in racially exclusive ambulances, could receive blood transfusions only from donors of their own racial groups, and could qualify for treatment only in racially defined hospitals. The state even regulated, with race as the prime criterion, who would be allowed to attend church services in some regions, and where one could be buried.

The implementation of segregation in pre-1994 South Africa was designed to secure the political dominance and the economic and social privileges of the white population group. When the Union of South Africa was established in 1910, political rights in the provinces of Natal, the Orange Free State, and Transvaal were almost exclusively confined to whites. Indians had been disfranchised by the British colonial authorities of Natal in 1896, but those who at that time were already registered voters retained their right to vote for life. When the 1948 elections were held, only two Indians were still on the voter rolls. In the Cape of Good Hope, Africans and coloreds had (qualified) franchise rights, and those rights were afforded entrenched protection in the Constitution of the Union of South Africa; however, Cape of Good Hope African voters were disfranchised by the legislature under United Party rule in 1936, and Cape coloreds were deprived of their voting rights by the legislature under National Party rule in 1956. The South African Constitution of 1983 reinstated political rights for coloreds and Indians, but did so on a racist basis. It created segregated legislative chambers for the colored and Indian popula-

tion groups, elected by the colored and Indian voters (respectively). The constitution was carefully crafted to afford dominance to the white chamber of Parliament in all matters, including those over which the coloreds and Indians supposedly had primary jurisdiction. Because of the constitution's racist design and the political dominance of whites it upheld, only small percentages of the colored and Indian communities exercised their newly acquired political rights.

As prescribed by the Bantu Land Act of 1913 and the Bantu Trust and Land Act of 1936, portions of South Africa were demarcated for exclusive occupation by Africans. Although the African communities comprised approximately 80 percent of the South African population, the land allocated for their occupation constituted no more than 13 percent of the territory comprising the South African state. In 1951 the South African government appointed a commission instructed by the governor-general "to conduct an exhaustive enquiry into and report on a comprehensive scheme for the rehabilitation of the Native Areas with a view to developing within them a social structure in keeping with the culture of the Native, and based on effective socio-economic planning." The commission, chaired by Frederick Tomlinson, professor of Agricultural Economy at the University of Pretoria, submitted its report to Parliament in 1954. It among other things calculated the costs of extending the African homelands and of creating economic incentives that might prompt Africans to remain in, return to, or settle in their respective ethnic homelands. The government rejected those recommendations as being too costly and instead embarked on a policy of separating the races by means of legal coercion. H. F. Verwoerd (1901–1966), commonly regarded as the architect of apartheid, transformed the Tomlinson recommendations into a policy that promoted the political "independence" of the black homelands, demarcated on an ethnic (tribal) basis. In due course eight black self-governing territories were proclaimed: Bophuthatswana, Ciskei, Lebowa, Transkei, Venda, Gazankulu, Qwaqwa, and kwaZulu. Four opted for independence: Transkei in 1976, Bophuthatswana in 1977, Venda in 1979, and Ciskei in 1981. In the UN, South Africa claimed that the policy of separate development was congruent with the right of its population groups to self-determination as proclaimed in international law. Not so, responded the UN: The right to self-determination presupposes participation of the people in the legislative and executive structures of the state that determine their fate, whereas the independence of the black homelands was imposed on the peoples of those territories without their consent. Further, the black homelands were never accepted as independent political entities by the international community of states.

The movement of Africans to and within the main employment centers of the country was regulated by the Blacks (Urban Areas) Consolidation Act of 1945. Africans required special permission to enter and to remain within an urban area and had to carry a reference book at all times that would indicate their right to be at a particular place within the country—the so-called dom pass (*dom* meaning stupid). As part of the Group Areas Act of 1966 (which consolidated earlier similar legislation), separate residential areas were designated for occupation by whites, Africans, coloreds, and Indians within the towns and cities of the country.

The South African exploitation of the African population group, and to a lesser extent the Indian and colored communities, was carried out in such a way as to preserve the privileged political, economic, and social status of white South Africans in a racially defined elitist oligarchy. Educational facilities, residential areas, and job opportunities reserved for persons of color were considerably inferior to those at the disposal of the dominant white community—both in quality and in degree of availability. The group areas reserved for occupation by members of a particular population groups other than whites were almost invariably far removed from the business districts and employment centers, and the residential areas reserved for Africans and coloreds were conspicuously inferior, as far as locality, infrastructure, and aesthetic appeal were concerned. When Verwoerd, Minister of Bantu Affairs at the time, introduced in Parliament the Bantu Education Act of 1953, he sought to justify the inferior education of blacks by invoking the system of job reservation imposed on the black community as part of the apartheid system:

> The school must equip the Bantu to meet the demands which the economic life . . . will impose on him. . . . What is the use of teaching a Bantu child mathematics when he cannot use it in practice?. . . Education must train and teach people in accordance with their opportunities in life.

Apartheid Enforcement and Apartheid Resistance

These racist accessories of a totalitarian and discriminatory regime did not reflect the "spirit" of those persons who were the victims of their practical impact, and who were a vast majority of the South African nation. Nor were these accessories supported by the moral convictions of the people, or of a majority of the people, or for that matter of any distinct section of the people. The state consequently had to resort to profoundly repressive measures—restrictions placed on freedom of

speech and of assembly; erosions of the rule of law and the due process of law; and indifference to the prohibition of torture and of other forms of cruel, inhuman, or degrading treatment or punishment. Included in the security laws of South Africa were those that could be used to authorize the banning of organizations and the subjection of opponents of the system to severe restrictions that could practically amount to house arrest. As part of the Terrorism Act of 1967, persons suspected of having information that pertained to subversive activities could be detained indefinitely. The grounds of their detention could not be contested in a court of law.

Resistance toward the repressive and discriminatory laws of South Africa has a long history. Within the Indian community, Mohandas Karamchand (Mahatma) Gandhi (1869–1948), who lived in South Africa from 1893 to 1915, initiated a strategy of passive resistance in the furtherance of *satyagraha* (from *satya,* meaning truth, and *graha,* meaning grasping—that is, grasping the truth, or holding onto truth). The African National Congress (ANC) was founded on December 16, 1913, as an organization designed to mobilize the political aspirations of black South Africans. ANC-sponsored anti-apartheid protests were initially entirely peaceful. In 1961 the ANC president, Chief Albert Luthuli (1899–1967), became the first South African to be awarded the Nobel Peace Prize. The Pan-Africanist Congress (PAC) was formed in 1959 to promote a blacks-only policy for Africa and a more aggressive agenda of resistance. When the ANC and PAC were banned in 1960, many of their leaders and followers went into exile and embarked on an armed struggle against the South African apartheid regime. *Umkonto we Sizwe* (Spear of the Nation) was established as the armed wing of the ANC, and *Poqo* as that of the PAC. The African Resistance Movement (ARM), which at times engaged in acts of sabotage, consisted mainly of white intellectuals.

As aggressive opposition to apartheid escalated, the South African government enacted draconian security laws, and engaged in clandestine strategies that amounted to state-sponsored terror violence, in order to retain its illegitimate regime. The Truth and Reconciliation Commission that was established pursuant to the National Unity and Reconciliation Act 34 of 1995 to facilitate the political transition of South Africa to a democracy, and whose committee on human rights violations (chaired by Archbishop Desmond Tutu) was charged with investigating "gross violations of human rights" from 1961 to 1994, recorded the sordid details of overt and clandestine methods used by the security forces to suppress resistance under the headings of bannings and banishments; judicial executions; "public order" policing; torture and deaths in custody; and killing, including many instances of abduction, interrogation and killing, ambushes, the killing of persons in the process of arrest or while pointing out arms, entrapment killing, killing of weak links within the security forces itself; and attempted killings, arson, and sabotage.

Violent confrontation between the South African authorities and groups of persons protesting the atrocities inherent in the policy of apartheid became part of everyday life in the black townships. On March 21, 1960, PAC organized a demonstration in Sharpeville, a black township sixty-five kilometers south of Johannesburg and just north of Vereeniging, in the Transvaal province, protesting the laws that required black citizens to carry passes at all times. The police opened fire on the demonstrators, killing sixty-nine people. On the twenty-fifth anniversary of Sharpeville (March 21, 1985), the police opened fire on a funeral procession in Uitenhage, killing nineteen people (the mourners had come from the black township of Llanga to bury comrades who had been killed while protesting unemployment). States of emergency were proclaimed by the government in 1985 and 1986.

Perhaps the turning point of white rule in South Africa was the Soweto riots of June 16, 1976, when black students staged massive demonstrations protesting the inferior system of Bantu education and a government decision to impose Afrikaans as the language of instruction in the teaching of at least one subject in black schools. The ensuing unrest swept through the entire country, had far-reaching repercussions, and prompted large numbers of young blacks of school-going age to leave the country and join the liberation forces in exile.

Among those who lost their lives in the struggle against apartheid was Black Consciousness activist Steve Biko (1946–1977), who died on September 11, 1977, of head injuries inflicted by those who held him captive while he was in police custody. Among the religious leaders subjected to profound humiliation because of their opposition to apartheid was Desmond Tutu (1931–), Anglican Archbishop of Cape Town and Secretary-General of the South African Council of Churches during the years 1979 to 1984. Perhaps the most celebrated person among the many incarcerated was Rolihlahla (Nelson) Mandela (1918–), who, after serving more than twenty-seven years of a sentence of life imprisonment (October 1962–February 1990), was released to become the first president of South Africa after its radical transition in 1994 to become a nonracist state.

The trials and tribulations of Mandela commenced with the infamous treason trial (1958–1961), at which he was among 156 political activists brought to trial following their arrest in December 1956. The accused were all members of a number of organizations comprising the Congress Alliance (the ANC, the Congress of Democrats, the South African Indian Congress, the South African Colored People's Organization, and the South African Congress of Trade Unions). In March 1961 a special criminal court in a unanimous decision acquitted all the accused, holding that the state had failed to prove that the Congress Alliance and its member organizations sought to overthrow the government by violent means or to replace it with a communist regime.

In July 1963 the police raided a house in Rivonia, a suburb on the outskirts of Johannesburg, and, using the newly enacted ninety-days detention law, detained seventeen persons found on the premises. Eleven of those detainees were subsequently brought to trial on charges of sabotage. The Transvaal Provincial Division of the Supreme Court (as it was then called) initially quashed the indictment owing to the state's failure to provide further particulars of the charges. The accused were then rearrested under the ninety-days detention law and thereafter charged with planning a violent revolution and with various acts of sabotage. On June 11, 1964, eight of the accused, including the leaders of *Umkonto we Sizwe* (Mandela, Walter Sisulu, and Govan Mbeki) were convicted and sentenced to life imprisonment. (At the time, Mandela was already serving a five-year sentence for incitement and leaving the country unlawfully, for both of which he was convicted in 1962.)

International Responses to Apartheid

Apartheid was being widely condemned throughout the world. In 1961 South Africa, on becoming a republic, was forced to withdraw its application to remain a member of the British Commonwealth because of apartheid (when the Union of South Africa acquired full sovereignty in 1931, it was constituted as a monarchy, with the king or queen of England its head of state). During the 1960s and 1970s many countries imposed economic, cultural, and sports events–related boycotts of South Africa. South Africa was forced out of the Olympic Games after the 1960 games and was formally expelled from the Olympic Games movement in 1970. Following the death of Biko, and in consequence of banning orders issued by the government against persons and organizations expected to be most vocal in their condemnation of his untimely death, the UN Security Council adopted Resolution 418 (1977). The Resolution proclaimed that the situation in South Africa constituted a threat to international peace and security and imposed a mandatory arms boycott against South Africa as a means of counteracting that threat.

It is not uncommon for persons who (quite rightly) condemn criminal conduct perpetrated by state action to (unjustifiably) attach a label to that action that would give it as bad a name as one could possibly conceive, even in instances in which the conduct or condition being condemned does not fit the essential elements of the label. The UN International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973 contained in its circumscription of apartheid a passage that suggested that, as part of that policy, the South African government inflicted living conditions on one or more racial groups calculated to cause their physical destruction in whole or in part, which—if it were true—would amount to an act of genocide. In 1985 the UN established an ad hoc Working Group of Experts to investigate violations of human rights in South Africa. In its report, the working group proclaimed that apartheid was a special instance of genocide. However, such is not the case. Apartheid was not devised with special intent to destroy any racial group, in whole or in part, as required by the definition of genocide. Attempts to bring a state policy within the confines of practices that are likely to have an exceptionally strong emotional appeal (thereby distorting concepts that underlie that policy and those practices) may add emotional vigor to one's condemnation of the policy, but ought not to be taken as having literal meaning, for law enforcement purposes, by those charged with the administration of justice.

Apartheid does constitute a crime against humanity under customary international law. The 1965 UN Resolution, Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, thus proclaimed that "the practice of *apartheid* as well as all forms of racial discrimination threaten international peace and security and constitute a crime against humanity." Inhumane acts resulting from the policy of apartheid were also treated as a crime against humanity in the UN Convention of the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) and in the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). The latter convention listed a number of acts that would constitute the crime of apartheid.

> If committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them, namely:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

i. By murder of members of a racial group or groups;

ii. By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman, or degrading treatment or punishment;

iii. By arbitrary arrest and illegal imprisonment of members of a racial group or groups.

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures or other measures calculated to prevent a racial group or groups from participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

The task of delineating these "inhuman acts" as personal conduct that could attract criminal prosecution was initially delegated to the ad hoc Working Group of Experts under M. Cherif Bassiouni of De Paul University in Chicago. The draft statute (1980), prepared by the working group rather clumsily, confined criminal liability to "grave breaches of Article II of the Convention for the Prevention and Punishment of the Crime of Apartheid, namely, murder; torture; cruel, inhuman or degrading treatment or punishment; arbitrary arrest and detention." These breaches do not apply to the segregation and discrimination components of apartheid as such, but seemingly only to (some of) the repressive measures designed to counteract opposition to the policy of apartheid.

Apartheid is identified in the Statute of the International Criminal Court, adopted by the Rome Conference of Diplomatic Plenipotentiaries in 1998, as a crime against humanity. "The crime of apartheid" is defined in the statute as denoting:

> . . . inhumane acts of a character similar to those referred to in paragraph (1), committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

Paragraph (1) referred to in the statute's definition of apartheid makes mention of murder, extermination, enslavement, deportation or the forcible transfer of populations, imprisonment or other severe deprivation of physical liberty, torture, rape or other (specified) forms of sexual violence, persecution, and enforced disappearances. But, again, the essentials of apartheid are not encapsulated in the definition to be applied in order to found the jurisdiction of the International Criminal Court (ICC) the definition is confined to (state security) action that might be resorted to for purposes of maintaining the regime of segregation and racial discrimination. That is, the repression component of the apartheid system becomes the only prosecutable offense. The act of segregation and discrimination will not come within the jurisdiction of the ICC if a state system of racial segregation and discrimination can be maintained without the state's resorting to murder, extermination, enslavement, deportation or the forcible transfer of populations, imprisonment or other severe deprivation of physical liberty, torture, rape or other forms of sexual violence, persecution, or enforced disappearances.

The Demise of Apartheid

Over a two-decade period commencing in 1971, the South African government gradually abandoned some of its practices associated with apartheid, making "concessions" in that year in regard to segregation in sports, and then extending those concessions to the areas of

trade union rights for Africans, political rights for coloreds and Indians, and the like. The final demise of apartheid in South Africa was formally announced by President de Klerk (1936–) in his opening-of-Parliament address of February 2, 1990. This initiative culminated in the radical transformation of South Africa, as defined in the Republic of South Africa Constitution Act of 1996, into "an open and democratic society based on human dignity, equality, and freedom."

Comparable Systems of Racial Discrimination

Racial discrimination has of course been practiced in many countries other than South Africa. In the United States, for example, the stratagems of racism were sanctioned in the 1895 judgment of the U.S. Supreme Court in the case of *Plessy v. Ferguson,* which decided that separate facilities for blacks and whites were constitutionally permissible provided the segregated facilities were equal. The U.S. doctrine of separate-but-equal received its death knell in the 1953 judgment of *Brown v. Board of Education,* wherein it was decided that "in the field of public education the doctrine of 'separate but equal' has no place." The principle enunciated in that case was subsequently extended to apply to all forms of segregation in public places.

In 1965, when Great Britain was contemplating the granting of independence to Southern Rhodesia under a one-person-one-vote dispensation, the minority white government of Prime Minister Ian Smith declared the country independent under a constitution that reserved political rights for whites only. The UN condemned the unilateral declaration of independence, and in Security Council Resolution 221 (1966) decided that the situation in Rhodesia constituted a threat to the peace. Security Council Resolution 232 (1966) imposed mandatory economic sanctions against Rhodesia with a view to bringing the racist regime of Smith to a speedy end. Following a bloody war between the Smith regime and internal resistance movements (with South Africa affording military support to the government forces of Rhodesia), the Lancaster House Agreement was concluded between Great Britain and the main political factions of Rhodesia. It culminated in the establishment of Zimbabwe as an independent state in 1980.

Although racial discrimination as practiced in the United States, Rhodesia, and elsewhere resembled apartheid, the policy as it existed in South Africa contained unique elements that one does not find in the history of any other country. It is perhaps fair to conclude that apartheid, as a special instance of racial discrimination that entails the exploitation of persons of a disadvantaged racial group for the purpose of retaining the privileged status of another, and requiring particularly stringent enforcement measure for its preservation, such as it existed in South Africa, has never found its equal in any other country.

SEE ALSO Convention on Apartheid; Mandela, Nelson; Namibia (German South West Africa and South West Africa); South Africa

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Johan D. van der Vyver

Arawak Indians see Taino (Arawak) Indians.

Arbour, Louise

[FEBRUARY 10, 1947–]

Chief Prosecutor for the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, 1996–1999

Louise Arbour was joint Chief Prosecutor for the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) from October 1996 to September 1999. She was the second person to hold the position at the ad hoc tribunals, having replaced South African judge Richard Goldstone. The highlights of her term of office include the first indictment in history of a sitting head of state—Yugoslavian president Slobodan Milosevic—and the first prosecution of sexual assault and rape as crimes against humanity.

Background

Arbour was born in Montreal, Quebec, Canada. She studied law at the Université de Montreal, where, in the 1960s, she first encountered Quebec nationalism—an idea that appealed to her at that time, but one that she revisited more critically in the late 1990s, during her investigations into the consequences of nationalism in the former Yugoslavia.

After being called to the Ontario bar, Arbour worked principally in Toronto, as a professor and then as associate dean at Osgoode Hall Law School. She was appointed to the Supreme Court of Ontario in 1987 and was then assigned to the appeals division of the same court in 1990.

Finta Decision

On the appeals bench, Arbour was one of three judges on a five-member panel who voted to uphold the controversial acquittal of Imre Finta, a former captain in the Hungarian gendarmerie who was charged with deporting 8,617 Jews to their deaths during World War II. The majority of the appeals court judges had upheld several rulings of the trial judge, among them the judge's decision to allow the trial jury to consider Finta's defense that he had been following orders.

The Finta trial was a landmark case in the history of Canada's response to Nazi war criminals who were residing in the country. Legal scholars and human rights activists argued that the courts had interpreted Canadian law too narrowly in acquitting Finta, and were setting such a high standard for conviction that it would become virtually impossible for anyone to successfully prosecute war criminals in the country.

Arbour's Controversial Appointment

Justice Goldstone recommended Arbour as his replacement at the international tribunals (ICTY and ICTR). Arbour's appointment was then guided through the United Nations (UN) Security Council approval process by Madeleine Albright, the U.S. ambassador to the UN, who favored the appointment of a woman and argued that a Canadian citizen with few affiliations would help to prevent politicization of the tribunals. But there was much international opposition to Arbour's candidacy, owing to her lack of profile in the field of international human rights and because of her role in the Finta decision. Tribunal activists were also alarmed that, in 1987, Arbour had been counsel in a successful legal challenge to Canada's rape shield law. The rape shield law had been introduced in Canada in order to prevent defense lawyers from challenging the credibility of a rape victim by presenting allegations on the subject of her past sexual history as evidence. Given the numbers of rape cases that were expected to come to the fore at the tribunals, Arbour was considered by some to be the wrong choice for Chief Prosecutor. But Arbour's consistent record of defending the rights of the accused appealed to members of the Security Council who wor-

Arbour announces the indictment of Yugoslav president Slobodan Milosevic for atrocities in Kosovo, at the international war crimes tribunal in The Hague, Netherlands. [AP/WIDE WORLD PHOTOS]

ried that the ad hoc tribunals were already balanced against the accused, specifically the Serbian suspects. The Arbour appointment was approved by the Security Council on February 29, 1996.

International Criminal Tribunal for the Former Yugoslavia

As Chief Prosecutor at the ICTY, Arbour faced a formidable obstacle. Goldstone had issued fifty-two indictments and had issued arrest warrants for the accused, including two wartime military and civilian leaders of the Bosnian Serbs, Ratko Mladic and Radovan Karadzic. But Goldstone was stymied by the absence of a practical way to serve the warrants. As part of the Dayton Agreement, the national leaders of Serbia, Croatia, and Bosnia had agreed to surrender anyone in their jurisdictions who had been indicted by the ICTY, but their commitment proved to be inadequate, particularly in the case of the Serbs, who considered the tribunal to be biased against them. The members of the North Atlantic Treaty Organisation (NATO)–led peacekeeping force that patrolled Bosnia and Herzegovina were also under an obligation to arrest suspects—if they found them and if the arrests did not endanger their mission. Despite ample evidence that some of the "most-wanted" suspects, whose names and photographs had been distributed to NATO troops along with the warrants, were freely crossing checkpoints, the peacekeepers had not detained anyone prior to Arbour's appointment.

Arbour continued to issue indictments, but unlike Goldstone, who had made the indictments open and very public (in part to put pressure on the recalcitrant NATO leadership), Arbour took the privilege of sealing many of her indictments—allowing NATO soldiers the advantage of covert action. This, along with the added political incentive that was provided by the general awareness that the United States and the United Kingdom were monitoring changes in government in Bosnia and Herzegovina, allowed NATO forces to apprehend two men who were under secret indictment—Slavko Dokmanovic and Milan Kovacevic.

Dokmanovic had been the Serbian president of the municipality of Vukovar during the siege of that municipality in 1991. During the siege hundreds of civilians were killed and thousands driven from their homes by Serbian forces. Dokmanovic was arrested by NATO soldiers in eastern Slavonia and charged with crimes against humanity.

On July 10, 1997, British Special Air Service troops under NATO carried out a far more daring commando-style capture and arrest of Kovacevic, the commander of the Omarska camp in Prijedor where Muslim and Croat men had been tortured and murdered by Bosnian Serbs during the Bosnian war. For the first time, NATO had made an arrest in the former Yugoslavia without permission from the local authorities.

Both men would die in the UN compound at the Scheveningen Prison in the Hague before their cases could be concluded, but their captures represented a breakthrough in the "non-arrests" issue at the courts. More arrests, and many surrenders, followed. The UN was compelled to add two more courtrooms to the one that existed in order to accommodate the cases. A number of "big fish" (as the indictees were called in tribunal jargon) joined the ranks of the detained, but the two most-wanted Serbian suspects, Karadzic and Mladic, remained at large.

International Criminal Tribunal for Rwanda

The ICTR was a far more troubled organization than the ICTY. Arbour first visited the Rwandan tribunal in the fall of 1996 at its headquarters in Arusha, Tanzania. She came up against an organization in which the telephones and computers did not function, and in which the most common complaint was of a lack of basic sup-

plies. The ICTR had its own financial officers, but Arbour reported to the UN in New York that funds had been misspent and accounting procedures were nonexistent. (She had been warned of the possibility of gross corruption.)

A UN audit of the tribunal in the winter of 1997 averred that "not a single administrative area functioned effectively." Karl Paschke, the UN auditor, reported that much of the ICTR staff was incompetent and that funds had been misused, but he stopped short of making charges of criminal activities.

Arbour was also perturbed by the location of the Office of the Prosecutor (OTP). It was based, not in Arusha, but in Kigali, the capital of Rwanda. In Kigali, Arbour discovered that Paul Kagame, the president of Rwanda (who had been the commander of the Rwandan Patriotic Front [RPF] during the Rwandan civil war), would not allow her to investigate any criminal charges against the RPF. She reported to the UN that Kagame threatened to shut down the OTP whenever he was dissatisfied with its proceedings. Although the overwhelming bulk of the indictments of the ICTR were of the perpetrators of the Rwandan genocide and their slaughter of Tutsis, Arbour uncovered much evidence of atrocities committed by members of the RPF against Hutus. But the UN insisted that the OTP remain in Kigali (where the prosecution of former members of the RPF would be most difficult).

Despite privation and all manner of adversity, Arbour had the kinds of successes while presiding at the Rwandan tribunal that had evaded her at the tribunal for the former Yugoslavia. She was able to persuade Kenyan authorities to participate in an arrest sweep of suspected perpetrators of genocide who were hiding in Nairobi, Kenya. On July 18, 1997, ICTR prosecutors, along with Kenyan police, apprehended many who had been the heart of the Hutu leadership, including Jean Kambanda, the former Prime Minister of Rwanda; Hassan Ngeze, a newspaper editor accused of having incited genocide via his paper's inflammatory prose; and Pauline Nyiramasuhuko, the Rwandan government's Minister of Family and Women's Affairs—and the first female to be arrested by either tribunal. Also in custody was Theoneste Bagosora, the military leader of the *génocidaires,* who had been arrested under Goldstone and transferred to Arusha in January 1997. Guided by Arbour, the ICTR was able to gain custody of many of the highest-level planners of the genocide (who were, as well, former members of the Rwandan government).

The tribunal also set a number of precedents. On May 1, 1998, Kambanda became the first person in history to plead guilty to the crime of genocide. Despite allegations of irregularities in the evidence-gathering process, the conviction of Kambanda was considered a major breakthrough for the ICTR. Later, Jean-Paul Akayesu, the former mayor of the Rwandan village of Taba, became the first person ever to be convicted of rape and of inciting others to commit rape as crimes against humanity. Akayesu had directed a "rape camp" in his village, where women were sexually assaulted and killed. Arbour admitted in interviews that rape cases were not, for her, a priority, given the gravity of the genocide charges. She also stated that rape, as a crime against humanity, is extremely difficult to prosecute.

Arbour was celebrated for her successes at the tribunal, but she, herself, was dubious about the ongoing feasibility of the ICTR. She maintained that the tribunal was "a by-product of shame"—the collective shame of the international community—and an attempt by that community to make amends for its failure to intervene to stop the genocide. In an interview she stated that "there were too many fault lines" at the ICTR, principally consisting of the limitations that had been placed on her field investigations in Rwanda.

Slobodan Milosevic

In the fall of 1998, Slobodan Milosevic accelerated his ongoing military campaign against Albanians living in the Serbian province of Kosovo, where the Kosovo Liberation Army (KLA) was resisting his efforts at "ethnic cleansing" in the Albanian regions of the province. In January 1999 a massacre of forty-five people in the village of Racak caused an international outcry. Only nine of those murdered were KLA fighters. Up until that point the ICTY had been investigating crimes that were several years old. For the first time Arbour turned the focus of her prosecutors to war crimes happening in real time.

Two days after the Racak massacre Arbour was refused entry into Kosovo from Macedonia. She warned Milosevic that she was monitoring events in Kosovo for possible war crimes prosecutions. In February 1999 the United States opened talks with Milosevic in Rambouillet, France, where diplomats from many countries attempted to find a solution to the Kosovo conflict before it became another Balkan war. Milosevic refused to withdraw his troops. On March 24, 1999, thirteen NATO member countries began to bomb Yugoslavia, without permission from the UN or even much consultation with the Security Council.

Seven hundred thousand Albanians fled the country, under attack from Serbian forces who had accelerated the ethnic cleansing campaign, and from NATO bombing. Arbour gathered evidence from the field wherever possible and attempted to persuade foreign

governments to give her the documents she needed to issue war crimes indictments. She did not tell these governments, until after the indictment was signed, that she was pursuing Slobodan Milosevic. World leaders were wary of any such indictment. It would mean that they would no longer be able to negotiate with Milosevic, something that seemed increasingly necessary as the NATO campaign stretched into weeks.

On May 22, 1999, Arbour signed an indictment against Milosevic for crimes against humanity, and against four other sitting members of the Yugoslavian government: Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanic, and Vlajko Stojiljkovic. The indictments were for the murder of 340 people in 16 villages, including Racak.

The following day, an ICTY judge also signed the indictment. Arbour offered the UN and NATO three days in which to state any reasons why the indictment should not be issued. The United States and the United Kingdom accepted the indictment, albeit with some reservations. France and Russia rejected it. Nonetheless, the indictment proceeded, making Milosevic the first sitting head of state to be charged with war crimes.

Milosevic became an international pariah overnight. Madeleine Albright, the U.S. Secretary of State and a major supporter of the ICTY at the UN, announced, "[W]e are not negotiating," when asked about the chances for a negotiated settlement to the NATO war. Three weeks after his indictment, Milosevic agreed to a ceasefire.

Just shortly after the Milosevic indictment, Arbour was asked by her government to return to Ottawa and join the bench of the Supreme Court of Canada, a position she accepted. On February 25, 2004, the UN General Assembly "approved by acclamation" the appointment of Arbour as the new UN High Commissioner for Human Rights. She replaced Brazil's Sergio Vieira de Mello, who, along with twenty-one others, was killed in a terrorist attack in Baghdad in August 2003.

SEE ALSO Del Ponte, Carla; Goldstone, Richard; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia

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Carol Off

Archaeology

Archaeology is the study of the remains of past cultures, both historic and prehistoric. In archaeological publications the term *genocide* is rarely encountered. Although it is often possible to determine the cause of death when skeletal remains are well preserved, the reasons why earlier peoples committed violent acts are not always clear. Consequently, interpretations of such actions are difficult and frequently controversial.

Damage to Skeletal Remains

Skeletal material provides the most useful source of information about acts of violence. An examination of skeletal remains first attempts to rule out reasons other than violence that could account for bone breakage. Interpretation of bone damage uses many of the same techniques as modern forensics, and comparative data from studies of present-day skeletal traumas aid archaeologists in determining the cause of death.

The skeletal material that archaeologists uncover may have been damaged postmortem (after death). Taphonomy is the study of the processes that modify bone between the death of the individual and the recovery of their remains. Taphonomic analyses help researchers determine whether an individual's bones were modified in any way postmortem due to, for example, crushing by shifting rocks, human intrusions into the grave, or trampling by large animals prior to burial. Postmortem and perimortem (around the time of death) bone fractures can usually be distinguished from those that occurred before death (antemortem), because antemortem fractures will exhibit evidence of healing. Differentiating perimortem injuries from postmortem damage is more challenging, particularly when the skeleton is not well preserved. In general, a perimortem break has the following features: (1) The bone at the break is of a similar color to that surrounding it, rather than lighter in color; (2) fracture lines radiate away from the break and; (3) the break angles acutely from the surface of the bone inward, rather than at a right angle.

Cause of Death

After deciding that the death of an individual was probably caused by some sort of perimortem trauma, archaeologists then attempt to determine how that injury was sustained. Fragments of weapons embedded within the skeleton provide the clearest evidence of violence against an individual. However, such findings are rare in the archaeological record. In most cases violence must be inferred based on the shape, size, location, and severity of skeletal injuries. For example, cranial (head) traumas caused by axes yield elongated and thin fractures. Most fatal skeletal injuries are located on the cranium, although when injuries result from projectile weapons, such as spears or arrows, they are more likely to be found on the postcranial (below the head) skeleton. Many deadly projectile wounds do not cause damage to the skeleton and, thus, there is no clear evidence of them in the archaeological record. Sometimes cause of death may be inferred when a projectile weapon is found at the burial site. The location of traumas can also provide information about the cause of death. For example, if most cranial injuries are on the frontal (forehead) bone, it is likely that they resulted from face-to-face combat.

In a case where archaeologists are investigating a site to determine if genocide was committed, multiple individuals are generally available for study. Consequently, researchers can search for patterns in the skeletal evidence to help them determine cause of death. If a series of skeletons exhibit injuries of a consistent size and shape, this provides evidence for a similar weapon having been used to kill all the individuals.

Demographic Profiles

A demographic profile of skeletal remains provides archaeologists with the age and sex of the individuals interred. The pelvis is the most accurate source of information; about 95 percent are correctly identified in determining the sex of an individual, with females having a broader, less muscular pelvis than males. When a pelvis is not found among the remains, features of the cranium (e.g., chin shape and muscle markings on the cranium) can be used with some confidence, to within 80 percent accuracy, to ascertain sex. DNA techniques have recently been developed that may provide a more useful means of establishing the sex of fragmentary specimens. An individual's age at death can be established using dental eruption patterns, the amount of wear on the teeth, and the extent to which sutures on the skull have closed. Social status can sometimes be inferred based on how the individual was buried. Burial context may also help in determining ethnic group affiliation, along with DNA data and skeletal information. Analyses of these data may demonstrate that a group was overrepresented at the site (e.g., women or a particular social class) and, consequently, may have been the target of violence. However, the possibility must be considered that the individuals interred at the site were the only ones who were present when the group was massacred or that only they were afforded the privilege of burial.

Genocide in the Archaeological Record

In cases of possible genocide archaeologists must initially attempt to determine whether the population died at approximately the same time. When individuals are interred in the same grave, careful examination of the burial may show whether there was later intrusion at the site, resulting in the remains being buried together. When there is no mass grave, dating methods (e.g., carbon dating) may help resolve whether the death of the population occurred around the same time.

The motivation behind the violent actions of past cultures is difficult to determine. Historical records and ethnographic studies may be useful in suggesting the motives underlying violent behavior. However, these accounts of past events can be colored by cultural biases. Another possible source of data is the method of burial. For example, if individuals are found to be randomly positioned in a grave without the artifacts that usually accompany burials, this suggests that their bodies were dumped without thought to funerary rites. This evidence can be used in combination with data derived from skeletal material and demographic profiles to determine whether genocide was committed.

As of 2003 Ofnet and Schletz remain two of the earliest sites in the archaeological record with credible evidence of genocide. At the Schletz site in Austria, dating back approximately 7,500 years, 67 individuals with multiple traumas were recovered from the bottom of a trench. The demographic profile of the group showed that there were no young females among the dead, suggesting that they had been forcibly abducted by the attacking group. Based on these data, along with the finding that the remains from the site were unburied for many months, researchers argued that genocide was the most likely motive behind the deaths of the population. At the Ofnet site in Bavaria, dating to the same historical period as Schletz, archaeologists located two mass graves containing thirty-eight individuals who were probably buried during a single episode. Many of the skulls of these individuals have cranial fractures of a similar size and shape, indicating a similar type of weapon was used to kill the victims. A detailed analysis of the damage indicated that the injuries occurred perimortem. The demographic profile showed that most, but not all, of the individuals in the

grave were females and subadults. David W. Frayer suggests that this indicates that most of the men were absent at the time of the massacre.

Archaeological material other than skeletal remains has occasionally been used to suggest that genocide took place at a particular site. Scorched layers of earth or burned structures may offer indirect evidence of genocide. A study of Roman camps in northern Britain provides an example of how nonskeletal data may be used as evidence of genocide. The placement and size of these camps, formed during the reign of the emperor Severus from 208 to 211 CE, indicated to researchers that the Romans attempted to control or destroy all agricultural products and, consequently, starve the local Caledonian population.

Human sacrifice and cannibalism are other methods by which particular groups have been singled out for violence in past cultures. Victims of human sacrifice can sometimes be identified by the artifacts buried with them, the location of their burial, or the nature of their wounds. To recognize when individuals were victims of cannibalism, remains are examined for evidence of postmortem corpse manipulation. Cut marks on bones may signify that the person was defleshed. The skull or postcranial bones may be broken in ways that indicate removal of the brain or extraction of bone marrow. The context in which the bones were found is also important. For example, discovering human material mixed with animal bones in trash heaps is strong evidence of cannibalism.

One of the more controversial cases of possible cannibalism involves the site of Cowboy Wash near the Anasazi dwellings at Mesa Verde in Colorado. Archeologists working at the site recovered human bones that exhibited signs of cannibalism. The evidence found at this site included: cut marks on bones; bones found in trash dumps; bones that were not discolored or pitted, indicating that flesh was removed prior to burial; a breakage pattern on bones, suggesting extraction of bone marrow; and color on some bones, indicating that they were cooked. Some have argued that this evidence does not necessarily imply cannibalism occurred because burial rituals may involve similar postmortem corpse manipulation. However, if the human bones were handled in the same manner as those of large animals, it seems logical to suggest that the humans were eaten. Archeologists have found that cut marks on the bones were similar in style and location to those made on bones of large game animals. Moreover, analysis of a coprolite (fossilized feces) from the site provided clear evidence that human flesh had been consumed there. Based on other data derived from the site, Brian R. Billman suggests that a population moved in and terrorized local communities by killing and eating their victims.

SEE ALSO Ancient World; Forensics

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Chris A. Robinson

Architecture

Architectural spaces designed for Holocaust museums and occasionally those to commemorate genocide have been instrumental in altering the design of the museum building, especially in advanced industrial societies where expense for museum space is an affordable luxury. Museums in the Western Hemisphere and Europe

have changed from structures built simply to contain artifacts, art, and conceptual works to become memory forms in their own right. Because of the huge displacement of peoples in the twentieth century, which included many artists and architects who fled authoritarian regimes, the builders of museums to the crimes of genocidal regimes have felt the need to make the museum building itself a memorial space to the event.

Standing in contrast to the modern museum space, often built in a location where genocide itself did not occur, are the places of destruction themselves. The Auschwitz extermination camp, for example, became the Auschwitz State Museum. The same transition to a museum has occurred in other camps, such as Prison S-21 in Cambodia, which became the Tuol Sleng Museum of Genocide. The architecture of the killing sites often has a strong impact on museums built as memory spaces.

One of the best and first examples of the intersection of memory and the present was James Ingo Freed's design for the United States Holocaust Memorial Museum in Washington, D.C., Freed, himself a refugee from Germany, visited Auschwitz in October 1986. The powerful effect of the physical space of the camp and its industrial motif convinced him that the future United States Holocaust Memorial Museum could not be a traditional museum structure. It was this careful analysis of the Auschwitz camp that led Freed to develop plans for the Washington museum that would embody symbolic aspects of the concentration camp in the memory space. This included the well-known symbols of watchtowers, glass, and barbed wire, but also the red brick of Auschwitz I, and the use of steel and other elements. However, he did not wish these symbols to be overstated so as to create a narrative with a single conclusion.

The completed United States Holocaust Museum space has been called "a place of disorientation" (Linenthal, 1995, p. 89). Cantilevered walkways, exposed steel beams, doorways that recall the centers of annihilation at Auschwitz, all help to create a memory of the site of genocide. Within this is the space for the historical narrative. However, the exhibition space at the United States Holocaust Museum does not provide for a continuous chronological narrative of the history of the Holocaust. The story is broken up by the use of modern technologies to provide fragments of events and personal stories, plus an installation tower of photographs, sometimes called the "Tower of Life," designed by Yaffa Eliach to commemorate the memory of her hometown, Eishyshok.

Daniel Libeskind's extension of the Berlin Jewish Museum, renamed the Berlin Jewish Museum addition,

Interior of the U.S. Holocaust Memorial Museum, Washington, D.C., completed in 1993. The work of architect James Ingo Freed, the monumental structure is a space of exceptional impact, conveying grief, terror, and history in its innovative design. [KELLY-MOONEY PHOTOGRAPHY/CORBIS]

has prompted an important discourse about the role of architectural space in the twenty-first century. Libeskind's concept is based on a theory of absence, the absence of the Jews from Germany, which he converted into architectural "voids." The architect himself called the greater project "Between the Lines" because of what he perceived to be a complex web of connections and disconnections between Germans and Jews as a result of the Holocaust (Libeskind, 1992, p. 86). Technically, the result was not a Holocaust Museum, rather a Jewish Museum. But because the building was situated in a unified Berlin after the fall of both Nazism and communism, many refer to it as the Berlin Holocaust Museum.

From an aerial perspective Libeskind's design for the Berlin Museum appears to be a fractured Star of David. The inspiration for this came from Walter Bejamin's *One Way Street,* which provided a motif for the zig-zag and underground crisscrossing design that

leaves the visitor disoriented. Within the space of the museum, the dominant features are the voids. These are empty spaces that literally go nowhere. Libeskind has written that in this space, "the invisible, the void, makes itself apparent as such" (1992, p. 87). In addition, the architect described the main spaces as:

> There are three underground "roads" which programmatically have three separate stories. The first and longest "road", leads to the main stair, to the continuation of Berlin's history, to the exhibition spaces in the Jewish Museum. The second road leads outdoors to the E.T.A. Hoffmann Garden and represents the exile and emigration of Jews from Germany. The third axis leads to the dead end—the Holocaust Void (Libeskind, 1992).

The zinc-clad Berlin Museum with its irregular windows was completed in 1998 and opened to visitors without any displays within. More than 400,000 people came to see the empty spaces until the museum's formal opening with a permanent exhibition on Jewish life in Germany on September 9, 1991.

For many years the Imperial War Museum in London has maintained a special museum space dedicated to the liberation of the concentration camp at Bergen-Belsen by British forces in April 1945. In deciding to establish a large and permanent exhibition about the Holocaust, which opened in June 2000, the curators focused on the role of the British as bystanders to genocide as well as liberators, and stressed the necessity of including original artifacts, something which the design for the United States Holocaust Museum chose to play down. Considerations about the building itself were moot, as the structure is a well-established museum that focuses on British military history. The result is perhaps a return to the essence of what a museum is supposed to be—more about what is displayed and how it is displayed, than the architectural features of the structure. Like other Holocaust museums, the Imperial War Museum exhibition features the extensive testimony of Holocaust survivors, in this case, those living in England.

Other Holocaust museums exist in North America (e.g., Vancouver, Los Angeles, Houston, El Paso, Detroit, St. Petersburg, Florida, and New York) that are smaller in size and often situated in remodeled, already existing structures. In some cases the museum buildings are new and overemphasize some of the symbols of the Holocaust, such as chimneys and barbed wire. Displays in these museums are remarkably similar and justified for their pedagogical role in local communities. Few Holocaust museums have concern for art except as a document from the victims.

In Milwaukee, Wisconsin, a museum has opened that chronicles the history of slavery; it is called America's Black Holocaust Museum. A museum initiated by the Armenian-American community is being developed in Washington, D.C.; located in a former bank building, it will serve as an educational center, library, and museum documenting the Armenian genocide of 1915 through 1922. In Rwanda the places of destruction have become both memorials and museums, while construction of a museum dedicated to telling the story of that country's genocide began in 2002 in Kigali. In Quebec architect Moshe Safdie designed the Museum of Civilization, which is "is committed to fostering in all Canadians a sense of their common identity and their shared past. At the same time, it hopes to promote understanding between the various cultural groups that are part of Canadian society" (Museum of Civilization website). However, this museum has started to discuss the possibility of including displays on the Holocaust, Armenian genocide, Cambodia, Rwanda, and genocide in the Ukraine. During 2002 a discussion and debate commenced in Ottawa, Canada, about the construction of a Canadian Museum of Genocide.

SEE ALSO Documentation; Memorials and Monuments; Memory

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Stephen C. Feinstein

Arendt, Hannah

[OCTOBER 14, 1906–DECEMBER 4, 1975]
German political philosopher

A political theorist with a gift for grand historical generalization, Hannah Arendt focused contemporary thought, particularly in scholarly circles, on the experience of exile and in her most influential book, *The Origins of Totalitarianism,* confronted the worst horrors of European tyranny.

Arendt was born in Hanover, Germany, and died in New York City. She studied theology and philosophy at the University of Marburg, and then philosophy at the University of Heidelberg. As the National Socialists drew closer to power, she became a political activist

and, beginning in 1933, helped German Zionists publicize the plight of the victims of Nazism. Arrested by the Gestapo, Arendt managed to escape to Paris, remaining there for the rest of the decade and aiding in the efforts to relocate German Jewish children to Palestine. In 1940 she married an ex-communist, Heinrich Blücher, but they were separated and interned in southern France along with other stateless Germans when the Wehrmacht invaded later that year. Arendt was sent to Gurs, a camp from which she escaped. She soon joined her husband, and the two reached the United States in May 1941. While living in New York during World War II, Arendt wrote *The Origins of Totalitarianism* (1951), published the year she secured U.S. citizenship.

No book was more reverberant in tracing the steps toward the distinctive twentieth-century tyrannies of Hitler and Stalin, or in measuring how grievously wounded Western civilization had become. Arendt demonstrated how embedded racism had become in central and western Europe by the end of the nineteenth century; by then imperialist governments had also succeeded in experimenting with the possibilities of cruelty and mass murder. The third section of her book exposed the operations of "radical evil," with the superfluity of life in the death camps marking an important discontinuity in the very notion of what it meant to be human. Totalitarianism put into practice what had only been imagined in medieval images of hell.

During the cold war of the 1950s, *The Origins of Totalitarianism* made its author an intellectual celebrity, but also engendered much doubt about her theories. Arendt's insistence on drawing parallels between Nazi Germany and Stalinist Russia—given their obvious ideological conflicts and the savage warfare between the two countries from 1941 to 1945—was especially criticized. When Arendt wrote her book, Soviet sources were barely available, nor could the author read Russian. But her emphasis on the plight of the Jews amid the decline of Enlightenment ideals of human rights, and her assertion that the Third Reich was conducting two wars—one against the Allies, the other against the Jewish people—have become commonplace in the historiography of the Holocaust. More than any other scholar, Arendt made meaningful the idea of totalitarianism as a novel form of autocracy, pushing to unprecedented extremes murderous fantasies of domination and revenge.

Arendt's most controversial work was published in 1963: *Eichmann in Jerusalem: A Report on the Banality of Evil.* This political and psychological portrait of the SS lieutenant-colonel who had directed the transportation of Jews to their deaths emphasized duty rather than fanaticism as his motivation. She believed that Israel had rightly hanged him in 1962. But Arendt's view that Eichmann had committed evil not because of a sadistic will to do so, or deep-rooted anti-Semitism, but because of thoughtlessness (a failure to think through what he was doing), led Arendt back in the final phase of her career to the formal philosophical approaches that had marked its beginning.

SEE ALSO Eichmann Trials; Evil, Banality of Radical; Psychology of Perpetrators

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Stephen J. Whitfield

Argentina

In the 1970s political violence in Argentina resulted in thousands of deaths, prolonged arbitrary arrest, unfair trials, pervasive torture, and cruel, inhuman, and degrading treatment. The most salient feature of repression by the military dictatorship was the practice of disappearances: At least 15,000 (and possibly up to 25,000) were abducted by security forces, their detention unacknowledged. They were sent to one of 250 secret detention centers, where they were interrogated under barbaric methods of torture. Ultimately, the vast majority of the *desaparecidos* were systematically, but secretly, murdered. Their bodies were disposed of in clandestine gravesites or dumped from airplanes into the ocean. More than twenty-five years later at least 12,000 victims remain unaccounted for, despite efforts by their relatives and civil society to establish their fate and the whereabouts of their remains.

The repressive campaign was launched in March 1976, as the commanders-in-chief of Argentina's three armed forces ousted President Isabel Peron and proclaimed a de facto regime designed to eliminate once and for all what they called the Marxist subversive threat. Serious human rights violations had begun at least eighteen months earlier, and the military participated in them. Isabel Peron had been elected vice-president in 1973 and became president after the death of her husband, General Juan Domingo Peron, on July 1, 1974. Elements of her government organized secret

death squads such as Triple A (*Alianza Anticomunista Argentina*) and *Comando Libertadores de America.* Years later it was established that some police and military officers were members of these squads, and that security forces and public institutions covered up their crimes. Their modus operandi included kidnappings, but within hours the victims' bodies would be found in visible places, often showing gruesome forms of mutilation. For this reason the regime of Isabel Peron was widely seen as increasing the insecurity felt by citizens, while making little progress in curbing the action of left-wing guerrilla movements. In that sense the coup d'etat of March 24, 1976, was an attempt to monopolize and intensify state violence and to expand its scope, while also hiding and denying it.

Unquestionably, official right-wing violence was a response to organized armed violence by several leftist revolutionary groups. As in other Latin American countries, Argentine guerrilla movements were organized shortly after the death of Ernesto Che Guevara in Bolivia in 1967. With some minor exceptions they employed urban guerrilla tactics; whether the violence reached the level of an internal armed conflict in terms of the laws of war remains an unanswered question. The largest of these groups was the Montoneros, formed by leaders emerging from student and working-class demonstrations in several cities in 1969. The Montoneros combined armed actions with political organization and mobilization, and considered themselves part of the Peronist movement. They had a commanding presence in the movement's large and actively mobilized student, rank-and-file labor, and grassroots wings. To the left of the Montoneros were several Marxist and Guevarist armed organizations, the most prominent of which was the *Ejército Revolucionario del Pueblo* (ERP). The Montoneros and ERP launched bold attacks on military and sometimes civilian targets, and occasionally engaged in terrorist actions. The aggregate effect of their actions provoked the police, the military, and right-wing death squads into a spiral of retaliatory violence.

On assuming control of the government, the military junta closed down Argentina's Congress, replaced members of its Supreme Court and most other judges, and intervened in all local and provincial (state) governments. Many prominent politicians and labor leaders were incarcerated for long prison terms without trial. In fact, the military utilized emergency powers to arrest nearly ten thousand persons and hold them indefinitely in administrative detention, pursuant to the state of siege provisions of Argentina's Constitution. The government refused to comply with the few judicial orders issued by its own judicial appointees, seeking to release some detainees because of the authorities' failure to establish a clear rationale for their continued detention. Many state of siege detainees spent between four and six years in prison. Others were subjected to military trials without a semblance of due process. A larger number were tried in the federal courts under counterinsurgency legislation of a draconian nature and with evidence largely obtained through torture.

[ARGENTINA'S MUSEUM]

On March 24, 2004, exactly 28 years after the coup that launched the "dirty war," president Néstor Kirchner announced that the Escuela de Mecánica de la Armada (ESMA) naval base would be turned into a "Museum of Memory" to honor the thousands who disappeared after their capture by security forces between 1976 and 1983. The ESMA was only one of 340 camps used for these purposes. It was not the only camp in Buenos Aires, but the most notorious because it held an estimated 5,000 *desaparecidos,* of which perhaps 100 survived.

The most terrifying and pervasive practice of the military dictatorship, however, was that of forced disappearances described above. Investigations and prosecutions completed after the return of democracy established without a doubt that disappearances were conducted pursuant to official (albeit secret) policy, and implemented and executed under careful supervision along the chain of command. The National Commission on the Disappearance of Persons, one of the earliest truth commissions of recent vintage and set in motion by president Raúl Alfonsín as soon as the country reestablished democracy in 1983, determined this critical fact without dispute. It was further proven through rigorous court procedures in 1985, when the heads of the three military juntas that governed between 1976 and 1982 were prosecuted for planning, executing, and supervising the reign of terror. General Jorge Videla and Admiral Emilio Massera were sentenced to life in prison for their respective roles as commanders of Argentina's army and navy.

By Videla's own admission the targets were not only the armed guerrillas: They included also their lawyers, priests and professors who allegedly spread anti-Western and anti-Christian ideas, labor leaders, neighborhood organizers, human rights activists, and in general anyone who—as defined by the military—lent aid and comfort to the so-called subversive movement. Military leaders variously claimed that their war against

subversion was a "dirty war." The deliberate, widespread, and systematic nature of the practice of disappearances, and the protection of its perpetrators from any investigation, qualifies the phenomenon, as implemented in Argentina, as a crime against humanity. To the extent that the targets were singled out because of ideology or political affiliation and did not belong to a racial or religious minority, the practice does not rise to the level of genocide as defined in international law. Nevertheless, many in Argentina, and significantly the courts of Spain exercising universal jurisdiction, consider it genocide insofar as it targets a distinct national group defined by its ideology and slated for extinction, in whole or in part, through mass murder.

Argentina's program to attain truth and justice about the crimes of the past was cut short when factions of the military staged four uprisings against the democratic regime. The laws of *Punto Final* (Full Stop) and *Obediencia Debida* (Due Obedience), enacted in 1986 and 1987 under the pressure of that military unrest, terminated the prosecution of an estimated four hundred identified perpetrators. Their legal effect was a blanket amnesty. Videla, Massera, and the other defendants in the only two cases to result in convictions were pardoned by Carlos Menem, who succeeded Alfonsín in 1989. In spite of these setbacks, Argentine nongovernmental organizations continued to press for accountability. They succeeded first in persuading federal courts to conduct truth trials designed to establish the fate and whereabouts of the disappeared for the purpose of relaying that information to their families and to society. Later, several courts found that the Full Stop and Due Obedience laws were unconstitutional for being incompatible with Argentina's international obligations under human rights treaties. In August 2003, at the initiative of president Néstor Kirchner, the Argentine Congress declared these laws null and void, and the prosecution of some cases has began again. In the matter of the abduction and illegal adoption of children of the disappeared, or of those born during the captivity of their mother, criminal prosecutions have been brought against Videla, Massera, and dozens of other defendants, because those crimes were specifically exempted from the pseudo-amnesty laws. Kirchner has lifted restrictions on processing extradition requests from Spain and other countries. He also expressed support for Mexico's decision to extradite an Argentine dirty warrior to Spain to stand trial there. In 2003 it seemed inevitable that Argentina would either prosecute the perpetrators of all dirty war crimes or extradite them to Spain or other countries exercising universal jurisdiction.

SEE ALSO Argentina's Dirty Warriors; Disappearances; Immunity; Torture

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Juan E. Méndez

Argentina's Dirty Warriors

The so-called *guerra sucia* (dirty war), which took place in Argentina under the various military governments that ruled from 1976 through 1983, resulted in the disappearance of between 9,000 and 30,000 people, and many more victims of torture and prolonged imprisonment. It was one of the worst examples of state terrorism in twentieth-century Latin America. The demand for justice figured prominently in the electoral campaign of the winning candidate, Raúl Alfonsín, during the 1983 presidential elections that restored civilian rule. During Alfonsín's presidency (1983–1989) the human rights issue continued to occupy a prominent place in public discourse. The struggle to bring to justice the perpetrators of the crimes also generated controversy and sowed unrest within the ranks of the military. On assuming office, Alfonsín formed a truth commission, the National Commission on the Disappeared (*Comision Nacional sobre la Desparicion de Personas,* CONADEP), to investigate alleged human rights abuses by the military. The commission's final report was a damning indictment of the military's crimes and set the stage, as well as providing the body of evidence, for the trials of members of the military juntas that had ruled the country between 1976 and 1983.

The Mothers of Plaza de Mayo have become a symbol of human rights activism. For many years they have demonstrated every Thursday afternoon at this plaza in Buenos Aires, seeking information about the fate of their sons and daughters "disappeared" during Argentina's dirty war. [BETTMANN/CORBIS]

Alfsonsín's government always remained wary of provoking unrest in the military through its human rights policies. This explains the first halting steps taken by the administration on the promise of punishment for those guilty of crimes. Alfonsín initially attempted to reform the Code of Military Justice and establish military jurisdiction over the accused and sentencing by military courts, thereby keeping the trials within clearly prescribed institutional boundaries and placating the armed forces. Once it became clear that the military would assume no responsibility in recognizing the guilt of its former leaders and sanctioning punishment or even acknowledging that such commanders had committed crimes, Alfonsín transferred the cases to the civil courts. In April 1985 the public trials of the three military juntas that had ruled the country between 1976 and 1983 began. The trials were to last until the end of the year, and the lead prosecutor, Julio César Strasser, produced dramatic testimony that led to the conviction of former president General Jorge Videla, Admiral Emilio Massera, and other military commanders. The court rejected the defense's claims of immunity from persecution because of an alleged "state of war" existing in the country, and the sentences handed down varied in severity according to the court's interpretation of the degree of involvement each commander had in the crimes.

The convictions, which elicited broad although not unanimous public support, unleashed great unrest within the ranks of the armed forces. Two abortive military uprisings threatened the country's fragile democracy, and Alfonsín faced the dilemma of fulfilling his campaign promise to deliver justice for human rights abuses while safeguarding democracy and civilian rule. He chose the safest path, restricting the scope of the trials through two highly controversial amnesty laws: the *Ley de Obediencia Debida* (Due Obedience Law) and *Ley de Punto Final* (Full Stop Law). The Due Obedience Law exempted lower-ranking officers and enlisted men from prosecution on the grounds that they were simply carrying out orders, whereas the Full Stop Law established a statute of limitations on further prosecutions for anyone accused of human rights crimes. The Full Stop Law did little to mollify the military because it

triggered a wave of lawsuits to beat the deadline for filing stipulated by the law, although the cumulative effect of both laws was indeed to impose limits on criminal proceedings. The government of Carlos Menem (1989–1999) appeared to definitively seal the process when it issued a pardon in 1989 and released from prison the following year the incarcerated former junta commanders sentenced in 1985.

Though domestic politics had resulted in compromises and even a certain betrayal of human rights issue within Argentina, foreign governments and courts were not so constrained. There were periodic attempts to extradite accused perpetrators of human rights crimes against foreign nationals. Such demands intensified in 2002 and 2003. In January 2002 Sweden asked Argentina to extradite naval officer Alfredo Astiz. Astiz, who had worked as an undercover agent in the most notorious of the detention and torture centers, the Navy Mechanics School, and was sought for his involvement in the disappearance of Argentine-Swedish national Dagmar Hagelin. The French and German governments made similar extradition requests. Most dramatically, in August 2003, Spanish human rights judge Baltasar Garzón issued warrants for the extradition of forty-five former military officers accused of the torture and murder of Spanish nationals during the dictatorship of Argentina. The activities of foreign governments and judges helped to revitalize the human rights issue within Argentina and restored it to a central position in public debate.

The government of Peronist Néstor Kirchner, elected president in May 2003, has been as vigorous in pursuing accountability for the human rights abuses as Menem's Peronist government was indifferent. Kirchner persuaded a congress with Peronist majorities to repeal the two controversial amnesty laws from the Alfonsín years and received delegations from the Mothers of the Plaza de Mayo and other human rights organizations that demanded full accountability for the military's crimes. As of mid-2004, the pending decision of Argentina's Supreme Court on the legality of repealing the amnesty laws means the human rights situation in Argentina was rejuvinated, but remains a controversial and polarizing issue. Human rights organizations have reclaimed the initiative and are pressuring Kirchner to live up to his promises of justice and accountability for the crimes committed. It remains to be seen to what degree domestic political considerations will, as they did under Alfonsín, exercise pressures against a thorough investigation and exemplary justice. For example, although Kirchner annulled a decree preventing the extradition of Argentines to stand trial abroad for human rights crimes—an annulment that led the Spanish government to drop its extradition request—political considerations continued to complicate judicial proceedings. Indeed, Kirchner's decision to press forward with the repeal of the amnesty laws and proceed with trials within Argentina was partly intended to deflect criticisms of his annulment of the decree banning extraditions. Justice for human rights crimes of the last military government therefore continues to be complicated by Argentina's volatile domestic political situation.

SEE ALSO Amnesty; Argentina

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James Brennan

Armenians in Ottoman Turkey and the Armenian Genocide

Armenia as a cultural, political, and geographical entity has existed for 2,700 years. The land, historically identified as Greater Armenia, lies east of the Euphrates River. It is bounded on the northwest by the river Choruh (Churuk or Tchorokh), on the north by the Kura River, on the east and southeast by the river Araks (also Araxes) and the Lake of Urmia, and on the south by the Tigris Valley.

Origins of the Armenian People

Described as Armenoi, the Armenians were first mentioned by the Greek historian Hecateus of Miletus around 550 BCE. Some thirty years later the inscription of Darius I, King of Persia, refers to Armina as the land of the Armenians. In the Bible itself, namely, in the Book of Jeremiah (Chap. 51, verse 27), there is also a reference to "the Kingdom of Ararat" denoting the timeframe of 594 BCE. Furthermore, according to the Greek historian Herodotus, the so-called father of history (fifth century BCE), the Armenians, an Indo-European people, migrated from the Balkan Peninsula to Asia Minor (Turkey), with the Phrygians whose colony they constituted, and spoke an Indo-European language. Following its later separation from them, however, this migrant colony over time amalgamated itself

Map outlining the expansion of the Ottoman Empire during the fourteenth and fifteenth centuries. [XNR PRODUCTIONS/GALE GROUP]

with the indigenous population groups, especially the Hayasa-Azzi. It is worth noting in this respect that Armenians call themselves Hay and not Armenian. Moreover, in the annals of Assyria, the Armenian plateau is depicted as the land of Nairi, in and around which, toward the end of the eighth century BCE, the proto-Armenian migrant colony is seen evolving into the dominant population of the area historically known as Urartu (Ararat).

Sociocultural Evolution of the Armenian People: Historical Background

Hence, the region in eastern Turkey encompassing Mount Ararat and Lake Van does constitute the geographical matrix marking the birth and formation of the Armenian nation. During the successive centuries of this pre-Christian era, Armenia attained sufficient consolidation and strength to emerge as an imposing royal power. During the reign of King Artashes (190 BCE), for example, the kingdom extended from the Euphrates on the west, almost to the Caspian Sea, from the Caucasus in the north to the Taurus Mountains. The apogee of such power coincides with the reign of Tigran the Great (95–56 BCE) who through a series of victorious military campaigns, created a vast Armenian empire. By 70 BCE it extended from the Caspian Sea to the Mediterranean Sea, from the Caucasus to Palestine, with him receiving as a result the title of King of Kings.

The subsequent decline of the Armenian Empire, power, and statehood coincides with the advent of Christianity. Its establishment during the first two decades of the fourth century in Armenia, as the first Christian state in history, was a defining moment for the formation of the Armenian nation in the centuries to follow. The Armenian Church consequently evolved as the single most important institution for Armenian national life. Its founders and leaders left their indelible imprint on Armenian religious literature, Armenian historiography, and linguistics, and provided the impetus for the cultivation of a distinct ethos relative to education and learning in general. The pillars of this initiative were Saint Sahag, the Catholicos, that is, the Supreme Patriarch of the Church, and Saint Mesrop, a polyglot and erudite monk, who, with the encouragement of the former and the help of others, set out to invent the Armenian alphabet. This effort yielded the intended result. In 414 a cultural milestone was

achieved: The Bible was translated into Armenian, and thereby the fusion of religion and language in Armenian civilization became enshrined.

This religious immersion in Christianity was perilously tested some four decades later. In the epoch-making Battle of Avarair in 451, Armenians fought and died to protect and preserve their Christian faith while successfully resisting the pagan demands of the Persian King Yazdgard III. They resolutely refused to substitute the worship of sun and fire for their Christian faith.

Due to successive Muslim incursions from near and far, the Christian identity of the Armenians and their stubborn clinging to it resulted in an unending chain of national calamities. The historical unfolding of the fate of the Armenians is accordingly punctuated by constant tragedy, sorrow, and attrition in numbers. The incursions included that of the Arab rulers of the Abbasid Caliphate in the seventh century; that of the Selchuks, nomadic Turkic tribes from Central Asia, in the eleventh and twelfth centuries; Genghis Khan's Mongols in the thirteenth century, who, at the end of that century, converted to Islam; and finally the Turkish clans who under Osman, the son and successor of the original clan leader, established the Ottoman realm that was to grow and endure for some five centuries.

Abd-ul-hamid II (1842–1918), the last Sultan of the Ottoman Empire, known as the "Great Assassin." He refused to intervene on behalf of Armenians in the massacres of 1894 to 1896. [MICHAEL NICHOLSON/CORBIS]

Ottoman Theocracy and Its Unsettling Impact on Armenians

The steady expansion of this incipient Ottoman realm and its eventual transformation over time into the Ottoman Empire had fateful consequences for the Armenian people, whose ancestral territories and major population centers had thus become incorporated into the territories of that empire. The overarching factor sealing the fate of Ottoman Armenians in this respect was the pervasive theocratic structure of that empire. The latter's multiethnic and multireligious character was a factor that drove the dominant Ottoman-Turkish element to rely heavily on the tenets and dogmas of the Islamic sacred law to govern the empire. The Ottoman sociopolitical system was dichotomized in terms of these antithetical entities: the ruling nation (*milleti hākime*) and the subject nation (*milleti mahküme*). The underlying principle of this dichotomy was a religion that proclaimed the superordination of the faithful, that is, the Muslims, and accordingly assigned a subordinate status to the "infidel" and, therefore, "inferior" non-Muslims. The institutionalization of this Islamic dogma as a doctrine found expression in the practice of prejudice, discrimination, and exclusion directed against non-Muslims.

Nevertheless, the most debilitating liability structurally imposed on the Armenians, the preponderant non-Muslim minority in Asia Minor, was the categorical denial of their right to bear arms. This canonical prohibition was especially reconfirmed and reinforced in connection with the 1876 Constantinople Conference. The representatives of the six Great Powers of Europe, among other demands, urged the sultan to grant the Christian subjects of the empire the right to bear arms. But, after summoning and consulting the *Ulema,* the Islamic doctors of law, the Seyhulislam, their head, issued a *fetva,* a preemptory final opinion, declaring such a right to be a violation of Islamic sacred law. In an environment teeming with Turkish, Kurdish, and other Muslim overlords armed to their teeth, especially in the remote provinces of the interior of the empire, the defenseless Armenians were, by virtue of this theocratic fiat, consigned to a level of status involving ultimate vulnerability; they were, in fact, reduced to fair game, which served to invite all sorts of depredations, including murder, rape, exorbitant taxations, plunder, confiscations, and abductions. These conditions, endemic in the Ottoman imperial system of provincial ad-

ministration not only persisted, but also during the reign of Sultan Abdul Hamit evolved into a portentous Turkish-Armenian political conflict.

Hamit and the Ensuing Series of Armenian Massacres (1894–1896)

The Turkish-Armenian conflict was but an integral part of a larger, evolving conflict between the Turkish-Muslim rulers of the empire on the one hand, and the empire's various Christian nationalities on the other. The Ottoman Empire's theocratic tenets, reinforced by the militant and imperial attitudes of these rulers, served to produce a regime unable to govern these subject nationalities. The resulting maladministration, marked by blight and ineptness, steadily aggravated the latter's plight. The interventionist response of the European powers, especially Russia, England, and France, not only further exacerbated the problem, but also in the process enabled these subject nationalities to jar themselves loose from the Ottoman yoke. Their ultimate success in emancipating themselves proved, however, contagious for the thus far docile Armenians, who, unlike these Balkan national groups, were not seeking independence, but rather local autonomy through administrative reforms. Their main concern was protection from the unabating depredations described above, within a broad scheme of reforms guaranteeing their overall security. The specific stipulation of Article 61 of the 1878 Berlin Peace Treaty, which followed the Russian military victory in the Turkish-Russian War of 1877 and 1878, had provided for such reforms; so did the 1895 Armenian Reform scheme that the European powers had negotiated with Hamit, who grudgingly signed it.

Determined to scuttle any program of Armenian Reforms, Hamit already in the years following the signing of the Berlin Treaty had begun to initiate a series of measures to this end. He solemnly swore to the German ambassador, Prince von Radolin, that he "would rather die than yield to unjust Armenian pressures and allow the introduction of large-scale Autonomy Reforms" (Lepsius et al., 1927, Document no. 2184). In two separate memoranda he composed as guidelines for his deputies, who were entrusted with handling the Armenian reforms issue, Hamit vented his wariness as he suspected ulterior motivations relative to the pursuit of these reforms. In one of these memoranda, he characterized such reforms as a device to strengthen the Armenians, who then would likely seek independence, and thereby cause the partition of the Ottoman realm. In the other, he expressed his anxiety that these reforms would eventually lead to the Armenians dominating the Muslims and establishing in eastern Turkey an Armenian principality. Hamit then instructed his underling to emulate his standard policy, namely, "to put off [the Europeans] by advancing trumped-up excuses [oyalamak]" (Hocaoglu, 1989, pp. 170, 237). Namely, the Ottoman government would officially issue oral and written instructions on the Armenian reforms that, being contrary to the wishes of the monarch, were expected to be evaded by setting forth credible excuses.

In the meantime Hamit embarked on a multipronged campaign to nip the reforms advocated by the Great Powers in the bud. Having earlier prorogued the Ottoman Parliament, he then completely transferred the residual executive power to the palace, his seat and domain of power. Thus, the limited restraints attached to his constitutional monarchy largely dissolved themselves, paving the way for the onset of a more or less unfettered autocracy that soon degenerated into a regime of despotism (*istibdad*). Instead of normally functioning cabinet ministers taking charge of government, a despotic monarch, surrounded by a reckless palace camarilla (*cabal*), began to devise and implement a new Armenian policy that involved a new phase of anti-Armenian persecution through officially sanctioned terror.

In anticipation of the escalation of the conflict surrounding the projected Armenian reforms, in 1891 Hamit set up a new system of Kurdish tribal regiments of territorial cavalry (*Hamidiye*). By 1899 their numbers had grown from thirty-three to sixty-three. These quasi-official regiments received ranks, uniforms, regimental badges, and Martin rifles, and with them, the license to intensify the level of persecution of the unarmed and highly vulnerable Armenian population of the provinces. During the ensuing massacres of 1894 and 1896 these regiments would play a key role as instruments of widespread death and destruction.

Parallel to this undertaking, Hamit launched a comprehensive program of redistricting or "gerrymandering" to use colloquial parlance. By drastically altering the proportion of Armenian inhabitants of several provinces in eastern Turkey, whereby an Armenian majority was transformed into an Armenian minority, especially in the Van-Mus-Bitlis triangle, the heart of historic Armenia, the rationale for Armenian reforms was rendered untenable, thereby preempting the need for the entire scheme of Armenian reforms.

Meanwhile, the plight of the provincial Armenian population continued to deteriorate steadily. The gravity of this plight and the deliberate intent of Ottoman authorities to pursue such aggravation were cogently depicted by the veteran French ambassador to Turkey, Paul Cambon. On the eve of the 1894 to 1896 massacres "a high ranking Turkish official told me," reported

Cambon to Paris "that the Armenian Question does not exist, but we shall create it." Cambon went on to explain:

> Up until 1881, the idea of Armenian independence was non-existent. The masses simply yearned for reforms, dreaming only of a normal administration under Ottoman rule. . . . The reforms have not been carried out. The exaction of the officials remained scandalous. . . . [From] one end of the Empire to the other, there is rampant corruption of officials, denial of justice and insecurity of life. . . . [As] if it were not enough to provoke Armenian discontent, the Turks were glad to amplify it. . . . [The] maintenance in Armenia of a veritable regime of terror, arrests, murders, rapes, all this shows that Turkey is taking pleasure in precipitating the events [imperiling] an inoffensive population (Documents Diplomatiques Français, 1947, pp. 71–74).

It is against this backdrop that the Armenian reform movement lost its momentum and was replaced by the confrontational thrust of Armenian revolutionaries, who thus entered the arena of conflict with Ottoman provincial as well as central authorities. Unlike in the case of the Balkan nationalities, these revolutionaries, contrary to their fervent hopes, did not receive any support at all from any of the six European powers, thereby compounding the vulnerability endemic in the position of Ottoman Armenians. Alive to the advantages of this condition, Hamit, in total disregard, if not defiance, of the pro forma warnings and admonitions of these powers, set out to punish the Armenians on a massive and indiscriminate scale, by resorting to empire-wide massacres that lasted from August 1894 to September 1896 and claimed some 250,000 to 300,000 direct and indirect victims. And, as if to underscore his disdain for these powers, two in the series of these massacres were perpetrated in Constantinople, then the Ottoman capital, in broad daylight, and before the very eyes of the official representatives of the Great Powers.

These massacres are significant in several respects. First, they were perpetrated mostly with special cudgels or sticks that were fitted with a piece of iron that helped bludgeon their victims to death. According to a well-informed Turkish source, Hamit, in the aftermath of the massacres, gloatingly gave European diplomats a tour of the depots in which those cudgels were stored. Another method of massacre was immolation in houses, but especially churches. In the large cathedral of Urfa, for example, three thousand Armenians, mostly women and children, were burned alive in December 1895. There was massive popular participation in these atrocities incited by the haranguing of *Mullahs* at special religious services in the mosques on Fridays. Additionally, in some cities and towns convicts were released from prison for massacre duty.

The material desolation was no less significant. According to German investigator Johannes Lepsius, who immediately inspected the sites following the massacres, 2,500 towns and villages were ruined, 645 churches and monasteries were destroyed, and 328 churches were converted into mosques. Moreover, 508 churches and monasteries were completely plundered. Furthermore, the survivors of 559 villages and hundreds of families were forcibly converted to Islam; included in this toll were 15,000 Armenians from the provinces of Harput and Erzurum. Perhaps the most consequential feature of this era of massacres is the fact that the perpetrators almost in toto were deliberately spared from prosecution and punishment. This paramount aspect of impunity associated with the large-scale mass murder at issue here may well be regarded as the integral nexus, the inevitable connecting link, to the subsequent 1909 Adana massacre and, ultimately, the Armenian Genocide during World War I.

Advent of the Young Turk Regime and the 1909 Two-Tier Adana Massacre

The scope and intensity of the Hamit-era massacres had demonstrated the broad latitude that the monarch was domestically and internationally allowed in the exercise of his sanguinary tyranny. But, the tentacles of that tyranny reached beyond the confines of the Christian Armenians, deep into the community of his Muslim subjects as well—albeit not in the form of massacres, but through a variety of methods of individual persecution. Consequently, a select group of Armenian revolutionaries, *Dashnaks* in particular, joined hands with the emerging Young Turk revolutionaries to topple "the Red Sultan." Through jointly held public demonstrations and great fanfare heralding a new era of Muslim-Christian fraternity and solidarity, a new regime was ushered in. By reinstituting the 1876 Constitution, which the sultan had first expediently embraced only to prorogue it with equal expediency within a year, the constitutional form of monarchy was thereby restored. But the unfolding of some precipitous events culminating in a new major massacre against the Armenians underscored the tenuousness of this Muslim-Christian fraternity and the fragility of the guarantees of the newly restored constitution.

Unhappy with the secular and egalitarian aspects proclaimed by the founders of the new Young Turk Regime, the Committee of Union and Progress (CUP), the apostles of fundamentalist Islam, the advocates of *Sheri,* the canon law of Islam, staged an uprising that was suppressed in short order. Coincidentally, howev-

er, there erupted in the city of Adana and its environs a major conflagration, historically known as the 1909 Adana massacre, to which some 25,000 Armenians fell victim.

Several factors converged in the outbreak of this bloodbath, the levels of fiendishness and ferocity of which exceeded those of all other episodes of mass murder against the Armenians, including the World War I genocide. Foremost among these factors was a large number of disaffected partisans of the partly dethroned monarch, who, together with a host of Islamic religious leaders and local military officers who likewise identified with the monarch, gladly joined in precipitating and consummating the bloodbath. Another factor involved was the accumulated wealth of the region's Armenians who had been spared from the death and destruction of the 1894 to 1896 massacres because of the fear of the nearby, combative Armenian mountaineers of Zeitun. That wealth served as a magnet for the lethal cupidity of the perpetrators. An equally important factor concerned the aggressive nationalism of some Armenian community leaders. Intoxicated with the new spell of freedom, these Armenians, suddenly relieved of the centuries-old Ottoman-Turkish yoke, openly vented their spirit of defiant nationalism, thereby challenging their erstwhile Muslim overlords. However, the most potent factor in question was the clandestine, instigative role of the CUP, egged on by the CUP's Saloniki branch leaders, headed by Mehmet Nazim, one of the architects of the subsequent Armenian Genocide. Through coded messages they directed the local CUP members and their fellow perpetrators in the operations of the two-tier Adana massacre (April 1–14 and April 14–27, 1909).

Two postmassacre official investigations concluded that the massacre was premeditated and organized. One of them, which was issued by a CUP deputy of Armenian extraction (Hagop Babikian), placed the blame squarely on the CUP as the arch culprit. He had been dispatched by the Ottoman Parliament along with another Turkish deputy (Yusuf Kemal) to investigate the matter on the spot. The results of the other investigation were reported by Grand Vizier Hilmi Pasa during an address before the Ottoman Chamber of Deputies. In it he denounced "the criminal scoundrels who were bent on massacring and plundering the Armenians through a surprise attack." Notwithstanding, there was very little retribution as far as the arch organizers were concerned and hardly any significant restitution or rehabilitation as far as the survivors were concerned. The vulnerability of the victim population proved once more to be a warrant for the kind of mass murder that would again escape any meaningful punishment.

Armenian Reform Issue as a Prelude to Impending Genocide

In the continuum of the era of Armenian massacres spanning the regimes of Hamit and the Young Turks, there is discernible a pattern of centrally directed organization. Whereas a palace camarilla was involved in the former case, in the latter a conspiratorial clique holding sway in the upper echelons of the CUP stands out. In both cases, the organizers had managed to gain the upper hand in control of the state's key apparatuses. The steady deterioration of the plight of the Armenian population of the Ottoman Empire and the intensification of the attendant Turkish-Armenian conflict coincide with the onset of a new policy of Turkish nationalism this CUP regime adopted. Pursuant to this policy, the CUP initiated a series of steps. To expand its base and acquire new resources, Mehmet Talaat, the CUP's party boss and frequent interior minister, established new party cells and clubs throughout the length and breadth of the empire. Additionally, it acquired substantial power by co-opting a significant number of army officers, many of who actually enrolled in the ranks of the CUP as active party members. In the meantime, the CUP's Central Committee, a kind of politburo, underwent a major structural change. After increasing the number of its members from seven to twelve, the top party leaders allowed three men to forge and inexorably carry out a new policy on nationalities, whereby the empire would be purged of its non-Muslim elements by way of supplanting multiethnic Ottomanism with exclusionary Turkism. Most significant, these three men—the MDs Behaeddin Sakir and Mehmet Nazim, and party ideologue, Ziya Gökalp—within a few years, namely, during World War I, would prove the principal architects of the Armenian Genocide.

A new crisis in the Balkan Peninsula, one involving the explosion of war in a brewing conflict with Christian subjects on that peninsula, brought matters to a head. Responding to two ghastly massacres the Ottoman rulers had perpetrated in Macedonia in the summer of 1912, the Greeks, Serbs, and Bulgarians, former Ottoman subjects, set aside their disputes on Macedonia and jointly declared war. Within weeks the Ottoman armies were roundly defeated, and Ottoman dominion in the Balkans came to a devastating end as tens of thousands of destitute Muslims fled and took refuge in all corners of Constantinople, then the capital of the empire. It was under these bleak circumstances that the various leadership groups of the Armenian community decided to resuscitate once more the languishing Armenian reform issue. Delegations were sent to the European capitals; their pleas served to mobilize Great Powers to pressure Turkey for the adoption of a new reform scheme. Following arduous and exacting negotiations,

the CUP leadership felt impelled to sign a new reform accord on February 8, 1914, which for the first time stipulated European supervision and control of the accord's implementation.

Having gained total control of the machinery of the Ottoman state through a second coup d'état on January 23, 1913, the CUP leaders in no time became monolithic dictatorial masters of the empire after having purged virtually all opposition groups. Vested with this enormous power, they set out to implement their plan of coercive Turkification, with the Armenians becoming the prime target. The CUP prepared themselves for this task and waited for a suitable opportunity, which eventually came with the outbreak of World War I.

The enormity of the crime of genocide accents the importance of contextualizing that crime. War in this sense provides a unique context in which opportunism and exculpatory self-righteousness dynamically converge to motivate and even embolden the arch perpetrators. While the optimal vulnerability of the targeted victim group is the source of the opportunity, the perils of defeat implicit in any war are often used as a rationale, if not justification, for resorting to draconian measures against such a group, which almost invariably is denounced as "the internal foe" by these perpetrators. This is the general framework within which the World War I Armenian Genocide must be understood.

Several major military defeats the Ottoman armies suffered in the winter and spring of 1915, including those of Sarikamis and Dilman, were conveniently attributed to the military role of Armenian volunteer units enrolled in the enemy Russian Caucasus Army; three units were comprised, in part, of soldiers who were former Ottoman citizens. The April 1915 Van uprising, which the Armenians mounted to resist the impending massacre of that province's Armenian population, further provided the needed ammunition to declare the Armenians an internal foe. The stage was set to embark on the plan of wholesale extermination.

Recourse to Genocide

More than any other form of capital crime, genocide, if undertaken by a state organization, requires detailed preparations in order not only to ensure optimal success, but also to conceal or camouflage intent and outcome. During post–World War I Turkish court-martials it was ascertained and recorded in the respective official judicial gazette that the wholesale destruction of Armenians was premeditated (*ta'ammüden*) and that deportations were but a vehicle toward that end. In his affidavit prepared for that court, Third Army Commander General Vehip, when attesting to this fact of premeditation, used the term (*kasden by prior deliberation*). Moreover, the respective official documents of imperial Germany and imperial Austria-Hungary, the Ottoman Empire's wartime allies, confirm the incidence of such premeditation.

Within weeks after the outbreak of war, while Turkey was maintaining a position of "armed neutrality," the newly formed brigand units (*çete*) of the Special Organization (*Teskilat'i Mahsusa*) began a campaign of harassment and terror against the Armenian population in eastern Turkey. When plans to encircle and destroy the Russian Caucasus Army disastrously failed in the aftermath of Turkey's intervention in the war, these brigand cadres were assigned a new and definitive mission: They were to be redeployed as killing units to attack and massacre the countless Armenian deportee convoys. Behaeddin Sakir, the head of the Special Organization East, with headquarters in Erzurum, in eastern Turkey, undertook a special trip to the Ottoman capital, where he sought and obtained the sanction of the CUP's omnipotent Central Committee to proceed with this mission. By way of a sweeping and reckless generalization, the Armenians were hereby expediently vilified as traitors and accordingly targeted as the so-called internal foe. Sporadic Armenian acts of desertion, espionage, and sabotage, common among other Muslim groups, especially Kurds and also Turks, in the service of the enemy Russians, and the coincidental Armenian Van uprising, were treated as welcome opportunities. They were conveniently and adroitly exploited as justifiable excuses for indiscriminate massive and lethal retaliation.

In order to streamline the mechanisms for implementing the projected extermination mission, the CUP leadership first suspended the Parliament, thereby transferring all state authority from the legislative to the executive branch. In short order, the executive began to run the country through the enactment of temporary laws as provided under Article 36 of the Ottoman Constitution and Article 12 of the CUP's party statutes. Accordingly, on May 13 and 26, 1915, Interior Minister Talaat railroaded through the Ottoman Cabinet the Temporary Law on Deportation that entailed the wholesale uprooting and eventual destruction of the empire's Armenian population. The gradual liquidation of able-bodied Armenian males, who through the General Mobilization decree had been conscripted months earlier, was already in progress.

The organization of the genocidal field of operations was entrusted to a number of agencies and groups. Foremost among these was the military. The coordination of the dual tasks of marshalling the logistics of the deportee convoys on the one hand, and their subsequent massacre through ambushes by the Special

Among the trees, victims of the Armenian genocide of 1915. Although many American lawmakers and politicians have advocated for the United States' formal recognition of the genocide perpetrated by Turkey, as of mid-2004 no such action has been taken. [BETTMANN/CORBIS]

Organization gangs on the other, was entrusted to Staff Colonel Seyfi, head of Department II in Ottoman General Headquarters. These gangs were largely comprised of bloodthirsty (*kanli katil*) convicts, who had been especially selected and released from the prisons of the empire for such massacre duty, and led by young active and reserve officers. Three army commanders likewise played key organizational roles. The military and civilian jurisdiction of General Mahmud Kâmil, Commander of the Third Army, encompassed the largest concentration of the Ottoman Armenian population identified with the provinces of Sivas, Trabzon, Harput, Diyarbekir, Erzurum, Bitlis, and Van. It was this general who, through a prearrangement with the CUP Central Committee, was appointed to that post and shortly thereafter demanded (*talep*) authorization from General Headquarters to order the wholesale forcible deportation of this huge block of Armenians. General Halil Kut, Commander of Army Groups East, and General Ali Ihsan Sabis, Commander of the Fourth Army, inexorably liquidated all Armenians belonging to their respective armies and ordered the wholesale massacre of the civilian Armenian populations of the regions under their command.

The details of the empire-wide deportations were handled by a special category of powerful party functionaries, mostly ex-army officers, who were carefully selected by the party leadership. Dubbed in ranking order as responsible secretary (*kâtibi mesul*), delegate (*murahhas*), and inspector (*müfettis*), they had superordinate authority, including veto power over the decisions of provincial governors. These omnipotent "commissars" were assisted in their task by members of local CUP party cells.

Beyond the levels of premeditation, decision making, organization, and supervision, the ultimate level involved the actual execution of death and destruction—the crux of the Armenian Genocide. The primary executioners in this respect were the tens of thousands of convicts of the Special Organization described above. They were assisted by a number of irregular units of the Ottoman Army that included several Kurdish cavalry formations, and squads of gendarmes and homefront militia, who served as convoy escort personnel. Frequently, large mobs were mobilized from surrounding areas to deal with bulky convoys; they willingly participated in the butcheries given the ever-present lure of plunder and spoils.

One of the most distinguishing, if not singular, features of the Armenian Genocide is the array of methods and instruments employed. To spare powder and shells, for example, the perpetrators mostly used daggers, swords, scimitars, bayonets, axes, saws, and cudgels, as attested to by wartime U.S. Ambassador Henry Morgenthau. Then, there were mass shootings primarily applied to thousands of disarmed Armenian Labor Battalion soldiers, who were always tied together with heavy ropes in fours and fives, before being executed. The inordinate gruesomeness of the Armenian Genocide is revealed most hauntingly, however, in the next two methods used. One of them involved massive drowning operations, whereby the tributaries of the Euphrates River, crisscrossing Turkey's eastern provinces, several lakes, and in particular, the Black Sea, covering the Samsun-Trabzon coastline stretch, became the fathomless graveyards of tens of thousands of women, children, and elderly men. The other concerns the fate of untold other multitudes, who were systematically burned alive in haylofts, stables, and large caves in such areas as Harput province, the deserts of Mesopotamia, but especially in Mus City and the Mus Plain in Bitlis province, where no less than sixty thousand Armenians were torched. In a rare act of condemnation, Turkish Army Commander Vehip, who during an inspection trip had observed the charred remains of women and children in Tchurig village, north of Mus City, one of those spots of that area's Armenian holocaust, decried what he called this evidence of "atrocity and savagery that has no parallel in the history of Islam" (Dadrian, 2002, pp. 84–85).

When warning Turkey of the dire consequences of the genocide then in progress, the entente powers—France, England, and Russia—on May 24, 1915, introduced the legal term *crimes against humanity,* which was later codified in Article 6c of the Nuremberg Charter and the Preamble of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Even though no exact statistical figures are available, based on an average of German, British, Austrian, and U.S. estimates, about 1.2 million perished in the genocide, while another half-million dispersed to all corners of the world as refugee survivors. While "the dire consequences" trumpeted by the victorious Allies dismally failed to materialize, the crime of the Armenian Genocide not only still remains negatively rewarded by way of impunity, but also official Turkey, past and present, with little hesitation, still persists in denying that crime.

SEE ALSO Armenians in Russia and the USSR; Atatürk, Mustafa Kemal Pasha; Enver, Ismail; Talaat

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Vahakn N. Dadrian

Armenians in Russia and the USSR

Armenian history can be traced back some three thousand years to a time when the Armenian people were clearly identifiable on what was traditionally called the Armenian plateau, which extended through present-day eastern Anatolia (or eastern Turkey) to the South Caucasus (or Transcaucasia). The Armenians were on the crossroads of international commerce and, accordingly, their land became a region fought over by contending empires and nomadic invaders.

Eastern Armenia, in the South Caucasus, was laid waste by centuries of warfare. Western Armenia, present-day eastern Turkey, was conquered by the Ottomans between 1514 and 1534. Many Armenians fled to other countries, so by the seventeenth century the Armenians experienced a large diaspora that extended from Poland in the west to India and the Far East. This diaspora was chiefly mercantile, and it enjoyed a high standard of living and education. It was from the Persian and Indian diasporas that the Armenian liberation movement originated in the seventeenth century.

Attempts were made by a wealthy, self-appointed adventurer to better Armenian security in the Caucasus by encouraging a forward movement of the nominally Christian Russian Empire. Nothing much came of these early appeals, but by the early 1800s the Russians of their own accord occupied South Caucasus and Eastern Armenia.

The Armenian peasants in Eastern Armenia, under the Russian Empire, remained serfs until 1870. Armenian peasants in Western Armenia, who were no better off than serfs, saw their condition deteriorate further in the nineteenth century as the Ottoman Empire, under pressures from the European powers, was forced to abandon, one after the other, its possessions in the Balkans and some territory in eastern Anatolia.

The Armenian Enlightenment

The Armenian enlightenment movement of the nineteenth century sought to better the condition of peasants both in the east and in the west by raising national consciousness. This movement arose in several quarters: the Russian Armenian intelligentsia, university graduates, who lived in the major cities of Russia and the Caucasus; the scions of the Armenian moneyed class, the *amiras,* of Constantinople and Smyrna, who were sent to Europe to study and adopted progressive European values; the American Protestant missionaries who established churches, schools, and medical clinics all over Anatolia, and who instilled in Armenians the American ideals of democracy; and, finally, there were Armenian rite Roman Catholic monks who revived Armenian scholarship.

Failure of Ottoman Reforms

The Ottoman liberal reform movement (the Tanzimat), which evolved at the same time as the Armenian enlightenment, failed chiefly because of the enmity of the fundamentalist Muslim clergy and conservative Muslim society that objected to the acceptance of Christians and Jews, the despised *gavours* (unbelievers), as the equals of Muslims.

Armenians in the Russian Empire

The Armenians of the former Russian Empire can be divided roughly into two groups: those living in Caucasian Armenia, the vast majority of whom were peasants, and those who lived in other parts of the empire as merchants/entrepreneurs, craftsmen, various professionals, and the like. In the Caucasus, for instance, the Armenian middle class dominated Tbilisi, the seat of the Transcaucasan viceroy and the capital of Georgia, and they enjoyed great financial success in Baku, which later became the capital of Azerbaijan.

Russian tsar Nicholas II continued his father's policy of repressing the domestic radical movement, which drove the revolutionaries into hiding or abroad, chiefly to Geneva and London. Native Armenian radicals made little headway domestically until 1903 through 1905, when Nicholas II closed down Armenian schools and attempted to deprive the Armenian Church of the income from its hereditary properties.

The Armenian radical intelligentsia followed the example of their Russian and Jewish compatriots. Armenian socialists established the Hunchak Party in Geneva in 1887, among the Russian radicals who had fled Russia, and patterned their party on the *Narodniks,* the Russian populists, who believed in "going to the people" to educate and radicalize them. For the Russian populists, "going to the people" meant going out to the oppressed Russian peasants of the Russian Empire, whereas for the Hunchaks, the people (they) were the oppressed Armenian peasants of the Ottoman Empire, among whom the Hunchaks eventually became active.

A lithograph depicting a group of Armenians, c. 1849. By the early 1800s the Russians had occupied South Caucasus and Eastern Armenia. Many Armenians became serfs living within the Russian Empire. [HISTORICAL PICTURE ARCHIVE/CORBIS]

Another Armenian political party, the *Dashnaktsutiun,* was founded by Russian Armenians in 1890 and spread then to the Ottoman Empire. Interestingly, this Armenian Revolutionary Federation, realizing that the Armenians were too few in number and too weak in strength to attempt to overthrow either of the powerful imperial governments or to establish themselves as an independent state, did not advocate Armenian independence. It was the *Dashnaktsutiun* that cooperated first with the Young Ottomans, an aristocratic liberal group of European-educated Turks, and then up to 1913 with the Young Turks (*Ittihad ve Terakke Jemieti,* the Committee for Union and Progress), mostly young army officers from the Turkish military academy in the Balkans.

Hamedian Massacres

Both the Armenians and Young Turks wanted to overthrow Sultan Abdul Hamid II (1876–1909) and reestablish the constitution that Abdul Hamid had arbitrarily suspended. Using the pretext of an Armenian revolt, Abdul Hamid turned viciously against the Armenians and instigated a series of massacres from 1894 to 1896 in the six "Armenian provinces" that resulted in the death of some 100,000 to 200,000 [to 300,000] Armenians and demoralized tens of thousands more.

Young Turk Revolution

In 1908 the Young Turks, encouraged by the Armenians and other minorities, carried out a revolution and reestablished the constitution. These early, heady days witnessed jubilation among enlightened Turkish and non-Turkish inhabitants of the empire, since the constitution now guaranteed all inhabitants—Muslim, Christians, and Jews alike—equality under the law. As before under the Tanzimat, traditional Muslim society and clergy refused to accept non-Muslims as equals.

The very next year, in 1909, the Armenians of Cilicia—among whom a wealthy and Westernized class ex-

isted—angered tradition-bound Turkish leaders, and a massacre resulted whereby some thirty thousand Armenians were slaughtered throughout the region.

The Armenian Genocide

In 1913 a radical group of Young Turks overthrew the Ottoman government and established a dictatorship. The ruling triumvirate led an ill-prepared Turkey into World War I on the side of Germany against Russia and the Allies. The ideology of exclusive nationalism became a policy sometime around the beginning of Word War I, when the central organ of the Committee for Union and Progress instituted a plan to empty Anatolia entirely of Armenian Christians by deportations and massacres under the cover of war.

A major Turkish argument for eliminating the Armenians is that it was a military necessity because Nicholas II had offered the Armenians a homeland if they supported Russia during the war, and that the Armenians were a potential fifth column. Such promises as the many made by Tsar Nicholas were part and parcel of wartime propaganda that few on any side intended to keep. Similarly, the Young Turks promised a "semi-autonomous" Armenia at the Erzerum (or Erzurum) Congress of the Dashnaktsutiun in July 1914, if the Armenians on both sides of the border would fight against the Russians. The Armenian delegates declined both offers.

Founding a Republic

In March of 1917 the Russian bourgeois revolution took place. The Russian armies in Turkey, losing clear direction, began to disintegrate. The Armenians who lived in the territories added to Russia in 1878 fled with the retreating Russian armies. The Armenians within Russian territory organized a federation with Georgia and Azerbaijan to bring order to South Caucasus. With the advance of the revitalized Turkish army into the Caucasus in 1918, however, the Transcaucasian Federation dissolved and Armenia, only some 4,000 square miles (or 11,000 sq. km.) in size, declared its independence on May 28, 1918, and was left to face the advancing Turkish armies alone. In acts of desperate self-defense, fearing a continuation of the massacres, the Armenian remnant repulsed the Turkish onslaught in three major encounters, thereby bringing it to a temporary halt.

U.S. President Wilson and the Armenian Mandate

Struggling with the problems of security, refugees, war, and famine, Armenia sought an American mandate to sustain the fledgling state and to assist in its reconstruction. President Woodrow Wilson made an appeal to the U.S. Senate and traveled throughout the United States seeking public support for his plan. The Senate, however, which had grown isolationist in the interim, rejected the proposal and left Armenia to survive as best as it could.

Bolshevik Takeover and the Armenian Soviet Republic

Meanwhile, the Bolsheviks carried out a coup d'etat against the provisional government in November of 1917 and created a Red Army to consolidate their power and recapture the territories of the defunct Russian Empire. Almost no Bolsheviks lived in Armenia, because Armenia at that time was an agricultural region. The Armenian Bolsheviks, later known as the Baku Commissars, were concentrated in Baku, which was the most industrialized part of South Caucasus.

Armenia at this juncture faced three enemies: the revitalized Turkish nationalist army that stood ready to attack Armenia once more and annihilate the remnant of Armenians; the Azerbaijani nationalist army that sought, successfully, to occupy Nakichevan and Nagorno-Karabakh, two districts inhabited by Armenians; and the Red Army that had struck a deal with Mustafa Kemal Pasha Ataturk not to lay claim to the areas of eastern Turkey (specifically Kars, Ardahan, and Batum) that had been captured by the tsar in 1877 and 1878 and abandoned in 1917.

The Bolshevik leaders in Moscow saw Ataturk's army as an anti-imperialist force and hoped to see the growth of communism in Turkey. Moscow also wanted to establish its power in Muslim Central Asia and did not want to antagonize the Muslims of Turkey. Lenin's hope for a communist revolution in Turkey was in vain. Once Ataturk assumed full control, he obliterated the Turkish Communist Party.

In 1920 the Armenian Republic, facing a Turkish army in the west and a Red army in the east, surrendered to the Bolsheviks as the lesser of two evils. The Bolsheviks then signed a draconian peace in Moscow with the Turkish nationalists that left Armenia bereft even of its traditional emblem, Mount Ararat, and its historic capital, Ani. Eventually, an Armenian Soviet Socialist Republic was established as one of the constituent republics of the USSR. The present-day independent Armenian Republic, with the same boundaries as the former Soviet Republic, occupies only the central eastern edge of historic Armenia.

Armenian Soviet Socialist Republic

The Baku Commissars having been killed, the young Armenian Bolsheviks who came under the leadership of the Red Army were inexperienced and ideologically narrow. They immediately conducted purges and in

A Turkey just coming into existence entered World War I on the side of Germany against Russia. Tsar Nicholas II promised Armenians a homeland on the condition that they support Russia during the conflict. This 1915 photo shows Armenian soldiers from Transcaucasia who have joined forces with the Russians. [UNDERWOOD & UNDERWOOD/CORBIS]

1921 the Armenians rebelled against Soviet power. The rebellion was but a brief interlude and was harshly vanquished.

The Armenians in the Soviet Union, except for being deprived of the eastern Armenian territory by Russia, Turkey, Azerbaijan, and Georgia, were treated as well or better than the other nationalities within the union. Lenin attempted to pacify the national minorities by a system of *khorenizatsya* (nativization), which encouraged the various nationalities to administer their local republics while at the same time remaining loyal to the Soviet central government. Due to Soviet policies, Armenian nationalism was preserved and strengthened during the Soviet period, even though Moscow continued to take harsh action against overt nationalists.

Armenian intellectuals living in Baku, Tiflis, or Moscow were encouraged to emigrate to Armenia in order to enrich Armenian life. State support was given to historians, linguists, composers, painters, sculptors, novelists, and poets. The state supported a university, a conservatory of music, a national theater and opera, and a film studio. Religion and religious practices, however, were discouraged and the church was suppressed.

Stalinism

Once Joseph Stalin solidified his power and introduced rapid industrialization, the five-year plans, and collectivization of agriculture, political repression was applied against all those who resisted the new order. Furthermore, the great purges that began in the 1930s wiped out almost the entire cadre of top-ranking Armenian communists, as well as many intellectuals, who were either imprisoned, exiled, or executed. By 1939 the purges came to an end and Stalin had removed any real or possible opposition to his rule. He brought to an abrupt halt Lenin's policy of nativization and introduced a period of Soviet patriotism, which was thinly disguised Russian nationalism.

World War II and the Death of Stalin

Armenians fought gallantly during World War II and Armenian troops engaged in heavy fighting at the front, and produced sixty generals and four (out of ten) marshals of the Soviet Union. Toward the end of the war

Stalin allowed the Armenians to elect a new head of their church, the Catholicos, a post that had remained vacant since 1938 when the then Catholicos was apparently murdered by the KGB and Stalin denied permission to the Armenians to elect a new one.

Following the war Stalin ordered a "repatriation" campaign to bring Armenians from overseas to help rebuild their devastated country. Over 100,000 Armenians, chiefly from the Middle East and Greece, immigrated to Armenia. The local population, however, did not welcome the extra burden imposed on a country already beset by a shortage of food, housing, and decent working conditions. By 1948 the inability of the newcomers to adapt themselves to Soviet conditions made them suspect and many were exiled to Siberia. It was also around this time that Stalin raised the question of a return of the territories from Turkey that the Russian Empire held between 1878 and 1921, not with the intention of adding them to Armenia because there were no longer any Armenians living there, but to Georgia that already had a Muslim population in the area abutting Turkey.

Armenia and Georgia seemed to have been favored by Stalin economically, although he retained strong political control and viciously suppressed any signs of nationalism. Beginning in the 1950s Georgia and Armenia, because of their climates, topography, development, and facilities, became destinations for Soviet tourists, and Armenia attracted diasporan Armenians as well, advertising the "advantages of socialism." Otherwise, Armenia experienced the vissitudes of Soviet rule much as the other European republics did, contending with economic development and political repression. Armenian cultural and intellectual life, however, managed to grow exponentially.

The Free and Independent Armenian Republic

Armenia remained relatively prosperous for a Soviet republic until the period of Leonid Brezhnev's rule, when the economy was undermined by indifference and corruption at all levels. Furthermore, bad planning and unrestrained growth of industry led to degradation of the environment and an ecological disaster. A movement in the 1980s to save the ecology morphed into a political movement, the Armenian National Movement (ANM), which sought to unify Nagorno-Karabakh with Armenia. The ANM argued that the Azeris were engaging in cultural genocide by repression that undermined the Armenian nature of the province, which they likened to the Armenian Genocide of 1915, calling it a "white genocide," or slow death, as compared to a "red genocide," or outright massacres.

The Azeri leaders in Azerbaijan were incensed by Armenian demands. In February 1988 a massacre of Armenians occurred in Sumgait, a working-class suburb of Baku, and then, subsequently, in January 1990 another bloody pogrom took place in Baku. War broke out between Armenia and Azerbaijan. In 1991 the former Soviet Union imploded and Armenia, along with all the other Soviet republics, became independent. In the first free elections in Armenia since 1919, the ANM became predominant in the parliament and Levon Ter-Petrossian, its leader, was elected president. Since then presidential power has passed into the hands of Robert Kocharian, the former president of Nagorno-Karabakh, who had been appointed premier by Ter-Petrossian. The war with Azerbaijan ended with a truce, and as of mid-2004 the issue of the political future of Nagorno-Karabakh had yet to be settled. Although Armenia is once more growing economically, it is hindered by a blockade imposed by Azerbaijan in the east and the Republic of Turkey, in sympathy with Azerbaijan, in the west. Nevertheless, it remains the most stable of the three South Caucasus republics.

SEE ALSO Atatürk, Mustafa Kemal Pasha; Armenians in Ottoman Turkey and the Armenian Genocide; Enver, Ismail; Talaat

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Art, Banned

Art that is banned may be found in all types of regimes, ranging from democracies to those that are authoritarian and genocidal. On the one hand, there has been a consistent debate about the use of public funds for the arts, which always has had a low appeal with electorates. On the other, humankind's knowledge of many civilizations has developed through their artistic contributions, even if they are handed down through history in disfigured form. Ancient Egyptian rulers usually mutilated the images of their predecessors. Almost all religions have tried to ban one form of art or another because of the deity or belief depicted. In Christian art, especially the Byzantine variant, biblical images of Christ and the Holy Family had to follow axiomatic rules on the representation of icons. The work of artists and intellectuals that has criticized military policy or underscored political follies has often been banned and even destroyed in gallery settings. The critique of war and patriotism has always been considered bad form, and in the early twentieth century this viewpoint was best expressed in the German government of Kaiser Wilhelm II, which reacted to the extremism of the Dadaists and expressionist artists who painted the horrors of World War I's battlefields and sometimes created images of the ruling elite as soldiers with pig's heads.

From the modern perspective of authoritarian regimes, the former Soviet Union under Joseph Stalin was the first to ban large areas of artistic representation and numerous artists. By the end of the 1920s, after a long period of creative and experimental achievement by Russian artists, the Soviet Union declared that all art must follow socialist realism, meaning it be realist in form, socialist in content. Thus, art in the Soviet Union ceased to be free and became a means of propaganda to prop up the regime. Artists had to choose to conform, emigrate if possible, or opt for "inner exile," which meant avoiding controversial subjects altogether. Many artists died in Soviet prison camps, and it was not until the early 1960s, during a period of Soviet history known as "the thaw," that artists began to confront formerly taboo subjects. By the 1970s and through the end of the Soviet regime in 1991, a substantial unofficial art movement became rooted in many intellectual capitals of the Soviet Union. The critiques of these artists, which ranged from visual puns to pop art and religious themes, were symptomatic of the failing political regime.

Often, banned art is work deemed "morally deficient" by regimes. Other times, it is art targeted for the religious or political beliefs it conveys. Here, an ancient Buddha as obliterated by the Taliban, extreme Islamic fundamentalists who ruled Afghanistan up until the early twenty-first century. [REUTERS/CORBIS]

Nazi Germany was the only genocidal regime that made aesthetics and art an important component of regime ideology. This unique characteristic may be linked to the Nazi consolidation of power over a six-year period before mass murder and war began. The key word for Nazism was *degeneracy,* which came to include physical, genetic, and psychological deformations in human beings; abstract and expressionist art; modern forms of music like jazz; and various campaigns to purify the human body, as exemplified by campaigns against white bread, margarine, women wearing cosmetics, and smoking. Adolf Hitler, who had aspired to become an artist earlier in his career, always maintained a keen interest in the arts and future architecture of Germany. In 1933, under the jurisdiction of Joseph Goebbels, *Deutscher Kunstbericht* (The German

Art Report) published a five-point manifesto for purifying German art. The main points included: the removal of all "cosmopolitan" works that were Bolshevist or Marxist in nature, the removal of all museum directors who spent public funds on such works, the condemnation and prevention of construction of "boxlike" buildings (a specific attack on the Bauhaus School of Design), and the removal of all public sculptures not approved by the public. On November 26, 1936, Goebbels, by then Hitler's Minister of Propaganda, banned art criticism. This edict restricted the number of people allowed to write about art and gave the government a monopoly over artistic ideas. A fundamental aspect of this assault, subsequently used in Nazi propaganda, was the belief that Jews controlled the art market and reaped huge profits. Thus, the Weimar Republic was defined by Nazism as a period of Jewish takeover of the arts, with the Jews becoming the scapegoat of antimodernists.

In July 1937 six hundred works of art representing heroic Aryan themes were hung for the *Grosse Deutsche Kunstausstellung* (Great German Art Exhibition) that opened in Munich. Hitler himself used this occasion to spell out, in essence, his plan for extermination: "From now on we are going to wage a merciless war of destruction against the last remaining elements of cultural disintegration"(Barron, 1991, p. 17). The alternative to so-called degenerate art was a heroic form linking the body and politics to race. The same month in 1937 the first of many *Entartete Kunst* (degenerate) art shows opened. These shows, which may have drawn the largest crowds in museum history, juxtaposed degenerate art, as influenced by "Jews and Negroes," against the Aryan ideal, that expressed romanticized themes of German mythology, militarism, productive workers and docile women tending to families in painting and sculpture. Only a small number of the artists shown were, in fact, Jews. Most were German artists who had been part of the avant-garde movement: Ernst Nolde, himself a member of NSDAP—The Nazi Party; Max Beckmann; Willi Baumesiter; Otto Dix; Paul Klee; Max Pechstein; Ernst Barlach; Ernst Ludwig Kirchner; Oskar Kokoshka; Kathe Kollwitz; Max Lieberman; Mies Van der Rohe; and Ludwig Gies.

Nazi guidelines on the arts became part of the destruction and regulation of all cultural life in Germany. In a broader sense, a good deal of the Nazi attack on culture might be called a war against imagination and the vision of the other. This became the prelude to genocide on a larger scale. In Germany the misuse of art helped define the victim. The administration of the visual arts came to parallel treatment of the Jews. The military conquests of Nazi Germany during World War II were followed immediately by expropriation of artistic treasures from all over Europe on a scale that was unprecedented. A new German art failed to materialize, as the limited subject matter for artistic concerns—military heroism; a fit body; portraits of the Führer; and seductive, almost pornographic, images of women—became the style of the period. The two major German sculptors who have remained the subject of artistic investigation are Arno Breker and Josef Thorak because of their focus on the human body, considerations of classical form, and a type of slick modernism that crept into corporate commercials and advertising during the 1990s.

Communist regimes in Asia, beginning with Maoist China, also placed a ban on most art forms. Painting immediately after 1948 largely evolved into graphic design adaptable to huge posters that supported the regime's policies. Certain so-called bourgeois concepts, such as Western art, Western music, and the playing of the card game bridge, were prohibited. Once in power, Maoist ideology was instrumental in destroying many of the cultural legacies of the Chinese artistic past, especially when an intersection of the arts and religion occurred. This was especially true in Tibet, where countless Buddhist monasteries were destroyed. The destruction of Tibetan Buddhist art had strong impact on the decline of the religion there. The Taliban regime in Afghanistan went even further by destroying, with artillery fire, two of the largest statues of Buddha in the world in Bamiyan Province.

Denial of genocide by current regimes can also be the basis for a ban on art. Thus, as the Turkish Republic has a state-directed policy about acknowledging the genocide of Armenians under Ottoman rule in 1915, discourse about this subject takes place in Armenia and in the Armenian diaspora.

SEE ALSO Art, Stolen; Art as Propaganda; Art as Representation

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Stephen C. Feinstein

Art, Stolen

The theft of art, or cultural looting, has almost always been one of the staple by-products of genocide and genocidal regimes. From ancient times to modern conflicts (e.g., the war in the former Yugoslavia), the plunder of artworks and the willful destruction of a cultural heritage have been used by the victor as a supplementary means to conquer, annihilate, and humiliate the enemy. Not only do conquerors try to obliterate their enemies physically, but they also try to take possession of their victims' precious art objects, including those that express their identity thereby simultaneously stealing the soul, meaning, and cultural values of a people.

Such stealing and destruction have occurred in many modern instances of genocide, including the Armenian genocide, the Khmer Rouges in Cambodia, Native Americans in the United States and Latin America, the wars in former Yugoslavia, but Adolf Hitler and the Nazis carried out what can be considered the most important systematic, methodical, and ideologically organized art theft in history.

Hitler's genocidal policies led to the extermination of millions of people and the eradication of long-established cultures in large areas of Europe. In addition, the Nazi policy of destruction of the enemy included the theft of the private and religious art collections and libraries of Jews, Freemasons, political opponents, and Gypsies in the German-occupied countries of Europe during World War II. To reach their goals, the Nazis used modern methods taken from industrial society: preliminary spying and research, renowned art historians and experts, and highly trained assistants, photographers, and administrative personnel. To safeguard their acquisitions, they employed double-entry accounting and coded inventories, and used land and air transport to carry off their stolen goods.

The well-planned Nazi theft, executed mostly under the guise of "legal confiscations," was also an integral part of the entire genocidal process known as the Final Solution and the Holocaust. From 1939 to 1945, Hitler and the Nazis, using a well-knit network of informers and collaborationist art dealers in Germany and the occupied countries, collected hundreds of thousands of works of art and millions of books confiscated or forcibly purchased from museums, private collections, libraries, and religious institutions. At a conservative estimate, the thefts in Western Europe reached an astounding total of about 300,000 artworks and antiques, and more than two million books and manuscripts confiscated by Hitler's looting staff. In Eastern Europe and the former Soviet Union, the Nazi program of art theft was not as well-organized, but it was more destructive.

Art theft acquired its surprisingly central importance under Nazism, mainly due to Hitler's personal interest in art. A mediocre painter as a youth, Hitler had, as a student, twice tried and failed the entrance examination to the School of Fine Arts in Vienna. In time he became an avid, though unskilled, art collector. His personal artistic taste was rigid, and he favored the Old Masters of Northern Europe—Dürer, Cranach, Vermeer, Rembrandt and Rubens, among others—that strongly enhanced and fit into his own political views on the superiority of Germanic culture. He also coveted the words of the Italian Renaissance Masters, such as Michelangelo or Leonardo da Vinci.

On the other hand, Hitler despised Picasso, Matisse, and the whole modern art school. In *Mein Kampf,* his autobiography, he ferociously attacked the degeneracy of modern art, considering Cubism, Futurism, and Dadaism to be the product of decadent twentieth-century society. After taking power in 1933, Hitler sold or destroyed the modern paintings found in Germany's state museums. He did not allow looted modern or degenerate artworks into Germany; instead, these were returned to the European art market in exchange for pieces that met the approval of Nazi ideology.

Hitler intended his thousands of newly, ill-gotten Old Masters and realistic paintings to form the central collection of a European Art Museum to be built in the Austrian city of Linz, where he had spent his childhood years. Other Nazi dignitaries, including Reichsmarschall Hermann Goering and Foreign Affairs Minister von Ribbentrop, also took advantage of German conquests to increase their private art collections.

Among the wealthy occupied countries of Western Europe, France suffered the most from Nazi looting, not only because it was probably the richest in art, but also because French Jews were among the best and most important art dealers and collectors at the time. From 1940 to 1944, an astronomical 100,000 artworks—or one-third of all art in French private hands—were confiscated there.

Nazis understood art theft as a way to redress what they considered to be the wrongs of history against the German people. They perceived Jewish collectors as usurpers. The legal, moral, and political justifications for Nazi theft and looting are clearly explained in a statement of principles issued by the Berlin head of the Einsatzstab Reichsleiters Rosenberg (ERR), the organization in charge of the plunder of the cultural and artistic treasures of the Jews. This memorandum, published November 3, 1941, and written by Gerhard Utikal, the

In Germany, a U.S. soldier inspects stolen paintings inside what had been barracks for Luftwaffe officers. Priceless art was looted from all over Europe and transported to Germany at the directive of Hermann Göring (who adorned his own mansions with stolen art treasures). [HULTON ARCHIVE/GETTY IMAGES]

head of the ERR in Berlin, provides the reasons behind cultural looting in France:

> The war against the Greater German Reich was incited by world Jewry and Freemasonry, which have provoked various states and European peoples into waging war against Germany. . . . The armistice with the French state and people does not extend to Jews in France . . . who are to be considered "a state within the state" and permanent enemies of the German Reich. . . . German reprisals against Jews are based on people's rights. . . . Jews have since ancient times, and following the dictates of Jewish law set forth in the Talmud, applied the principle that all non-Jews be considered cattle and therefore without rights, and that non-Jewish property be considered abandoned and ownerless.

The looting of cultural property was one of the main indictments introduced against Nazi dignitaries at the Nuremberg War Crimes Tribunal. It is also one of the war crimes under investigation at the International Criminal Tribunal for the Former Yugoslavia, particularly with regard to Bosnia and the planned destruction of cultural and religious monuments of Muslim and Croats by Bosnian Serbs.

One of the primary ideological goals of genocidal regimes is to change the course of history; and the Nazis, in this sense, were no exception. By stealing—illegitimately transferring ownership—or destroying the art of their enemies, they tried to impose a homogeneous and restrictive cultural view of the world. Recent investigative work had brought to the fore of international public opinion the presence of thousands of Nazi-looted artworks in museums, auction houses, art galleries, and private collections in Europe, the United States, and Canada. Even though an important segment of the art world and art market has set numerous legal and administrative obstacles, in a few years' time, thousands of looted artworks have been returned to their rightful owners and heirs, stirring a world-wide ethical

Around 1910 the poster became a respectable advertising medium. By World War II warring governments used it to solicit recruits, to raise money, and to urge the conservation of resources. Here, the British-born artist Albert Sterner paints a war poster in his studio in the United States, c. 1917. [CORBIS]

and juridical debate on the subject of the selling, acquisition, and possession of art stolen by the Nazis.

SEE ALSO Art, Banned; Art as Propaganda; Restitution

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Hector Feliciano

Art as Propaganda

For genocide and crimes against humanity to occur, the dehumanization of the potential victims must first take place. Perpetrators of such crimes often use art as a tool to help them accomplish their goals. Indeed, without the intense propagandistic effort of the National Socialists to demonize Jews, Africans, Roma, the ill, and others they deemed "undesirable," the genocidal intentions of Hitler and the Nazi party may not have been realized. As historian David Welch suggests in his 1993 book, *The Third Reich: Politics and Propaganda,* Nazi propaganda was used to convince those who were not yet persuaded of the importance of the Hitler's racial policies, and to inspire those who already adhered to his views.

The Jews were one of the primary targets of Nazi smear campaigns. Hitler's propagandists employed newspaper caricatures, films, and posters in their attempt to dehumanize the Jews. Julius Streicher, the editor of the National Socialist *Der Stürmer,* printed a number of editorial cartoons that depicted Jews as either "children of the devil," or as rat-like vermin whose "claws" can stretch out and infect the entire globe. Film was also used to distill and disseminate the Nazis' racist values. For example, in the movie *Jud Süss,* the director Veit Hartlan distorted the story of an actual eighteenth

century Jewish court financier who had been hanged for "Christian treachery and hypocrisy" (Welch, 1983, p. 285). Veit transformed him into a stereotypical cosmopolitan Jew. He portrayed him as someone willing to disguise his Jewishness so that he might rape the Aryan maiden Dorothea and satiate his reputedly monstrous sexual appetites. Although the rape of Dorothea incensed many in the German audience who viewed the film, it was, as one newspaper critic remarked, the scene of the Jews bringing "all their belongings into Stuttgart . . . [that] repeatedly prompted . . . shouts of . . . 'Throw the last of the Jews out of Germany!'" (Welch, 1983, p. 291). If films such as *Jud Süss* or editorial cartoons did not fully achieve the goals of the National Socialist Party, the party's propaganda minister, Goebbels, was willing to employ other tactics as well. Widely circulated posters such as *Der Ewige Jude* (The Eternal Jew) asserted that the Orthodox Jew was crooked, was concerned only with money, and was aligned with the forces of Bolshevism.

Like the Jews, African-Germans, homosexuals, Roma and others were rendered as racially undesirable by Nazi propaganda. On August 5, 1929, Hitler concluded that "If Germany was to get a million children a year and was to remove 700,000–800,000 of the weakest people, then the final result might be an increase in strength" (Burleigh and Wippermann, 1992, p. 142). African workers who stayed in Germany in order to remain with their Caucasian wives and interracial children represented a potential "corruption" of the Aryan blood line. As a result, many of the so-called *mischling* or mixed race children were forcibly sterilized. Indeed, the Nazis were so fearful of African and African-American culture (particularly jazz) that in 1930 a law was passed that was titled "Against Negro Culture." In other words, the Nazis were clearly aware of the potential for popular cultural forms to taint what they considered to be genuine Aryan culture—whether this taint was a result of marriage or of music. As a consequence, the Germans often conflated stereotypes of African-American musical performers with those of Jews and Africans into some of their most heinous propaganda pieces.

Two of the most infamous and well-known Nazi propaganda artworks were posters which advertised cultural events. In a poster advertising an exhibition of *entartete musik* (degenerate music), for example, the viewer is confronted with a dark-skinned man in a top hat with a large gold earring in his ear. This distorted caricature of an African homosexual male in black face playing a saxophone has a Star of David clearly emblazoned on his lapel. To the National Socialists, the most polluting elements of modern culture were represented by this single individual. They were suggesting that anyone who listened to jazz (or enjoyed other forms of art that they judged to be degenerate) could be transformed into such a barbarous figure.

Toward the end of the war, the Nazis circulated posters in a somewhat desperate attempt to get their "white European brothers" to join their cause. In one infamous poster, the designer depicted a multi-armed monster clutching two white American women. Attached to his muscle-bound body are iconic references to the Ku Klux Klan, Judaism (the Star of David), boxing gloves, jazz dancing, and a lynching noose. At his middle is a sign that reads in English "Jitterbug—the Triumph of Civilization." This poster was directed at white European men, and it urged them to protect their wives and their culture against a coming invasion of primitive, inferior American men. As occurred in the poster that warned against jazz, this image conflated stereotypes of the Jew with that of the African in an attempt to frighten white (Aryan) Europe and America into joining their cause. The exaggerated racist stereotypes served to strengthen and amplify widely accepted attitudes regarding racial and ethnic superiority. With these images, the National Socialists were offering their justifications as to why certain groups should be feared and thus eliminated.

SEE ALSO Advertising; Architecture; Art, Banned; Art, Stolen; Film as Propaganda; Propaganda

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Art as Representation

The artistic legacy of genocide emanates from many quarters: outsiders and insiders warning about genocide or massacres in posters and paintings; images by survivors that include art created by children in the aftermath of genocide; imaginative, surrealistic, and what may be called postmodern art executed under the worst

Picasso's *Guernica,* depicting the horrors of war. A tapestry copy of *Guernica* is displayed at the entrance of the UN Security Council chamber in New York City. On January 27, 2003, a curtain was placed over the tapestry, so that it would not be visible when Colin Powell, John Negroponte, and others gave press conferences there. It was reported that television news crews had requested the curtain; however, some UN diplomats told journalists the United States had demanded that UN officials cover the tapestry. **[AP/WIDE WORLD PHOTOS]**

circumstances in order to convey a specific message about genocide via art. Artists, often seen as social outsiders, articulate various reasons for presenting genocidal subjects in art: witnessing; helping to commemorate or create an alternative form of memory to inform another generation of the event and its danger; use of fragmented, deconstructed visual forms instead of historical narratives as a means of telling the story; and warnings about lessons from the past that may bear on the future.

The styles of such critical artistic representation vary according to the chronological time of the genocidal event related to mainstream art movements. They have been expressionistic (George Grosz, Hannah Hoch, and Otto Dix's visual commentaries on the Jewish question from the early 1920s), photomontages (John Heartfield), surrealist (Max Ernst and Salvador Dali), realistic and satirical drawings (art from the concentration camps and ghettos, such as the work of Jozef Szajna and Eli Leskley, and Karl Stojko's images of the destruction of the Romani), and a vast array of media and forms of depiction in the aftermath of genocide, including sculpture, memorials, installation art, and large projects that often attempt a visual narrative. Key questions for such socially and politically directed art (and questions with illusive answers) are how specific it should be to the event, versus generalized human suffering, and what the balance between aesthetics and politics should be. The iconographic works that have best stood the test of time are Francisco Goya's *Diasters of War* (early nineteenth century) and Pablo Picasso's *Guernica* (1937).

Depictions of the Armenian genocide contemporaneous with the event appeared largely in political posters and editorial cartoons in newspapers. The Holocaust took place over a longer time span and was connected to the chronic political and economic difficulties of the Weimar Republic. This event, therefore, as well as the fact that Jews are part of a larger religious story and have played an important role in modern art, produced a wider array of artistic responses than any other genocide. Second only in duration were the genocidal events in Bosnia during the 1990s, which led to the production of art ranging from simple painting by children that conveyed the horrific effects of events beyond their control, to sophisticated postmodern installations in galleries. Art about the Rwandan genocide appeared only after the event, particularly in the form of children's art completed with the help of psychologists attempting to treat post-traumatic stress disorders.

Issues in Artistic Representation of Genocide

Artists were keenly aware of the power of photography and film in the depiction of twentieth-century genocides. Many early-twenty-first-century photographic projects now focus on the often barren landscape of genocide. The most important question asked about photographs invariably is, "Who took the photo-

graphs?" Often the images were made by perpetrators or liberators, rarely by the victims themselves, and are thus documents. In the aftermath of such crimes photography also plays an important role as photojournalists often dwell on the images of remains and chaos. These scenes, in the hands of artists, often become the basis for other art such as collage, a form that includes well-known photographic images as part of larger canvases.

Artists who focus on genocidal events are concerned about the effect of their work. If the art is so visceral, many feel, it may alienate viewers. Controversies have also occurred over the inflammatory nature of their art, which has sometimes led to censorship. If the art and representation of genocide contain repetitive scenes of dead bodies, a characteristic of documentary-style photographs of genocide, the result might well repel viewers from the subject rather than maintain interest. Such work has the potential to be viewed as low-brow or simply sensationalist. Furthermore, piles of human remains do not convey a sense of genocide, especially its source, except for being the most vivid representation of its aftermath. As genocides have occurred in different places, their artistic representations often contain images that convey a sense of geography, landscape, technology, and culture.

Themes of Absence

Still another subject found primarily in postmodern representations of genocide is the theme of absence, usually related to the aftermath of genocide. Loss can be conveyed by using old photographs of people and historic landmarks, and creating a visual sense of overall disturbance. Abstract artists Barnett Newman and Mark Rothko created a variation on absence in the late 1940s. Newman destroyed all of his art executed before 1945, insisting that a new form of visual representation was needed. The result was his *zip paintings,* large canvases with fields of color, or black and white, and vertical lines. The allusion of these works was the impossibility of adequately representing the Holocaust, as well as Newman's own retreat into the study of the kabbalah and the story of Creation from the Bible.

The British photographer Simon Norfolk produced an exhibition of the photos he had taken at many sites of genocide, from Namibia to Cambodia; that show wastitled, *For Most of It, I have No Words*. Norfolk's ideological approach is related to the power of art to produce memory about atrocity, in both a kind and unkind way. He has written: "Forgetting is the final instrument of genocide" (Norfolk, 1998b). Installation artists also often deal with the theme of absence: French artist Christian Boltanski never depicts dead bodies or massacres, but does confront the viewer with mixed-media images of people who may be dead or alive, walls and metaphorical lakes filled with clothing, and haunting environments that suggest some sinister event. Chilean artist Alfredo Jaar produced a multiroom installation about Rwanda titled, *Let There Be Light* (1994–1998). A significant part of this exhibit stresses the impossibility of representing genocide and absence, all the while provoking viewers by sometimes perplexing devices. Jaar created eight different exhibits called *Real Pictures,* photos shown in an unexpected way: Groups of rectangular black boxes were arranged in patterns on the floor to form a series of monuments. No actual images were plainly visible, however. The photos were inside the black boxes, while the box lid, which could not be opened, recorded with white lettering a description of the images inside. But the viewer was not allowed to see the photos, as seeing, in the artist's vision, did not necessarily mean understanding.

In Bosnia such postmodernism was employed by some of the potential victims. *Witnesses to Existence* was a 1993 exhibition in Sarajevo conceived by Mirsad Purivatra, who invited a group of Sarajevo artists to install one-day solo shows in his ruined gallery. The exhibition was the official entry from the Republic of Bosnia and Herzegovina for the 45th Venice Biennale. As it turned out, however, the gallery was unable to ship the artists' works to Italy because of the Serbian blockade. Only a videotape of the exhibition found its way to Venice.

Art and Theodicy

Art also often relates to theological issues and a search for the spiritual. This is a difficult subject; one associated more closely with the Holocaust as a genocidal event because of its underlying race-religion question and Christianity's Jewish background. Spiritual themes and images are found in many artistic works about the Holocaust and occasionally in other genocide-related art. The idea of creating art from such extremely negative circumstances, thus affirming the value of human life and the existence of a Creator, is at best questionable, and suggests some of the difficult theological questions posed by the Holocaust: the presence and/or absence of God, the death of God, the use of mysticism as a way of understanding the immensity of the event and its purpose—for good to be understood, evil must perhaps exist. Paintings by Marc Chagall, Anselm Kiefer, Arie Galles, Alice Lok Cahana, Samuel Bak, Lea Grundig, Fritz Hirschberger, Mauricio Lasansky, Rico LeBrun, and others attempt to address some of these difficult questions. Armenian-American artist Robert Barsamiam has used images of the crucifixion in his room installations as a symbol of the fate of the Arme-

nian people, but such a device does not invite theological questioning on the scale that a work about the Holocaust does. Artistic responses to the Bosnian war have not tried to deal with Christian or Muslim theological questions. Simon Norfolk's photographs of Rwanda after the genocide there have the power to raise questions about the failure of the Catholic Church in preventing genocide, or even witnessing the active participating in mass murder by a few priests and nuns.

One of the most successful painters of the Holocaust is a survivor from Vilna, Lithuania, Samuel Bak; he paints with a classical palette but after much experimentation with different forms of representation, Bak's painting settled into a kind of surrealism that revealed the artist's close ties with Renaissance paintings, the Jewish traditions as well as his feelings of estrangement from them. Bak does not describe this process as a long intellectual journey, rather a "responding to something that was pushing out from the inside, something visceral, something that takes a long time for the mind to comprehend." The result was a large body of paintings that focused on the themes of absence, the post-Holocaust landscape of Jewish existence, and the peoples of the technologically advanced modern age who are barely able to function, and made metaphorical use of specific objects such as chess pieces or pears for a discourse about the post-Holocaust world. Bak has described his vision as follows: "These representational paintings of mine depicted devastated landscapes of ancient cities, urban constructions that seemed to be made of a child's building blocks. In painted figures that were half-alive, and half-contrived of bizarre prostheses. I imagined helpless and abused angels. . . . My painting carried no answers, only questions."

Cambodia: Archive or Art?

A postgenocide art has materialized within Cambodia and in émigré Cambodian communities around the world that adds to an understanding of events there. One particularly important set of photographic images is *Facing Death: Portraits from the Killing Fields,* assembled by the Photo Archive Group at Boston University. The exhibition consists of photographs taken in S-21, a secret Cambodian prison operated by the Pol Pot regime in the capital city of Phnom Penh from mid-1975 through the end of 1978. As the text of the exhibition reads, "Individuals accused of treason, along with their families, were brought to S-21 where they were photographed upon arrival. They were tortured until they confessed to whatever crime their captors charged them with, and then executed" (University of Minnesota Center for Genocide and Holocaust Studies). Of the 14,200 people taken as prisoners, only 7 are known to have survived. After the Vietnamese army captured the prison site in 1979, it was transformed into the Tuol Sleng Museum of Genocide. The photographic archive was catalogued and its contents published in 1994. One hundred negatives were selected for final printing, many of which are reproduced in the 1996 book *The Killing Fields.* Many of the photos, although documentary, have an artistic dimension. Some of the victims show fear, while others appear to laugh, as if they do not comprehend the horrible fate that awaits them. Viewers are left to ponder, at least for a second, if they would resist a similar fate or attempt to bargain for their lives.

Bunheang Ung, a prolific Cambodian artist and survivor of genocide, has created an important artistic chronicle of the Cambodian genocide. Ung was forced to flee Phnom Penh with his family in 1975. At the time he was twenty-three years old and a university student studying art. Assigned to work units in the rural economy, he witnessed the mass murder of thirty relatives. His black and white drawings, done in the late 1970s, possess a fascinating amount of detail. The energy of the artist's hand in drawing the images suggests his own agitation and need to fill every space on the drawn surface, as if there was too much to relate. His *Communal Dining* depicts resettlement camps where Cambodian life was realigned along collective lines. The drawings of torture, oppression, and murder share similarities with the images of the German painters Otto Dix and George Grosz, who recreated the horrors of World War I in their work. However, certain uniquely Cambodian symbols distinguish all art produced about this event, such as Ung's *Demolition of the Phum Andong Pagoda.*

Art about genocide is not in the public view as much as film, literature, and drama on the same subject. Since art needs appropriate gallery or museum space for display, it has certain constraints not encountered by other forms of representation. Therefore, the most frequent exhibitions that have included art about genocide have occurred in large European shows or historical commemorations, in galleries at colleges and universities, and only occasionally at large museums.

SEE ALSO Art as Propaganda

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Assassinations

Assassination is commonly defined as "political murder." While it is not necessary that the victim of an assassination be a political leader, assassinations are generally killings that target specific individuals for a political purpose, and are often accomplished by means of surprise or treachery. When ordered by a state against leaders of a foreign state, assassinations generally violate international law.

The word *assassination* first appeared in English in the play *Macbeth* by William Shakespeare. However, the root of the word, *assassin,* is much older. It originally comes from the Arabic word *hashshashin,* which means "eaters of hashish." This Arabic meaning derives from a certain Islamic sect whose members were known for murdering their political opponents after ingesting the drug hashish.

International law distinguishes between state-sponsored assassination and assassination that is not state-sponsored. When an assassination is committed by a group that is not affiliated with a government or by an individual acting alone, it is not state-sponsored. There have been many well-known assassinations of this type throughout history. For example, the Roman general and statesman Julius Caesar was assassinated by a group of conspirators in the Roman Senate in 44 BCE. The American Presidents Abraham Lincoln and John F. Kennedy were also assassinated by individuals who were not acting on behalf of any state, as was the civil rights leader Martin Luther King, whose killer was an escaped convict. Another example of this type of assassination is the murder of Egyptian president Anwar al-Sadat, who was assassinated by Islamic extremists in his own army, while he was reviewing a military parade in 1981.

Assassinations that are not sponsored by states are usually treated as murders in the countries where they occur. Because no state is responsible, they usually do not violate international law. Except in the case of international criminal law, only states can be held responsible for violating international law.

State-Sponsored Assassination

Under most circumstances, international law prohibits state-sponsored assassination. The United Nations Charter prohibits the aggressive use of force by one state against another. The Charter also prohibits interfering in the territory or affairs of another state. Chapter I of the Charter requires that all states must "settle their international disputes by peaceful means" and must "refrain in their international relations from the threat or use of force". When a state sponsors the assassination of the leader of another state, it violates this basic rule of international law.

However, there are two important exceptions to this rule. First, state-sponsored "targeted killings" may sometimes be legal during times of war. Under the law of war, two states that are at war with each other may kill soldiers in the opposing army. The killing of enemy soldiers is not considered illegal assassination because during a war soldiers are said to have a legal "privilege" to kill their enemies. This privilege extends to military leaders, who are often considered fair game as "command-and-control" targets. In some cases, government officials may be fair targets if they are part of the military chain of command.

However, even during times of war a "targeted killing" can only be legal if it does not violate the law of war. A state that uses "treachery" to kill an enemy may be guilty of war crimes. Article 23 of the Hague Convention IV of 1907 provides that "it is especially forbidden . . . to kill or wound treacherously, individuals belonging to the hostile nation or army." *Treachery* is usually defined as a breach of confidence, such as an attack on an individual who believes that there is no need to fear the attacker. Examples of treachery include attacking while pretending to seek a truce or surrender, attacking while pretending to be injured or sick, or attacking while pretending to be a non-combatant civilian. However, the mere act of surprising an enemy or failing to meet the enemy face-to-face is not enough to constitute treachery. Treacherous assassinations are illegal under the law of war.

The second exception to the general prohibition against state-sponsored assassination is the exception

for self-defense. Article 51 of the United Nations Charter grants states an "inherent right" to self-defense if an armed attack against them occurs. If assassination is used as self-defense it may be legal under international law. The self-defense exception does not require that the state be at war, but the assassination must meet the definition of a legitimate act of self-defense.

There are three main requirements for a legitimate act of self-defense. First, self-defense may only be used when the threat of aggression is imminent. This means that defensive force may only be used to defend against an act of aggression that is occurring or is about to occur. Second, force must be necessary in order to defend against the aggression. If there is any other way to defend against the threat, such as a diplomatic solution, it must be used first. Third, the defensive response must be proportionate to the threatened aggression. A state may not use more force than necessary to defend against the threat. Any extra force would be considered an illegal reprisal, and not a legal act of self-defense. Under these criteria, an assassination must be designed to defend against an immediate threat of aggression to be considered a legitimate form of self-defense. The assassination must be the only way to defend against the aggression. Furthermore, the assassination may not be used for reprisals against an attack that has already occurred.

Scholars have debated whether the right to self-defense permits the use of assassination to prevent or deter future attacks. This is generally called "anticipatory self-defense." The more restrictive view is that assassination can only be legal when used to defend against a specific attack that is occurring or is about to occur. Others argue that terrorism and weapons of mass destruction have created a new environment, in which states must be allowed to defend themselves by any means necessary, even before an attack has begun. Israel has frequently used assassination as a kind of anticipatory self-defense. In 1988 its agents killed Abu Jihad, the head of military strategy for the Palestinian Liberation Organization. In 1992 an Israeli helicopter gunship killed Sheik Abbas Musawi, the leader of the Islamic Resistance Movement. In 2004 an Israeli missile killed the spiritual leader of Hamas, Sheikh Ahmed Yassin. Israel has argued that these killings are necessary to prevent future terrorist attacks, but many international observers view them as reprisals for past acts and, therefore, as illegitimate forms of self-defense.

[DEATH OF YASSIN]

Returning from his morning prayers at a mosque in Gaza City on March 22, 2004, Sheikh Ahmed Yassin, the sixty-seven-year-old founder and "spiritual leader" of Hamas, was killed when a missile was fired by an Israeli helicopter.

Hamas is a loosely structured organization formed in 1987 that has used violent and political means to pursue the goal of replacing Israel with an Islamic Palestinian state. The organization had claimed responsibility for a wave of suicide bombings against Israeli civilians and was considered a terrorist organization by the United States.

The killing was viewed as an assassination that violated international law by much of the international community. Algeria introduced a United Nations Security Council resolution that would have condemned the killing as an "extrajudicial execution." However, the United States vetoed the resolution after Algeria refused to include language condemning previous acts of violence by Hamas.

U.S. Law on State-Sponsored Assassination

The U.S. position on assassination has changed over time. As of the early twenty-first century, U.S. law prohibited the use of assassination. However, although assassination has been prohibited by the U.S. army as a technique of warfare since the Civil War, there have been periods where assassination has been used as an instrument of foreign policy. For example, during the cold war the CIA attempted to assassinate a number of foreign leaders who were thought to be sympathetic to communism. These assassination plots were made public in 1975. A congressional committee lead by Senator Frank Church found that successive U.S. presidents had authorized plans to assassinate five foreign leaders during the 1960s and early 1970s. The targeted leaders included Chilean President Salvador Allende and Cuban dictator Fidel Castro, against whom eight unsuccessful assassination plots were authorized.

The Church Committee made clear its disapproval of these tactics and concluded that: "short of war, assassination is incompatible with American principles, international order, and morality. It should be rejected as a tool of foreign policy." The Committee recommended that Congress pass a law to make assassination illegal. Congress, however, has never passed such a law. Instead, U.S. policy on assassination has been governed by a series of Executive Orders, beginning in 1976. These orders have prohibited employees of the United States from engaging in assassination during peacetime, but have not defined the exact meaning of assassina-

tion. The absence of a precise definition has given U.S. Presidents leeway to order missions that some observers have viewed as assassination attempts.

For example, in the 1980s and 1990s, the U.S. launched several military attacks that were most likely designed to kill specific individuals. In 1986, the Reagan administration launched air strikes against Libya and targeted the army barracks where Libyan leader Muammar Qaddafi was known to be sleeping. In 1998, in retaliation for the al-Qaeda attacks on U.S. embassies in East Africa, the Clinton administration launched cruise missiles against a training camp in Afghanistan with the hope of killing Osama bin Laden.

International Criminal Responsibility

Assassination is generally considered a violation of the international law against treachery in war or aggression in times of peace. In addition, it is possible, although less likely, that individuals or groups of individuals accused of assassination could be held accountable for committing genocide or crimes against humanity.

An assassination could rise to the level of a crime against humanity only if it was part of a systematic or widespread pattern of attacks against a civilian population. There would have to be a pattern of "extra-judicial killing" of civilians, of which the assassination formed one part. In general, assassinations do not fit this definition because they often occur as single isolated events and involve treachery, often against quasi-military targets, rather than systematic or widespread attacks against civilians.

An assassination could constitute genocide only if the killing was committed with the intention of destroying a national, ethnic, racial, or religious group in part or as a whole. Because assassinations generally target specific individuals for political purposes, they would not often meet this requirement. However, if an assassination that targeted a particular individual was a part of a broader plan to destroy the individual's entire group, it could be viewed as part of a genocide. This might have been the case during the early stages of the Rwandan genocide, when groups of Hutu used written lists to search out and murder specific Tutsi political leaders.

SEE ALSO Crimes Against Humanity; War Crimes

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Brian K. Morgan

Atatürk, Mustafa Kemal Pasha

[1891–NOVEMBER 10, 1938]
Founder and first president of the Turkish Republic

There is no evidence that Atatürk was in any way involved in the enactment of the World War I Armenian Genocide, either directly or indirectly. However, there is ample evidence that, as the forceful founder of the modern Republic of Turkey, he played a decisive role in the handling of many problems arising from that genocide. Foremost among these problems was the demand of the victorious allies—France, Italy and Great Britain—to bring all Turks who were responsible for the genocide to trial, and to severely punish all who were found guilty. This was in line with the official and public pledge the Allies had made on May 24, 1915, when they denounced members of Turkey's leadership for crimes against humanity. The call for justice was the first time that the violation of human rights was integrally linked to the crime of genocide.

Of greater concern for Atatürk, however, was the Allied powers' plan to partition the territories of the

former Ottoman Empire. As part of a package of compensation for the victims of the Armenian genocide, the Allies envisaged the creation of a new Armenia that would encompass several former Ottoman provinces in eastern Turkey. Prior to the genocide, these provinces had constituted part of historic Armenia. The Allied powers warned that, unless Turkey acquiesced to prosecuting the genocide's perpetrators and providing compensation to the victims, the terms of their impending peace treaty with Turkey would be even more severe. Trapped by a regime of occupation, the captive Sultan and a succession of subservient postwar Turkish governments agreed to cooperate. The result was the establishment of an extraordinary military tribunal with the mandate to prosecute the authors of the genocide and to make certain territorial concessions to the newly established Armenian Republic.

To mitigate, if not avert, what he regarded as ominous developments for Turkey, Atatürk embarked on a two-pronged campaign. First, he challenged the authority of the reigning Sultan and questioned the legitimacy of his tottering regime. Second, he launched a militant movement to liberate Turkey from the debilitating clutches of the occupying Allied powers, while repudiating their territorial designs for the benefit of the nascent Armenia. In an effort to facilitate the attainment of these strategic goals, Atatürk employed a series of tactics intended to assuage the Allies. On November 9, 1918, he published a major editorial in *Minber*, a Turkish daily newspaper that he had helped to found and finance. In his editorial he denounced the wartime regime of the Young Turks (Committee of Union and Progress, or CUP) for having attempted genocide against Turkey's Armenian population. When a more self-assertive government came to power in Istanbul in autumn of 1919, Atatürk co-signed the Amasya Protocol. Article I of the protocol declared both the CUP's policies and its ideology as anathema. Article 4 of the same document provided for "the criminal prosecution of the perpetrators of the Armenian deportations as a matter of justice and politics." In a companion but confidential protocol, Atatürk further promised to prosecute those CUP leaders who were principally implicated in the crime of Armenian deportations and massacres and who were being detained by the British in Malta, as soon as they were released from British custody. He also acknowledged to U.S. Major-General James Harbord the mass murder of 800,000 Armenians. In interviews with foreign correspondents he denounced the CUP perpetrators as "rascals who ought to be hanged" for "ruthlessly deporting and massacring" the Armenians.

As his national liberation movement began to gain momentum, however, Atatürk abandoned these tactics in order to accommodate a domestic audience that was animated with a new brand of nationalism. He not only tried to cover up the catastrophe of the genocide but, when occasionally forced to take a position, he proceeded to blame the Armenians for their own fate. Moreover, he welcomed many of the former Malta detainees into the ranks of his liberation movement, some of whom had been released by the British under prisoner exchange programs, others of whom had simply escaped custody. By openly embracing known perpetrators of the genocide, Atatürk was in violation of the Amasya Protocol that mandated their criminal prosecution and punishment.

These newly repatriated militants knew they had a high stake in Atatürk's ultimate success. Were his movement to fail, they would likely not only face criminal prosecution but also enormous losses of the property and financial assets that they had acquired from the murdered victims of the genocide. Atatürk also recruited a number of other perpetrators who had gone into hiding to avoid prosecution by the Istanbul government. All of these fugitives of justice substantially contributed to the ultimate triumph of Kemalism and its standard-bearer, Atatürk. They included several army commanders, cabinet ministers, presidents of the republic's Grand National Assembly, governors-general, deputies, and heads of the Special Organization, the main instrument of the Armenian genocide.

By an ironic twist, however, in 1926 a dozen of these organizers of the Armenian genocide were hanged following a series of trials in Izmir and Ankara. Their prosecution was based on charges of conspiracy to assassinate Atatürk and restore the CUP to power in the new Republic of Turkey.

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Vahakn N. Dadrian

Athens and Melos

In the summer of 416 BCE an Athenian naval force attacked the small island of Melos, with the intention of coercing it into their alliance. The Melian government refused to cooperate, and the city came under siege. It held out until the winter, when starvation and internal dissidence forced the defenders to unconditional surrender. Then, according to the contemporary historian Thucydides, the Athenians "killed all of the adult Melian men whom they had captured and enslaved the children and women. They settled the place themselves, subsequently sending out five hundred colonists" (Strassler, 1996, p. 357).

One can to some degree delve beneath this bald statement. In the first place Melos was a small community, even by Greek standards. The surface area of the island is a mere fifty-nine square miles. Its total population in antiquity could not have been much more than three thousand, and its military forces were insignificant. Against an expeditionary force of three thousand fighting men, more than its entire male population, Melos had no chance of survival, unless there was outside intervention. That was the nub. The Melians claimed to be related to the Spartans and, unlike the vast majority of Aegean islands, had held aloof from the Athenian alliance. For Thucydides that was the sole motivation for the Athenian aggression. Some modern commentators have argued that the attack was provoked by the Melians, in that the state had contributed money to the Spartan war fund some ten years previously, but the dating of the document in question is very uncertain and it probably dates to a much later period. The Athenians did claim suzerainty, and in 425 they demanded tribute from Melos (along with many other states that they did not, in fact, control). But Melos was not annexed or forced into alliance. A perfunctory operation occurred in 426, when the Athenians ravaged Melian land and quickly withdrew to another theater. At that time they were at war with Sparta and might reasonably have been uncomfortable with Melian neutrality. The invasion of 416, by contrast, took place within the context of a general peace, when Melian sympathies for Sparta were in no sense a threat to Athens, and there is every reason to believe that the motive for the attack was imperial expansion.

Thucydides considered that the Melians had no hope of survival and set on record the famous Melian Dialogue, in which the Athenians and the Melian government exchange views, and the Athenians attempt to coerce their interlocutors to surrender immediately. This is a very elaborate and difficult passage, and it is clearly not a verbatim report of proceedings. However, one cannot dispute that the Athenian generals made representations to the Melian government, and that Thucydides gives the substance of what he believes was said. At the very least, his writings reflect contemporary thinking. In the dialogue the Athenians justify their actions in the most brutal terms. The Melians' very weakness forces them to attack. Their own credibility would suffer if they allowed the Melians to remain neutral. They have no hope of assistance, for the Spartans would not jeopardize the peace they had signed with Athens only five years previously. The only sensible course was to surrender and avoid destruction. If the dialogue does represent the arguments that were actually voiced, then the Melians were threatened with extermination before the siege began, but chose to resist and placed their hopes in the Spartans and divine providence.

There can be no doubt that the Athenians were by any standards violating the norms of civilized behavior, as Thucydides makes them admit in the dialogue: They are not going to make specious claims of justice, for matters of justice are decided when the compulsion on both side is equal. Otherwise, the strong do what they can and the weak concede. Following this logic, the extermination of Melos was a guarantee against resistance elsewhere, and it was appropriate retribution for its government's obstinacy. Other mass killings had more justification. Scione, a city in the north of Greece, suffered the same fate as Melos, but it was already an ally of Athens and had revolted. Scione was explicitly excluded from the peace of 421, in which the Athenians were given a free hand to dispose of it. Similarly, the city of Mytilene in Lesbos had revolted against Athens and, like Melos, surrendered unconditionally after internal dissent. In this case the Athenian assembly voted to kill all males of military age, but retracted the decree the following day. Even so, over one thousand Mytileans were executed as instigators of the revolt. In contrast, the Melians were not in any sense in rebellion. They were attacked in peacetime and their crime was simply resistance, their punishment exemplary. The Athenians at first appear to have been indifferent. Shortly afterward the comic poet Aristophanes in the *Birds* made a callous joking reference to "Melian starvation." The Athenians may have treated it as a joke, but they recognized the enormity of their action. In 405, when it was apparent that they would be forced to capitulate, they felt they would suffer what they had inflicted on others; the treatment of the Melians is first on the list of atrocities that are mentioned. It was a re-

peated accusation against Athens throughout the next century, and the orator Isocrates can only echo Thucydides' dialogue and offer the lame excuse that other states would do the same and worse.

The killing did not result in extermination. It is clear that many Melians survived and lived elsewhere as exiles. One actually served as a commander in the Spartan navy that won the decisive victory over the Athenians, and there were enough Melians left to form a viable community on Melos after the Athenian colonists were expelled in 404. Thereafter Melos continued its history as a small independent state, and there is an epigraphic record that exists of the settlement of a land dispute that it had with its even smaller neighbor Cimolus. This leads one to question how systematic the killing had been. Thucydides himself notes that only those whom the Athenians had captured were put to death. Others presumably escaped during the course of the siege, which did witness a few localized Melian victories. Events at Mytilene may provide a parallel. There, once the city had surrendered unconditionally, its fate was decided by the Athenian assembly, as was that of the Melians, and an interval of a week or fortnight must have elapsed before the decree was received by the fighting force. During that time there would have been ample opportunity for Melian prisoners to escape. The commanders on the scene may well have felt some political sympathy for the democratic faction there, given that the city had been driven to resistance by what Thucydides regards as its pig-headed oligarchic government, and some Melians at least had made overtures to the Athenians before their surrender. Whether (as has been argued) they felt any affinity with imperial Athens is dubious, but they were not dogmatically set on resistance at any price. A number of them may have been allowed to disappear before the order for execution was given. That being said, Athens' actions fall squarely within the terms of Article 2 of the Genocide Convention, in that they were intended to destroy a national group (as the Melian city-state could be defined) "in whole or in part," and they were largely successful in achieving that end.

By any standards the treatment of the Melians was a crime against humanity. The crux is not the enslavement of women and children. However repugnant to modern sentiment that may be, it was acknowledged contemporary practice. According to Xenophon in *Cyropaedia* (7.5.73), "it is a universal and eternal law that in a city taken during a war everything, including persons and property, belongs to the victor." In his *Politics*, Aristotle was to agree, claiming that the "law" was in fact a convention, a general agreement. The Athenians themselves were threatened with collective enslavement when they surrendered in 404, but were saved by their reputation (and no doubt the logistics of justifying such vast numbers). There can have been little quarrel with the enslavement of captives after capitulation. However, the killing of combatants who had thrown themselves on the victor's mercy was a different matter. It amounted to violation of the rights of the suppliant. For Thucydides, admittedly in a tendentious passage (3.58.2), "it is law for the Greeks not to kill such people," (Thucydides 3.58.3) and it seems to have been a general principle as well as logical practice to spare the lives of opponents who surrendered unconditionally. Otherwise, there was nothing to gain by surrender. The killing of the Melians was compounded by the circumstances of the attack, which was an unashamed exercise in imperialism, and it is rightly seen as the most flagrant and unjustified act of repression carried out by the Athenians during the Peloponnesian War.

SEE ALSO Armenians in Ottoman Turkey and the Armenian Genocide; Enver, Ismail; Talaat

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A. B. Bosworth

Attempt

An *attempt to commit a crime* is an unsuccessful effort to engage in conduct that is proscribed by criminal law. Attempts to commit both genocide and crimes against humanity are criminal under international criminal law. The criminality of attempts to commit genocide was made clear in 1948, in Article III(d) of the United

Nations Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). With respect to war crimes, crimes against humanity, and genocide, the criminality of attempt can be gleaned from Article 25(3)(f) of the Rome Statute of the International Criminal Court. It states that liability exists for "[a]ttempts to commit [one of these crimes] by taking action that commences its execution by means of a substantial step, but [wherein] the crime does not occur because of circumstances independent of the person's intentions." It goes on: "However a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment . . . for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose."

The justifications for criminalizing attempt are multiple. First, by attempting to bring about a crime, which does not occur only, In the words of Article 25, "because of circumstances independent of the person's intentions" the person is, in a moral sense, virtually identical to a person who succeeds in completing a crime. Both have tried to arrive at a result prohibited by law, but one is "lucky" enough to bring the crime to fruition. Second, the person attempting a crime has brought into being the risk of harm to others, which is itself wrongful. Finally, by criminalizing attempt, international criminal law allows those enforcing it to act at an earlier stage, not having to wait for a crime to occur. This should allow for more effective crime prevention.

An attempt to commit genocide is an attempt to engage in conduct prohibited by Article II of the Genocide Convention (e.g., an attempt to commit murder or serious bodily harm, with genocidal intent). It should not be confused with successful completion of conduct prohibited in Article II which, however, does not lead to the destruction, in whole or in part, of the protected group. That is an offence of genocide. A completed offence of genocide does not require that in fact the group is destroyed in whole or in part, merely that the perpetrator completed the conduct with genocidal intent.

The definition of attempt in the Rome Statute is not easy to apply to particular cases. The International Criminal Court will have to determine exactly when a person has "commence[d] . . . execution [of an international crime] by means of a substantial step." This formulation of the test for attempt is not clear. Attempt must be intentional; however, there is no liability for reckless or negligent attempt. A person may avoid liability if he or she abandons the attempt and "completely and voluntarily gives up the criminal purpose" he or she harbored. This is intended to provide an incentive to people to abandon attempts to commit crimes before the crimes are complete, but it is unlikely that in practice people are encouraged to return to lawfulness by such provisions.

SEE ALSO Convention on the Prevention and Punishment of Genocide; War Crimes

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Robert Cryer

Auschwitz

Over the last few decades the term *Auschwitz* has become in common parlance a synecdoche for the Holocaust in general. Such a meaning has often overshadowed the alternate historical significance of the name. The town of Auschwitz, located on the border between Germany and Poland, was established by Germans in the thirteenth century and became a Polish fief known as Oswiecim in the fifteenth century. The Duchy of Auschwitz merged into the Hapsburg patrimony as part of Austrian Galicia in the First Polish Partition (1772). With the collapse of the Austro-Hungarian Empire in 1918 Oswiecim become a part of the Polish republic. In 1939, following its Polish campaign, Auschwitz was incorporated within the German Reich in the newly established province of Upper Silesia. After World War II ended in 1945 Oswiecim returned to Polish sovereignty.

Auschwitz's historical significance in the twentieth century relates to the massive concentration/extermination camp that the Germans established in a suburb of the town in the spring of 1940. The camp remained in operation until January 27, 1945, when it was liberated by the Red Army.

The nature and scope of the atrocities that took place at Auschwitz justify its identification as the symbolic center of the Holocaust. It was the site where the single largest group of Jews was murdered: over one

Beyond a front gate ironically proclaiming "Work Shall Set You Free" stood the elaborate death camp at Auschwitz, preserved as a monument to Nazi depravity and the victims of the Holocaust. [CORBIS]

million men, women, and children (or more than 90% of the 1.1 million Jews deported to the camp). Furthermore, Jewish citizens from at least twelve European countries were deported to Auschwitz, and as such, its history testifies to the pan-European character of the Holocaust. In addition, Auschwitz was a place where the Germans killed more than 100,000 non-Jews: 75,000 Poles (or some 50% of the 150,000 Poles deported to the camp), 21,000 Sinti and Romani (or more than 80% of the 23,000 Sinti and Romani registered at Auschwitz), 15,000 Soviet prisoners of war (almost all who were deported to the camp), and some 15,000 others (or 60% of that group). Auschwitz thus testifies to a historical circumstance too easily forgotten: The Holocaust of the Jews was part of a larger German fantasy about a new world order that also called for the genocide of other undesirable groups (select Slavic populations, undesirable Sinti and Romani, and the mentally ill, to name but a few).

Auschwitz is also worth focusing on because in its technology and organization it was thoroughly modern and a model of Nazi efficiency. Given its central location within the European railway infrastructure, its business relationship with many larger and smaller industries that relied on the slave labor provided by the camp, its medical experiments conducted by highly qualified physicians in collaboration with distinguished research institutions, and its large and efficient crematoria—equipped with logically designed killing installations, including rooms for undressing and gas chambers, for those who were deemed "unfit for labor" on arrival—Auschwitz stands for industrial civilization. Auschwitz has also become the focus of moral and philosophical reflection because it created two new variations of the human species: the *Sonderkommando,* the slave laborer who kept the factory of death running, and the *Muselmann,* the living dead.

Establishing the German New Order in Poland

In light of the scale of the atrocities at Auschwitz, it is easy to overlook the complex historical evolution of the camp. When the Nazis annexed the town of Auschwitz to the Reich in 1939, they designated the region with the highest priority for political, social, and economic redevelopment. For the Germans Auschwitz signified a return to the pristine, lost past of medieval German

The main entrance at Birkenau. In the former Polish town of Oswiecim, the Nazis built Auschwitz I, the original concentration camp; Auschwitz II (Birkenau), an extermination center; and Auschwitz III (Monowice), essentially a labor camp for IG Farben. [(C) RAYMOND DEPARDON/MAGNUM PHOTOS]

achievement and represented opportunity and promise to new generations. As Reich Commissioner for the Consolidation of the German Nation, SS chief Heinrich Himmler oversaw its redevelopment; he soon initiated a policy of ethnic cleansing by deporting Poles and Jews, and organizing the immigration of Germans into the area. This formula was not without its problems in Auschwitz, however. Some of the local Polish population could not be deported as they were employed in industry, and there were few skilled ethnic German workers to replace them. Himmler's response to this circumstance was to claim a former Polish military base located in the suburbs of Zasole as a concentration camp to terrorize the local population. In order to provide practical support to the new arrivals in establishing economically viable farms, Himmler made the concentration camp the center of a huge agricultural experiment, a scientific farm. The camp, headed by SS Sturmbannführer (Major) Rudolf Höss, claimed increasingly larger territories for this new function, and Himmler began to see that its future might be different from what he had originally envisioned: As a concentration camp Auschwitz was assumed to be a temporary facility; as an agricultural estate, it would claim permanence.

Originally a small compound surrounded by a double barbed wire fence, the camp had grown by the beginning of 1941 into a 15-square-mile so-called zone of interests, an area that was under direct control of the SS and which was legally a municipality with all the rights that came with it. A huge influx of money and building materials was needed to develop this zone. Therefore, Himmler sought to generate income by attracting a major chemical manufacturer, IG Farben, to Auschwitz. The terms of the bargain were simple: The camp would supply the labor to construct Farben's synthetic rubber plant; and a new satellite camp, Birkenau, that was to be populated by Soviet prisoners of war, would provide labor to transform the town of Auschwitz into a place worthy of a Farben enterprise. In return, Farben agreed to finance and supply the building materials required for Himmler's Germanization project in the area, which included the expansion of the concentration camp and construction of an idyllic village for SS guards.

The SS expected many deaths due to endemic and epidemic disease in the Auschwitz camp, which was intended to house 125,000 Soviet prisoners of war in Birkenau and 30,000 Polish prisoners in the main camp at Zasole. The existing crematorium, constructed in 1940 in a former ammunition depot and equipped with three double-muffle ovens with the ability to process 340 corpses per day, was deemed too small. Thus, the SS commissioned in the fall of 1941 the design of a very large, state-of-the-art crematorium with the capacity to incinerate 1,440 corpses per day. Remarkably enough, this seemingly excessive capacity was considered appropriate to cope with the anticipated mortality of the 155,000 slave laborers to be worked to death in Auschwitz. The crematorium was not meant to provide execution facilities: Nothing in the original conceptual sketches of the crematorium, or in the blueprints dating from January 1942, suggests the presence of gas chambers, or their use in the Final Solution.

Auschwitz as a Center of the Holocaust

When the large-scale mass murder of Jews began in the summer and fall of 1941 in the wake of Operation Barbarossa, the SS in Auschwitz was still fully committed to Himmler's project to develop the town and region. However, the camp at Auschwitz soon became a center of genocide, with the SS sending to the camp not only Soviet prisoners of war (POWs) for forced labor, but also those considered officials of the Soviet Communist Party for execution. Initially, these men were executed

[GAS CHAMBER TECHNOLOGY]

A key innovation that distinguishes the Holocaust from other genocides is the widespread use of gas chambers. Of the 5 to 6.5 million Jewish victims, about half were killed in stationary gas chambers. The use of these gas chambers reveals the deliberate nature of the German genocide of the Jews. Gas chambers are designed and built to kill non-combatants. They allow for the anonymous execution of many people simultaneously. The victims can be killed out of sight by the simple opening of a valve, or by emptying a canister full of pellets through a trapdoor. A gas chamber can be operated with a total diffusion of responsibility.

The idea of using gas chambers originated in the British and American eugenics movements. In the two decades that preceded World War I, many people advocated the use of "lethal chambers" where degenerates, the mentally ill, and the physically handicapped could be killed "humanely." In the belief that gassing caused a quick and merciful death, the state of Nevada installed a gas chamber in 1924 to execute convicted criminals. By the end of the 1930s, eight states had followed Nevada's example. Gas chamber executions were popular with prison authorities because they were effective and above all clean.

In the Third Reich, official death sentences were executed by means of guillotines. In the autumn of 1939, German officials began to construct gas chambers in selected asylums, first to kill groups of mentally ill and handicapped patients (T-4 program) and, from 1941 on, to kill groups of selected concentration camp inmates (14f13 program). The gas used was bottled carbon monoxide. Apart from the secrecy and clearly illegal character of the operation, the T-4 program, which killed over 70,000 people, realized many of the policies advocated by the earlier eugenic theorists.

In late 1941, when German soldiers, the SS, and the police faced increasing stress from conducting mass executions of Jewish civilians in the East, the SS introduced the first mobile gas chambers ("gas vans") as a preferred, anonymous, and "clean" means of killing in occupied Russia. Later, in occupied Poland, stationary gas chambers were installed in specially built extermination camps. The gas vans on the Russian front and in Chelmno, and the stationary gas chambers of Belzec, Sobibor and Treblinka, used diesel engine exhaust which, when modified to run with a less efficient fuel-air ratio, produced an asphyxiating and toxic mix of carbon dioxide and carbon monoxide. In these gas chambers, some two million victims died a slow and agonizing death.

In 1941 the Auschwitz SS began to experiment with using Zyklon B as a killing agent. A commercially available delousing agent, Zyklon B consisted of small diatomite pellets soaked with cyanide and sealed in metal cans. Upon opening, the contents would "degas," expelling a lethal toxin for a continuous 24 hours. This was important in delousing or killing other vermin, which can last as much as 14 hours in a highly toxic environment. Zyklon B had proven its wider use in 1938, when the city of Vienna adopted it to kill pigeons. Three years later, in Auschwitz, Zyklon B was used on people. After the war, Auschwitz Kommandant Rudolf Höss claimed that he had adopted Zyklon B because it ensured a quick and easy death for the victims—a claim not supported by the evidence.

Höss first installed a gas chamber in the morgue of crematorium 1, and in early 1942 transformed two peasant cottages into gas chambers. These makeshift installations proved reliable and efficient, and in the summer and fall of 1942, SS architects modified the designs of four new crematoria to include sophisticated cyanide gas chambers, creating true factories of death. In the case of crematoria 2 and 3, which could hold up to 2,000 victims at one time, the large underground chambers were equipped with hollowed-out, wire-mesh columns, which allowed for an easy introduction of Zyklon pellets in the crowded room and the quick removal of the still degassing pellets after twenty minutes, when all the victims had died. With the pellets removed and the ventilators turned on, the cyanide gas could be removed from the room in half an hour, allowing corpse cremation to begin without delay in the chamber's fifteen large ovens. Thus, a consignment of victims could be killed and cremated within a 24 hour period, allowing for a regular daily schedule of arrivals, selections, and killings. In operation until the end of October 1944, the Auschwitz gas chambers killed 1.1 million people. For further reading, see Eugen Kogon, Hermann Langbein, and Adelbert Rückerl, eds. (1994). *Nazi Mass Murder: A Documentary History of the Use of Poison Gas.* New Haven, Conn., and London: Yale University Press. **ROBERT JAN VAN PELT**

by rifle and machine-gun fire. In August 1941 camp officials conducted a few experiments to determine if a more efficient and less psychologically jarring method of execution could be devised. Hydrogen cyanide, marketed under the brand name Zyklon (Cyclone) and sold in versions A, B, and C, was available in the camp in large quantities for delousing purposes. Zyklon B also proved effective in killing the Soviet prisoners.

In January 1942 Hermann Göring ordered the transfer of Soviet POWs from Auschwitz to German armament factories; it was at this point that Himmler began to consider the so-called Auschwitz Project as part of a systematic plan or Final Solution to address the Jewish question. This did not mean that Himmler wanted to solely use the camp as a site for the continuous mass murder of Jews. In early 1942 he remained intent on making Auschwitz the centerpiece of his racial utopia. Only now this would not be accomplished on the backs of Soviet POWs: Jewish slave laborers were to take their place. The Wannsee Conference gave Himmler (through Reinhard Heydrich) the power to negotiate with German and foreign civilian authorities for the transfer of Jews to his SS empire. The first transports carrying Jews fit for labor departed from Slovakia for Auschwitz-Birkenau soon thereafter.

When the Slovak government asked Himmler to also take Jews unfit for labor in exchange for a cash payment, he dispatched SS construction chief Hans Kammler to Auschwitz. Kammler toured the site and ordered the transformation of a cottage there into a Zyklon gas chamber. Two months later, on July 4, 1942, the first transports of Jews from Slovakia were submitted to selection. Those who could work were admitted to the camp; those who could not were killed in the cottage, known as Bunker I. The murder of select Jews at Auschwitz changed from an incidental practice to a continual one, although it had not yet become official Nazi policy. Bunker I and a second cottage outfitted with four gas chambers, Bunker II, were an outgrowth of Slovak unwillingness to provide for old and very young Jews, and German greed. The main purpose of Auschwitz at this time remained the creation of a city and a region, and not the annihilation of Jews.

In mid-July 1942 Himmler assumed responsibility for a German settlement in Russia—a position that he had coveted for more than a year. His view of Auschwitz and his plans for it changed rapidly and dramatically. The Auschwitz Project was no longer of interest to him. The camp could be used for the systematic killing of Jews. Practice became policy. In August camp architects received the order to construct a large crematorium in Birkenau, to be known as crematorium 2. The plan also called for the design and creation of a third crematorium and two smaller crematoria, each with an incineration capacity of 768 corpses per day and equipped from the outset with gas chambers. When under construction crematoria 2 and 3 were retroactively fitted with gas chambers. SS architect Walter Dejaco revised the design of each building's basement, changing one of the two underground morgues into a room for undressing and the other into a gas chamber.

As work crews busily constructed these factories of death, daily transports arrived in Auschwitz. In May 1942 regular transports from Poland began to arrive, in June transports from France, in July transports from Holland, and in August transports from Belgium and Yugoslavia. On average some one thousand deportees arrived every day at the *Judenrampe* located between the main camp and Birkenau; in a quick selection process most were declared to be unfit for work, loaded on trucks, and transported to Bunkers I and II, where they were forced to undress and then killed. Initially, their bodies were buried nearby, but in the late summer the SS changed this practice, instead incinerating the bodies on large pyres. Primitive as the method of corpse disposal may have been, it did not limit the rate of murder: In 1942 some 200,000 Jews were killed in Auschwitz.

In the late winter and early spring of 1943, with the killing continuing at the rate of eight hundred people per day, the first of the new crematoria in Birkenau came into operation. In their final form all the crematoria offered a relatively discrete method of murder and corpse disposal. People calmly entered the buildings, in many instances not suspecting their fate; their ashes either exited through the chimneys or were dumped in waterholes, or "lakes," that are still visible in Birkenau. The larger of these lakes is said to contain the ashes of 600,000 victims. Between entrance and exit the crematoria constructed by the Germans followed a well-conceived plan, which included ample rooms for undressing, gas chambers of different sizes, other rooms where workers could quickly shear off the hair of female victims for industrial use and extract golden crowns from their mouths, and fuel-efficient ovens that allowed for the high-rate incineration of multiple corpses. Thirty adjacent storehouses, nicknamed Canada because of the wealth they contained, provided an efficient sorting and storage facility for the deportees' belongings. Anything that was deemed usable was shipped back to the Reich as charity for the use of less fortunate Germans. Most importantly, the new crematoria offered the SS the opportunity to kill anonymously. The SS doctors selecting victims could justify their actions by claiming that because all Jews who arrived at Auschwitz were a priori condemned, they actually saved the lives of those whom they chose as slave laborers. Moreover, the SS medics who fed Zyklon B into the gas chambers crowded with those deemed unfit for labor never saw their victims. In the case of crematoria 2 and 3 they just opened vents at ground level, emptied a can of Zyklon into those openings, and then closed the vents. The killing below became invisible to them and everyone else. As for cleaning the gas chambers af-

terward and incinerating the corpses: Jewish *Sonderkommandos* were forced to do this job.

Oddly enough, on their completion, the crematoria seemed superfluous. By the summer of 1943, when the SS had all four crematoria at their disposal, the Holocaust itself had peaked. The genocide had begun in 1941, with the Germans killing some 1.1 million Jews that year. In 1942 they murdered another 2.7 million Jews, of whom less than 10 percent died in Auschwitz. The year the crematoria of Auschwitz came into operation the number of victims dropped to 500,000, half of whom were killed in Auschwitz. Most of the Jews whom the Germans had been able to catch had already been successfully eliminated. In June and July 1943 average daily transports brought only 275 Jews to the camp. The crematoria ran on a mere 5 percent of their total capacity. This lull gave the Germans an opportunity to liquidate in August the nearby Sosnowiec ghetto—the place where, two years earlier, the Oswiecim Jewish community had been imprisoned to make room for German settlers and Farben personnel. The Jews from Sosnowiec, some 24,000 in number, were the bulk of the deportees in August. In the fall and winter the number of arrivals decreased again to 250 people per day.

At this time the major interest of the SS at Auschwitz was an increasingly lucrative collaboration between German industry in Upper Silesia and the camp. In 1942 three satellite camps providing slave labor to the Farben synthetic rubber and fuel plant in Monowitz, the coal mines in nearby Jawischowitz, and German industry in Chelmek were established; in 1943 five more satellite camps followed, and in 1944 another nineteen. In 1942, 4,600 prisoners (out of 24,000) worked for outside firms; in 1943 that number had increased to 15,000 (out of 88,000), and in 1944 some 37,000 (out of 105,000). When the camp was evacuated in early 1945, more than half its prisoners provided slave labor outside of the camp. The rest worked on the construction and maintenance of the camp and the 15-square-mile estate surrounding it, and for SS-owned companies. Working for outside firms or the SS, whether slaving in mines, factories, the camp, or the fields, all was lethal: Prisoners labored for long hours on starvation diets, with insufficient clothing in the winter, without adequate protection or shelter, and subject to the brutal treatment meted out by supervisors and guards. Regular selections ensured that any prisoner not able to work would be sent to the gas chambers.

By the end of 1943 the Germans closed the death camps built specifically to exterminate Jews: Kulmhof, Sobibor, Belzec, and Treblinka. Auschwitz remained to kill off the remnants of Jewish communities from Poland, Italy, France, the Netherlands, and the rest of occupied Europe. In 1944 another 600,000 Jews would be killed in Auschwitz, most of them Hungarians. In the months of May and June almost 7,000 Hungarian Jews arrived in Auschwitz everyday, and most were killed on arrival. The crematoria could not keep up; Bunker II was brought back into operation, and once again many corpses were disposed of on large pyres. When the Hungarian transports stopped arriving in July, the Lodz ghetto provided in August another 65,000 victims, the last major group to arrive and succumb in Auschwitz. In October Himmler ordered the gas chambers to be closed, and their killing infrastructure was dismantled. The incinerators, with the rest of the crematoria, were blown up in January 1945, just before the arrival of the Red Army.

With more than 1.1 million victims, of whom 1 million were Jews, Auschwitz had become by the end of the war the most lethal death camp of all. But Auschwitz was also the camp with the greatest number of survivors because not all the victims deported to Auschwitz were killed on arrival; many more survived than any of the other death camps. Only a few people survived Belzec, and several hundred survived the hell of Sobibor and Treblinka. Of the 1.1 million Jews shipped to Auschwitz, some 100,000 Jews left the camp alive. Many of these survivors perished, however, during the death march to the West, or in 1945 in other concentration camps such as Buchenwald and Bergen-Belsen. Yet tens of thousands lived to see liberation and testify about their ordeal after the war. Of the 100,000 Gentile survivors of Auschwitz, with the Poles, at 75,000, being the largest group, all who could did bear witness to the use of the camp as an extermination center for Jews. This ensured that Auschwitz would figure forever prominently in the memory of the Holocaust. In addition, the survival of significant parts of the camp became another important witness to its importance. In Treblinka, Belzec, and Sobibor, which together hosted the murder of 1.5 million Jews, little of the original camps may be observed. In Auschwitz the SS dismantled the gas chambers and blew up the crematoria, but other sections of the camp remain largely intact. In 1947 the Polish parliament adopted a law titled Commemorating the Martyrdom of the Polish Nation and Other Nations in Oswiecim, and the minister of culture included both the main camp in Zasole and Birkenau in the new state museum at Auschwitz-Birkenau. But it was only until the early 1980s that the site mentioned the murder of Jews at Auschwitz.

SEE ALSO Concentration Camps; Extermination Centers; Gas; Holocaust; Medical Experimentation; Memory

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Robert Jan van Pelt

Australia

Beginning in 1788 British colonization drastically diminished the indigenous or Aboriginal population of Australia. Precise enumeration of the decline is impossible. Estimates of the precolonial population range from 300,000 to 750,000 and statistics for the colonial period are unreliable, but the indigenous population probably reached its nadir, at around 75,000, in the 1920s. Disease, compounded by destitution, malnutrition, alcohol, and other drugs, accounted for most deaths. The numbers deliberately killed by colonists are disputed, although 20,000 is a plausible estimate. The uncertainties of body counts notwithstanding, it was by force and the threat of force that the lands of Australia passed from indigenous to European hands.

Early colonial governments sought to assimilate the Aborigines into British civilization. By the 1820s this ambition gave way to the belief that it was not possible to civilize Aborigines and they were thereby doomed to extinction. This racist assumption underpinned the protectionist legislation that was first enacted in Victoria in 1869 and subsequently in all other mainland colonies (states after 1901). Only full-blood Aborigines, however, were expected to die out; those of mixed descent were encouraged, even forced, to integrate into white society. Such ideas guided Aboriginal policy well into the 1930s. After World War II policy shifted toward the assimilation of all indigenous people, regardless of the degree of white descent, although much of the earlier protectionist apparatus, including restrictions on civil rights, remained in place until the 1960s. A consistent assumption throughout these changing policies was that indigenous peoples were too incompetent to realize their own best interests.

Indigenous peoples' varied responses to colonization belie that assumption. During the frontier period they not only fought against the invaders, but also forged alliances with them for motives both pragmatic and strategic. In the second half of the nineteenth century many Aborigines in southern Australia established themselves as self-sufficient farmers. Others, especially in the north, became skilled workers in the pastoral and pearling industries. Indigenous peoples responded creatively to changing circumstances, adopting and adapting elements of Western culture while simultaneously preserving much of their own heritage. Out of shared experiences of colonization, and to more effectively assert their interests, Aboriginal people fashioned a pan-Aboriginal identity and solidarity that surpassed (without completely displacing) traditional affinities to kin and language group. The growth of pan-Aboriginality was largely a phenomenon of the second half of the twentieth century. Alongside it the peoples of the Torres Strait Islands fashioned their own distinctive collective identity.

Genocide

Allegations that Australia has a genocidal past have provoked fierce disputes, with the public dichotomy

often being a clash between assertions of the intrinsically genocidal nature of colonization and flat denials of the possibility of genocide having been committed on the continent. Scholarship on Australian genocide has moved beyond such stark polarities. In an influential article published in 2000, Dirk Moses argued that although Australian history since 1788 is not ubiquitously genocidal, it has been punctuated by "genocidal moments." No consensus is emerging on the questions of whether, where, or when genocide was committed in Australia, but the debate has promoted public awareness of historical injustices to indigenous people, and encouraged a more internationally comparative approach to the study of Australian race relations.

In Tasmania a decade of violent conflict culminated in 1830 in a military sweep through the center of the island, followed by the deportation of the survivors to the islands of Bass Strait where the last full-blood Tasmanian Aborigine, Truganini, died in 1876. Although this is widely cited as an instance of genocide, Australia's leading historian of frontier conflict, Henry Reynolds, disagrees. He points out that while numerous Tasmanian settlers urged the extermination of the Aborigines, this was not the intent of the colonial government, which sought to segregate them from belligerent settlers and thereby ensure their survival. Similarly, on mainland Australia the disjunctions between intentions and consequences, together with the difficulty of discriminating between forcible subjugation and attempted eradication, complicate attempts to judge the actions of colonial governments as genocidal.

In 1997 the Human Rights and Equal Opportunities Commission (HREOC) report on the forcible separation of indigenous children from their families propelled the Stolen Generations into public prominence and frequently into bitter controversy. HREOC's claim that the removal of indigenous children throughout the period 1900 to 1970 was genocidal in intention has been criticized on several grounds, notably its presumption of consistent administrative intentions over a seventy-year span, and its supposition that cultural genocide (ethnocide) comes within the scope of the 1948 Genocide Convention. The number of children removed remains in dispute, although twenty to twenty-five thousand, or one in every ten indigenous children over seventy years, is a widely cited estimate. Whatever the numbers, and regardless of administrative intentions, the consequences of forced removal were traumatic, often tragic, both for the separated children and for the grieving family members and communities left behind.

The number of violent deaths of Aborigines at the hands of white colonizers is much contested and the subject of intense political debate. The figure is perhaps as high as 20,000. In this photo from 1976, an Aboriginal man, wearing traditional body paint, plays the didgeridoo—an Australian musical instrument that has been in use for thousands of years. [PENNY TWEEDIE/CORBIS]

Into the Twenty-First Century

When, in 1998, prime minister John Howard refused to offer an official apology to the Stolen Generations, concerned citizens instituted a national Sorry Day on May 26 to allow the Australian public an opportunity to convey their own collective apology. Although annual Sorry Days express contrition for the pain inflicted on indigenous peoples, they have also crystallized public disagreement over the remembrance of Australia's past. Conservative commentators have condemned Sorry Days as a manifestation of black-armband historiography, which allegedly caricatures the past as a mere litany of misdeeds inflicted on indigenous innocents. Their opponents, in turn, accuse them of a white-blindfold approach that seeks to expunge unpleasantries from the record. Such polemical labels may obscure the nuances of debate, but they highlight the political potency of historical representation.

In the last quarter of the twentieth century some indigenous groups regained ownership of their lands, a process facilitated by the 1992 *Mabo* judgment of the Australian High Court that determined native title, predating British sovereignty over Australia, still prevailed over much of the continent. However, many indigenous groups remain landless, and land rights have not always delivered the expected benefits. Compared to other Australian groups, indigenous people are severely disadvantaged in terms of all significant socioeconomic criteria, including income, health, housing, employment, and education; in many indigenous communities these problems are compounded by inordinately high rates of violence, suicide, alcoholism, and drug abuse. Indicative of the scale of disadvantage, in 2001 indigenous Australians had an average life expectancy almost twenty years less than that of other Australians, and the gap is not narrowing. Although some indigenous individuals have achieved success in the arts, media, sports, business, and politics, such successes have made little dent in aggregate disadvantage, and standards in certain areas, for example, literacy and health, may be deteriorating.

Since 1990 all major Australian political parties have proclaimed their commitment to a reconciliation between the indigenous population and other Australians, apparently with strong public support. What reconciliation means, however, is uncertain. Conservative interpretations tend to construe it as a strategy for attaining socioeconomic equality between indigenous and nonindigenous Australians through a common commitment to national and liberal-capitalist norms. More leftist commentators and most indigenous leaders, while equally committed to eliminating disadvantage, regard reconciliation as a process demanding the recognition of indigenous peoples as distinct groups, with special rights and entitlements. Behind the differing interpretations lie deeper disagreements over the extent and requirements of indigenous autonomy, and how sociocultural distinctiveness might be maintained in harmony with the demand for socioeconomic parity.

SEE ALSO Indigenous Peoples; Residential Schools

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Russell McGregor

Aztecs

The Aztecs were the last major civilization to control central Mexico before their defeat by the Spaniards and their indigenous allies in 1521. Although commonly known as the Aztecs, a name derived from their supposed place of origin in Aztlan, they called themselves the Mexica. One of many groups speaking Nahuatl, the major language of central Mexico, the Mexica had humble beginnings. They were an obscure hunting and gathering people who migrated to the populous Nahua region of the Mexican central plateau sometime before 1325, when they established a settlement at Tenochtitlan, on the snake-infested island in the middle of an inland lake system. After serving as mercenaries for other city-states, they became a power in their own right, the dominant member of the Triple Alliance, a confederation composed of Tenochtitlan, Texcoco, and Tlacopan, which conquered other city-states in central and southern Mexico and Central America.

In 1519 Tenochtitlan had a population estimated at 150,000, making it one of the world's major cities. It boasted huge temples, palaces of rulers and nobles, an enormous daily market, and a dense artisan and warrior population. Long-distance and local trade, with both permanent and periodic markets, was already well established, and Tenochtitlan became a major hub. The Aztecs built on the achievements of prior civilizations, which were highly complex. Their accomplishments are even more impressive given that there were no beasts of burden to ease human labor and provide a steady source of animal protein.

Much of the Aztecs' imperial history is recorded in glyphic writing. The conquest of other city-states garnered them payment of tribute goods and labor service, as well as captive warriors who became ritual sacrifices to the Aztec deities. The Aztecs were not unique in practicing human sacrifice in Mesoamerican civilizations, but they practiced it on a huge scale. When the

great temple was dedicated in 1487, thousands, perhaps tens of thousands, of captives had their hearts offered to the sun god. The capture of warriors on the battlefield was considered the optimal way to acquire victims; this greatly affected combat. Tenochtitlan conducted ritual warfare with the nearby independent city-state of Tlaxcala in so-called flowery wars (*xochiyaotl*) to acquire warriors for sacrifice. Weaker city-states realized that their quick capitulation would prevent large-scale battlefield capture of warriors so a quick surrender was in their interest. They then had no incentive to revolt because unsuccessful uprisings put them at risk again for sacrifice. The specter of being sacrificial victims thus aided the Aztecs as conquerors and facilitated their continued control of other city-states. Following the Spanish Conquest, human sacrifice ceased, likely not just because the Christian Spaniards aggressively suppressed it, but because sacrificial victims were from populations other than the Aztecs themselves.

The Aztec Triple Alliance was fragile and quickly disintegrated during the Spanish-led Conquest because it was a confederation and not an integrated, unitary state. Although one language group (Nahuatl) dominated on the central plateau, city-states sought autonomy. Spaniards did not expend much effort to divide and conquer because the potential for fragmentation already existed. At the Spaniards' arrival, a number of key city-states saw the opportunity to gain powerful allies to pursue their own political goals, particularly the independent, secondary state of Tlaxcala, which had been a long-standing enemy of the Aztecs. Tlaxcalans and the Spaniards' other indigenous allies provided tens of thousands of warriors to battle the Aztecs, so the Aztecs' defeat was not accomplished by a mere five hundred seasoned Spanish soldiers of fortune, but also their numerous indigenous allies fighting for their own reasons.

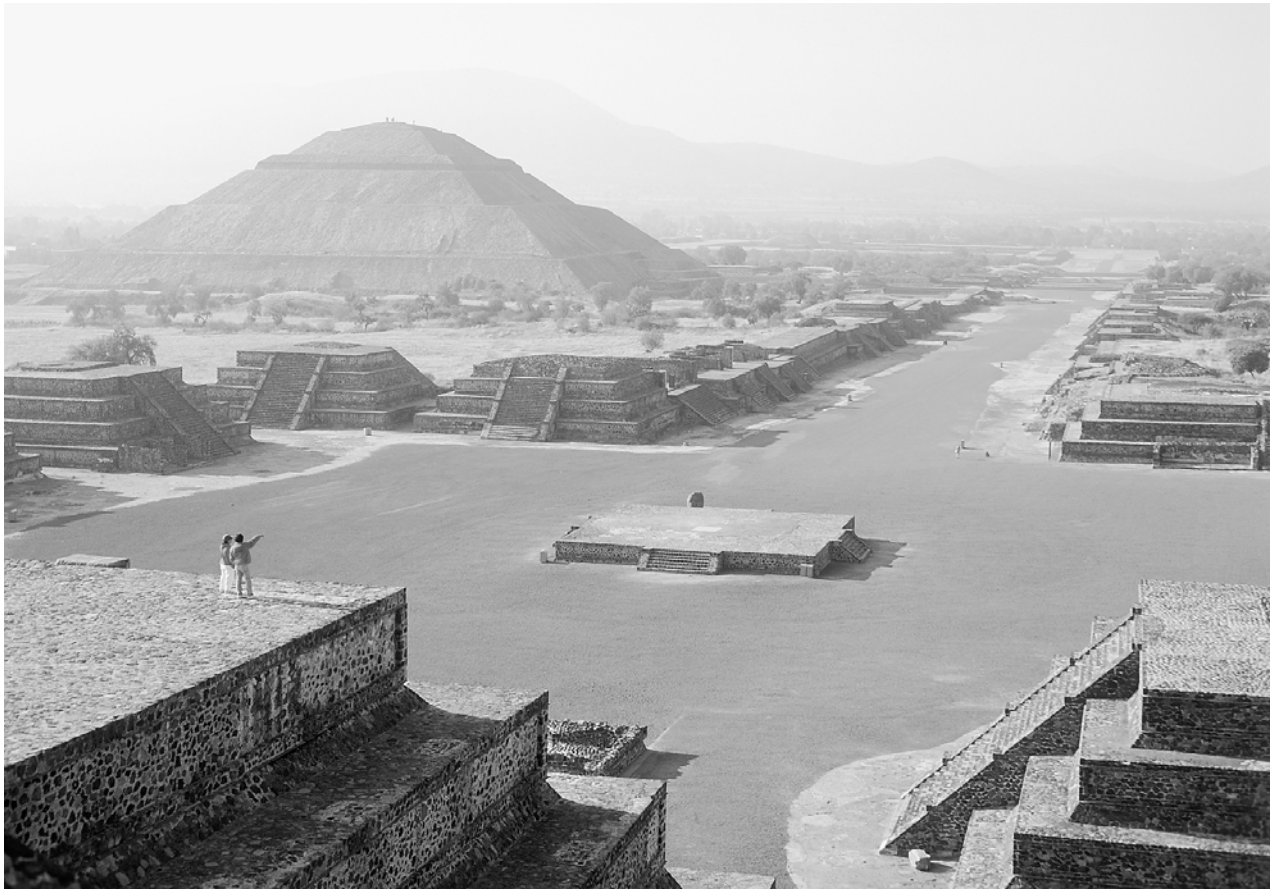
The Spaniards had several technological and tactical advantages over native warriors, including horses, cannons and guns, steel weapons, and ships, as well as training in battlefield conduct. Horses were Spanish imports to the New World and gave riders protected by armor and armed with steel weapons enormous advantages in open field engagement. Furthermore, the Spaniards were not interested in capturing their enemies alive on the battlefield, but fought a war to the death. The dissimilarity between Spanish and indigenous practices afforded Spaniards a tactical advantage. Cannons and a long gun, the harquebus, gave Spaniards both firepower and a psychological advantage over warriors who had never seen explosive weapons that killed at a distance. Furthermore, the Spaniards took control

A nineteenth-century drawing depicting the death of Moctezuma (or Montezuma), the ruler of the Aztec Empire of Mexico at the time of the Spanish invasion. [BETTMANN/CORBIS]

of the inland lake system by building shallow draft brigantines and mounting a cannon on them, bombarding the Aztecs' island capital and cutting them off from water, food, and contacts with allies on the mainland.

Also key to the European victory was the rapid spread of smallpox during the siege of Tenochtitlan, unintentionally introduced by one of the Spaniards' African slaves who had an active case. Spaniards were largely immune to the disease due to prior exposure. In 1520 smallpox killed the Aztec emperor Cuitlahuac, who had rallied his people to defeat the Spaniards, just months after his accession to the throne following the death of the vacillating emperor Moctezuma, held captive by the Spaniards. Cuitlahuac's successor, Cuauhtemoc, attempted to again rally the Mexica, but the Aztecs' situation was untenable. Tenochtitlan was in ruins, its population ravaged by smallpox and cut off from food and water; its allies had deserted to join the Spaniards. Cuauhtemoc was captured on August 13, 1521, marking the end of the Aztec empire.

The Spaniards' goals during the Conquest are often summarized as gold, glory, and God, that is, material wealth, personal aggrandizement through warfare, and the spread of Christianity as the exclusive religion. In central Mexico Spaniards recognized that the long-term



The Pyramid of the Sun at Tenochtitlan (or Teotihuacán), Mexico, was built between the first and second centuries CE.[JOSE FUSTE RAGA/CORBIS]

exploitation of its population was in the Europeans' material and religious interests because prior to European contact these central Mexican Indians were sedentary farmers and skilled artisans, accustomed to paying taxes and rendering labor service to their overlords. The Spaniards incorporated cooperative indigenous rulers into the colonial system as nobles, turning dynastic lords into important mediators between Spanish rulers and indigenous commoners, who continued to render tribute and labor. The Aztec empire as such disappeared and epidemics reduced the Nahua population, but nonetheless a sizable indigenous population remained. The essential structures of their society and economy became the basis for Spanish colonial rule. Spaniards built their colonial capital on the site of Tenochtitlan, drawing on its symbolic power as an imperial center.

Central Mexican populations prior to European contact were quite dense, largely sedentary agriculturalists living in nucleated settlements, although the exact numbers are controversial, perhaps between fifteen and twenty-five million for the whole region. There were many cities of significant size, and a network of towns and villages. Rapid population decline in the first fifty years after European contact, perhaps as high as 90 percent, was due to epidemics that killed populations with no immunity, not homicidal Spaniards bent on the Indians' extermination. The Spaniards viewed population decline with alarm because these Indians were a source of tribute and labor. Their attitude was unlike the English in North America, who considered Indians an environmental hazard and viewed their demise as providential. Epidemics had a major impact on transforming the post-Conquest central Mexican economy from one based on traditional compelled labor and delivery of tribute goods to a colonial economy based on free labor on Spanish landed estates that produced goods for a Spanish market. Colonial Mexico City, the former Aztec capital of Tenochtitlan, continued to have a significant indigenous population, from natural increase and immigration from elsewhere. Al-

though the imperial Aztecs were conquered in 1521, their descendants live in modern central Mexico, some still speaking Nahuatl.

SEE ALSO Indigenous Peoples

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Sarah Cline

Babi Yar

A ravine on the western outskirts of Kiev, the capital of Ukraine, Babi Yar was the site on September 29 and 30, 1941, of the single largest Nazi shooting of Jews in the occupied Soviet Union. The massacre at Babi Yar (in Ukrainian, *Babyn Yar*) also stands out as a vivid example of the German military's involvement in the Holocaust. German forces entered Kiev on September 19, 1941. Five days later mines laid by the retreating Soviet authorities started to explode and set off a fire that demolished much of the city's center. SS and police officials together with officers of the Sixth Army found this an acceptable rationale for taking vengeance on Kiev's Jews, whom they had already started persecuting. Some time between September 25 and 27 they decided to murder all the Jews. On Sunday, September 28, the newly installed Ukrainian auxiliary police posted an order in Russian, Ukrainian, and German addressed to the Jews of Kiev and the surrounding area. It ordered them to appear early the next morning at a specific intersection and to bring along their identity papers, money, valuables, and warm clothing. No reason was provided. "Yids" who disobeyed would be shot, the poster added.

Many thousands of Jews, most of them expecting to be deported, arrived at the intersection of Melnyk Street (today Melnykov Street) and Dehtiarivska Street, where at that time a freight train station stood nearby. They were directed to the entrance to the Jewish cemetery; there across Melnyk Street, Germans and Ukrainians controlled a checkpoint. After entering it, Jews had to surrender their documents and possessions and pass a gauntlet of Germans with dogs. Ukrainian police then forced them to take off their clothes, and drove them into Babi Yar, where Germans shot them with rifles or machine guns. The killers were members of *Sonderkommando* 4a, a subunit of Security Police Task Force C (one of the four *Einsatzgruppen*). Reserve Police Battalion 45 and Police Battalion 303 assisted them in the massacre. All morning and afternoon Jewish men, women, and children, as well as non-Jewish husbands and wives, and others who wished to remain with them, arrived at the site. The massacre resumed the next day when more Jews arrived at Babi Yar. Thus, the ravine became a huge mass grave. According to the records of the Security Police, they shot 33,771 Jews in two days. Historians have generally considered this statistic reliable or at the very least close to reality.

Many Jews were shot at Babi Yar after September 1941, although wartime records that have been preserved do not mention figures for those later shootings. For instance, some three thousand Jewish Red Army prisoners of war (POWs) were executed at the site late in September and early in October 1941. Non-Jews, in particular non-Jewish POWs and Roma, were also killed at Babi Yar. In February 1942 Kiev's mayor and some members of the Organization of Ukrainian Nationalists were killed; if perhaps these crimes did not physically occur at Babi Yar, the Nazis still dumped the corpses there. Later the Nazis also used vehicles fitted with gas vents to murder other victims at the site. From August 1943, in a cover-up operation supervised by *Sonderkommando* 4a's former commander Paul Blobel (who was executed in 1951), Jewish inmates from a nearby camp had to dig up and incinerate all of the

Execution in progress at Babi Yar (just outside the city of Kiev). According to records maintained by the Nazis, 33,771 Jews were killed here on September 29 and 30, 1941. [HULTON ARCHIVE/GETTY IMAGES]

corpses at Babi Yar. Four survivors have estimated that over 100,000 corpses were burned, and this became the official Soviet (and now Ukrainian) figure for the total number of victims of Babi Yar from 1941 to 1943.

During the war the Soviet media reported the massacre of Kiev's Jews, and in March Soviet Ukrainian authorities decided to erect a monument at the site. But the design for the latter never evolved beyond the planning stage, and it soon became impossible to properly commemorate Babi Yar, for the increasingly anti-Semitic Communist Party prohibited any commemoration of the Holocaust. Nearby brick factories started pumping refuse into the ravine and officials made plans for a stadium and park. In 1959, in a sign that First Secretary Nikita Khrushchev wished to relax Soviet restrictions, *Literaturnaya gazeta,* a prominent Moscow weekly, published a letter from the Kiev writer Viktor Nekrasov that demanded a memorial to the victims of the Babi Yar massacre. On March 13, 1961, the factory refuse broke loose, wreaking havoc on Kiev's nearby Kurenivka district and killing an unknown number of people. In September 1961 *Literaturnaya gazeta* created another sensation by publishing a pro-Jewish poem, "Babi Yar," by the Russian writer Yevgeni Yevtushenko. (Later, after intense pressure, he added a patriotic sentence about Russia.) The composer Dmitri Shostakovich set the story to music as part of his Thirteenth Symphony, which premiered in 1962.

In the mid-1960s there were two official design competitions for a memorial, but neither led to any changes on the grounds. On the twenty-fifth anniversary of the massacre a spontaneous commemoration occurred that included the remarks of Ukrainian writer Ivan Dziuba, who courageously condemned anti-Semitism. After that, as before 1966, commemorations were suppressed. In 1966 a Moscow monthly published installments of Anatoli Kuznetsov's novel *Babi Yar,* and one year later it was officially published as a book. This work, actually the author's memoirs, also included an account of the massacre by Dina Pronicheva, one of the handful of survivors. The Communist Party began to harass Kuznetsov, who escaped to the United Kingdom and published there a more complete version of *Babi Yar,* which included cases of wartime anti-Semitism.

The political climate of the 1970s resulted in some of the worst distortions of the massacre at Babi Yar. On March 12, 1970, *Pravda,* the official Soviet newspaper,

carried a statement signed by fifty-one Jews from Ukraine that included this passage: "The tragedy of Babi Yar will forever remain the embodiment not only of the Hitlerites' cannibalism, but also of the indelible disgrace of their accomplices and followers: the Zionists" (p. 4). Although in 1976 a large, bronze sculpture commemorating the citizens and POWs shot there between 1941 and 1943 did finally appear at Babi Yar, in artificially sculpted terrain, it made no mention of Jews. Likewise, a 1981 Soviet television documentary about Babi Yar conveyed a message of anti-Zionism.

In September 1991, one month after the declaration of an independent Ukraine, the first state-sponsored commemoration of the Babi Yar massacre took place. Additional text was added to the Soviet monument, and at another location (far from the shooting site), local Jews placed a bronze menorah. Other new commemorative objects in or near the area include a wooden cross erected by the Organization of Ukrainian Nationalists in 1991; another cross erected in 2000 to honor two Russian Orthodox priests believed to have been shot at Babi Yar in November 1941; and a memorial built in 2001 devoted to the children of Babi Yar. The first stone for a Babi Yar museum was laid in 2001. In 2002 an emotional debate took place in Kiev, primarily among Jews, about the possibility that the museum and community center would rise atop human remains.

In the wider world an awareness of Babi Yar has evolved from sources as diverse as Leon Uris's best-selling novel *Exodus* (1958), which briefly mentions Babi Yar; war crimes trials in Nuremberg and elsewhere; Babi Yar Park in Denver (open since 1970); translations of Yevtushenko's and Kuznetsov's work; the TV mini-series *Holocaust* (1978), which included a scene of the massacre; and visits to the monument by former U.S. president George Bush (1991) and Pope John Paul II (2001).

SEE ALSO Anti-Semitism; Einsatzgruppen; Holocaust; Massacres; Mass Graves; Memorials and Monuments; Ukraine (Famine); Union of Soviet Socialist Republics

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Karel C. Berkhoff

The Babi Yar monument near the Ukranian capital of Kiev stands as a memorial to more than 100,000 Jews massacred by the Nazis at the site. [AP/WIDE WORLD PHOTOS]

Bagosora, Théoneste

[AUGUST 16, 1941–]

Rwandan defense minister who briefly assumed control of the country and was ultimately indicted for his role in the Rwandan genocide.

Théoneste Bagosora, known as "Colonel Death," was a cousin of President Juvenal Habyarimana's wife and a member of the "Clan de Madame," a group of Hutu political extremists opposed to sharing power with Tutsis in the Rwandan government. He was born on August 16, 1941, in the Gisenyi prefecture in Rwanda, the same region from which President Habyarimana came. After serving as Second in Command of the *École Supérieure Militaire* in Kigali and Commander of the mili-

tary camp in Kanombe, he became *Chef de cabinet* (Director of the Cabinet) of the ministry of Defense in June of 1992. When Rwandan President Juvénal Habyarimana's plane crashed on April 6, 1994, he assumed de facto political and military control during the Rwandan genocide. The International Criminal Tribunal for Rwanda (ICTR) indicted him on August 9, 1996 for his responsibility in the Rwandan genocide. He was arrested in the Republic of Cameroon on September 3, 1996, and transferred to Arusha, Tanzania, for trial on January 23, 1997. He pled not guilty on March 7, 1997. His trial was still underway in 2004.

Colonel Bagosora was accused of being the "mastermind" of the genocide, as well as of performing crimes against humanity and war crimes. He and three other military officers were accused of being coconspirators since late 1990 in planning to exterminate the civilian Tutsi population and eliminate members of the opposition. Bagosora was also charged in April 1995 by the Belgian legal authorities for murder and serious violations of the Geneva Conventions of August 12, 1949, and of Geneva Protocols I and II of June 8, 1977. Bagosora was a member of Akazu, the extremist network based in Ruhengeri and Gisenyi and centered around President Habyarimana's wife. Akazu was accused of smuggling arms and drug trafficking, and was believed to be responsible for the training of the militias from 1992. Akazu was also believed to be responsible for the incitement to ethnic violence that was conducted by local authorities, and for the massacres of the Tutsi minority in Kibilira (1990), Bagogwe (1991), and Bugesera (1992). In 1992 Bagosora instructed the two General Staffs to establish lists of people to be identified as the enemy and its accomplices. These lists were drawn up by the Intelligence Bureau (G-2) of the Rwandan Army and regularly updated. In 1993, following a traffic accident, a list of this type was found in the wreckage of the car of Chief of Staff, Déogratias Nsabimana.

Colonel Bagosora, as military adviser to the government delegation at the Arusha peace talks in the spring of 1993, openly expressed his opposition to the concessions made by the government representative, Boniface Ngulinzira, Minister of Foreign Affairs. (On April 11, 1994, Ngulinzira was assassinated.) When Bagosora left Arusha at the end of the talks, he declared that he was returning to Rwanda to "prepare the apocalypse." Subsequently, in the presence of senior officers on various occasions, he evidently reiterated that the implementation of the Arusha Accords would unleash war and that the solution to such a war would require plunging the country into an apocalypse that would eliminate all the Tutsis and thus ensure lasting peace.

Just before the final version of the Arusha Accords was signed on August 4, 1993, James Gasana, Minister of Defense in President Habyarimana's cabinet and a longtime MRND politician, attempted to recall weapons that were being transferred to the militias. In response, Bagosora, then Gasana's Chief of Staff, threatened Gasana's life. Gasana fled with his family to Italy. From July 1993 to July 1994, the Minister of Defense, Augustin Bizimana, who replaced James Gasana, encouraged and facilitated the acquisition of weapons for MRND militants by openly asserting that the Ministry of Defense was a Ministry of the MRND.

General Romeo Dallaire, the Force Commander of the United Nations Assistance Mission in Rwanda (UNAMIR), met Bagosora in August 1993 as the military liaison to UNAMIR; Dallaire described this bespectacled and pudgy military officer as "bemused by Arusha." Bagosora, according to Dallaire, made only rhetorical gestures at adhering to the arms agreement concerning heavy weapons and at maintaining the neutral corridor, and did nothing to stop the militia training.

Subsequently, in a letter dated December 3, 1993, FAR officers informed Dallaire of the "Machiavellian plan" of the Northerners to destroy the Arusha Accords by exterminating the Tutsis and their "accomplices." On January 10, 1994, a leader of the *Interahamwe* (Hutu militia group that carried out much of the genocide) gave Dallaire details of just such a plan. On January 11, 1994, Dallaire sent a cable to UN headquarters detailing the plan, which called for Hutus to kill Tutsis at the rate of 1,000 every 20 minutes, to kill 10 Belgian peacekeepers, and to restart the war. He wanted UN permission to investigate the potential for this plan to be carried out by seeking out hidden arms caches, of which he had been informed. However, his superiors, including Kofi Annan, then head of the United Nations Department of Peacekeeping, countermanded this suggestion.

Dallaire claimed that Bagosora was behind the training and arming of the militias and the youth gangs—the Interahamwe and *Impuzamugambi*. There was cooperation between the *Interahamwe* and military personnel in the Presidential Guard and the Para-Commando Battalion, contrary to the provisions of Arusha. On April 4, 1994, three days before the beginning of the genocide, Bagosora exclaimed before witnesses that the only solution to the political impasse was to eliminate all the Tutsis. On April 6, 1994, immediately after Habyarimana's plane was shot down, Dallaire found Bagosora at the center of a cadre of military officers. Bagosora was the spokesperson of the coup. In his trial testimony, Dallaire testified that Bagosora took

control of the country. It was Bagosora who announced the curfew on April 7, and who, over the next two days, assembled the *Comité de Salut de Public* (Committee of Public Safety) to pick a provisional government. On April 9, Paul Kagame denounced Bagosora as the mastermind behind the coup.

A prosecution witness, testifying by video link from The Hague at Bagosora's trial, claimed that, between April 9 and 12, 1994, Bagosora possessed a list of Tutsis and businessmen to be killed, and that the people on the list were massacred a day later. On April 13, Bagosora demoted or pushed aside the army officers who signed a communiqué drawn up by moderate military officers in an attempt to stop the resumption of the war and the genocide. Further, it was Bagosora who, on May 1, 1994, arranged a meeting with the *Interahamwe.* On May 22, 1994, films were taken that showed Bagosora in control of genocidal militias (Dallaire, 2003, p. 386). On July 1, 1994, General Dallaire saw Bagosora for the last time before testifying against him from the witness box at his trial. During that July encounter, Bagosora threatened to kill Dallaire the next time he saw him.

SEE ALSO Geneva Conventions on the Protection of Victims of War; Incitement; Rwanda

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Howard Adelman

Bahā'īs

The Bahā'ī Faith is an independent religion founded in Iran in the nineteenth century by Mīrzā Ḥusayn ʿAli Nūrī, whose religious appellation was Bahā' Allāh (Arabic for *glory of God*). The word Bahā'ī signifies a follower of Bahā' Allāh.

During the early 1800s there was a messianic expectation among Shi'ite Muslims that the Twelfth Imam, a descendant of the prophet Muhammed, would return to renew the religion of Islam and establish a just society. This belief was central to the teachings of the Shaykhī sect, named after Sheik Ahmad-i-Ahsā'ī.

On May 22, 1844, Mīrzā ʿAli Muhammad announced that he was the promised Twelfth Imam and took the name of the Bāb (Arabic for *gate*), indicating that he was the forerunner of yet another divine messenger to appear imminently. The Bāb's message spread throughout Persia (now Iran) and provoked the ire of powerful Shi'ite clergy. These clerics convinced government officials that the Bāb's rapidly growing influence posed a threat to ruling authorities. In 1848 the Bāb was arrested, beaten, imprisoned, and tried before the Muslim clerics of Tabriz. On July 9, 1850, the Bāb was executed by a firing squad.

After the Bāb's execution two followers of the Bāb attempted to kill the Shah of Persia, only confirming the Shah's fears of rebellion. This act led to the mass imprisonment of thousands of the Bāb's followers over the next few years. Bahā' Allāh was among those imprisoned for being a Bābī even though evidence demonstrated his innocence. After several months Bahā' Allāh was released and banished from Iran. He traveled to Baghdad, where he announced in 1863 that he was the messenger of God about whom the Bāb had spoken. Persian officials, concerned about the flow of pilgrims and foreign dignitaries seeking an audience with Bahā' Allāh, requested that Turkish officials move Bahā' Allāh further away from Persian territory. Bahā' Allāh was moved from Baghdad to Constantinople, then to Adrianople in an unsuccessful attempt to diminish his influence. Finally in 1868 Bahā' Allāh was banished to the distant prison city of ʿAkká (Acco, Acre), Palestine.

Before Bahā' Allāh died on May 29, 1892, his teachings spread from Persia and the Ottoman Empire to the Caucasus, Turkistan, India, Burma, Egypt, and the Sudan. ʿAbd al-Bahā, Bahā' Allāh's son, assumed leadership of the Bahā'ī community after his father's death and embarked on several journeys around the world, spreading the religion to regions of Africa, Europe, and America. When ʿAbd al-Bahā died, his will designated his eldest grandson, Shoghi Effendi Rabbanī, as the new leader of the community. Shoghi Effendi continued to expand the Bahā'ī community and build up the administrative structures of the Bahā'ī Faith. By the time of his death in 1957, the foundation had been laid for the first international election of a governing body called the Universal House of Justice. The Universal House of Justice, located in Haifa, Israel, guides the administrative affairs of the Bahā'ī community.

In just over 150 years the Bahā'ī Faith has become the second-most geographically widespread religion in the world. It embraces people from all economic classes and more than two thousand ethnic, racial, and tribal groups. In 2003 there were approximately five million

Bahā'īs in more than two hundred countries and territories worldwide.

A central tenet of the Bahā'ī Faith is unity. Bahā'īs believe that there is only one unknowable God who has revealed himself to humanity through a series of messengers, including Moses, Zoroaster, Buddha, Krishna, Jesus, Muhammad, the Bāb, and Bahā' Allāh. Bahā'īs believe in the oneness of humanity, the unity of religious truth, the harmony of science and religion, the equality of women and men, independent investigation of truth, the elimination of all forms of prejudice, and a spiritual solution to extremes of wealth and poverty.

Persecution of the Bahā'īs in Iran

Since the founding of their religion the Bahā'īs of Iran have suffered torture, imprisonment, mob violence, and execution despite Bahā'ī beliefs of obedience to government and tolerance. Some twenty thousand Bahā'īs perished in the face of opposition from Islamic religious authorities during the nineteenth century. Persecutions continued intermittently throughout the twentieth century until the Islamic revolution in 1979, when clerics seized control of the government and embarked on a systematic campaign to eradicate the Iranian Bahā'ī community.

Between 1978 and 1998 the Iranian government executed more than two hundred Bahā'īs. The majority of these Bahā'īs were members of the community's democratically elected governing councils. During the 1980s hundreds of Bahā'īs were imprisoned and tens of thousands were deprived of jobs, pensions, businesses, and educational opportunities solely because of their religious beliefs.

International Responses

In response to intense international pressure in the late 1980s, including a series of country-specific United Nations (UN) resolutions, the Iranian government began to reduce the rate of executions and number of Bahā'īs held in prison. However, despite the apparent abatement of persecution in the late twentieth century, evidence revealed that the Islamic Republic of Iran continued its campaign to marginalize and eliminate the 300,000-member Bahā'ī community. Bahā'īs were arrested and released without documentation to confirm their freed status. Suspended sentences were used to threaten individuals who continued to participate in Bahā'ī activities. These practices were calculated to extinguish the life of the community without drawing the attention and ire of the international community.

Evidence of the government's altered tactics emerged in early 1993 with the discovery of a confidential government policy memorandum regarding the Bahā'ī question. Drafted by the Supreme Revolutionary Cultural Council and signed by former president Ali Khamenei, the document described the government's objective: to ensure that the "progress and development" of the Bahā'ī community remain "blocked." The memorandum declared that all Bahā'īs should be expelled from universities and prevented from obtaining positions of influence and employment. The memorandum further suggested that Bahā'ī youth should be sent to Islamic schools with "a strong and imposing [Islamic] religious ideology" and must be expelled from schools and universities if they identified themselves as Bahā'īs. It also discussed plans for reaching beyond the borders of Iran "to confront and destroy their [Bahā'ī] cultural roots outside the country."

Twenty-First Century Developments

International efforts to focus on Iran's human rights record faltered in April 2002. Iranian officials were able to convince other nations that the previous seventeen resolutions adopted by the UN Commission on Human Rights were not helpful in advancing human rights in Iran and other means would prove more effective in improving the status of Bahā'īs, and other groups, in that country.

After the Commission on Human Rights suspended its monitoring of Iran, arrests and short-term detentions of Bahā'īs increased. Bahā'ī teachers and students were constantly watched and harassed. Instances of confiscation increased, while attempts to obtain redress from the courts failed. The Bahā'ī community constitutes Iran's largest non-Muslim religious minority, yet it remains unrecognized by Iran's constitution.

Thousands of newspaper articles about the situation of the Bahā'īs in Iran have appeared around the world. Prominent international organizations, including the European Parliament and several national legislatures, have passed resolutions expressing serious concern for their situation.

SEE ALSO Iran; Religious Groups

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East Pakistanis were struggling for independence from Pakistan in 1971 when the Pakistani Army inaugurated a genocide there. Here, in a photo taken in Dhaka (or Dacca), corpses are transported for burial. [BETTMANN/CORBIS]

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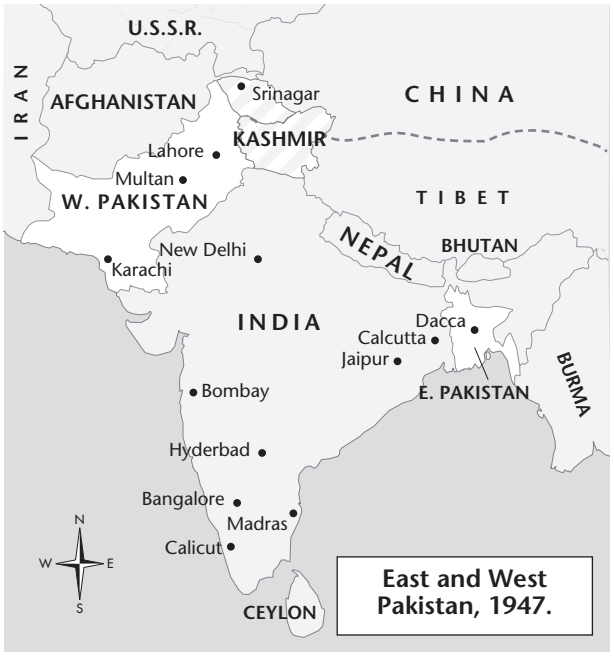
Kit Bigelow
Jerry K. Prince

Bangladesh/East Pakistan

India's independence from Great Britain in August 1947 resulted in the partition of British India into India and Pakistan. Pakistan was created out of the Muslim-majority provinces of British India, with no regard for geographical contiguity. The resulting state was formed into two physically separate wings, with the territory of India intervening between the two. The eastern wing was created by the partition of the British province of Bengal, and the principal language spoken there was Bengali. Although it was principally the language of those who fled India to Pakistan, the government of Pakistan decreed that Urdu would be the national language.

In the evening of March 25, 1971, the Pakistan army attacked East Pakistan, as the future Bangladesh was then known. The attack was an effort to put down East Pakistani protesters who demanded that the national government recognize the right of the elected majority party, the Awami (People's) League, to assume political office. The attacks by the Pakistanis, and resistance by the Bangladeshis, continued until December of that year, with the Bangladeshis seeing this as a war of independence, and the government forces viewing it as a civil war. Throughout the year, India provided support for the East Pakistani rebels, and received a large number of refugees. Early in December, Pakistan's internal conflict assumed international dimensions with the direct intervention of Indian troops. The violence ended on December 16, when the Pakistani commander at the time, General A. K. Niazi, surrendered to General Jagjeet Singh Arora, commander of the Indian forces.

The discontent of East Pakistanis in the united state of Pakistan had a long history before it finally culminated in war. The Muslim League government of Pakistan, led by Muhammad Ali Jinnah, had long ignored East Bengal. However, during his only visit to the east-



Map of India and to its east, Bangladesh/East Pakistan, site of the well-documented Hindu genocide. [EASTWORD PUBLICATIONS DEVELOPMENT/GALE GROUP]

ern province, in March 1948, Jinnah was confronted by Bengalis who demanded that their language be recognized along with Urdu as a co-official language of Pakistan. Jinnah stated that anyone who opposed the status of Urdu as the official language of Pakistan was a traitor to the country. This angered the Bengali faction, and in 1952 that anger gave rise to the "language movement" in East Pakistan.

After independence, the Pakistani government was constituted according to the Government of India Act (1935) as modified by the India Independence Act of 1947, both acts of the British Parliament. It was not until 1956 that a formal constitution was promulgated (India adopted its own constitution in 1950). The constitution of 1956 changed the name of the eastern wing of the country from East Bengal to East Pakistan and the four provinces of the west wing were consolidated into West Pakistan. The constitution also instituted the concept of parity between the eastern and western regions. This meant that representation in the National Assembly would be equal from each province, even though East Pakistan had about 54 percent of the total population of Pakistan. The Bengalis of East Pakistan viewed this as an affront.

This shortchanging of representation in the National Assembly was also seen in the military services. There were very few officers from East Pakistan in a military overwhelmingly dominated by West Pakistanis. There was a similar disparity in representation within the civil service. Although a quota system was later instituted, the disparity persisted at the higher levels throughout the 1960s.

In 1954 a major and violent strike occurred at the Adamjee Jute Mill in Narayanganj, a suburb of Dhaka. In addition to disputes over pay and labor practices, the East Pakistani workers felt that the company was showing favoritism to Urdu-speaking Biharis in employment. *Bihari* is a general term applied to those Urdu-speaking Muslims, most of them from the Indian state of Bihar, who fled east at the time of partition but who never learned to speak Bengali. In addition, the East Pakistani strikers were protesting the fact that the majority of East Pakistan's manufacturing and banking firms were owned by West Pakistanis, among whom the Adamjee family was prominent.

The leading Muslim political party in Bengal prior to Pakistan's independence had been the Muslim League, which dominated the Bengal Provincial Assembly. At the time of independence, the sitting members of the Bengal Provincial Assembly chose their future membership in either the assembly of West Bengal in India or the assembly of East Bengal in Pakistan. The Muslim League maintained control. Although elections were held in each of the provinces of the west wing as early as 1951, elections in East Bengal were delayed until 1954. The election, when it was finally held, resulted in an almost total rout of the Muslim League, which was looked upon locally as a proxy of the central government.

The winning coalition in East Pakistan was comprised of the Awami League and the Krishak Sramik (Farmers and Workers) Party. The principal founder of the Awami League was Husain Shahid Suhrawardy. The Krishak Sramik Party was led by Fazlul Haq. Haq had been a prime minister of united Bengal (i.e., prior to independence) when his party was known as the Krishak Praja (Farmers and Peoples) Party. For the 1954 election, the Awami League and the Krishak Sramik Party joined forces as the United Front and ran for office on a platform called "21 Points." Among the issues addressed by the coalition were the recognition of Bengali as an official language of Pakistan; autonomy for East Bengal in all matters except defense, foreign affairs, and currency; land reform; improved irrigation; nationalization of the jute industry; and other points that, if enacted into law, would give East Bengalis greater control of their own governance.

The demand that Bengali be recognized as an official language was an outgrowth of the language movement of 1952. Since the early days of independence, East Pakistanis had demanded that Pakistan recognize

two official languages: Bengali (the most widely spoken language) and Urdu. An attempt by the central government to devise a means to write Bengali in the Urdu script was met with widespread opposition and rioting, mainly from academics and university students. On February 21, 1952, in an attempt to suppress the violence, the police fired on a crowd of demonstrators, and about twenty students were killed. Today, a monument stands at the site of the killings, and February 21 is celebrated annually as Martyrs' Day.

For its championing of this and other issues important to the majority of East Pakistanis, the Krishak Sramik–Awami League coalition won the 1954 election. Eventually, however, the Krishak Sramik Party withered away, and the Awami League became the most important party in the province. It would become the leader of the independence movement and dominate emerging Bangladeshi politics.

In October 1958 General Muhammad Ayub Khan proclaimed himself president of Pakistan following a military coup, declared martial law, and dissolved the National Assembly and the provincial legislatures. He then set up what he called "Basic Democracy," which he described as a more representative government. Elections at the local level would be direct, and those elected at this level would be designated Basic Democrats. Elections for the provincial and national assemblies and for the presidency would be indirect, with the Basic Democrats serving as the electoral college. He retained the principle of parity, however. This meant that each province was allocated an equal number of Basic Democrat electors, so that East Pakistanis continued to be underrepresented at the higher levels of government. Not unexpectedly, Ayub was elected president in 1962 and reelected president in 1967. Although he won majorities in each wing in each election, his majority in the east wing in 1967 was dramatically less than in 1962.

Nonetheless, Ayub's power began to slip after his reelection to office, as did his health. Opposition to his rule spread, even in West Pakistan. Ayub grew concerned about a growing secessionist movement in East Pakistan. The Awami League, now headed by Sheik Mujibur Rahman, demanded that changes be made in regard to East Pakistan. These changes were embodied in Mujib's Six Points Plan, which he presented at a meeting of opposition parties in Lahore in 1966. In brief, these Six Points called for:

(1) a federal and parliamentary government with free and fair elections;

(2) federal government to control only foreign affairs and defense;

(3) a separate currency or separate fiscal accounts for each province, to control movement of capital from east to west;

(4) all power of taxation to reside at the provincial level, with the federal government subsisting on grants from the provinces;

(5) enabling each federating unit to enter into foreign trade agreements on its own and to retain control over the foreign exchange earned; and

(6) allowing each unit to raise its own militia.

If these points had been adopted, it would have meant almost de facto independence for East Pakistan. Many observers saw point six, a separate militia, as the point most unacceptable to the central government, but they were wrong. The 1965 Indo-Pakistan War had demonstrated the lack of local defense forces in East Pakistan, which would have left the province defenseless had India attacked there. In fact, it was point four, regarding taxation, that proved to be the problem, because the enactment of this point would make it all but impossible for a central government to operate.

In 1968, in response to the Six Points Plan, the Ayub government charged Mujib and his supporters with treason. This later became known as the Agartala Conspiracy Case, so-called as it was alleged that Mujib had met with Indian agents in Agartala, the capital of the Indian state of Tripura, which borders on Bangladesh. Mujib and the Awami League denied that any such meeting had ever taken place. In early 1969, as hostility to Ayub increased in both East and West Pakistan, he invited opposition leaders to meet with him. Mujib, having been jailed awaiting his trial for treason, was not invited to this meeting. The opposition leaders refused to come to the meeting unless the charges against Mujib were withdrawn and demanded that he, too, be invited to attend. Ayub complied with these demands. The meeting, which Ayub hoped would work to his advantage, instead strengthened the opposition's position, which called for the end of the policy of Basic Democracy and the return to direct parliamentary elections.

The opposition movement expanded beyond the political sphere to the military, and Ayub was forced to resign on March 25, 1969. He was replaced by General Agha Muhammad Yahya Khan, who promised to reinstate direct elections. These were held in December 1970 in most of the country, but flooding in East Pakistan forced a few constituencies to delay their elections until January 1971. In addition to reinstating free and direct elections, Yahya also acted to restore the former provinces of West Pakistan, which had been united into a single unit by the 1956 constitution. More im-

portant for East Pakistan, he ended the principle of parity. In the 1970 election for the National Assembly, East Pakistan would have 162 general seats out of a total of 300, reflecting the 54 percent majority that Bengalis enjoyed according to the 1961 population census.

Yahya also introduced legislation that, in his view, would limit the changes that could be made to the constitution by the National Assembly. This legislation, called the Legal Framework Order, touched upon seven points:

(1) that Pakistan would be a federated state;

(2) Islamic principles would be paramount;

(3) direct and regular elections would be held;

(4) fundamental rights would be guaranteed;

(5) the judiciary would be independent;

(6) maximum provincial autonomy would be allowed, "but the federal government shall also have adequate powers, including legislative, administrative, and financial powers, to discharge its responsibilities"; and

(7) economic disparities among provinces would be removed.

The result of the election in East Pakistan startled outside observers, and even took some supporters of the Awami League by surprise. The party won 160 of the 162 seats in East Pakistan, thereby gaining a majority in the National Assembly without winning a single seat in West Pakistan, which had thrown its support behind the Pakistan People's Party, led by Zulfiqar Ali Bhutto. Neither Yahya, nor his military associates, nor Bhutto looked favorably on a government comprised solely of the Awami League and headed by the author of the Six Points Plan. Yahya began a series of negotiations, perhaps in the hope of creating a coalition government, but more in an effort to sideline Mujib. As the talks became more rancorous and compromise seemed impossible, the Pakistani government began to increase the strength of its rather small contingent of military forces stationed in East Pakistan.

Yahya negotiated with Bhutto and Mujib, the former declaring that there were "two majorities" in Pakistan, and the latter insisting on the full enactment of the Six Points, even where these were at variance with Yahya's Legal Framework Order (i.e., on the issues of taxation). Demonstrations supporting the Awami League's position spread across East Pakistan. Violence began to look more attractive than political activism as a means of protecting East Pakistan's interests. By this time, the term *Bangladeshi* was widely adopted by the Awami League and its supporters to replace the designation *East Pakistani*.

The army struck back on March 25, 1971. Its first move was to attack the faculty and students at Dhaka University and to take Mujib into custody. By one estimate, up to 35,000 Bangladeshis were killed at the university and elsewhere on the first few days. Mujib was transported to jail in West Pakistan. (There were fears that he would be executed, but these later proved unfounded when he was released at the end of the conflict.) A number of Mujib's associates fled, first to a village on the border with India, then to Calcutta. Major Ziaur Rahman, who would later become president of independent Bangladesh, issued a declaration of independence.

Bangladeshi police and border patrol forces organized a resistance force to oppose the Pakistani army, and they were later joined by several civilians, many of whom had been university students. It was, however, almost nine months before India intervened, triggering the December 16, 1971, surrender of the Pakistani army. India intervened both for strategic reasons (as weakening Pakistan) and for humanitarian reasons, to alleviate the suffering of Bangladeshis.

Pakistan complained about India's invasion of its sovereign territory to the UN Security Council in early December. In an often emotional speech, Bhutto argued, with reason, that this intervention was a violation of international law. The Security Council agreed, but the question soon became moot with the surrender of the Pakistani troops in Bangladesh.

The number of Bangladeshis killed, disabled, raped, or displaced by the violence of 1971 is not fully known. Estimates by Bangladeshi sources put the number killed at up to three million, and it is estimated that as many as ten million may have fled to India. Initially, the Pakistani army targeted educators, students, political leaders, and others who were generally considered to be prominent sympathizers of the Awami League. As the Bangladeshis formed military units, however, these units also became the targets. Some of these units were formed by Bangladeshis who had formerly served in the Pakistani army; others were recruited from the police and the East Pakistan (now Bangladesh) Rifles, a border security force. These units, based in rural and outlying areas of Bangladesh, were able to take advantage of the Pakistani army's initial focus on the student-led demonstrations in the Dhaka region. Survivor accounts, such as that by Jahanara Imam, suggest that much of the killing soon devolved into little more than indiscriminate slaughter.

The Pakistani surrender and the termination of conflict left several unsettled questions. Many Bangladeshis—mostly civil servants or military troops and their families—were still detained in Pakistan. In

Bangladesh, there were non-Bengalis—again, mostly civil servants or military troops, but also some business owners and professionals—who wished repatriation to Pakistan. In addition, the fate of de facto prisoners of war held by Bangladesh, and Pakistani prisoners of war held by India had yet to be decided. Bangladesh wanted to place 195 Pakistani military personnel on trial for war crimes and genocide. On August 9, 1975, a tripartite agreement between Bangladesh, India, and Pakistan was reached to create a panel that would attempt to settle these issues. Bangladesh also agreed to drop all charges against the 195 Pakistanis accused of war crimes and to permit their repatriation to Pakistan.

In the end, and at great cost, Bangladesh achieved its independence. Slowly, the two countries were able to establish diplomatic relations. Pakistan recognized Bangladesh as independent on February 22, 1974, primarily at the urging of the Organization of the Islamic Conference (OIC), which was meeting in Lahore at that time. The OIC insisted that Bangladesh, a Muslim state, be permitted to attend the conference. Bangladeshis, however, remained unsatisfied. They wanted an apology from the Pakistanis for the excesses committed during the war. They received one finally from the Pakistani president, Pervez Musharraf, when he visited Bangladesh in July 2002.

SEE ALSO Humanitarian Intervention; India, Modern; Rape; Refugees

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Craig Baxter

Barbie, Klaus

[OCTOBER 25, 1913–SEPTEMBER 25, 1991]
German Officer, Chief of the Gestapo in France

A German officer during World War II, Klaus Barbie was the chief of the Gestapo in Lyons, France, between November 1942, when the Germans assumed control of the previously unoccupied zone, and the occupation's collapse after the Allied D-Day landings in Normandy. Subsequently known as the Butcher of Lyons for his responsibility for the wartime arrest, deportation, torture, and death of thousands, Barbie finally appeared before a French court in 1987, after having lived for three decades in South America under the assumed name Klaus Altmann. His trial was the first in France to deal explicitly with crimes against humanity.

Barbie seems to have escaped justice in the postwar period because of his work on behalf of the United States as a counterintelligence agent. In 1951 he found his way to La Paz, Bolivia, and although tried in France and sentenced to death twice in absentia, in 1952 and 1954, he virtually disappeared until discovered by the French Nazi-hunters Beata and Serge Klarsfeld in 1971. Extradited to France in 1983, Barbie was charged with crimes against humanity committed against civilians, particularly Jews—charges that gained an independent status in French law in the mid-1960s, and for which the twenty-year statute of limitations for war crimes did not apply. In a controversial decision, the *Cour de cassation,* the highest appeals court in France, defined crimes against humanity as those perpetrated "in the name of a state practicing a hegemonic political ideology. . .not only against persons because they belong to a racial or religious group, but also against the adversaries of this [state] policy, whatever the form of their opposition."

The two-month trial of Klaus Barbie, which opened on May 11, 1987, was a cause célèbre in France and, it has been claimed, marked a turning point in the French memory of the Holocaust and wartime resistance. Specifically, Barbie was charged, among other crimes, with having led a raid on the headquarters of the Jewish council in Lyons, with the deportation to Auschwitz of forty-three Jewish children and five adults who were seized from a place of hiding in the village of Izieu, and with the deportation of various other victims, both Jews and members of the French Resistance. Despite the efforts of Barbie's brilliant defense lawyer, Jacques Vergès, to divert attention from his client's wrongdoings to allegations of misdeeds on the part of the Resistance, France's historic complicity in war crimes in Algeria, and even Israeli policies, the extensive publicity generated by the evidence highlighted the sufferings of Barbie's victims—both Jews and the wartime resistance. In the end Barbie was found guilty of crimes against humanity and sentenced to life imprisonment—the maximum sentence allowed by French law. Barbie died in prison in 1991. He was the last ranking Nazi to be tried by a tribunal of justice.

SEE ALSO Crimes Against Humanity; Gestapo; Prosecution; SS

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Michael R. Marrus

Beothuk

The Beothuk, speakers of a proto-Algonkian language, had lived in the area now known as Newfoundland and southern Labrador, Canada, for more than two thousand years before John Cabot's landing in 1647. Nomadic, they followed the coastlines, taking advantage of the rich migratory fisheries, shorebirds, and land and sea mammals. In winter they supplemented their diets with inland caribou, herded through specially constructed fences.

Estimates of the Beothuk population in 1500 vary widely, ranging from seven hundred to five thousand individuals, organized into bands of seven to ten families, comprising thirty-five to fifty people. Egalitarian in social organization with decision making by consensus, each band bestowed leadership positions on those men and women respected for their wisdom and experience. They called themselves Beothuk (red people) in reference to the red ochre paint mixed with fish oil or animal grease that coated their bodies, clothing, canoes, and personal goods. The coating, which served as a symbol of tribal identity and initiation, may be the basis for the later European term "redskins."

The Beothuk learned early on to mistrust European explorers, who captured dozens of their people between 1501 and 1510, transporting them to Europe as slaves. For the next 150 years Europeans fished off the Newfoundland coast, making few permanent settlements, but cutting off the Beothuk from their traditional fishing grounds during the important summer months. The Micmac, once allies but now armed by the British, further reduced the food supply by invading the Beothuk's territory and killing their game for the fur trade.

Unlike other tribes, the Beothuk refused to enter into relations with the Europeans, enforcing a penalty

Map of present-day Newfoundland and Labrador, where the Beothuk flourished prior to the arrival of European traders in the seventeenth century. **[EASTWARD PUBLICATIONS DEVELOPMENT/ GALE GROUP]**

of death on those who did. By the 1720s Beothuk relations with European settlers and the Micmac had deteriorated beyond repair. The Europeans, angered by the Beothuk practice of stealing and scavenging iron implements, which the tribe then refashioned into various tools, responded by frequently killing Beothuk, who in turn exacted their own revenge. By 1768 the Micmac and European settlers had pushed the Beothuk further north, reducing their number to fewer than four hundred people attempting to subsist on the inadequate resources of the Exploits River system. Although some early efforts were made to protect the Beothuk, official intervention on the part of the Canadian government came too late. By 1823 starvation and disease, especially tuberculosis, had left only three female survivors. The last known Beothuk, Shanawdithit, a twenty-six-year-old young woman, died in 1829 from tuberculosis.

SEE ALSO Canada; Indigenous Peoples

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Sharon O'Brien

Biafra/Nigeria

Agitation for secession among the more than 250 ethnic groups in Nigeria started almost immediately after the British-engineered amalgamation of January 1, 1914, which joined the southern and northern protectorates to form what is Nigeria. Vast distances, differences of history and traditions, and ethnological, racial, tribal, political, social, and religious barriers all hampered the creation of a unified state. Nigeria became a federation of three regions based on ethnic groupings upon independence on October 1, 1960, but pressure for secession continued even after that development.

In 1967 Biafra attempted to secede from the Nigerian federation. That effort culminated in a devastating, intense, and prolonged civil war. Scholars differ in their view of its history and consequences, but broad agreement exists on some pertinent issues.

The Nigerian Civil War, spanning a thirty-month period, from May 30, 1967, to January 12, 1970, was precipitated by a combination of factors. Among the many reasons advanced are growing interethnic rivalry and suspicion between the three major ethnic groups (Hausa/Fulani in the north, Yoruba in the west, and Igbo in the south); agitations over alleged domination by one ethnic group to the exclusion of the others; a controversial 1963 federal census; disputed postindependence elections in 1964 and volatile western regional elections in 1965, inevitably resulting in prolonged political crisis, anarchy, and uncertainty. These events triggered the first military coup on January 15, 1966, by predominantly young Igbo army officers led by Major Chukwuma "Kaduna" Nzeogwu, himself an Igbo from the eastern region.

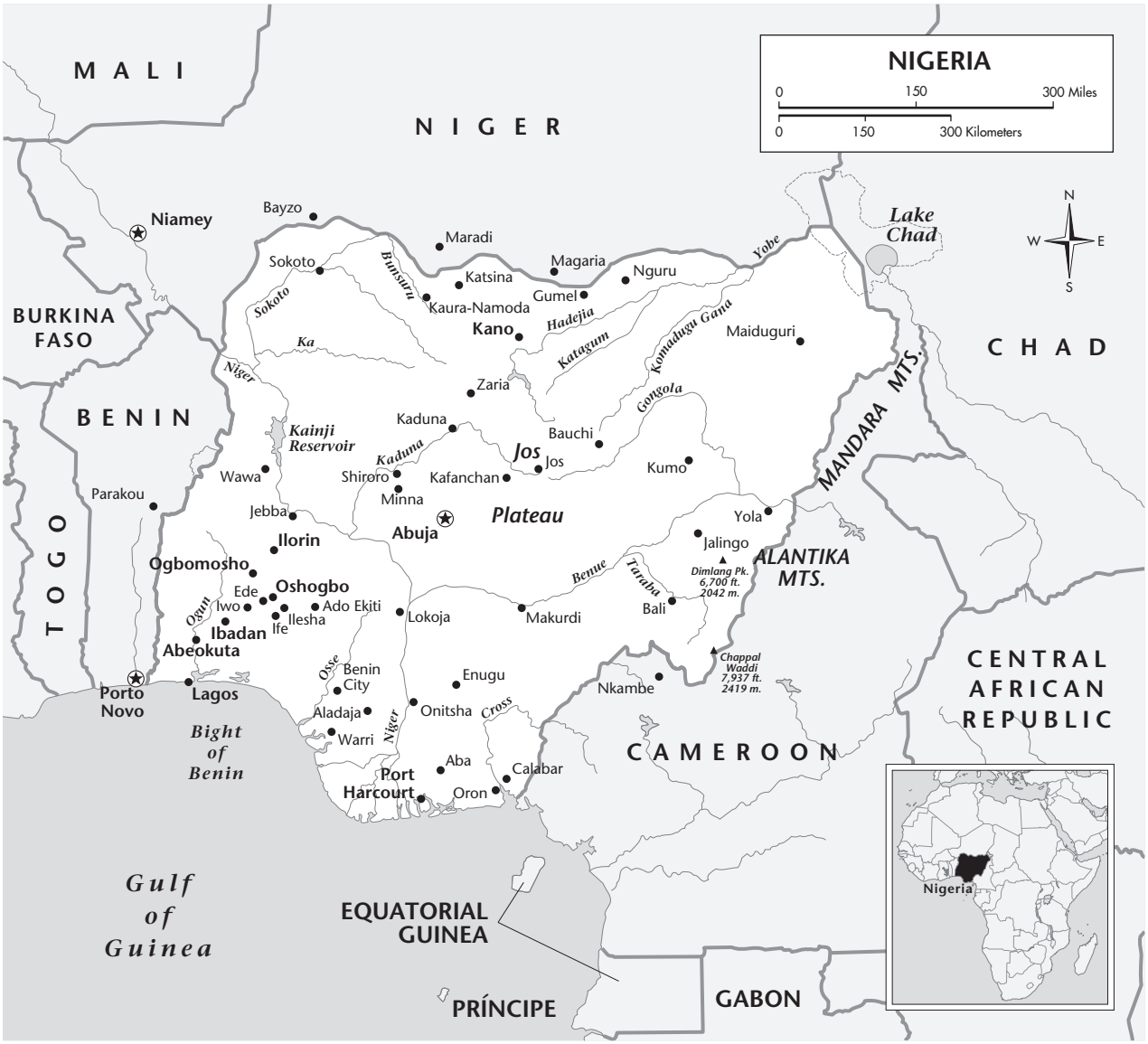
Although prominent northern politicians such as the prime minister, Tafawa Balewa, and the Sarduana of Sokoto, Sir Ahmadu Bello, were killed in the process, there were no casualties in the east, reinforcing the belief in many quarters, especially in the northern region, that the coup was ethnically motivated to achieve domination by the Igbo over other ethnic groups. Nzeogwu's coup failed, but a countercoup, led by another Igbo, Major General Johnson Umunakwe Aguiyi-Ironsi, abolished the federal structure and introduced in its stead a unitary system of government.

Although the new government arrested the suspected plotters of the first coup, they were never tried. Consequently, on July 29, 1966, a "revenge coup" by largely northern officers led to the killing of the Nigerian head of state, Major-General Aguiyi-Ironsi at Ibadan, while he was making an official visit to the western region. During this same period several Igbo officers and civilians were also killed in the north, and their properties looted or destroyed.

By October 1966 over fifty thousand Igbos had lost their lives, several thousands more were maimed, and an estimated two million Igbos fled from other parts of Nigeria back to the east. In response, Lieutenant Colonel Chukumeka Odumegwu Ojukwu, Eastern Military Governor stated, "The brutal and planned annihilation of officers of Eastern Nigeria origin had cast serious doubt as to whether they could ever sincerely live together as members of a nation" (Ojiako, 1979, p. 48).

To reduce the political tensions that had engulfed the country, representatives of all concerned parties attended a summit of military leaders at Aburi, Ghana, beginning January 4, 1967, and agreed to a confederal system of government, but the agreement was never implemented. After several unsuccessful efforts to negotiate peace, Ojukwu unilaterally declared Biafra's independence from Nigeria on May 30, 1967, citing the Nigerian government's inability to protect the lives of easterners and suggesting its culpability in genocide. Biafra derived its name from the Bight of Biafra and comprised the East-Central, South-Eastern, and Rivers states of Nigeria. Biafra's independence was recognized by Gabon, Haiti, Ivory Coast, Tanzania, and Zambia. The federal government of Nigeria responded to Biafra's declaration of independence with its own declaration of war.

The Nigerian Civil War, fought almost entirely in the southeastern portion of that country, resulted in the death of millions of unarmed civilians and massive destruction of property. As the conflict progressed, the living conditions in Biafra deteriorated. The Biafrans, fighting against a numerically and materially superior force, were virtually encircled and isolated. The Biafran armed forces made sporadic strategic incursions into federal territories, but limited means of support frequently forced a retreat. A combination of military operations—by land, air, and sea—and an economic blockade against Biafra and the destruction of its agricultural life by the Nigerian federal government led to the starvation, mass death, and displacement of Igbos.



Map of Nigeria, including the East-Central, South-Eastern, and Rivers states that comprised the former Biafra. [MARYLAND CARTOGRAPHICS]

The Nigerian government blockaded the region from the sea, thus preventing the shipment of critical items and services to the east. Furthermore, the government recaptured the Rivers state, cutting off the oil revenue with which Biafra had expected to finance the war; suspended telephone, telegraph, and postal services; and cancelled all air flights to the region, except those cleared by Lagos. The enforcement of a comprehensive blockade led to severe shortages of food, medicine, clothing, and housing, precipitating heavy casualties among Biafran civilians. About three million Biafrans are believed to have lost their lives, an estimated one million of them as a result of severe malnutrition. More than three million Igbos became internally displaced persons or refugees. For a variety of reasons, including the national interests of most of its member states, the international community, except for limited humanitarian relief, left Biafrans to their fate.

Biafra alleged genocide, fueling international sympathy. Although a team of observers found considerable evidence of famine and death as a result of the war, it uncovered no proof of genocide or the systematic destruction of property. Furthermore, although claims of starvation and genocide secured military and political support from some members of the international community and international organizations, they also helped to lengthen the war, thereby furthering the suf-

Two British businessmen held prisoner, along with Biafrans, after being beaten by Nigerian federal troops during the civil war between the central government and the province of Biafra (1967–1970). [HULTON-DEUTSCH COLLECTION/CORBIS]

fering in Biafra. In December 1968 the International Committee of the Red Cross (ICRC) estimated that fourteen thousand people were dying each day in Biafra. Many civilians who had already survived the war reportedly died of starvation because the federal government obstructed direct access to relief agencies and ignored international pressure to allow mass relief operations entry into Biafra, accusing relief agencies of concealing arms shipments with supplies from their humanitarian flights.

It would appear that the implementation of the Geneva Conventions of 1949 and its Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts, to which Nigeria is a party, was the exception rather than the rule. According to Additional Protocol II,

> [All] persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honor and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.

The fall of Owerri, one of Biafra's strongholds on January 6, 1970, signaled the collapse of the resistance, leading to the flight of its leader, Ojukwu, to the Ivory Coast. On January 12, 1970, the Biafran chief of army staff, Major General Phillip Effiong, surrendered to the federal government. According to Effiong, "We are firm, we are loyal Nigerian citizens and accept the authority of the Federal Military Government. We accept the existing administrative and political structure of the federation of Nigeria. The Republic of Biafra hereby ceases to exist" (Oko, 1998, p. 336).

The Nigerian head of state, Colonel Yakubu Gowon, accepted Biafra's unconditional surrender, declaring that there would be no victor and no vanquished. Although the civil war resulted in mass death, starvation, displacement, and destruction of property, its principal objective was to bring back the eastern state to the federation, not the destruction of the Igbos. In contrast to the policies of extinction underpinning the Holocaust and Rwandan genocide, those of the Nigerian government did not call for the extermination of the Igbos, but instead sought to address the threat of secession.

Thus, after the war, the government developed a Reconciliation, Reconstruction, and Rehabilitation program to resettle those who had been displaced from their homes and places of permanent residence; rehabilitate both troops and civilians alike; reconstruct damaged infrastructure and public institutions; and correct economic and social problems—poverty, preventable diseases, squalor, and ignorance. Furthermore, the federal government promised to provide food, shelter, and medicines for the affected population; hand over power to a civilian government on October 1, 1975; reorganize the armed forces; complete the establishment of the twelve states announced in 1967; conduct a national census; draft a new constitution; and hold elections. Although some of these commitments were fulfilled—new states were created, a new constitution was implemented, the armed forces were scaled down in size, and power was handed over to a civilian government—Nigeria's subsequent history of corruption and military coups has left many of its promises unfulfilled.

SEE ALSO Ethnic Groups; Geneva Conventions on the Protection of Victims of War; Minorities; Nationalism

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Kolawole Olaniyan

Biographies

Of all the individuals who have either participated in or been the victims of genocide, the majority of those who are the subject of biography have come from three relatively small and discrete groups: the perpetrators in the highest echelons of political and/or military power; victims (mostly survivors) who have distinguished themselves through their literary works; and the liberators, those who risked their lives to save or aid victims. Unsurprisingly, biographies emanating from each of these groups have been significantly different in tone as well as purpose.

The biographies of perpetrators have drawn the most attention from both scholars and the reading public. These works not only chart the rise to power and prominence of their relatively well-known subjects, they also invariably seek to explain the environmental, psychological, political, and ideological forces that motivated these infamous individuals to plan and organize mass killings. Although no biography of Adolf Hitler has achieved undisputed canonical status, several have provided satisfying and convincing portraits. Allan Bullock's *Hitler: A Study in Tyranny* (1962) still remains the most penetrating biography, although Joachim Fest's *Hitler* (the English translation was published in 1975) does an excellent job of exploring the German fascist dictator's early ideological development. A superb overview and analysis of the existing literature on Hitler may be found in John Lukacs's *The Hitler of History* (1998).

Although source material is less complete (and less available) for the communist mass murderers of the twentieth century, several fine biographies of Joseph Stalin do exist, including Dmitrii Volkogonov's *Stalin: Triumph and Tragedy* (1991) and Robert Conquest's *Stalin: Breaker of Nations* (1991). For Mao Zedong, Ross Terrill's *A Biography of Mao* (1999) and Stuart Schram's *Mao Tse-Tung* (1974) are excellent. As of 2004 several biographies of the enigmatic Khmer Rouge leader Pol Pot have been written—although the amount and overall quality of scholarship on Cambodian genocide remain inadequate.

Biographies of victims have primarily (although not exclusively) focused on writers who were also

survivors, such as Primo Levi, Elie Wiesel, Nelly Sachs, and Paul Celan. These works provide insight into how these survivors' experiences affected their lives post-trauma as well as informed their writing. The finest examples examine the capacity of history and literature to convey both the horror of mass murder and the evil underlying it. In many cases biographies have furnished valuable added insight into the lives of acclaimed memoirists and diarists such as Anne Frank and Hannah Senesh. Two notable works that defy categorization are *Maus* (1986) and *Maus II* (1991), Art Spiegelman's comic book portrayals of his parents' experiences in pre-war Poland, Auschwitz, and post-war America. Blending biography and autobiography with self-conscious explorations of aesthetic representation, Spiegelman has created an original and individualized approach to Holocaust narration. In the realm of visual media many fine bio-documentaries have been made about individuals from all three groups. One example—*Chaim Rumkowski and the Lodz Ghetto* (1991)—paints a dramatic and unflinching portrait of the Jewish leader and Holocaust victim.

Biographies of liberators (or righteous Gentiles in the case of the Holocaust) have focused primarily on the reasons such individuals risked their lives to save others. As such, they tend to emphasize the heroic as well as the personal. Two prominent subjects include Raoul Wallenberg, the Swedish businessman and diplomat who saved tens of thousands of Jewish lives in wartime Budapest, and Oskar Schindler, the German businessman turned protector of Polish Jews. Both men have also been the subjects of widely acclaimed feature films—*Good Evening, Mr. Wallenberg* (1990) and *Schindler's List* (1993).

The biographies of perpetrators and victims (as well as liberators) of genocide have explored issues of wide scholarly and public interest. Combining the historical and the private, such biographies have provided valuable perspective on the incalculable human toll of mass murder in the twentieth century.

SEE ALSO Diaries; Memoirs of Perpetrators; Memoirs of Survivors

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Mark C. Molesky

Bosnia and Herzegovina

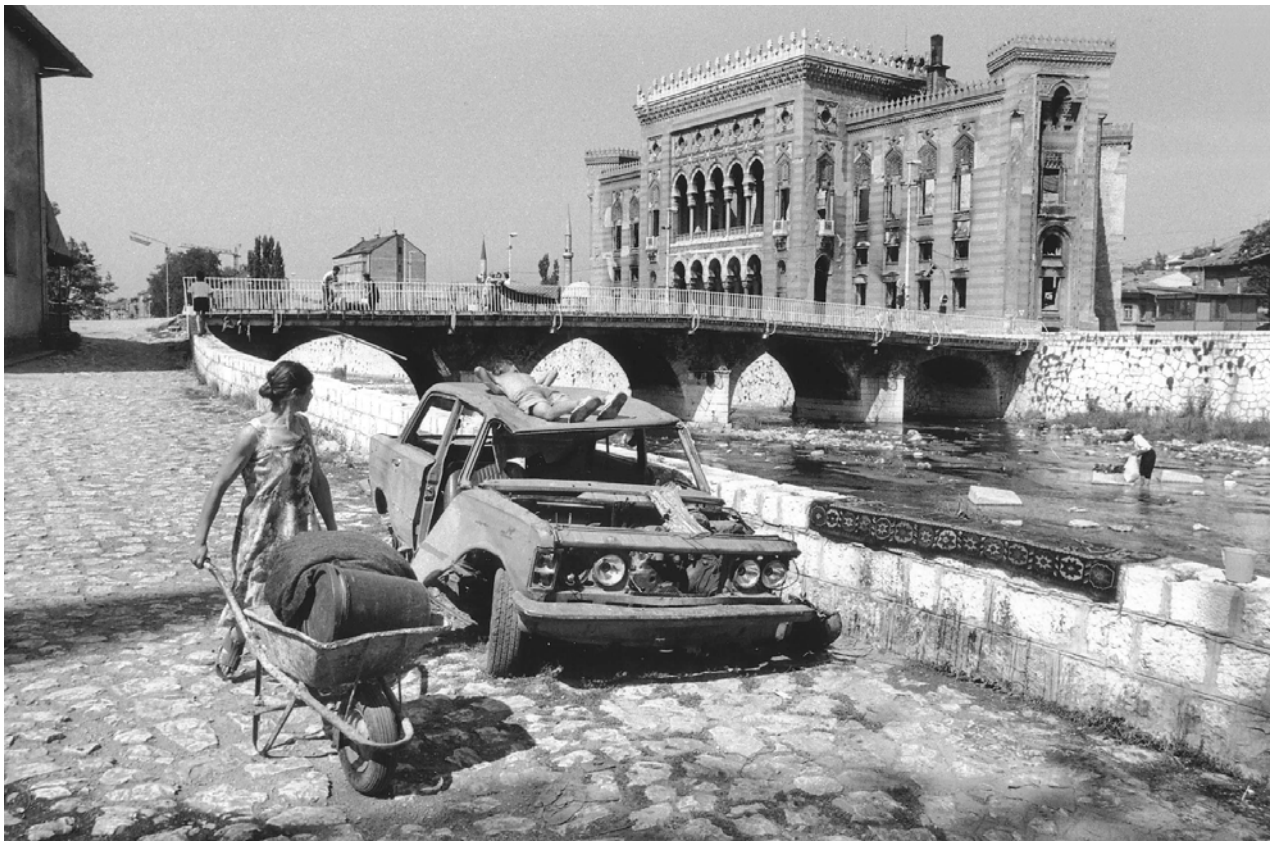
At the beginning of April 1992, Serb forces swept through much of Bosnia and Herzegovina, systematically brutalizing and expelling non-Serbs and, in particular, Bosnian Muslims, in a campaign of terror. In the process, the term *etničko čišćenje* (ethnic cleansing) passed from Serbo-Croat into English to encapsulate the brutality of a conflict in which the principal aim was to erase all traces of a culture. Meanwhile, the name Bosnia and Herzegovina became synonymous with killing, cruelty, and human suffering on an almost unprecedented scale.

In response to the atrocities committed in Bosnia and Herzegovina, and to assist post-war reconciliation, the International Criminal Tribunal for the Former Yugoslavia (ICTY) was set up in The Hague to try perpetrators of war crimes, including genocide. The war itself lasted three years and nine months and only ended after NATO intervention, first with an air campaign in August and September 1995, and then with the deployment of a peacekeeping force in December of that year, following agreement on a peace plan negotiated in Dayton, Ohio.

The Bosnian question boils down to two issues: how 2.2 million Muslim Slavs could live amid 4.5 million Christian Croats and 8.5 million Christian Serbs in the wider region of the former Yugoslavia; and how 750,000 Christian Croats and 1.3 million Christian Serbs could live together with 1.9 million Bosnian Muslims within Bosnia and Herzegovina itself. Depending on where borders are drawn and whether they are respected, Muslims either form a minority squeezed between two more powerful ethnic groups, or they comprise a relative majority in a territory shared with two large minority communities, both of which generally consider the neighboring states of Croatia, Serbia, and Montenegro to be their mother countries.

Of Bosnia and Herzegovina's 109 pre-war municipalities, 37 had an absolute Muslim majority, 32 an absolute Serb majority, and 13 an absolute Croat majority. A further 15 municipalities had a simple Muslim majority, 5 had a simple Serb majority, and 13 had a simple Croat majority. With the exception of Croat-populated Western Herzegovina, an absolute majority rarely accounted for more than 70 percent of the population and, as often as not, neighboring municipalities had majorities of one of the republic's other peoples. Therefore, Bosnia and Herzegovina could not fragment neatly along ethnic lines, because there were no ethnic lines to fragment along. Dividing Bosnia and Herzegovina into ethnic territories would inevitably be messy and would require massive population transfers.

In the early 1990s, the fundamental cause of conflict in the former Yugoslavia was not simply the drive by the country's Serbs to forge their own national state at the expense of their neighbors. Structurally speak-



During the siege of Sarajevo (at the start of the Bosnian War), all roads leading in and out of the city were blockaded. Approximately 400,000 residents became trapped during the siege, cut off from food, water, medicine, and electricity. Here, a young woman transports water in a wheel barrow and a boy plays atop a burned-out car. [TEUN VOETEN]

ing, this was only a manifestation of a much deeper-rooted problem. As communism disintegrated, the gel that had held Yugoslavia together since World War II disappeared, and the country was institutionally ill equipped to deal with the transition to democracy. Nearly half a century of communism had failed to resolve the national question. Indeed, communist rule may even have exacerbated the potential for conflict within Yugoslavia because it had stifled open dialogue on ethnic issues. Moreover, the planned economy had failed to sustain prosperity and had been disintegrating throughout the 1980s.

Although Bosnians had lived together in apparent harmony before the war, ethnic identities formed over centuries of Ottoman rule—when each religious community was governed separately under its own spiritual rulers—remained strong. As a result, when elections took place in November 1990, the vote was divided along ethnic lines. Although the ethnically based parties ostensibly formed a coalition and governed together, they rapidly fell out with one another, and politics descended into a "zero-sum" game.

Western media generally portrayed the Bosnian War as a conflict between nationalists—in particular Serbs, but also Croats—seeking to destroy the multiethnic Bosnian state and the predominantly Muslim Sarajevo government, which formally espoused multiethnicity. This reflected the brutality of the siege of Sarajevo, witnessed by journalists, and the massive ethnic-cleansing campaign of the first months of fighting. However, most media failed to cover the disintegration of the former Yugoslavia, which was probably unstoppable in the absence of the preventive deployment of international forces. In the early 1990s, the key international institutions and the world's most powerful countries possessed neither the capabilities nor the mindset for such intervention, with the result that international diplomacy also contributed to the impending catastrophe.

In the 1990 elections, many Bosnians, especially those of mixed ethnic origins or from the cities, did vote for nonethnic parties, choosing instead one of two former communist options. These people were genuinely committed to a multinational state, but they rep-

resented an increasingly marginalized group and had no influence on the events leading to their country's disintegration. In many ways, Bosnia and Herzegovina was in an impossible and untenable position as soon as the rest of Yugoslavia broke apart. All three ethnically based parties behaved as if they believed that they were locked in a struggle for survival. The moderation of the Bosnian Muslim leadership and the extremism of their Serb counterparts reflected, in part, the reality of the situation that the rival leaders faced.

The debate over the future of the Yugoslav federation was effectively a question of life and death for Bosnia and Herzegovina. For this reason, the Bosnian Muslim leader, Alija Izetbegović, who was also Bosnia and Herzegovina's president, joined his Macedonian counterpart, Kiro Gligorov, in a failed eleventh hour initiative to save a "Yugoslav state community" in June 1991. Although Izetbegović supported the continued existence of some form of Yugoslavia, he was not prepared to see Bosnia and Herzegovina remain in a Serb-dominated country in the event of Slovene and Croatian secession. He opted instead for independence. In preparation, he and his party, the SDA, attempted to push a declaration of sovereignty through the Bosnian parliament in the first half of 1991. As war loomed and it became clear that Bosnia and Herzegovina's Serbs were well armed and willing to use force, Izetbegović saw the best way to advance his aims was by internationalizing the Bosnian question.

The Bosnian Serb leadership, under Radovan Karadzic, had made elaborate advance preparations for the disintegration of Bosnia and Herzegovina. A month before the 1990 elections, they formed a Serb National Council within Bosnia and Herzegovina, and by September 1991 they had set up four so-called Serb Autonomous Authorities, which were effectively self-governing Serb entities. In October 1991 a new, self-appointed Assembly of the Serb Nation of Bosnia and Herzegovina declared that the Bosnian Serbs would remain with other Serbs as part of Yugoslavia, and staged a referendum among Serbs to endorse this decision, which provided near unanimous support. On December 21, 1991, the Assembly proclaimed the creation of the Serb Republic of Bosnia and Herzegovina, and on January 9, 1992, they declared independence. Many Bosnian Serbs had been mobilized by the Yugoslav Peoples Army (YPA) to fight in Croatia and still retained their weapons. The YPA in Bosnia and Herzegovina effectively turned itself into a Bosnian Serb Army by deploying Bosnian Serbs in their home republic in place of Serbs from elsewhere. The Bosnian Serb leadership was in a position to fight to achieve its aims.

Bosnian Croats formed two of their own Autonomous Authorities in November 1991 and were equally adamant that they should not end up in a rump, Serb-dominated state. The community and its leadership were, however, internally divided. A moderate faction represented the two-thirds of Bosnian Croats who lived as a minority among Serbs and Muslims in Bosnia. An extreme faction represented the third who lived in western Herzegovina and formed a large majority of the population there. The Bosnian Croat faction was politically dominant until February 1992, and, like the Muslim leadership, generally pursued a cautious line because of the vulnerability of most Croats in the event of hostilities. That month, however, the moderate Croat leader, Stjepan Kljujic, was ousted at the wishes of Croatian president Franjo Tudjman and replaced by Mate Boban, a Herzegovinian radical. Many Herzegovinian Croats fought in Croatia during the Croatian War and had returned home armed and willing to continue the struggle.

In the course of the Croatian War, which ended after the Sarajevo Accord of January 1992, Bosnia and Herzegovina's communities effectively split into three hostile, armed camps, with the bulk of the weapons in Bosnian Serb hands. A United Nations (UN) arms embargo against the whole of the former Yugoslavia was imposed in September 1991, ensuring that the imbalance in weaponry became a permanent feature of the conflict. The best internal hope for avoiding conflict would probably have been agreement among the nationalist parties to create government mechanisms that would protect the interests of each ethnic community. A constitutional commission was formed early in 1991, but the parties failed to agree on whether the Bosnian state should be a republic of citizens or nations, let alone the manner in which power should be exercised by the central and provincial governments. A Council on National Equality, intended to ensure that no legislation undermined any of Bosnia and Herzegovina's nations, failed to come into operation, and each nationalist party sought to achieve its own aims, largely irrespective of the potential impact on the other two peoples.

The best external hope for avoiding conflict in Bosnia and Herzegovina was the European Community's Conference on Yugoslavia, headed by former North Atlantic Treaty Organisation (NATO) secretary-general Lord Peter Carrington. Although it sought an overarching solution to all conflicts then undermining the country, it failed to halt escalating fighting in Croatia and was unable to influence Serbian president Slobodan Milosevic. An arbitration commission set up within the Conference under the French jurist Robert Badinter de-

termined in late November 1991 that Yugoslavia was in the process of dissolution. Against Carrington's (and for that matter Izetbegović's) wishes, Germany recognized Croatian independence on December 23, 1991, followed by the rest of the European Community on January 15, 1992. The Badinter Commission suggested the holding of a referendum to determine the popular will about independence for Bosnia and Herzegovina.

Although referenda are arguably the worst possible tool for resolving identity-related questions, both the European Community (EC) and the United States gave their support to the Bosnian vote. In his desperation to prevent Bosnia and Herzegovina ending up in a rump Yugoslavia, Izetbegović decided that the referendum should go ahead "even if the devil is knocking at our door." As expected, Serbs boycotted the vote and Muslims voted for independence. The swing vote was that of the Croats, most of whom would probably have preferred something other than Bosnian independence, but sided with the Muslims to avoid the risk of coming under Serb domination. Close to 63 percent of voters supported independence. On March 3, 1992, Izetbegović declared independence. The move was ratified by the parliament a day later, in the absence of the Serb deputies.

The international community refused to recognize Bosnia and Herzegovina, but a war did not break out after the referendum. War erupted only when irregulars from Serbia proper under General Zeljko Raznjatovic Arkan entered northeastern Bosnia and Herzegovina in Bijeljina on April 2, 1992, and carried out a premeditated massacre of Muslims. This triggered large-scale ethnic cleansing of both Muslims and Croats in areas earmarked for a Greater Serbia. The campaign entailed, above all, the systematic expulsion of non-Serbs and included large-scale rape, the creation of internment camps, and other well-publicized atrocities. Summary executions took place, but were not the rule. Selected killings, usually of leading Muslims and Croats, were designed to frighten their victims' ethnic kin into leaving of their own accord. The exercise was also a lucrative enterprise for the ethnic cleansers, who appropriated any valuables left behind. The EC and the United States recognized Bosnia and Herzegovina on April 6, 1992, hoping to dampen the flames of conflict, but achieving the opposite.

With the outbreak of war, international efforts to end the conflict intensified in the framework of the International Conference on the Former Yugoslavia, which was headed by both an EC and a UN representative. UN peacekeepers were deployed, but only to provide humanitarian aid. International efforts amounted to little more than persuading the Bosnian Serbs to make some territorial concessions and forcing the Bosnian Muslims to accept the resulting deal. It was almost a recipe for failure.

The Vance-Owen peace plan (named after its principal authors: former UK Foreign Secretary David Owen and former U.S. Secretary of State Cyrus Vance) attempted to devise a reasonably equitable solution after more than a year of fighting. It failed to win sufficient international backing, however, and was rejected by the belligerents. This contributed to the outbreak of a second war in Bosnia and Herzegovina, this time between Croats and Muslims. The Croat-Muslim alliance had always been one of convenience, and was exhibiting strains even during the initial Serb offensive in which Croats and Muslims fought on the same side. It broke down completely when Croats began unilaterally to implement elements of the Vance-Owen plan that effectively gave them control over contested territory in Herzegovina.

In 1995 the U.S. Congress pushed a policy of "Lift and Strike." It wished to lift the arms embargo against the region while striking the Bosnian Serbs from the air. To achieve this, an extraction force would have to be deployed to assist the withdrawal of the UN peacekeepers on the ground. Three events prevented the policy from being implemented: Croatian offensives of May and August 1995 changing the geographic balance on the ground, the taking of UN hostages by Bosnian Serbs in May 1995, and the Srebrenica massacre of July 1995. Some 8,000 Bosnian Muslim men and boys were summarily executed in the single greatest atrocity of the wars of Yugoslavia's dissolution. The massacre led to the first genocide ruling at the International Criminal Tribunal of the Former Yugoslavia (ICTY). In response to these three events, NATO launched the first air campaign of its history on August 31, 1995. The campaign lasted two weeks and succeeded in shattering Bosnian Serb communications, helped the Croats and Muslims reverse some of the Serb gains from the beginning of the war and, most importantly, paved the way for the peace negotiations in Dayton, Ohio, that eventually brought the Bosnian War to an end.

The Dayton Agreement came into force on December 20, 1995. It defined Bosnia and Herzegovina as a single state with three main constituent peoples—Croats, Muslims, and Serbs—but divided into two entities. One was the Federation of Bosnia and Herzegovina, comprising 51 percent of the territory; the other was the Republika Srpska, with 49 percent. Both entities have their own armed forces (the Federation army is effectively divided into Croat and Muslim forces), whose strength is regulated and related to that of the

neighboring states. The country that emerged out of Dayton nevertheless inherited the political independence, territorial integrity, and sovereignty of the previous state, the republic of Bosnia and Herzegovina.

The Dayton Agreement contains eleven annexes. Only the first concerns the cease-fire and military matters; the remaining ten cover civilian aspects of the peace plan, including the right of displaced Bosnians to return to their homes or to be compensated for the loss of their property. The condition of the country has depended as much on the manner in which the civilian side of the peace plan has been implemented, as on the political structures contained within it.

Bosnia and Herzegovina's central institutions are weak and government is handled by complex, power-sharing mechanisms. This means that the system requires broad agreement and consensus to function. However, given enduring animosities and a lack of trust, such consensus has not existed. The Dayton Agreement, therefore, includes provision for international involvement in all aspects of the peace process, with overall coordination entrusted to a so-called High Representative, under the authority of the UN Security Council.

The scale of the international presence, although critical to the peace process, has in some ways been counterproductive for Bosnia and Herzegovina. Domestic institutions and politicians have given up much of the responsibility for governing their own country. Nonetheless, the massive international stake has led key players to declare the peace process a success, irrespective of how it is actually evolving, since failure would reflect badly on those states people, organizations, and countries responsible for the agreement. Unsurprisingly, the peace remains fragile. After all, the settlement was agreed to by the very individuals who were responsible for the war: Izetbegović, Milosevic, and Tudjman.

SEE ALSO Crimes Against Humanity; Ethnic Groups; Genocide; International Criminal Tribunal for the Former Yugoslavia; Izetbegović, Alija; Milosevic, Slobodan; Rape; Srebrenica; Tudjman, Franjo; Yugoslavia

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Christopher Michael Bennett

Burma/Myanmar

In the last half-century the peoples of Burma have experienced six different political transformations.

Constitutional Democracy, 1948 to 1958

In 1947 a partially elected constituent assembly wrote a new constitution, a mixture of liberal democratic and socialist principles; organized the nation into a federation of unequal states, two with the right of secession; created a parliamentary system and an independent judiciary; and guaranteed rights, freedom, and equality to all. During its deliberations the nation's leader, Aung San, was assassinated; his successor, U Nu, finished the constitution. Although flawed, incomplete, and hastily written against a backdrop of political unrest and incipient revolution, the basic document was approved unanimously and Burma became independent on January 4, 1948.

With independence came internal war and invasion. The Burma Communist Party (BCP) revolted in March 1948, as did the Karen National Defense Organization at year's end. In 1949 Nationalist Chinese soldiers fled China, took refuge in Burma, refused to disarm, and joined the local wars. By 1950 the Burmese army gradually began to recover political control and, with international help, removed nearly half the Chinese.

Throughout the worst days of war the government upheld the constitution, parliament met without interruption, courts functioned, people and press were free, schools remained open, and the economy grew. Two national elections were held in the 1950s; the independence party, the Anti-Fascist Peoples' Freedom League (AFPFL), won both while a parliamentary opposition gradually emerged.

Caretaker Government, 1958 to 1960

In 1958 the AFPFL split. Unable to govern, Nu urged parliament to utilize a constitutional provision and elect a nonmember, General Ne Win, his successor. Ne Win formed a Caretaker Government (CG) of military and nonparty members. The general governed Burma's heartland strictly and harshly, but within the letter of the law. In the Shan state, martial law was declared in combating indigenous and Chinese forces; the army used violence against accused civilians, made arbitrary personnel and institutional changes in the government, and was not held accountable. Ne Win, with parliamentary approval, pressed the Shan and Karenni states' rulers to surrender hereditary power and forced state governments to agree to replace civilian administrations in contested and border areas with new military-controlled administrations. The CG ended in April

1960, following a national election in which the public voted overwhelmingly against the party pledged to continue Ne Win's policies and returned Nu to power.

Second Constitutional Democracy, 1960 to 1962

Nu's government restored the letter and spirit of the constitution, strengthened democracy and human rights, and sought to end internal wars through negotiations. However, divisions among his fellow leaders emerged and threatened to split the party. Angry because Nu had reversed many CG decisions and appeared to support Shan and Karenni secession, Ne Win and a cabal of officers overthrew the government, set the constitution aside, dismissed parliament, and arrested members of the government and ethnic leaders.

Military Dictatorship, 1962 to 1974

On March 2, 1962, Ne Win and sixteen military officers formed a Revolutionary Council (RC) that ruled by decree and proclamation. It replaced the federal structure with a unitary hierarchy, the military-led Security and Administration Councils; abolished the two highest courts; established a Chief Court of Burma; and unified the administration of justice. Judges upheld the new "laws," the military and police acted with little restraint in arresting scores without warrants, the courts conducted judicial procedures in secret and extended sentences without notice, and prisoners were beaten, brutalized, and killed while in custody. To maintain its hold on the public and control the dissemination of information, the RC replaced the free press with a single government publication, created huge mass and class organizations, and formed a single political party, the Burma Socialist Program Party (BSPP). In essence, a police state was created—one that involved regular surveillance and required all of its citizens to inform the authorities of their own and their neighbors' movements, the presence of houseguests, and any contacts with outsiders. By 1970 the government had closed Burma to tourists and journalists and severely curtailed its citizens' right to travel.

Religions continued, but under strict state control. Western-based religions had to sever all foreign connections, whereas Buddhist orders were required to register with the government, with monks forced to carry identity cards.

In 1963 the RC began transforming Burma into a socialist state. Without preparation and placing untrained and inexperienced military officers in charge, it seized private property and nationalized most of the urban economy. Trade and distribution quickly broke down, leading to shortages, hoarding, inflation, corruption, and black markets. Although the government used force to root out illegal markets, it eventually gave up in this regard as it was incapable of providing needed goods and services.

By holding talks with insurgent groups in 1963 and offering a national amnesty in 1981, the RC tried, but failed, to solve peacefully the problems of national unity.

Constitutional Dictatorship, 1974 to 1988

In 1971 the RC ordered the BSPP to write a new constitution. It was approved by 90 percent of the country's voters. On January 3, 1974, the constitution came into effect and the nation was renamed the Socialist Republic of the Union of Burma. The new law created a unitary state with fourteen political divisions, a one-house legislature, and one recognized party. Two leadership bodies were formed, and judicial power rested with two councils. Three levels of government existed beneath the national level, and all four were governed under the principle of democratic centralism.

Rights were paired with duties and made conditional upon the completion of state goals. None were absolute. All citizens had to work toward the fulfillment of socialist objectives and surrender any right that interfered with them. Dissent was outlawed, and the military had no right to seize power and rule by decree.

Between 1974 and 1988 periods of serious social unrest developed, led by unemployed workers over rising prices and by students and monks over the internment of U Thant, former Secretary-General of the United Nations (UN). A coup by middle-grade officers to restore civilian rule and the 1947 constitution failed. In the early 1980s an improving economy proved short-lived. In 1987 new economic problems and social unrest contributed to Ne Win's acknowledgment of past mistakes, with his call for policy changes and his own resignation. The removal of currency from circulation without the substitution of a new form of currency provoked student demonstrations and national discontent.

On March 12, 1988, a riot between students and townspeople in a tea shop near the Rangoon Institute of Technology caused the death of one student and led to student clashes with the police that continued until September. The public largely supported the students, and some military units even marched with the demonstrators. On August 8, believing that the date, 8-8-88, had spiritual significance and would lead to the end of military rule, thousands of students and ordinary citizens gathered in Rangoon. Near midnight the military attacked, shooting anyone still on the streets. The crowds dispersed; no one, in fact, knows how many were killed, as the army seized and disposed of the bodies.

On September 18, 1988, the military struck again. General Saw Maung and senior officers seized all power, set the 1974 constitution aside, and established a new military dictatorship, the State Law and Order Restoration Council (SLORC)—later renamed the State Peace and Development Council (SPDC). Marching through the streets with rifles leveled, the soldiers fired at anyone in sight and the carnage lasted for three days. Again, the number murdered is unknown as the soldiers seized the bodies. Thousands were arrested and even more fled the country, seeking refuge in neighboring states.

Second Military Dictatorship since 1988

Since the SLORC was established, it has ruled with an iron hand. Arrest, imprisonment, execution, and long prison terms have intimidated and subjugated all peoples in Burma's heartland. Governing under martial law, the army expanded to over 400,000; it built hundreds of jails and filled them with political prisoners and ordinary criminals. It has remained in continuous conflict with the nation's minorities in its efforts to force an end to their actions against the state.

SLORC issued a new election law; 233 parties were formed, but only a few had national or regional support. Aung San Suu Kyi, daughter of Burma's first democratic leader, Aung San, helped form the National League for Democracy (NLD) and was named Secretary-General. Her party was committed to restoring democracy and freedom. In the May 27, 1990, national election the NLD won 60 percent of the vote and 392 of the 485 seats contested. It expected to form a new parliament and government, but on July 27 SLORC refused to step down, instead declaring (in Announcement 1/90) its intention to continue ruling under martial law, not bound by any constitution.

In 1992 General Than Shwe replaced Saw Maung as dictator. He announced that a National Convention (NC) of 702 delegates would be formed to write a new constitution. The NC was convened in January 1993 and met irregularly. In 1995 the NLD was expelled for its absence following criticism of Convention procedures and rules. Before the NC was suspended in 1996, it adopted 104 principles as the basis of a new constitution. Key provisions required that the military would hold one-fourth of parliamentary seats, the president must have long military experience, and in times of emergency, the Minister of Defense would take power.

In 1989 the BCP cadres revolted and created several nationalist ethnic organizations. The government quickly offered to end its war against them—allowing them to keep their weapons, control their areas, and continue their business activities without interference—if they halted their activities against the state and broke all contact with other ethnic groups at war with the government. Offering the same terms to others, seventeen groups accepted. As of 2004 the last two large groups, the Karens and the Karenni, are discussing an end to their conflicts with the government.

An elderly Burmese woman tosses bricks at a construction site in Rangoon, Burma. Human-rights groups and several Western governments have condemned Burma's labor practices. [AP/WIDE WORLD PHOTOS]

Human Rights

During the last half-century of internal wars, military governments, a rapacious army, and predatory insurgent groups have plundered the Burmese peoples. The UN, International Labor Organization (ILO), Human Rights Watch, and other international bodies have reported the abuses and violations of human rights suffered. The UN General Assembly has passed several resolutions condemning the behavior of military governments, and several individual nations have adopted measures to pressure dictators to change, but the rulers of Burma have ignored all such directives.

Forced labor, bordering on slavery, is used by the military in battle zones and the hinterland. When con-

fronted by international organizations, military rulers deny human rights violations, or claim that they have stopped. Women are victimized in the frontier areas through seizure, abuse, and sexual violation by soldiers. Civilians, too, prey on rural women, promising good jobs but instead passing them on to brothels. Peasants are forced to grow crops and give food to the army, and if they refuse or fail in their efforts, their crops and animals are seized, their houses are burned, and they are forced to serve the soldiers.

Citizens accused of political crimes are arrested without warrants, tried in courts without legal representation where decisions are predetermined, given long sentences, and incarcerated far from their families. Without new trials sentences often are extended and prisoners are held for indeterminate periods of time. Inside prison they are ill treated, badly housed, poorly fed, and denied adequate health care. Despite international protests against these violations and others, the government responds in two ways: It will not tolerate interference in its internal affairs and it is studying the problem. In May 2003 the UN Special Rapporteur on Human Rights reported there were thirteen hundred political prisoners in Burma's jails.

In fighting internal wars, the military uses a "Four Cuts" policy. It seeks to isolate its enemies from supporters by cutting off food, funds, intelligence, and recruiting. Women, children, and the elderly who help insurgents or hide in contested areas are beaten, imprisoned, raped, and murdered. In urban areas civilians are seized on city streets and forced to work as porters and lead soldiers through mine fields. There are no avenues of appeal against such demands.

Captured noncombatants in contested areas such as the Chittagong Hill Tracts are driven from their homes and made dependent on the army for food and shelter. Those who can escape to neighboring states face inhospitable governments; they are rounded up and are either placed in camps without adequate food, shelter, and medical support or forced to return to their own country and face certain imprisonment or death.

Isolated and alone, without real internal or external help, and with the international community divided on how to deal with Burma, no real change is on the horizon.

Daw Aung San Suu Kyi and the Depayin Massacre

Suu Kyi remains the leader of peaceful resistance to military rule. Born in Burma, schooled in Burma and India, graduated from Oxford, and the widow of an Oxford University distinguished professor, she returned to Burma in 1988 to care for her ailing mother.

On August 26, following an address at Shwedagon Pagoda, Suu Kyi emerged as the leader of the democratic movement. Although she was her party's leader, SLORC prohibited her from contesting a seat in the 1990 election. Despite government harassment and threats, she addressed ever-growing crowds, criticized military rule, and called for political change. On July 20, 1990, the army arrested and placed Suu Kyi under house arrest; without being charged or tried, she remained a prisoner until 1995. In 1991, while imprisoned, she won the Nobel Peace Prize.

Upon her release Suu Kyi's freedom was limited. When, in 1996, she withdrew her party from the NC because of its lack of democracy and freedom of speech, she came under constant verbal and occasional physical attacks. As she worked to strengthen the NLD, harassment continued. In 2000 she was once more placed under house arrest; following her release in 2002, she resumed her political work, traveling, and public speaking. She drew ever-larger crowds.

On the night of May 30, 2003, while Suu Kyi and NLD party members were driving home from the state of Kachin, they were intercepted, with their passage blocked at Depayin, and attacked by truckloads of government-sponsored Union Solidarity and Development Association (USDA) members and hired thugs. Suu Kyi was assaulted and injured, her automobile was damaged. Her driver managed to steer their vehicle away from the confrontation but was stopped by the military, and the NLD leader was placed in "protective custody." Officially, the government said that four were killed and 50 injured; the NLD claimed the totals were 70 and 200, respectively. After two months of detention and no communication with the outside world, Suu Kyi was returned home and, again, she remains under house arrest in 2004.

The Depayin massacre signaled a nationwide attack on the NLD; party offices were closed and leaders arrested. Despite international demands no official inquiry into or full explanation of the affair was made. Meanwhile, government leaders sought to divert world attention by naming the head of intelligence, General Khin Nyunt, as prime minister. He quickly introduced a seven-step road map to democracy and initiated the process by declaring that the NC would reconvene and continue its work writing a new constitution. Although some nations applaud this action, most do not as they have no faith that the military will surrender power freely.

SEE ALSO Chittagong Hill Tract, Peoples of the; United Nations Commission on Human Rights

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Josef Silverstein

Burundi

Burundi has the sad distinction of having experienced the first genocide recorded in the Great Lakes region of Central Africa. In the summer and spring of 1972 between 100,000 and 200,000 people were taken to their graves in the wake of a Hutu-led insurrection. Though largely overshadowed in public attention by the far more devastating bloodbath in Rwanda—a total genocide—the ghastly carnage in Burundi undoubtedly qualifies as genocide, or at least a selective genocide. The key difference is that in Burundi the Hutu, not the Tutsi, were targeted for extermination. In both cases, however, the killings were intentional and deliberately targeted a specific ethnic community.

The past and present histories of Burundi and Rwanda are inseparable from each other. Both were archaic kingdoms and shared roughly the same ethnic map, consisting of Hutu agriculturalists (85% of the total population), Tutsi pastoralists representing the ruling minority, and a numerically and socially marginal group of pygmoid people known as the Twa. Both were first colonized by Germany and incorporated into German East Africa. After World War I they were entrusted to Belgium as mandated territories and became United Nations trust territories after World War II. Both gained independence in 1962, but in contrast to Rwanda, where a Hutu revolution between 1959 and 1961 overthrew the monarchy and shifted power into Hutu hands, Burundi acceded to self-government as a constitutional monarchy ruled by a mixed assemblage of Hutu and Tutsi. On the eve of the 1972 genocide power was largely the monopoly of Tutsi elites.

Burundi and Rwanda's divergent trajectories are traceable in part to differences in their traditional political organization. Burundi differed from Rwanda in the greater complexity of its social hierarchies. Unlike Rwanda, where power was highly centralized in the hands of a small fraction of the Tutsi minority, in Burundi the real holders of power were a distinct social category, neither Hutu nor Tutsi, but a princely aristocracy known as *ganwa,* with the king reduced to *a primus inter partes* (first among equals). The Tutsi were divided into two groups: the lowly Tutsi-Hima and the more status-conscious Tutsi-Banyaruguru. Thus, because of its greater pluralism and social complexity, the Hutu-Tutsi cleavage in Burundi did not materialize until after independence and then largely as a result of the demonstrated effect of the Rwanda revolution.

Road to Genocide

Ethnic massacres did not begin in 1972, yet they set the stage for the cataclysm to come. A turning point in the escalation of Hutu-Tutsi tensions came in May 1965 with the first postindependence elections to the national assembly. Although Hutu candidates scored a landslide victory, capturing twenty-three seats out of a total of thirty-three, their victory proved illusory. Instead of appointing a Hutu as prime minister, the king turned to a princely figure and longtime protégé of the court, Leopold Bihumugani. On October 18, 1965, Hutu anger exploded in an abortive coup directed at the king's palace, followed by sporadic attacks against Tutsi elements in the countryside. Repression swiftly followed: Eighty-six leading Hutu politicians and army officers were immediately arrested and shot. After the discovery of an alleged Hutu plot in 1969, seventy Hutu tribesmen, both civilian and military, were arrested; of these twenty-five were sentenced to death and nineteen immediately executed. Thus, by the late 1960s the Hutu had been virtually excluded from political participation.

The polarization of ethnic feelings so soon after independence must be seen in the light of the enormous power of attraction of the Rwanda model among those aspiring Hutu politicians who saw in the republican ideology of their neighbor the promise of a better future. For most Tutsi identified with the ruling party, *Union pour le Progrès National* (Uprona), however, Rwanda stood as the dreaded symbol of the tyranny of

the majority. The nightmarish possibility that Burundi might become another Rwanda seemed real enough to justify the brutality of the repression that befell the nascent Hutu elites in 1965 and 1969.

But if political exclusion was clearly the key factor behind the rise of Hutu extremism, the timing of the insurrection draws attention to the violent intra-Tutsi squabbles and maneuverings that preceded the Hutu uprising. By late 1971 the long-simmering struggle for power between the Tutsi-Hima from the south and the Tutsi-Banyaruguru from the north was threatening to escalate beyond control. The country was awash with rumors of plots and counterplots, in turn leading to the arrest and bogus trials of scores of Banyaruguru politicians, many of them accused of working hand in glove with the monarchists to overthrow the regime. The ruling clique, headed by President Michel Micombero, consisting principally of Tutsi-Hima from the Bururi province, saw its legitimacy plummet. The sudden eruption of bitter internecine rivalries among Tutsi is what prompted the insurgents to strike a decisive blow in hopes of capturing power. Instead, they triggered a bloodbath on a scale that none had anticipated.

Anatomy of Mass Murder

On April 29, 1972, Hutu-instigated violence suddenly engulfed the normally peaceful lakeside towns of Rumonge and Nyanza-Lac in the south. In a matter of hours terror was unleashed on the Tutsi population. Countless atrocities were reported by eyewitnesses, including the evisceration of pregnant women and the hacking off of limbs. In Bururi all military and civilian authorities were slain. After seizing the armories in Rumonge and Nyanza-Lac, the insurgents fanned out into several southern localities. In Vyanda, near Bururi, they proclaimed a mysterious *République de Martyazo.* A week later government troops brought the republican experiment to an end. What followed was not so much a repression as a hideous slaughter of Hutu civilians. The carnage went on unabated until August. By then almost every educated Hutu element was either dead or in exile.

Exactly how many died between May and August is impossible to say. Conservative estimates put the total number of Hutu victims somewhere between 100,000 and 200,000, whereas one Tutsi opponent of the regime (Boniface Kiraranganiya) speaks of 300,000. The same holds for Tutsi victims of the insurrection, with estimates ranging from 2,000 to 5,000. Nonetheless, however much one can disagree about the scale of the massacre, that it reflects a planned annihilation is hardly in doubt.

The standard argument advanced by Hutu intellectuals is that the killings were inscribed long before any action on the *plan Simbananiye,* the directives of Artémon Simbananiye, Minister of Foreign Affairs at the time of the slaughter. The aim, presumably, was to provoke the Hutu into staging an uprising so as to justify a devastating repression and thus cleanse the country once and for all of the Hutu peril. Although there is no evidence of such a provocation, little doubt exists that Simbananiye played a key role in organizing the killings. As the social profile of the victims suggests, there was an element of rationality behind the carnage: In killing all educated Hutu elements, including civil servants, university students, and schoolchildren, any serious threat of another Hutu rebellion would be ruled out for the foreseeable future. In this sense one can indeed speak of a Simbananiye plan.

Given these circumstances, it is easy to understand why some of the most gruesome atrocities occurred on the premises of the University of Bujumbura, and in secondary and technical schools. Scores of Hutu students were physically assaulted by their Tutsi classmates, and many beaten to death. In a scenario that would repeat itself again and again, groups of soldiers and members of the Uprona youth wing, the *Jeunesses Révolutionnaires Rwagasore* (JRR), would suddenly appear in classrooms, call Hutu students by name, and take them away. Few ever returned. Approximately one-third of Hutu students enrolled at the University of Bujumbura disappeared under such circumstances. A missionary source indicated that at least 1,450 secondary school students of Hutu origins were either killed or in hiding. Out of a total of 138 Hutu priests, 18 were massacred. The army was thoroughly purged of all Hutu elements, beginning with 700 troops massacred immediately after the outbreak of the rebellion. A total of 190 Hutu officers were shot and killed between May 22 and May 27. Meanwhile, the execution of the young King Ntare, in Gitega on May 1, effectively ruled out the resurrection of the monarchy.

The cables dispatched by Deputy Chief of Mission Michael Hoyt from the U.S. Embassy in Burundi to the State Department paint a gruesome picture of this hellish climate:

> No respite, no letup. What apparently is a genocide continues. Arrests going on around the clock. (May 26)

Tutsi reprisals unabated in the interior but have slackened somewhat in Bujumbura. In the north Hutu take cover upon arrival of any vehicle, reflecting pervasive fear. (July 11)

In two days following July 14 three new ditches filled with Hutu bodies near Bujumbura airport. Arrests have continued throughout the week in Bujumbura, in

the hills around town, in Ngozi region and central Burundi. (July 21)

Repression against Hutu is not simply one of killing. It is also an attempt to remove them from access to employment, property, education and the general chance to improve themselves. (July 25)

Describing what he saw at the time, Tutsi observer Boniface Kiraranganiya wrote: "It is the paroxysm of dementia, the most perfect example of what men are capable of doing when their hold on power allows them to do anything they want, when there is no obligation for him to control his destructive instincts" (Kiraranganiya, 1985, p. 76). That these lines were penned by a Tutsi should disabuse us of the notion that the killings were universally endorsed by the Tutsi community. Many in fact did everything possible to save their Hutu neighbors (as in Rwanda in 1994 when many Tutsi owed their survival to the protection of their Hutu neighbors) but could do little else to stop the carnage. Nonetheless, from this orgy of genocidal violence emerged a state system entirely dominated by Tutsi elements from the south, and it would remain so for years to come.

Indifference of the International Community

In the official doctrine issued by the Micombero government in the wake of the killings, the so-called White Paper, the argument is made that the Hutu rebels were bent upon committing genocide against the "people of Burundi." Thus, in putting down the rebellion, the state allegedly prevented the insurgency from taking an even bigger toll. Surprisingly, this inversionary discourse was received with little more than polite indifference by international public opinion. The unwillingness of the international community to see through the humbug of official media is no less astonishing than its extraordinary passivity in the face of mass slaughter.

The most surreal of all international responses was that of the Organization of African Unity (OAU)—now the African Union (AU)—on May 22, 1972, during OAU secretary general Diallo Telli's visit to Bujumbura. "The OAU," said Telli, in a statement reported by the U.S. embassy deputy chief of mission, Michael Hoyt, "being essentially an organization based on solidarity, my presence here signifies the total solidarity of the Secretariat with the President of Burundi, with the government and the fraternal people of Burundi." Hardly more edifying were the comments of United Nations (UN) Secretary General Kurt Waldheim, who expressed his "fervent hopes that peace, harmony and stability can be brought about successfully and speedily, that Burundi will thereby achieve the goals of social progress, better standards of living and other ideals and principles set forth in the UN Charter." In 1972, as in 1994, the UN sat on its hands as tens of thousands of human beings were being slaughtered.

Legacy of 1972

The bloodbath was intended to achieve several long-term objectives: (1) to insure the stability of the state by the wholesale destruction of all educated elites and potential elites; (2) to transform the instruments of force—the army, the police, and the gendarmerie—into a Tutsi monopoly; (3) to rule out the possibility of a restored monarchy accomplished with Hutu assistance (hence the killing of King Ntare on May 1); and (4) to create a new basis of legitimacy for the Hima-dominated state by projecting an image of the state as the benevolent protector of all Burundi against their domestic and external foes.

On each count the government of Micombero, a Tutsi-Hima, met with considerable success. For the next sixteen years Burundi experienced a period of unprecedented peace under Tutsi hegemony. This surface impression of a country at peace with itself was suddenly shattered by a new outburst of ethnic hatred in August 1988, in the northern communes of Ntega and Marangara. Triggered by the provocations of a local Tutsi notable, Hutu-instigated riots took the lives of hundreds of Tutsi civilians before the army moved in and unleashed another bloody repression that resulted in the deaths of an estimated 15,000 Hutu.

In sharp contrast to what happened in 1972, the international community responded to the 1988 killings with a sense of shock. Substantial press coverage of the events led to charges of gross human rights violations by the European Community. In the United States congressional hearings were held in September 1988, followed by a nonbinding resolution urging the Burundi government to conduct an impartial inquiry into the circumstance of the riots. All of these responses eventually persuaded the Burundi government to introduce major constitutional and political reforms.

A major breakthrough toward liberalization came in 1993 with the organization of multiparty presidential and legislative elections. Twenty-one years after the 1972 genocide, the clear victory scored by the predominantly Hutu *Front des Démocrates du Burundi* (Frodebu) effectively wrested power away from the Tutsi minority. The Frodebu victory proved short-lived: On October 21, 1993, the newly elected Hutu president, Melchior Ndadaye, was arrested and killed by units of the Tutsi-dominated army, thus unleashing yet another cycle of ethnic violence, from which the country has yet to recover. An estimated 300,000 people have died since 1993, and at least as many have joined the 1972

refugees in United Nations High Commission for Refugees (UNHCR) camps in Tanzania.

Ndadaye's assassination brought into sharp focus the enduring legacy of 1972. Having reaped for decades the benefits of political hegemony, Tutsi extremists within and outside the army were quick to grasp the economic and political implications of a transfer of power to representatives of the Hutu majority. None were more eager to challenge the verdict of the polls than those Tutsi who had seized the land and houses of the 1972 refugees: To this day the refusal of Tutsi claimants to return ill-gotten properties to their rightful owners remains a critical issue facing the implementation of the Arusha accords.

Perhaps the most threatening problem of all inherited from 1972 is the enduring vitality of Hutu radicalism. It is worth recalling that it was in the refugee camps of Tanzania that the *Parti de la Libération du Peuple Hutu* (Palipehutu), the principal vehicle of anti-Tutsi radicalism, emerged in 1973. Today the most vehemently anti-Tutsi of the half-dozen political parties identified with Hutu interests are the *Parti pour la Libération du Peuple Hutu-Forces Nationales de Libération* (Palipehutu-FNL), led by Agathon Rwasa, and the *Conseil National pour la Défense de la Démocratie-Forces pour la Defense de la Démocratie* (CNDD-FDD), headed by Pierre Nkurunziza: Both are heirs to Palipehutist ideology in their uncompromising anti-Tutsi stance and unwillingness to lay down their arms.

With the power-sharing agreement formalized by the Arusha accords of August 28, 2000, a major step forward in restoring a measure of stability to the country was made. For this much of the credit goes to the mediating efforts of former Tanzanian president Julius Nyerere and after, his death, South Africa's Nelson Mandela. Although often suspected of Hutu sympathies by Tutsi extremists, Mandela was able to achieve a broad consensus on the need to work out a constitutional formula for a genuine sharing of executive and legislative responsibilities between Hutu and Tutsi. Among other issues, and pending the holding of multiparty elections in 2004, agreement was reached on a rotating presidency and a fifty-fifty share of cabinet positions among Hutu and Tutsi parties. Thus, after serving as president from 2000 to 2002, Pierre Buyoya, a Tutsi, handed power over to Domitien Ndayizeye, a Hutu, and the Hutu vice-president who served under Buyoya was succeeded in office by a Tutsi.

Much remains to be done, however, to fully implement the Arusha accords, including the restructuring of the army on the basis of parity between Hutu and Tutsi. The country is still wracked by chronic eruptions of violence. To the loss of human lives caused by unprovoked attacks by Palipehutu-FNL and CNDD-FDD guerillas—neither of which were signatories to the Arusha accords—must be added the devastating retribution blindly visited by the Tutsi army against civilian populations suspected of harboring Hutu terrorists. Extremism at both ends of the ethnic spectrum poses the greatest threat to the sustainability of Arusha. Despite the presence on the ground of a two thousand–strong multinational African military force, under the auspices of the African Union, there is no cease-fire in sight as yet.

If time has yet to dim the memories of 1972, there is reason to wonder—short of a public acknowledgment of the atrocities committed since then by both Hutu and Tutsi—whether the power-sharing arrangement so painfully worked out at Arusha can once and for all exorcize the demons of Burundi's genocidal past and pave the way toward peace.

SEE ALSO Genocide; Mandela, Nelson; Peacekeeping; Rwanda

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René Lemarchand

Bystanders

The *Oxford English Dictionary* defines a bystander as one standing by, one who is present without taking part in what is occurring. One may immediately think of the phrase *innocent bystander*. In this association what is occurring is a crime. In a crime a bystander is neither perpetrator nor victim and thus innocent of all active involvement. The bystander is present only as passive observer or witness.

Although all bystanders to crime initially find themselves passively observing, some abandon passivity to intervene. They actively seek to help the victim and, in so doing, move from bystander to rescuer. In contrast, other bystanders, remaining passive throughout, have come to be called *nonresponsive bystanders*.

Although there is a range of possible bystander behavior between all-out rescue and complete nonresponsiveness, many bystanders to crime do remain entirely nonresponsive. Why do so many people so frequently do nothing when others are in peril? Are not bystanders morally obliged to help somehow? These are important questions, especially when what is underway is genocide or some other crime against humanity. For crimes of this magnitude, it is unclear whether one can ever consider bystanders innocent.

Bystander is a complex category in crimes such as genocide. In a double sense genocide and crimes against humanity are collective crimes. In these crimes both the perpetrators and victims are collectives. Genocide, for example, is a crime an entire society commits. And genocide is committed not against an individual but against multiple individuals who themselves comprise a group or social category and thus also a collective.

Two distinctions need to be made about bystanders to collective crimes that do not generally need to be made when the perpetrator and victim are both individuals. Because collective crimes are crimes an entire society commits, a distinction must be made between internal and external bystanders. Whereas internal bystanders are individuals and organizations internal to a society committing a collective crime, external bystanders are individuals and organizations external to the society. Citizens of Nazi Germany, for example, who observed the Holocaust without contributing to it were internal bystanders to genocide. In contrast observers outside Nazi Germany were external bystanders.

In the case of collective crimes, it is also necessary to distinguish between individual and organizational bystanders. This distinction is ordinarily unnecessary in crimes involving only individuals. Crimes exclusively involving individuals are mostly episodic. In other words, they occur in one place at one moment, and the bystanders are those who were physically present at that place at that moment. Generally, the physically present bystanders also will all be individuals.

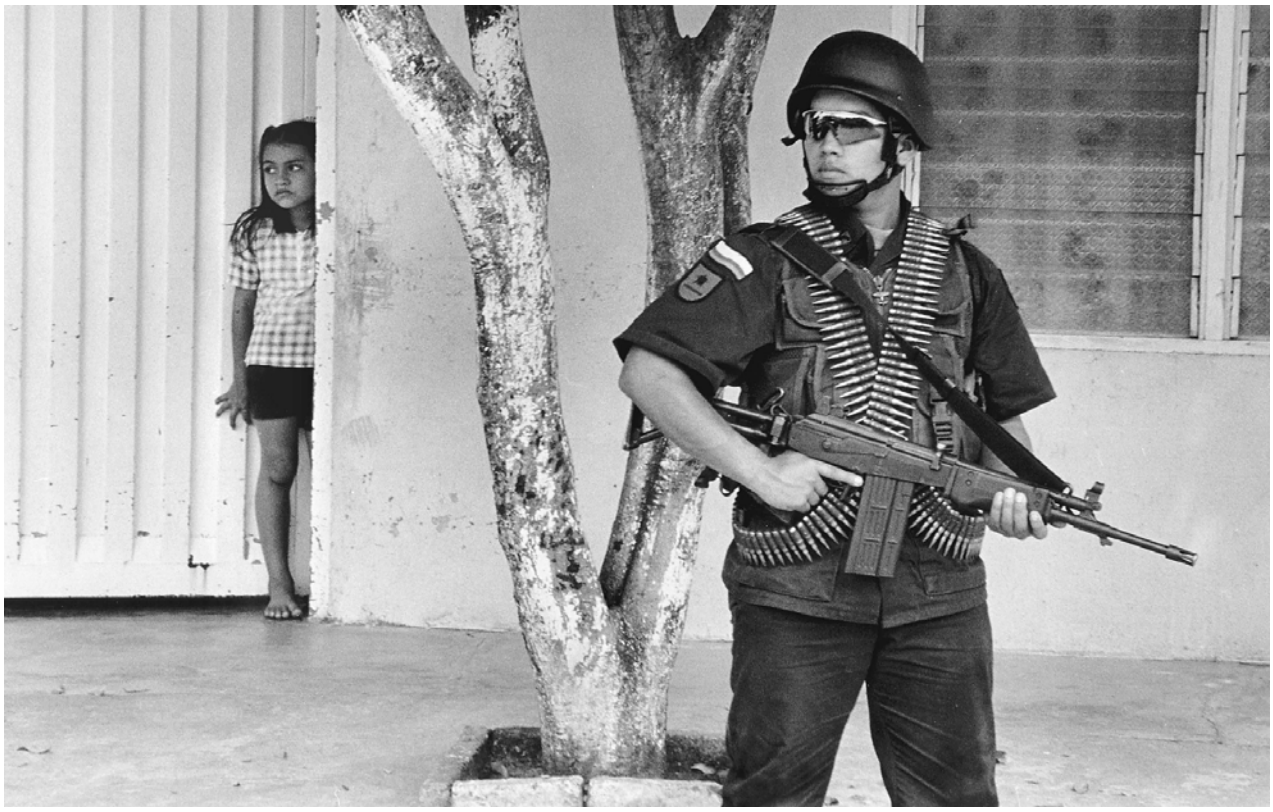
Some collective crimes are also episodic—massacres, for example. A massacre occurs suddenly in one place and is quickly over. The bystanders, if any, are those who are physically present at the time and place of the massacre, and these will generally all be individuals.

In contrast genocide and crimes against humanity exceed the limits of space and time that apply to crimes involving only individuals. First, because genocide and crimes against humanity are enormous social undertakings not confined to a single place and time, physical proximity is not necessary to observe them. Instead, genocidal efforts can be observed from afar. Thus, as noted, even people in other countries can be counted as bystanders.

Second, because genocide and crimes against humanity take place not in a moment but over an extended length of time, there is opportunity for reaction not just from observing individuals but also from observing organizations. Thus, in the case of collective crimes, bystanders include other collectives. These range from religious organizations and nongovenmental organizations such as the Red Cross to entire nations. Indeed, insofar as the signatories to the international Genocide Convention are actually nations, entire nations have now pledged themselves not to remain passive bystanders to genocide.

When people are endangered, bystanders presumably have an ethical obligation to help somehow. Yet from what does this ethical obligation derive and how much does it oblige bystanders to do? These questions have not been adequately addressed by professional philosophy. Most people would agree, however, that the greater the magnitude of the crime witnessed, the greater the obligation on bystanders to intervene somehow. Since genocide and crimes against humanity are the most enormous of crimes, bystanders to these crimes seemingly bear the greatest obligation to intercede.

However, it is not only the magnitude of the crimes witnessed that weighs on the shoulders of bystanders to genocide and other crimes against humanity. The collective nature of these crimes also morally complicates the position of bystander. Just as there is a positive range of bystander behavior between total nonresponsiveness and all-out rescue, a negative range of behavior also exists between total nonresponsiveness and active complicity in a crime.



A young girl, unsure of her next move, beyond the sight of a heavily armed soldier. Barrancabermeja, Colombia, March 2001. [TEUN VOETEN]

Generally, in crimes involving only individuals, the distinction between bystander and accomplice is clear. The accomplice is one who serves the perpetrator in some way such as lookout or driver of the getaway car. If one were only present at the time the crime was committed without having helped in any way the perpetrator, then one is not an accomplice but only an innocent bystander.

The moral complication in the case of collective crimes such as genocide and crimes against humanity is that even doing nothing abets the perpetrator; thus, arguably, even the totally passive bystander becomes something of an accomplice. If so, no bystanders to collective crimes ever remain totally innocent.

For bystanders to do nothing helps the perpetrator of a collective crime in two ways. First, arguably, while a society is committing a collective crime, anything that promotes normal social functioning also enables the society to continue the crime. Thus, as Henry David Thoreau famously argued, if the citizens of a society continue to conduct business as usual while their society is committing a collective crime, the citizens share complicity in that crime.

There is a second way in which doing nothing contributes to a collective crime. In contrast to the actions of an individual, when a society acts—especially in the absence of opposition—it establishes what is normal or legitimate for that society. Such is the case when a society engages in genocide or some other crime against humanity. To fail to challenge these acts is to condone them and thereby to make their continuation more possible. In her 1984 comparative study of Nazi-occupied Europe, Helen Fein found that when subjugated populations resisted the Nazis, more Jews escaped death. How bystanders behave is thus very important.

What explains bystander nonresponsiveness to genocide and other crimes against humanity? No one factor explains all cases. There are differences between individual and organizational bystanders and between bystanders who are inside and bystanders who are outside a society committing a collective crime. How important different factors are to each case requires specific historical study of that case.

Although they are intertwined, the general factors contributing to bystander nonresponsiveness can broadly be classified as rational, psychological, cultural, and social structural. First, for both individual and

organizational bystanders, inaction may be a rational—although not necessarily morally legitimate—response. Individual bystanders, for example, must rationally weigh the benefits of action to protect victims against the costs of action to themselves and their families. These weights will vary depending on whether bystanders are inside or outside the criminal regime.

Organizations must rationally calculate, too. During the Holocaust, for example, the Red Cross kept silent about the atrocities it knew were occurring in Nazi concentration camps. Why? The Red Cross decided after rational consideration that the benefits of speaking out were outweighed by the possible costs to the people it could help if the Nazis were to consequently forbid Red Cross operations. Whether or not this decision was morally right, it was nonetheless rational.

The Red Cross ostensibly was at least evaluating moral weights. In contrast, if bystanders are morally indifferent to the victims, morality will not even enter their rational calculations. Consistently, for example, throughout the twentieth century the U.S. government did little to respond to the cases of genocide it knew about. Instead, successive U.S. administrations tended to weigh only the political costs of action against the political costs of inaction. As there seldom was much pressure to act from the American public, the costs of inaction were consistently small. Thus, with morality out of the equation, inaction generally became the government's rational response.

Why does the American public not put more pressure on its government to intervene in cases of genocide and crimes against humanity? A whole range of factors combine to produce in bystanders what can be called the social creation of moral indifference.

The crux of the matter is what Helen Fein terms the *universe of obligation,* the universe of people one feels obligated to help. How large is this universe? One's sense of obligation generally declines with physical and social distance. Physically, one feels most obliged to help people in need when their needs are observed firsthand. Social distance matters, too. In declining order one feels most obligated to help family, friends, community members, and compatriots. For many bystanders the universe of obligation ends abruptly with nationality.

Cultural factors can further constrict the universe of obligation, making bystanders indifferent to certain victims. Most examined in this regard is anti-Semitism during the Holocaust, which clearly contributed something to bystander nonresponsiveness. It also matters whether or not bystanders have been reared in a culture stressing care for others. Likewise important is whether the culture is what is called *authoritarian,* that is, one that instills uncritical respect for and obedience to authority. Bystanders in an authoritarian culture will be apt not to question their government should it stand silently by as genocide unfolds or even be committing genocide itself.

Bystander nonresponsiveness is also produced by group effects deriving from the social structure of an emergency situation. It turns out that bystanders to an emergency are less likely to respond helpfully when other bystanders are present. When multiple bystanders are present, conditions arise that social psychologists call *pluralistic ignorance* and the *diffusion of responsibility*.

Pluralistic ignorance is a situation in which two or more heads are worse than one. When multiple bystanders witness an ambiguous event that may or may not be a crime or emergency, each bystander looks to the others for guidance. If all bystanders wait for others to respond, none reacts. Because no one seems to be reacting, all bystanders may mistakenly conclude that nothing urgent is occurring. This condition is pluralistic ignorance.

The diffusion of responsibility is similar. When a single bystander witnesses an emergency, he or she may feel the full responsibility to react. When multiple bystanders are present, the responsibility is diffused among all witnesses. Each bystander assumes someone else will take responsibility for action. If all bystanders make this assumption, once again, no one acts.

Pluralistic ignorance and the diffusion of responsibility are even more pronounced at a national level (Porpora, 1990), where they are also likely to be combined with authoritarianism and governmental efforts to obfuscate the situation. If, in addition, a citizenry feels it is politically disempowered, it may not pay enough attention even to notice that genocide is taking place.

Despite all barriers to action some bystanders do respond—even at great personal risk. What makes responders different? Psychological study of the so-called altruistic personality has not turned up anything remarkable: Gentiles who rescued Jews during the Holocaust possessed good, moral role models and a strong sense of right and wrong. It is unclear whether nonresponsive bystanders are without these qualities. Most individuals probably possess what is psychologically necessary to respond appropriately when others are endangered. Mainly required is that one muster what has been called the *courage to care*.

SEE ALSO Altruism, Ethical; Anti-Semitism; Collaboration; Perpetrators; Rescuers, Holocaust; Resistance; Sociology of Perpetrators

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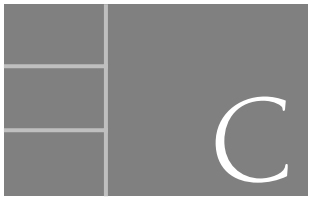
Douglas V. Porpora



Cambodia

The kingdom of Cambodia traces its heritage to the realm of Angkor Wat, the twelfth-century center of a network of principalities, including many where ancient Khmer was spoken. Angkor's political reach was large, and the Hindu-influenced Angkor temple complexes are among the greatest in Southeast Asia. In the thirteenth and fourteenth centuries, however, Khmer-dominated political networks—which gradually adopted Buddhism—shrank, becoming increasingly subordinate to Buddhist Siam (Thailand) and the Confucian Dai Nam (Vietnam). The Khmer court welcomed a mid-nineteenth-century French offer of protection against Siam and Dai Nam, although some princes rebelled unsuccessfully against French supremacy.

Colonialism, Nationalism, and Communism: 1863 to 1953

The French dominated Cambodia together with Vietnam and Laos as part of their creation, French Indochina. Colonialism profoundly transformed Vietnam, generating rich landlords, landless peasants, industrial workers, and a vibrant intelligentsia, but left Cambodia more or less intact, with the small farms of peasants predominant and a tiny educated elite. The great changes in Vietnam made it fertile ground for the communist take-over of a strong nationalist movement in the 1930s and 1940s, whereas in Cambodia a milder cultural nationalism stimulated by two related French views of Cambodian history dominated the relatively scarce political activity. One depicted Khmer as inheritors of lost Angkorian greatness, recoverable with French help; the other portrayed them as a decadent race doomed to extinction at the hands of the superior Vietnamese, whom the French imported as bureaucrats and laborers to help administer Cambodia and work its plantations. The French also promoted the immigration of Chinese, who engaged in trade and became Cambodia's biggest ethnic minority, more numerous than Islamic Cham garden farmers and merchants and forest-dwelling upland peoples, whose presence predated French colonialism.

During the anticolonial upsurge that swept Southeast Asia after World War II, senior Khmer aristocrats and bureaucrats argued that Cambodia's splendor could be restored if the French handed power over to them, but were challenged by younger and lower-status Cambodians who believed progress required political reform or even armed revolution. They established the Democrat Party, which won elections allowed by the French, and launched rural Khmer Issarak (emancipated Khmer) insurgencies to drive out the French and topple King Norodom Sihanouk. Some Issarak accepted guidance from Vietnamese communists who entered Cambodia to fight the French there, in support of their own struggle in Vietnam. After Sihanouk dissolved the parliament, a few youthful Democrat Party activists joined the Vietnamese-led Issarak, including Pol Pot, who had become a Marxist while a student in France. Another recruitment route was followed by Nuon Chea, a Cambodian originally enrolled as a communist by the Vietnamese following university studies in Thailand. Both, however, resented the Vietnamese argument—echoing French colonial views—that Cambodia

was too backward to mount a revolution without Vietnamese direction.

Independence, Sihanouk, the Khmer Republic, and War: 1954 to 1975

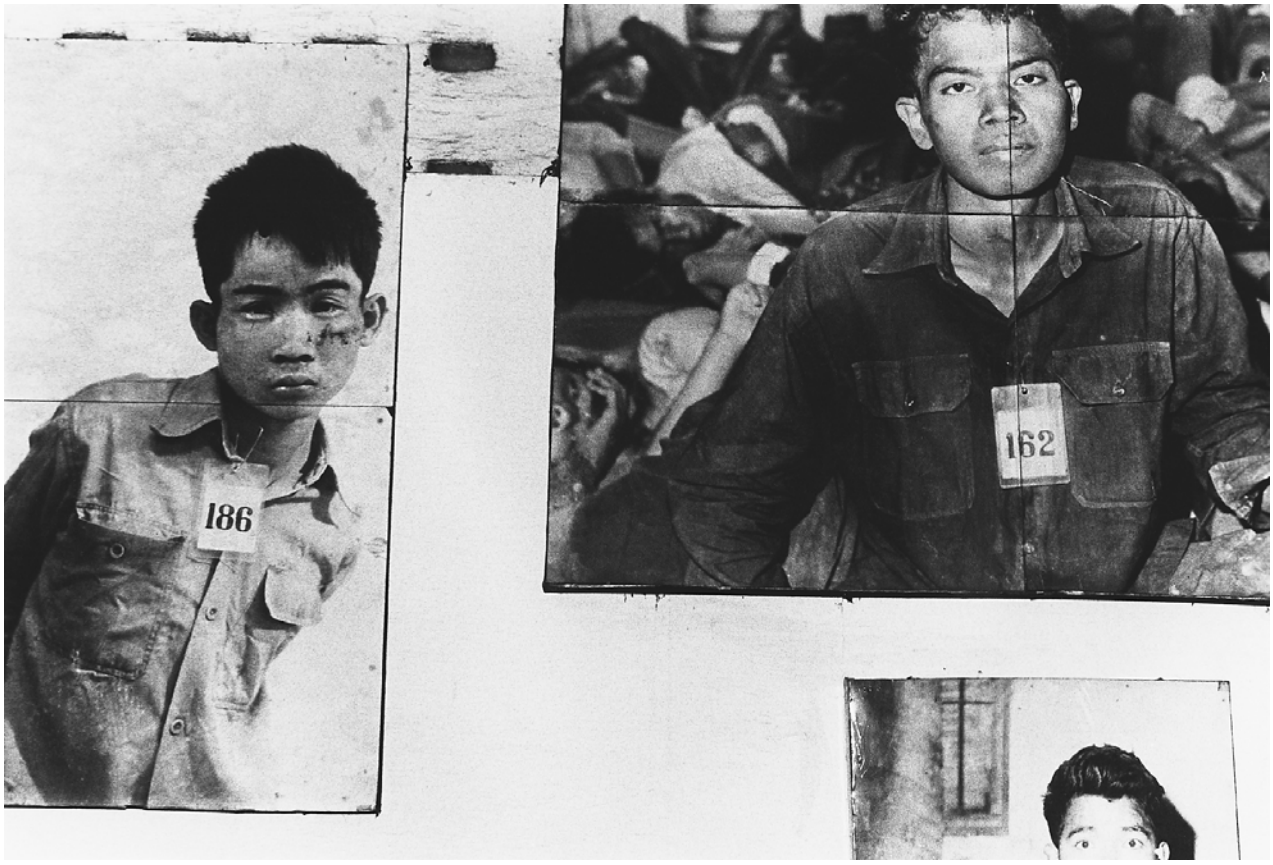
Harboring such ill-feelings, Pol and Nuon emerged as leaders of the Cambodian communist movement (known as the Khmer Rouge) after the 1954 Geneva Agreements provided for the withdrawal of French and Vietnamese military forces, a ceasefire, and elections in which all political parties were allowed to run candidates. Sihanouk used elections as an opportunity to destroy the communist opposition, driving it underground and eventually back into armed insurrection. Under Sihanouk's autocratic regime—which lasted sixteen years—the economy stagnated amidst corruption, generating rising discontent among an impoverished peasantry and a restless urban intelligentsia, some of whom joined the communist underground. Internationally, Sihanouk refused to align with the United States in its war against the communists in Vietnam, allowing the Vietnamese to establish sanctuaries on Cambodian soil, thereby persuading them not to support the violent rebellion Pol and Nuon launched in 1968.

Although Sihanouk alleged his April 1970 overthrow by his army chief Lon Nol was a U.S. plot, it probably resulted from domestic factors, with Lon Nol initially enjoying urban support for abolishing the monarchy as an obstacle to progress, making Cambodia a Khmer republic. However, the coup precipitated cataclysmic changes. From exile Sihanouk called on Cambodians to rise up against Lon Nol as part of a front including Pol and Nuon's guerillas, to which the Vietnamese suddenly provided overwhelming support, attacking the Khmer Republic's army and recruiting peasants to form local revolutionary administrations. In May 1970 the United States invaded Cambodia, attacking Vietnamese sanctuaries, but withdrawing ground forces—while continuing bombing—without preventing the Vietnamese from conquering rural Cambodia, which Pol and Nuon demanded be turned over to their Communist Party of Kampuchea. The transfer was completed by 1973, after the Vietnamese withdrew most of their troops and as a final blitz of U.S. bombing devastated the countryside. Pol and Nuon meanwhile initiated forced collectivization of agriculture, brutal curtailment of Buddhism and Islam, the bloody deportation of the populations of captured towns, and escalating executions of supposed traitors, spies, and other enemies in the Party and general population, the victims often being opponents of their policies, which alienated many peasants. However, the military dictatorship Lon Nol had imposed was also unpopular, and his regime collapsed in the face of a Communist offensive as U.S. military aid ran out in April 1975.

Democratic Kampuchea: April 17, 1975, to January 7, 1979

Pol and Nuon pursued even more extreme and homicidal policies once in complete power over what they called Democratic Kampuchea. Their ambition was to restore Cambodian glory by developing a form of communism that combined the most radical aspects of the Soviet, Chinese, and Vietnamese revolutions, applying their nationalist logic to survive. Cambodia had to advance free of foreign—especially Western and Vietnamese—tutelage; they also believed that the more rapidly Cambodian backwardness was overcome via true and autonomous communism, the more quickly genuine independence would be guaranteed. Their vision of communism called for the expulsion of the entire urban population into agricultural cooperatives; the deportation of Vietnamese to Vietnam; the abolition of markets, money, religion, and ethnic identities; the construction of railroads, steel mills, and hydroelectric dams amidst the rice fields; and the annihilation of anyone in the general population or within the Party who got in the way. They set out to vastly increase agricultural productivity and industrialize the country by transforming the whole population into proletarianized, atheistic peasants working in economic and eventual political equality to create an agricultural surplus to finance industry. However, their policies soon caused catastrophic agricultural and industrial regression, ever-worsening mass starvation, and increasingly vicious social division, and they directly ordered or empowered their subordinates to carry out killings to preempt and repress opposition to their vision and its results.

Various estimates suggest that during the less than four years of communist rule, between 1.5 and 3 million Cambodians out of a population of 7 to 7.5 million died in excess of normal mortality, among whom one-third to one-half were executed, the remainder dying from famines and illnesses resulting from conditions created by the regime. Among the dead from all causes were one in seven of the country's rural Khmer, one-quarter of urban Khmer, half of ethnic Chinese, more than a third of Islamic Cham, and 15 percent of upland minorities, while Vietnamese who refused deportation were totally wiped out. Also, by the end of the regime, around 20,000 communists and troops in the Party's armed forces were executed for purported treason, among an overlapping membership of 40,000 in the Party and strength of 60,000 combatants in the army.



The faces of alleged dissidents murdered by the Khmer Rouge at the secret Tuol Sleng (S21) "security office" in Phnom Penh, c. 1978. Victims were photographed prior to interrogation and execution.[HOWARD DAVIES/CORBIS]

Several hundreds of thousands of the executions were carefully planned murder campaigns targeting well-defined categories of victims for complete elimination, carried out under specific and direct orders from Pol and Nuon. Victims included Khmer Republic military personnel and civil servants and religious and intellectual elites, with many having been killed by communist troops during the evacuation of towns, and the remainder hunted down by local security forces in the countryside, who also exterminated Vietnamese. With regard to deaths from starvation and disease, although Pol and Nuon's long-term policy was to create a prosperous rural society, they knew in advance that the effort to do so would involve temporary difficulties, during which some people would die. They then ignored mounting evidence that such sacrifices were occurring for a much longer period of time than anticipated and claiming many more lives than envisaged, insisting that the population march ahead, regardless of the cost. Finally, they authored a policy that anyone who opposed or failed to carry out their agricultural policies could be declared an enemy by local Party bosses and executed, a delegation of discretionary authority that was widely used and abused.

Many of the starvation and execution victims were so-called new people, urban Khmer, Chinese, and Cham deported in 1975 to the countryside then dispersed among the veteran people, the mostly Khmer peasants living in communist cooperatives since 1973. Pol and Nuon's policy was that the new people were to be welcomed, well-treated, properly fed with equal rations, and politically reeducated by veteran people and cadres who ran the cooperatives, but until their transformation into proletarianized peasants like veteran people was achieved, they had no right to participate in the running of the cooperatives. Worse yet, although Pol and Nuon asserted the new people, as such, were not enemies, they also said that new people were more likely to harbor enemies and be susceptible to enemy subversion than veteran people.

In fact, most veteran people did not share weal and woe—much less food—with the deportees. Amidst widespread famine, new people starved in droves as some veteran people gloated, verbally and physically

More photographs of prisoners of the Khmer Rouge, taken at the time of their admission to Tuol Sleng, prior to execution. The building is now preserved as the Tuol Sleng Museum. [HOWARD DAVIES/CORBIS]

abusing urbanites as previously privileged who deserved punishment for their supposedly luxurious and decadent lifestyles. Cadres often gave them the most difficult, unhealthy, and dangerous labor assignments, working many to death, while others perished in accidents and from ravaging illnesses. Those who protested their mistreatment, otherwise complained, or were accused of laziness were executed by cooperative militias or district security centers, with the extent of the killings decided by local Party members.

Although veteran people were deeply implicated in the mass death of evacuees, they were not the mainstay of Pol and Nuon's communism because they became more unhappy about a regime that increasingly also made them work harder and harder for less and less food, and insisted they accept a more and more alien communist political culture, totally renouncing Buddhism and many Khmer traditions. If they resisted or criticized any of this, they, too, were vulnerable to execution locally, and more and more were killed as the food situation worsened and dissatisfaction intensified.

Nevertheless, the death toll among new and veteran Khmer was far short of the 50 percent and 35 percent fatalities suffered by Chinese and Cham, figures suggesting that these minorities may have been targeted for progressive extermination as such. This conclusion seems supported by survivor testimony about racist remarks made by local Party bosses, encouraged by an official Party analysis stigmatizing them as belonging—like some Khmer groups—to special class strata with upper-class connections, and by an official policy requiring minorities to give up their language and other ethnic particularities and meld into a Khmer-speaking worker-peasantry. However, in contrast to the virulent demonization of Vietnamese in Party texts, these contain no anti-Chinese or anti-Cham racialist discourse, and victim testimony is inconsistent. Although many Chinese and Cham have reported their communities were sooner or later targeted for complete extermination, others have said they were treated no worse than Khmer, if they practiced assimilation and followed Party orders. It appears that—before 1978, at least—Chinese and Cham were targeted not for extermination, but suffered disproportionately from starvation and execution, the severity of this discriminatory ill-treatment depending on how local power-holders exercised their delegated powers. Chinese were mostly new people and many were upper-class, so they sometimes suffered doubly or triply. Originally, Cham were mostly rural veteran people, but after a few rebelled against renouncing Islam, almost all Cham were demoted to new-people status and dispersed throughout the country, like urban deportees. Both Chinese and Cham were killed for not speaking Khmer or for objecting to discrimination, the numbers again determined by on-the-spot decisions.

All of this points to variations and a paradox in killings by local cadres. Although some eliminated the Khmer Republic elite, Vietnamese, new people, Chinese, Cham, and dissident veteran people with gusto, others were not happy about all of the killing they were carrying out or about the regime they were protecting with murder. Moreover, at the same time that they starved to death and executed more people, there was an ever-growing malaise within the Party, reflecting the fact that many Party members who had been reformists before becoming revolutionaries retained liberal values. That even those who were dedicated communists had expected a milder form of communism; and that even those who had once shared Pol and Nuon's radical vision were disillusioned by the endless famine, epidemics, social strife, and escalating killings it was bringing about. Intra-Party dissidence was intensified by Pol and Nuon's policy of launching aggressive cross-border raids to force Vietnam to cede disputed territory to Cambodia. The Vietnamese counterattacked in 1977, routing Cambodian border units before withdrawing. Pol and Nuon blamed the defeats on traitors within the ranks, but the defenders realized that their policies were inviting military disaster by provoking the overwhelmingly superior Vietnamese forces.

Pol and Nuon reacted to the malaise with increasingly large-scale executions of dissident Party members falsely accused of being CIA, Soviet KGB, or Vietnamese communist spies plotting against the revolution. These purges were carried out under their direct supervision at the secret S21 (Tuol Sleng) security office, which tortured confessions from arrested cadres, forcing them to name scores or more of purported coconspirators, who were then arrested and compelled to confess, naming still others. A massive purge in mid-1978 precipitated armed resistance from some cadres in eastern Cambodia who managed to escape, taking refuge with local veteran people, some of whom helped them fight back, unsuccessfully. Defeated peasants were subjected to large-scale execution, mass demotion to new-people status, and immediate deportation to other parts of Cambodia. As a few surviving insurgent cadres fled to Vietnam, Pol and Nuon pushed S21 to purge every last dissident inside the Party, with arrested cadres naming almost all leading figures except Pol and Nuon as traitors by late 1978. Meanwhile, local killings of all suspect population categories escalated to new heights, with Cham particularly targeted. There is some evidence that this reflected a change in Pol and Nuon's policies toward exterminating them completely, although definitive proof remains elusive.

What is certain is that Pol and Nuon continued to order the grossly depleted army to attack Vietnam. Each battle that was lost precipitated more arrests and executions of the enemy agents in the ranks supposedly responsible for the inevitable defeats. When the Vietnamese finally responded with a full-fledged invasion at the end of 1978, the Democratic Kampuchea regime disintegrated, the population welcoming the Vietnamese as liberators, while Pol and Nuon fled with part of their forces to Cambodia's border with Thailand. Their murderous quest for glory, prosperity, and independence thus ended in infamy, penury, and foreign occupation.

Regime Changes and Accountability since 1979

In January 1979 the Vietnamese installed the People's Republic of Kampuchea regime, in which Communist Party of Kampuchea defectors played prominent roles, but which the Vietnamese dominated. Pol and Nuon's remaining forces were treated by China, the United States, and the Association of Southeast Asian Nations (ASEAN) as still embodying Cambodian sovereignty. Therefore, Democratic Kampuchea retained its United Nations seat, and its army was supplied by China via Thailand to pursue guerrilla warfare against the Vietnamese and their clients, until the Paris Agreement of 1991. That internationally authored peace pact confirmed the withdrawal of Vietnamese and provided for United Nations–organized elections, which continuing Democratic Kampuchea supporters, former clients of the Vietnamese, and other Cambodian political organizations—including one founded by deposed King Sihanouk and headed by his son—were allowed to contest. No provision to determine accountability for Democratic Kampuchea crimes was made, but the United States, which backed the accord, declared it would support an effort by an elected government to bring perpetrators to justice. However, although the Democratic Kampuchea remnants refused to participate in elections and resumed insurgency, the coalition government of the restored kingdom of Cambodia that emerged from the ballot did not pursue the matter of accountability. The coalition included Sihanouk's organization, which had won the election, and the Cambodian People's Party (successor to the People's Republic of Kampuchea), which had lost but obtained a 50 percent share of power by threatening violence against the winners and the United Nations. The People's Party dominated the country under the leadership of Hun Sen, a one-time junior Communist Party of Kampuchea member, who preferred to respond to the Democratic Kampuchea insurgency through armed suppression and amnesties for insurgents who surrendered. In 1997 he asked for United Nations help to establish an International Tribunal, but later reversed himself, demanding instead cosmetic international participation in a domestic court trial of selected senior Democratic Kampuchea figures, Pol Pot having died in 1998. The United Nations resisted this move, convinced that Hun Sen's control of the judiciary would pervert the course of justice. From 1999 the United States attempted to broker a compromise, which the United Nations believed would still not guarantee a fair trial, but after bitter negotiations, the United Nations finally agreed to participate in a mixed tribunal in 2003. This court's personal jurisdiction was effectively limited to surviving Democratic Kampuchea senior leaders, thus shielding subordinate cadres, including Hun Sen and others who had defected before the Vietnamese invasion of 1978, from scrutiny.

SEE ALSO Khmer Rouge; Photography of Victims; Pol Pot; Statistical Analysis

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Steve Heder

Canada

In precontact Canada Amerindian societies were predominantly agrarian and hunter-gatherers. The two economies facilitated extensive trade routes and military alliances that were readily penetrated by European imperial rivals with the introduction of the fur trade.

Although neither Europeans or Amerindians needed lessons in the waging of armed conflict against an enemy, precontact hostilities were largely limited to blood feuds, which resulted in relatively few casualties when compared to European conventional warfare. Trade and alliances with European nations brought access to wealth and firearms that increased hostilities among Amerindian nations to unprecedented levels due to competition for furs and threats to sovereignty.

Trade in Furs and European Imperial Rivalries

Speculation that the Iroquois may have committed genocide against the Huron, who ceased to exist as a confederacy in 1649, is based on the hypothesis, first proposed by George T. Hunt in 1940, that the war between them was fought over the right to be the middlemen in the fur trade. Bruce Trigger, who dismissed Hunt's hypothesis as a "major dis-service" to scholarship argues that the Huron, because of their precontact allies and relationship with the French, represented a military threat to Iroquois sovereignty. The intent of the Iroquois was to break the Huron-French alliance. After the defeat of the Huron, the Iroquois made no attempt to replace them as middlemen. At the end of conflict the Iroquois compelled the Huron to join the Iroquois Confederacy. Many Iroquois were dispersed among the Onondaga and Mohawk, while one entire tribe and some of their allies were adopted by the Seneca Nation. This tribe was allowed to maintain its own language, culture, and customs.

A second possible case of genocide during the Huron-Iroquois conflict involves the Jesuits. In 1640 the Iroquois met with then Governor Montmagny of New France in an attempt to procure a treaty allowing them to kill Algonquin, allies of the Huron, without French interference. In return, Iroquois would no longer attack French or Huron furriers. Montmagny at first declined, but was persuaded by Jesuit priests to agree, provided the Iroquois promised to attack only non-Christian Algonquin. The Algonquin were never informed of the treaty. Trigger contends that the Jesuits, who were dependent on the fur trade, feared losing their missions if trade was cut off and recognized this as an opportunity to encourage Algonquin conversion. While the Iroquois' intent was to attack Algonquin randomly, Jesuit intent, inflicting conditions that aimed to annihilate non-Christian Algonquin, may have qualified as a genocide; however, Trigger points out that the treaty was only temporary.

Impact of European Infectious Diseases

Although there is a divergence of opinion as to the numbers of Aboriginal peoples who perished from the seventeenth century onward after contracting European infectious diseases, most notably smallpox, a consensus exists among historians that the spread of dis-

ease was one of the leading factors in the destruction of Amerindian societies. The primary debate centers on the issue of intent. Did the carriers of infectious disease deliberately facilitate its spread to Aboriginal peoples with the intent that Amerindians should die?

Jesuit missionaries, who first came into contact with the Huron Nation in the early 1600s, estimated the Huron population to be roughly 20,000 to 35,000. After a wave of epidemics, particularly smallpox, the Huron were reduced to about 10,000 by 1640. Many Huron observed that epidemics had occurred after visits from the black-robed missionaries. This led Huron to believe the Jesuits were practicing witchcraft. Jesuit ceremonies, such as the burning of incense and the priests' obsession with baptism (it did not go unnoticed that most Huron baptized while on their death bed with smallpox failed to survive), were interpreted as spell casting, or worse, soul stealing. Events culminated with a Huron attack on a Jesuit settlement in modern Midland Ontario, which resulted in the annihilation of its inhabitants.

While the Huron may not have understood the science behind the spread of European infectious diseases, in all probability they were likely correct in identifying the Jesuits as the carriers of disease. The Jesuits believed in the existence of two worlds after death. Heaven, which represented all they deemed holy, and hell, or purgatory, which represented all that was evil and feared. Better to risk the death of Amerindians after baptism, they reasoned, than not to baptize and risk eternal damnation for those unfortunate enough to die without having been baptized.

Intent and Implementation of British/Canadian Amerindian Policy

British Amerindian policy followed three discernible paths: protection, civilization, and finally assimilation. With the introduction of the Royal Proclamation of 1763, the British Crown recognized Amerindian land rights and forbade European settlement west of the Appalachian Mountains. Amerindian lands could only be surrendered to the Crown. The exception was the colony of British Columbia, where the colonial government favored what it called "peaceful penetration." However, after confederation, the Canadian government put an end to this policy and proceeded to invoke the tradition born out of the Royal proclamation where only the Crown could purchase land. The Crown, in turn, was the sole proprietor of land sales to settlers. Although this policy advanced British economic interests in the fur trade, it conflicted with the interests of American settlers, ultimately contributing to the American Revolution.

Between 1815 and 1841 Upper Canada accepted an influx of European settlers, creating demands on Amerindian lands. Sir Frances Bond Head, the lieutenant governor of Upper Canada, as U.S. President Thomas Jefferson before him, advocated the relocation of Amerindians. Bond Head proposed moving all Amerindians from central and southern Ontario to Manitoulin Island. While Bond Head's proposal was never actuated, all Indians were eventually isolated on reserves, opening land for settlement. Christian converts who originally built and maintained their own community of log houses, barns, and fields at the present-day site of Owen Sound, Ontario, were not spared. Bond Head told the Amerindians that they could not be protected from settlers unless they agreed to relocate and relinquish their lands.

In 1830 the Indian Department was transferred from military to civilian control. With this change, the Act for the Gradual Civilization of the Indian Tribes in the Canadas was introduced. Favored by white settlers and politicians, Governor George Simpson of the Hudson's Bay Company warned that policies undermining Amerindians societies would become a political issue in Britain. As J. R. Miller contends, "Assimilation through evangelization, education and agriculture would have to be the policy after 1830, because more coercive methods of achieving the 'Euthanasia of savage communities' were inimical, expensive and politically dangerous" (1996, p. 75). Miller appears to be correct in his estimations. From 1837 to 1861 Englishman Herman Merival, rejecting the notion of the physical extermination of Natives as unthinkable, openly advocated utilizing both the church and state to prepare Amerindians for assimilation, while isolating them from settlers until such time that they might be deemed "civilized." The Civilization Act of 1857 was precisely what Merival had advocated. The Crown went further in 1866, with the introduction of policies that "adjusted" reserves. Amerindians were expected to live on 10 acres per family, whereas whites were permitted to claim 160 acres and purchase an additional 480.

Recognition of a Nation

The introduction of the British North American (B.N.A.) Act of 1867 recognized Canada as a nation and entrenched Amerindians in Canadian law as wards of the Crown; however, Amerindians were encouraged under the act to pursue enfranchisement, which entailed full assimilation into white society.

In 1868 the Indian Act was passed into law. Its principles were once again protection, civilization, and assimilation. As Robert Surtees stresses, the "general framework" of policy was inherited from preconfederation:

> It became increasingly legalistic in its orientation. Emphasis was directed toward enfranchisement, toward the meaning of Indian status, and toward eradicating all remnants, aspects, or symbols of tribal background or Indian heritage. The imposition of elected local governments on reserves and the proscription by federal statute of such customs as the Sun Dance and the potlatch were instances of the latter emphasis. And to promote the program, extended powers were accorded the Indian agents through an increase in the authority of the chief superintendent, who, after Confederation, was a minister of the federal government (Surtees, 1982, p. 44).

The creation of the Enfranchisement Act of 1869 authorized the federal government of Canada under the Indian Act to relinquish the status of anyone legally recognized as a "Status Indian" whom the government deemed fit for assimilation. The Indian Act was again amended in 1876 to clarify that Indians were minors, wards of the federal government, subjects, not citizens. Brian Titley explains, "It was designed to protect the Indians until they acquired the trappings of white civilization. At that point, they were supposed to abandon their reserves and their special status and disappear into the general population" (1986). John Milloy notes that it was tribal councils that first decided policies on agriculture, schools, and other forms of cultural change. Under the Indian Act of 1876 the Canadian government controlled the reserves.

After the collapse of the fur trade in western Canada, the Plains Cree made overtures to the federal government, aimed at the creation of a Cree homeland within the confederation. The Cree insisted on the inclusion of a commitment to providing schools and farm equipment in treaties. Federal promises either fell short or were neglected altogether. Successful farming operations were reduced in size after settlers complained of having to compete with Amerindians. Living conditions became deplorable, forcing some women into prostitution in order to acquire food. The government blamed the perceived immorality of Amerindian culture. Hostilities boiled over in the communities of Battleford and Frog Lake, at roughly the same time the Metis rebelled against federal subjugation. According to Robert Tobias, Edgar Dewdney, a senior bureaucrat with Indian Affairs, used the opportunity to publicly cover up the results of federal policy by claiming that Cree hostilities were part of the Metis Rebellion of 1885. Privately, Dewdney admitted the two were separate incidents. After 1885 Dewdney refused to honor treaties with the Cree. The Cree were eventually forced onto scattered reserves, their leaders wrongfully imprisoned, and the farming equipment promised in treaties never delivered.

In 1894 the Canadian Indian Act was amended to allow for the lease of so-called idle reserve lands to the growing numbers of settlers. Reserves were increasingly viewed as a hindrance to assimilation. In 1903 the Oliver Act became law. It was designed to make the seizure of allegedly surplus Indian lands for settlers easier. (At the beginning of the early twenty-first century Amerindians occupy less then 2% of the land in Canada below the 60th parallel.) Education also became compulsory under the Indian Act of 1894. The intent was to utilize day and residential schools to prepare Amerindian children for assimilation into Western society. Children were forbidden from practicing their own culture, language, and religion; the vacuum created was filled by Western culture, the English language, and Christianity. This policy remained unchallenged until the drafting of the United Nations (UN) Convention Against Genocide concluded in 1948. Canada, among other UN member nations, successfully lobbied for the removal of most of the references to cultural genocide in favor of limiting legislation to cases of "physical destruction." The Canadian government feared that the residential schools or forced education in its country might be seen as genocidal institutions.

Seven years after the ratification of the Genocide Convention, in response to external threats to her sovereignty in the high Arctic, Canada engaged both the Hudson's Bay Company and Royal Canadian Mounted Police to relocate Inuit, predominantly from Port Harrison, Quebec, to Grise Fiord and Resolute Bay. They were to select Inuit deemed "inefficient trappers." For the most part the Hudson's Bay Company ignored the fact that Inuit who were dependent on relief payments received this government assistance, in part, because some of the tribe's best hunters were too busy trapping for Hudson's Bay to hunt for their own people; furthermore, a number of self-sufficient hunters and at least one prominent carver who maintained a respectable income by southern standards were sent to the high Arctic.

In the 1960s Canadian policy toward its Native population underwent a radical change with the Supreme Court of Canada's ruling in *Nishga,* which confirmed the rights of Amerindians. This ruling legally quashed the 1969 White Paper that proposed the abolition of reserves and Amerindian rights as recognized by the Crown in earlier treaties. Although the 1960s bore witness to improved Canadian-Amerindian relations, Canada did not, as Micheal Asch asserts, shift policy from assimilation to negotiating Amerindians into the confederation. Contemporary land claims assert Crown sovereignty over unceded lands while recognizing some rights in return for the extinction of others and

Amerindian recognition of Canadian sovereignty. All modern treaties contain a clause stating that Amerindians must "cede surrender and extinguish all Aboriginal claims." The agreements offer Amerindians financial considerations on a per acre basis, generally well below market value, and an agreed upon percentage of royalties for resources.

Although there is general consensus among scholars that the Canadian government pursued an ethnocidal policy toward Amerindians, Miller underscores the frustration of this policy, as a result of Amerindian resistance, lack of government finances, and the overall failure of government agents to fully cooperate in the implementation of ethnocidal policies. However, Miller's work fails to take into account the agents who did cooperate or were overzealous, as demonstrated by Robin Brownlie and Mary-Ellen Kelm. Nor does Miller address the plight of Amerindians on the West Coast who were imprisoned if they participated in a potlatch or those who were released from prisons only after surrendering their religious regalia to museums. Brownlie and Kelm's findings are further validated by Chalk and Jonassohn, who state that few genocides are ever entirely successful. It is only logical that the same principle applies to ethnocide.

SEE ALSO Beothuk; Residential Schools

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David King

Carthage

The destruction of Carthage in 146 BCE ended the Third Punic War (149–146). It the violent anticlimax to more than a century of conflict between Rome and Carthage, the two most powerful states in the western Mediterranean. Rome's grim treatment of the Carthaginians and their city, while not entirely unprecedented as a postscript to Roman conquest, stands out as an extraordinary and calculated act of brutality.

Rome and Carthage had not always been enemies, but conflicting Roman and Carthaginian imperial interests resulted in the First Punic War (264–241) and the Second Punic War (218–201). In the latter war, the Carthaginian general Hannibal invaded Italy and brought Rome to the brink of defeat. However, Rome's ultimate victory left it the unrivalled power in the western Mediterranean. Carthage was forced to accept severe terms, including a large indemnity paid annually for fifty years and the loss of all overseas territories. Moreover, Carthage agreed not to wage war outside of Africa and, within Africa, only with Rome's permission.

Carthage also agreed to restore to Masinissa (the king of neighboring Numidia and a Roman ally since 206) all the territory that he or his ancestors had once possessed. Masinissa consistently raided or seized Carthaginian territory, claiming that the lands once belonged to his family. Each time, Carthage either acquiesced or dutifully sought Roman arbitration, and each time, the Romans sided with Masinissa.

Despite the loss of territory and military power, Carthage remained a prosperous city. A Roman em-

bassy, which included the powerful senator, Cato the elder, visited Carthage in 153 and returned home impressed by the size and wealth of the city. After this visit, Cato reportedly began concluding all of his speeches in the Senate with the phrase "Carthage must be destroyed." In one speech Cato presented a number of Carthaginian figs to the senate. He warned his audience, amazed at the figs' size and freshness, that the country that produced them lay only a short distance from Rome. Cato's views probably reflected the popular Roman sentiment that Carthage was to be feared. This fear may have grown stronger after Carthage paid off its indemnity in 151.

Rome's justification for the Third Punic War came when the aging Masinissa again invaded Carthaginian territory in 150 and Carthage chose to resist the invasion without first seeking arbitration from Rome. The Carthaginians may have simply grown frustrated with Rome's consistent support of Masinissa over the previous half-century and decided to risk war rather than concede more territory to its enemy. Alternatively they may have believed the war indemnity stipulated by the treaty of 201 was paid, that they were no longer bound by the treaty and could pursue independent foreign policy. Whatever the case, the Numidians badly defeated the Carthaginian army, which fought under the command of Hasdrubal. The Carthaginians immediately condemned Hasdrubal to death, then sent an embassy to Rome to publicly disavow the actions of Hasdrubal and to seek arbitration over the dispute with Masinissa.

The Roman response was calculated and duplicitous. In fact, the Roman historian Appian claims that the Roman senate had had begun to seek a pretext to attack Carthage soon after Cato had returned from his visit to the city three years earlier, though the veracity of the statement is questionable. In any case, the Roman senate had already begun to prepare for an invasion of Africa by the time the Carthaginian embassy arrived. The senate blamed Carthage for the impending war and warned that it could be avoided only if Carthage "satisfied the Roman people" (Appian, 1972, p. 74). The next year (149), the Roman senate declared war and ordered a fleet and army to gather in Sicily, preparatory to invading Africa. The Carthaginians sent another embassy to the Roman senate in a desperate attempt to avoid conflict. The Romans responded that the Carthaginians could retain their lands in Africa and would be allowed to live under their own laws. To gain this concession, however, they were ordered to hand over 300 hostages—children from aristocratic families—within thirty days to the Roman generals in Sicily and obeyed Rome "in other ways" (Appian, 1972, p. 76).

The Carthaginians were suspicious, but they complied with this demand. The Roman generals then sent word that they would provide further conditions once the Roman army landed in Utica (a harbor town in north Africa). Carthage sent an embassy to meet the Roman generals in Utica, at which point the generals demanded that the Carthaginians turn over all stockpiled weapons and siege machines. Only after the Romans collected these weapons did they reveal their final conditions for peace: the Carthaginians must abandon their city and resettle at least ten miles from the sea. The city itself would be razed, except for its shrines and graves. Carthage rejected these terms, and the Romans began to prosecute the war.

The Third Punic War lasted longer than Rome expected, though there was little doubt as to the outcome. After a lengthy siege the Romans, under the command of Scipio Aemilianus, forced the city to surrender, but only after a great many women, children, and elderly had been killed or wounded when Scipio ordered residential buildings set on fire to clear a path to the citadel. Fifty thousand men, women, and children were sold into slavery. Roman soldiers looted the city for several days, after which a board of ten Roman senators oversaw the systematic destruction of the city. Carthage was burned to the ground and buildings were razed. The story that the Romans sowed salt on the fields to prevent crops from growing is a later invention.

What drove the Romans to extreme barbarity in this case is a matter of debate. Cato's speech about the wealth of Carthaginian territory, Carthage's economic resilience, and Rome's demand that the Carthaginians resettle away from the sea all suggest that commercial factors may have influenced Rome's policy toward Carthage. After the war, Carthaginian territory was reorganized as the province of Africa, and in 122 the Romans tried to establish a colony on the site of Carthage. However, this decision was reached long after the destruction of Carthage and was very controversial, suggesting that colonization had not been the foremost reason for Roman actions in 146.

Roman politics and the desire for glory certainly contributed to its treatment of Carthage. After the war, Scipio Aemilianus's popularity soared and he was awarded the title Africanus for defeating Rome's rival. Finally, one should not underestimate Roman hatred of Carthage, fear (even if unfounded), and desire to avenge the destruction wrought by Hannibal in the Second Punic War. According to Appian, the Romans who poured into the streets to celebrate the news of Carthage's destruction were still mindful of Hannibal's war.

Finally, it is worth considering to what degree the treatment of Carthage was typical of contemporary Roman military and diplomatic procedure. On the one hand, Roman brutality throughout the Mediterranean appears to have increased in the second century BCE. For example, in 146 Rome razed the city of Corinth and enslaved its population. On the other hand, Rome's apparent long-term policy of weakening Carthage and its calculated manipulation of the treaty of 201 are not typical of its treatment of other conquered rivals. This underscores the degree to which Roman fear, hatred, and desire for revenge may have been important motivating factors in the decision to wipe out Carthage both physically and symbolically.

SEE ALSO Ancient World

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Cathars

Catharism, a Christian heresy attested from approximately the tenth until the fifteenth century from France to Asia Minor, advocated a path to salvation through one sacrament, held that the material world was evil, and believed that salvation was available for all believers. The Cathars shared with the Bogomils (another, nearly contemporary Christian heresy) certain elements of belief, organization, and ritual, whose dissemination probably followed the trade routes from East to West. The Cathars, who called themselves simply "good Christians," constituted a real counter-church, consisting of believers, clergy, and bishops. The name "Cathar" was explained as referring to cat worshippers, because the Cathars were accused of holding diabolical rites, or as a derivative from the Greek word *katharos* (meaning "clean, pure") to describe the pure asceticism of the believers.

Origins and Development

In Bulgaria, the followers of a priest named Bogomil initiated a dissident movement in the tenth century, attested by various sources such as the sermon of Cosmas (c. 970). In the West, other heretical groups began to emerge around the year 1000, as lay apostolic movements reacted to the reforms initiated by Pope Gregory VII (1073–1085) and to the growth of monasticism. In the 1140s, when the trials and condemnations of the Bogomils were occurring in the East, Evervin, prior of Steinfeld (in Germany), wrote to Bernard, abbot of Clairvaux (in France), about heretics who claimed that their church originated with Christ and the apostles and had been existing secretly in and around Greece. Reports of heresy followed in the 1150s and 1160s. In 1163, five people were burned in Cologne by authority of a lay court. Eckbert of Schönau authored thirteen sermons against the heretics he termed Cathars. Eckbert's sister Elisabeth and Hildegard of Bingen both engaged in polemics against the dissidents. Popular heresy spread rapidly from the 1170s until the Fourth Lateran Council (1215). Among the various movements that arose, the Cathars attracted the greatest suspicion and were the primary targets of campaigns against heresy, from preaching missions to armed intervention.

Contacts between Eastern Bogomils and Western Cathars were not uncommon, especially in and through Italy because of its proximity to the Balkans. Sometime between 1167 and 1172, Pope Nicetas of Constantinople attended a synod in France at Saint-Félix-de-Caraman, north of Toulouse. A document from that council, the so-called Charter of Nicetas, gives the names of Cathar bishops who arrived at the conference from various parts of France and Italy. Nicetas reconsecrated bishops who already held office and consecrated newly elected bishops. Around 1190, Nazarius, the Cathar bishop of Concorezzo, brought the Bogomil text *Interrogatio Iohannis* from Bulgaria to Italy. Envoys carried letters between French and northern Italian Cathars, and leading French Cathars took refuge in Italy during periods of persecution in the thirteenth and fourteenth centuries.

Italian Cathars in cities such as Orvieto and Viterbo benefited from the protection of political leaders who opposed the papacy. Eventually, the Cathars in Italy emerged into three divisions according to their affiliation with different Bogomil churches: the Albanenses centered in Desenzano, near Lake Garda were affiliated with the church of Dragovitia; the Garatenses, located in Concorezzo, near Milan, observed ties to the church of Bulgaria; and the Bagnolenses from Bagnolo, near Mantua, maintained affiliation with the church of Sclavonia.

Map showing Occitania in the early thirteenth century. [MAP BY XNR PRODUCTIONS. THE GALE GROUP.]

Beliefs

Sources pertaining to the beliefs and existence of the Cathars consist primarily of polemical texts written against them, but also include three extant Cathar rituals, two in Occitan and one in Latin; an anonymous treatise for Cathar preachers; and the *Book of Two Principles*, a scholastic exposition written by John of Lugio, bishop of Desenzano.

Catharism differed from orthodox Christianity on several points, including beliefs regarding the nature of Christ, the role of the church hierarchy, the number and function of the sacraments, the source of evil in the world, and the possibility of salvation for all believers. The Cathars leaned toward docetism, which rejects the human nature of Christ. They practiced a single sacrament, the *consolamentum,* which was a laying-on-of-hands that served as baptism, confirmation, ordination, forgiveness of sins, and extreme unction. Through the *consolamentum,* human souls which had fallen away from God would return to God's realm. The Cathars rejected any necessity for a priest's absolution to forgive sins, any function for the saints' intercession, or any need of prayers for the dead. The Cathars shared a sym- practiced a generally austere way of life, with special dietary restrictions. The women *perfectae* performed evangelical, pastoral, and sacramental functions. Cathars refused obedience to Rome and the local clerical hierarchy. With the Bogomils, they believed that matter was created by Satan and that the last fallen soul would be saved at the end of this world. Both Cathars and Bogomils rejected icons and practiced a simple, repetitive liturgy emphasizing the Lord's Prayer, an *Adoremus* formula, and multiple genuflections.

Social Location and Practices

Catharism included all social classes, perhaps having been introduced among the elites but later filtering down to the lower classes. Family ties represented an important force. Cathar houses played a religious and socio-economic role; people were welcomed there for instruction in trades as well as religion. Less prosperous and military than their northern counterparts, Occitan nobles engaged in some form of work, such as weaving or cobblery. They lived with members of other social classes in the *castrum*, a fortified village built around a castle. As the population of Occitan villages

Furthermore, Catharism placed no economic restrictions on believers and exacted no tithes.

Before their persecution, Cathar bishops preached widely, traveling with assistants who set forth their doctrines. Cathars also met and preached in the homes of their patrons. The Roman church responded first by expanding the scope and frequency of orthodox preaching to the people, mandated by the Fourth Lateran Council (1215) and implemented through the approval of the mendicant orders (Dominicans in 1216; Franciscans in 1220). Eventually, however, the ideology that justified the crusades to the Holy Land was extended to rationalize campaigns against heresy in Italy, France, and the Balkans.

The Albigensian Crusade: 1209 to 1229

Pope Innocent III launched the Albigensian Crusade in 1208/1209, after the murder of the papal legate, Peter of Castelanu. This decision followed decades of unsuccessful efforts at preaching conversion to the Cathars in Occitania and failed attempts to suppress their alliances with political enemies of the pope in Italian cities. It also rested on a gradual build-up of mechanisms for persecution. When teaching and preaching no longer proved effective in persuading dissenters to conform, church and secular leaders turned to coercion.

The third canon of Lateran IV (1215), which established the mechanisms for persecution, was preceded by a series of landmarks. These were:

1. Chapter 21 of the Assize of Clarendon in 1166, the first secular legislation against heresy;
2. Lateran III in 1179;
3. Ad abolendam in 1184, the first joint (secular and spiritual) condemnation of heresy since the Theodosian code;
4. Innocent III's 1199 decree *Vergentis in senium* equating heretics with traitors before the law.

Moreover, in 1207, just prior to the Albigensian Crusade, Innocent III issued *Cum ex officii*, which expressed the intent to "remove from the patrimony of St. Peter the defilement of heretics," and provided for the delivery of heretics to secular courts, the confiscation and sale of a heretic's possessions, destruction of his home, and penalties imposed on his followers or supporters. These papal measures, aimed at Cathars and political foes in Viterbo, equated the two groups and furthered the alliance of the ecclesiastical and secular forces that drove the Albigensian Crusade.

Historians divide the Albigensian crusade into six general phases, as follows:

1. 1209 to 1211, when the land belonging to the powerful Trencavel family was conquered;
2. 1211 to 1213, when Toulouse and the surrounding area were subdued;
3. 1213, the year of the decisive battle at Muret, when allied forces under Peter of Aragon were defeated by Simon of Montfort's armies;
4. 1213 to 1215, the period of Montfort's triumph and Lateran IV, where the disposition of conquered territory was debated and Count Raymond VI was deprived of his lands;
5. 1215 to 1225, a decade of counter-attack and reassertion of southern lords;
6. 1225 to 1229, when royal intervention conquered the southern forces and compelled Raymond VII's submission.

The first phase of the crusade included some of the most brutal massacres. On July 22, 1209, the city of Béziers was sacked and thousands were slaughtered. When asked whether to kill both Catholic Christians and heretics, the legate Arnaud Amaury supposedly replied: "Kill them all; God will recognize his own." Whether or not he uttered those infamous words, Amaury reported succinctly to Innocent III that "neither age, nor sex, nor status had been spared, and nearly twenty thousand people perished." The legate described the subsequent sack and burning of the city as "divine revenge raging wondrously against it," and he termed the event a "great miracle." In June of 1210, 140 Cathars were burned at Minerve. The following year, in April and May 1211, at Lavaur, about 80 *faidits*, Occitanian nobles who supported the Cathars, were executed, and 300 to 400 Cathars were burned. In May of the same year, at the siege of Cassès, 60 to 100 Cathars were burned.

The middle period of the crusade involved more victories for the French army, but those were followed by victories by southern (Occitanian) forces at Castelnaudary, Agen, Moissac (1221), and Carcassonne (1223 and 1224). The deaths of Raymond VI in 1222, Raymond-Roger of Foix in 1223, and King Philip Augustus in 1223 led to a reversal of southern victories. When Louis VIII acceded to the throne, full royal intervention in Occitania ensued. After negotiations with Raymond VII and his excommunication in 1226, the king's army moved southward. After Louis VIII's death in November of the same year, his cousin continued the campaign, under the urging of Blanche of Castille, who was serving as regent until her son, the future Louis IX, reached the age to assume the throne. Humbert de Beaujeau, the governor of Languedoc, directed the systematic devastation of the area around Toulouse, which along with pressure from Pope Gregory IX, forced the beginning of negotiations for peace, and culminated in the treaty of Paris/Meaux in 1229.

The brutality of the Albigensian crusade reflects the perception of heresy's threat to the social order, as expressed by Caesarius of Heisterbach, a Cistercian monk from the Rhineland, in his *Dialogus miraculorum*: "The Albigensian error was so strong that in a short period of time it would have infected as many as 1,000 cities, if it had not been repressed by the swords of the faithful. I think that it would have corrupted all of Europe."

Inquisition, Dissent, and Reform

After Innocent III's papacy, the legislative campaign to combat heresy was renewed by Honorius III (1216 to 1227). The migration of Occitan Cathars into northern Italy increased the presence of the counter-church there. The friars undertook influential preaching campaigns to swing public opinion toward enforcement of already existing legislation against heresy or toward the enactment of new laws. Attention to the crusade to the holy land eclipsed the effort against heresy again in 1221, but Gregory VIII, Honorius's successor, resumed the legal assault on heresy, establishing Dominicans as inquisitors first in Germany with *Ille humani generic* (1231).

The first permanent tribunal of inquisition functioned in Occitania in 1233 or 1234. In 1233 Gregory IX ordered friars sent to the archdioceses of Bourges, Bordeaux, Narbonne, and Auch to aid the bishops there in their fight against heresy. Accounts for inquisitorial proceedings in Toulouse and Albi during this period have survived. Local protests against the inquisitors began shortly thereafter, and the townspeople of Narbonne reacted violently during the years 1234 to 1237. Dominicans were expelled from Toulouse in 1235, but the people of the city continued to suffer persecution from 1237 to early 1238. Occitan nobles defied the French twice more, in 1240 and 1242, but were unsuccessful in both attempts. Meanwhile the inquisitors renewed their activities at various sites with fierce determination from 1241 onward. Acts of resistance to the inquisitors continued, and some were murdered at Avignonet in 1242. But the last strongholds of Cathar sympathizers were soon to fall: Montségur in 1244 and Quéribus in 1255.

Under Innocent IV's papacy (1243–1254), earlier procedures of inquisition were melded into the formalized office, the "inquisitor of heretical depravity." Pope Alexander IV granted inquisitors broader powers in 1256. Although heresy was waning, the inquisitorial commissions continued, examining earlier proceedings and opening posthumous investigations. The inquisition found new interrogants when a revival of Catharism took place in Occitania during the early fourteenth century, after the return from Italy of a Cathar preacher named Pierre Authié. Bernard Gui, a Dominican, was appointed inquisitor in Toulouse from 1307 to 1324. Jacques Fournier, a Cistercian who would become Pope Benedict XII (1334–1342) residing in Avignon, served as inquisitor from 1318 to 1325, and he left extensive registers recording interrogations. The year 1321 marked the burning of the last known Cathar perfect, William Bélibaste, in the town of Villerouge-Termenès.

However, medieval dissidence regained force during the fourteenth and fifteenth centuries. Some groups, such as the Lollards, claimed the right of all Christians to participate in the apostolic life. Others, like the Free Spirit heresy, rejected the hierarchical structure and domination of the Roman church. The Lollards, like the Cathars, rejected images; furthermore, they saw the propagation of the faith as the responsibility of all believers, as did the Hussites in fifteenth-century Bohemia.

Sixteenth-century reformers challenged some of the same issues argued by medieval dissident groups, notably the role of sacraments; the role of the saints and the dead; the role of and responsibility for evangelism; and issues of lay and clerical morality. During the Reformation, churches that held views espoused by some medieval dissidents, including the Cathars, were established, but not without considerable bloodshed.

SEE ALSO Crusades; Religion

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Beverly Mayne Kienzle

Catholic Church

Extreme controversy surrounds any discussion of the Catholic Church's role in genocide and crimes against humanity. Several issues need to be highlighted in seeking to unravel this controversy. First is the allegation that the Church was directly responsible for the drive toward colonialism in issuing papal bulls that commanded states such as Portugal to spread Catholicism. One might argue that these declarations led European nation-states to believe that it was their right to acquire territories abroad. The fact that crimes against humanity were committed during colonial conquest is uncontested. A second criticism often leveled against the Church is that it has failed in its moral duty to condemn or guide leaders and populations in curbing genocidal tendencies. Such an argument claims that the Church, by virtue of its proclaimed aim of spiritual guidance, ought to have played a more significant role in the prevention of crimes against humanity and genocide. The third and fiercest criticism of the Church, however, is that it has furthered genocidal tendencies. This remains the harshest criticism and goes beyond moral arguments to an examination of evidence suggesting that elements of the Church have colluded with forces perpetrating crimes against humanity and genocide.

The Papal Bulls

Many processes concurrent with colonization can be attributed to the Church and traced to a series of edicts issued by the Pope. These edicts, referred to as "bulls," were commands or grants the Church gave to its followers. One of the more well-known bulls was delivered by Pope Alexander III to the King of Portugal on May 21, 1179. In this edict the Pope declared:

> All the regions which you will have rescued from the hands of the Saracens, and where other neighboring Christian princes could not acquire any legal rights, are conceded by us to your Excellency (Consilia, 1547, p. 137).

As Bartolus points out in his treatise, although the papal bulls did not directly bestow territories on princes, they "legalized, recognized [and] sanctioned ex post facto territorial integrity which already existed in fact, or they gave assent, and thereby legal sanction *ex ante* to an intended occupancy, to a condition anticipated in the future" (p. 137).

Thus, it might be argued with some force of authority that an examination of the role of the Catholic Church within the context of genocide and crimes against humanity ought to take into account the Church's impact during the period of colonization, when European powers competed against each other for the pursuit of Christianity, civilization, and commerce. Again, the responsibility attributed to the Church may be characterized as direct and indirect: direct responsibility for the actions of people it directly commanded to pursue such ends, as in the case of the papal bulls, and indirect responsibility for its failure to condemn the immoral actions of others, including Church members, and its attempts to justify its own doctrine. Within this rubric the missionary work legitimized by the Catholic Church also needs to be assessed.

The Church and the Jews

The most significant issue in discussing the Church within the context of genocide concerns its role prior to and during the Holocaust. Once again, an analysis of the Church's role differentiates between acts of commission and acts of omission in the condemnation of activities directed toward the minority Jewish population. In many respects the tenuous relationship that existed between the Catholic Church and Jewish minorities who lived in various parts of Europe in the 1930s dated back to much earlier times. Many suggest it was the Church that in previous centuries had instigated, or at any rate fanned the flames of, the anti-Semitism which was to take such a high toll on the Jewish population in later years.

In terms of acts of commission, an argument may be made that anti-Semitism, to an extent, is linked to the teachings of the Catholic Church, one being the assignment of blame for the death of Jesus to the Jews. The ghettoization of the Jewish community all across Europe in the 1930s and 1940s can in some part be ascribed to the fervor with which Jewish lifestyles and beliefs were condemned by the Church. This is captured in the sentiments expressed by the Third Lateran Council (a gathering of 302 bishops under the aegis of the Pope to restore ecclesiastical discipline) in 1179—the same year that Pope Alexander III delivered his fa-

Heretics being burned at the stake, by order of Catholic Church authorities, in Piazza della Signoria, Florence, around 1400. Painting (artist unknown) from the Museo Firenze com'era.[DAVID LEES/CORBIS]

mous edict to the King of Portugal. The Fourth Lateran Council in 1215 went a step further in passing anti-Jewish decrees that included, among a host of other measures, the requirement for Jews to wear special badges clearly identifying them in the general population. The Church also encouraged monarchs to expel Jews from their states—a notable example being King Ferdinand and Queen Isabella's decision to expel Jews from Spain in 1492. In places such as Venice, the Church prevailed on city authorities to segregate Jews and prevent them from living among Christians. Although Venice did not undertake such measures to segregate its Jewish population until 1516, Jews at a much earlier period in the city's history regularly faced the wrath of Catholic clergy who actively advocated their removal and exclusion, especially during the Easter season.

Thus in terms of the Holocaust, the Church among other parties bears some moral responsibility for stoking anti-Semitism throughout European history, or at the very least, for failing to condemn such dangerous levels of antagonism on moral and spiritual grounds.

Much has been written about the Church and its role during the Holocaust. Great emphasis has been placed on the work of Pope Pius XII: described by many as a leading advocate of Jewish rights, and by others as having done too little during the Holocaust. A brief examination of this pontiff's views and actions casts significant light on the role of the Church during World War II.

Pope Pius XII

Many view Pope Pius XII (born Eugenio Pacelli) as a tireless defender of Jewish independence in the face of

the Nazi onslaught. He created the Pontifical Aid Commission whose mandate was the provision of relief to the victims of World War II on both sides. He is also believed to have opened the Holy See to Jewish refugees during the Nazi occupation of Rome in September 1943. Some estimate that Pius XII helped save as many as 1.5 million refugees, including Jews, by granting them Vatican citizenship. Many maintain that it was Pius XII who was responsible for organizing the network of priests who spirited Jews to safe havens at the height of the Nazi attack on this group. In addition, Jewish relief agencies who made large donations to the Catholic Church at the end of the war have formally acknowledged the pontiff's humanitarian role. There has also been official recognition of Pius XII's work: The Israeli government issued the "Righteous Gentile" award to him and, upon his death, Golda Meir (then Israeli ambassador) delivered a moving eulogy to the United Nations (UN) General Assembly.

Nevertheless, Pope Pius XII has also been criticized for failing to prevent genocide during World War II. Many contend that as the spiritual leader of the Catholic Church during this tumultuous period, he had a moral obligation to adopt strong public positions and explicitly condemn the events unfolding in Europe. Critics argue that such public statements would have unhinged support for the Nazis among Germany's large and influential Catholic population; in this sense the pontiff might have undermined the Nazi campaign for the genocide of the Jews. Two defenses are often proffered to explain the lack of a public statement by the Vatican during the Holocaust. The first suggests that the pontiff was unaware of the scale of the tragedy occurring; he believed the incidents of violence against Jews to be sporadic, rather than part of a deliberate state policy aimed at the organized annihilation of an ethnic and religious group. Historical information gathered in the later part of the twentieth century suggests that Pius XII was not only aware of the details of several horrific events, he was directly petitioned by several individuals and groups that implored him to intervene and make a public statement condemning the atrocities.

Notable among the direct pleas made to Pope Pius XII were those of Rabbi Isaac Herzog (chief rabbi of Palestine) in 1940, Theodor Innitzer (cardinal of Vienna) in 1941, Harold Tittman (assistant chief of the U.S. delegation to the Vatican) in 1941, Andrej Septyckyj (metropolitan of Ukraine) in 1942, Myron Taylor (U.S. representative to the Vatican) in 1942, and Wladislaw Raczkiewicz (president of the Polish government in exile) in 1943. On each occasion the request was either ignored or rebuffed, and on some occasions even the facts presented were disputed as lacking in evidence. In his 1942 Christmas Eve radio broadcast the pontiff acknowledged the "hundreds of thousands who through no fault of their own, and solely because of their nation or race, have been condemned to death or progressive extinction," but made no direct reference to the plight of Europe's Jews.

A second defense attributes Pope Pius XII's failure to openly condemn the genocide to the Catholic Church's perceived position of neutrality. Proponents of this argument suggest that any statement by the Church on the atrocities committed against the Jews might have compromised it, in the eyes of the international diplomatic community as well as its own followers, because the work of the Church was above that of governments. However, clear evidence of the Church's condemnation of other atrocities, notably those perpetrated by the former Soviet Union, exists, thereby suggesting that the Church did occasionally find it appropriate to make such statements.

Admissions of Culpability

The question of relations between Jews and the Catholic Church was the focus of much discussion in the closing years of the twentieth century. In seeking a reconciliation, the International Catholic-Jewish Historical Commission (ICJHC) was appointed in 2000, respectively, by the Holy See's commission for religious relations with the Jews and the International Jewish Committee for Interreligious Consultations (IJCIC). Its members (three Jewish and three Catholic scholars) undertook the study of Vatican archives, with a view toward understanding the true nature of the Church's relations with Jews and ways in which a reconciliation might be reached.

The commission's report entitled "The Vatican and the Holocaust" was intended to be an authoritative examination of that issue vis-à-vis general relations between the two religions, as well as an in-depth study of the Church's alleged complicity in the events of the genocide perpetrated during World War II.

One of the key findings of the panel's research was that Pope Pius XII was indeed fully aware of the extent and scale of Nazi atrocities during World War II. It is within this context that the Vatican's failure to respond to the situation and assume a significant public role is particularly troubling. The report also raises doubts about whether or not the Church did all it could to facilitate Jewish emigration to Palestine and South America.

The same scholars, in addition, examined the Church's claim of neutrality as a justification for its lack of condemnation. Drawing on evidence recently

declassified by the U.S. National Archives, they suggested that within the context of other atrocities, notably those perpetrated by the Red Army against the German population, the Church adopted a strident tone of opposition, roundly condemning these events. This revealed that within the context of the Holocaust, the Church had selectively applied the notion of neutrality.

The same commission also requested access to Vatican archives to ascertain culpability for its role in the Holocaust. The request was denied, with the Vatican only willing to release documents prior to 1923, and as a result, the work of the ICJHC came to an end.

Road to Reconciliation

The attempt at reconciliation between the Catholic Church and Jewish communities has also taken other forms. In 1965 the Vatican issued a papal decree entitled Declaration on the Relation of the Church to Non-Christian Religions (*Nostra Aetate*). Proclaimed by Pope Paul VI on October 28, 1965, this declaration acknowledged the division that had existed between the Catholic Church and the Jewish community throughout history:

> True, the Jewish authorities and those who followed their lead pressed for the death of Christ; still, what happened in His passion cannot be charged against all the Jews, without distinction, then alive, nor against the Jews of today. Although the Church is the new people of God, the Jews should not be presented as rejected or accursed by God, as if this followed from the Holy Scriptures.

Furthermore, in rejecting every persecution against any man, the Church, mindful of the patrimony it shares with the Jews and moved not by political reasons but by the Gospel's spiritual love, decries hatred, persecutions, displays of anti-Semitism, directed against Jews at any time and by anyone.

Besides, as the Church has always held, Christ underwent His passion and death freely, because of the sins of men and out of infinite love, in order that all may reach salvation.

An effort was also made to mend relations between the Church and Jewish communities in 1974 when a Committee for Religious Relations with the Jews was established to formulate guidelines on religious relations with the Jews by December 1 of that same year. The declaration addressed the need for dialogue and an acknowledgment of the commonalities that exist between both communities in terms of liturgy, teaching, and education. It concluded by stressing the need for joint social action.

Similar attempts to examine relations between Jews and the Church were also conducted in 1982, 1996, and 1999, but rather than exploring the Church's culpability in genocide, they merely remain content to emphasize the importance of good relations in the future. Implicit in this is a focus on "ecumenical questions" that have formed the basis of the Church's view of Jews throughout history.

Rwanda

At the dawn of the twenty-first century the Catholic Church once more came to the fore within the context of genocide, that which took place in Rwanda. In determining the culpability of various parties in the Rwandan genocide, the International Criminal Tribunal for Rwanda (ICTR) has drawn attention to various horrific episodes meriting close examination. Allegations have been made suggesting that several members of the Catholic clergy incited hatred against the Tutsi and moderate Hutu. This claim is significant in that as many as 62 percent of the Rwandan population is Catholic, and the country's former president, the late Juvenal Habyarimana, himself enjoyed the patronage and support of the Catholic Church. The role of the Church in this particular genocide has not been fully determined.

The main allegation concerning the Church is that it switched its allegiance from the Tutsi elite to the creation of a Hutu-led revolution, thereby assisting in Habyarimana's subsequent rise to power in a majority Hutu state. In terms of the actual genocide, critics once again hold the Church directly responsible for inciting hatred, sheltering perpetrators, and failing to protect those who sought refuge within its walls. There are also those who believe that, as the spiritual leader of the majority population in Rwanda, the Church is morally responsible for failing to take all available measures to end the killing.

The discussion on remedies for atrocities has also reached international courtrooms, with the Church through its clergy being directly implicated. Belgium, in keeping with its stance on universal jurisdiction in cases concerning grave breaches of human rights, has sought to prosecute priests and nuns alleged to have played a significant role in the events leading up to the genocide. It handed down sentences of fifteen and twelve years to two nuns who were convicted for their involvement in the slaughter of approximately five thousand civilians who had sought refuge in their monastery at Sovu in Rwanda. Witnesses testified that the two nuns had directed the death squads to the civilians' place of refuge; some even stated that the nuns had assisted in the pouring of petroleum in a bid to burn down the monastery with civilians still inside.

Conclusion

When addressing the issue of the Catholic Church's responsibility for the perpetration of genocide and crimes against humanity, there are several subissues that need to be taken into account. Although one might insist that the Church has a particular moral responsibility to condemn genocide and crimes against humanity, and take all measures necessary to prevent and terminate such acts, this moral responsibility is not necessarily easily fulfilled. In addition, it might be argued that the Church did seek to protect thousands of Jews during the Holocaust: a fact recognized in different settings. Insisting that the Church adopt a particular strategy of public condemnation in the face of atrocities, rather than working behind the scenes for individual victims and families, would be unfair.

Defending other claims of direct action by the Church in the instigation and promotion of discrimination that later led to genocide is much less tenable. Thus, the policies of the Lateran Council and the sentiment expressed in the papal bulls need to be acknowledged for what they were: the legitimization of one particular religion over others. In this quest the rights of non-Catholics were ignored and considered to be of less value to the grand plan of proselytization. It can be further argued that the real responsibility of the Catholic Church in genocide and crimes against humanity may be traced to this aspect of its history, whether within the context of the Crusades, the quest for colonization, the incitement of discrimination, or the failure to condemn violations against non-Catholic communities.

Although some attempts at rapprochement and acceptance of culpability have been made within the context of the Church's role in modern-day episodes of genocide and grave breaches of human rights, the issue of violations perpetrated through colonialism remains neglected. This is especially true when evaluating the Church's missionary work, which sought to "civilize" communities far removed from European civilization. In this bid the Church has altered the fabric of many societies irrevocably, and while some might argue that this is a trend with positive aspects, from a human rights point of view this remains problematic because it gives greater credence to one particular religious belief over others; something at the very heart of much discrimination and upheaval in human history. Indeed, if the values of equality that are so fundamental to the human rights movement are to be more than mere lip service, then it is imperative that the Church's actions be examined critically.

SEE ALSO Amazon Region; Christians, Roman Persecution of; Crusades; Ghetto; Pius XII, Pope; Religious Groups

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Joshua Castellino

Chechens

Chechnya is a small mountainous region in the Russian Federation. Bordered by Georgia to the south and the Russian constituent republics of Ingushetia and Dagestan to the east and west, the Connecticut-sized enclave straddles the crossroads between Europe, the Middle

East, and Central Asia. Its indigenous people, known as Chechens, are an ethnically distinct national group with a language and culture predating the formation of the Russia state. Worldwide in the early 2000s, Chechens numbered around 1 million.

Although Chechens are Sunni Muslims, the practice of Islam in Chechnya is generally moderate and strongly influenced by Sufi teachings and various mystical orders. Equally important is the *adat,* a body of indigenous, pre-Islamic law resting on principles of family honor, deference to elders, and personal hospitality. While kinship, clan, and religious structures are strongly patriarchal, Chechen women nonetheless possess full social and political equality.

Prior to the Russian colonial, Chechnya was an independent nation but not a centralized state. Villages were largely autonomous, linked through mutual defense obligations and larger, multi-clan confederations. In 1858, however, Moscow consolidated its control of the Chechen lowlands and the neighboring regions of Ingushetia and Dagestan, eventually forcing the highland clans to capitulate after forty-six years of bloody conflict. Thousands of refugees left the Caucasus and resettled in Jordan and Turkey, where Chechen communities remain.

A History of Conflict

In 1918 Chechens and other peoples in the Northern Caucasus declared independence following the Bolshevik Revolution. Within four years, however, the Red Army had once again occupied the territory and began to impose communist rule. In 1944 Soviet leader Joseph Stalin departed the entire Chechen nation en masse to Kazakhstan and Siberia, killing at least one-quarter and as much as one-half of the entire population in transit. Though politically rehabilitated in 1956 and resettled in 1957, Chechens remained objects of both official and unofficial discrimination under both Soviet and post-Soviet governments.

In 1991 communist authorities in Chechnya supported the attempted military coup against Soviet President Mikhail Gorbachev. As the Soviet Union fell, Chechens deposed their hard-line leadership and declared independence. The following year, the newly formed Chechen Republic of Ichkeria (ChRI) adopted a constitution defining it as a secular democracy. In 1994 Russian troops invaded Chechnya to quash the independence movement. Some 100,000 people—most of them civilians—died before the conclusion of a ceasefire in the 1996 Khasavyurt Accords.

In August 1999, guerrillas led by Chechen warlord Shamyl Basayev launched a failed raid into neighboring Dagestan. Shortly thereafter, a string of unexplained bombings rocked apartments in Moscow and Volgodonsk, killing 300 civilians. Though the ChRI condemned Basayev's actions, Prime Minister Vladimir Putin of Russia swiftly launched a second military campaign to end Chechnya's drive for independence.

The human cost of the Russian offensive proved severe. Between October 1999 and February 2000, no less than 200,000 Chechen noncombatants were displaced by aerial and artillery bombardment. Federal Army and Interior Ministry (MVD) troops failed to provide safe passage for many, ignoring key provisions of the 1949 Geneva Conventions. Thousands more were detained in filtration camps, where the MVD and the Federal Security Service (FSB) culled alleged terrorists from the general population.

Violations of basic norms governing warfare further exacerbated these derogations from international humanitarian law. Putin's decision to use SS-1 SCUD and SS-21 SCARAB rockets during the siege of Grozny, Chechnya's capitol, marked the first and only time (as of 2004) a modern head of state has used ballistic missiles against his own population. The strikes razed homes, schools, and hospitals, burying thousands of noncombatants seeking shelter below ground.

The Kremlin's offensive met with international condemnation. In February 2000, the U.S. Senate unanimously declared that "the people of Chechnya [were] exercising their legitimate right of self-defense" and demanded a negotiated settlement under the auspices of the Organization for Security and Cooperation in Europe (OSCE). Shortly thereafter, the Parliamentary Assembly of the Council of Europe (PACE) suspended the voting rights of its Russian delegation, citing egregious violations of the 1954 European Convention on Human Rights.

The diligent documentation of crimes against humanity and looming threat of genocide in Chechnya produced little more than rhetoric, however. Efforts by PACE and OSCE to monitor abuses met with hostility in Moscow and generated little support among Western governments. As the Russian offensive gradually became an armed occupation, the relevance of international institutions and enforcement of international conventions grew politically ambiguous.

Humanitarian Dimensions

Apart from ad hoc Russian consultative arrangements with PACE and the European Parliament, there were currently not any international or intra-governmental mechanisms for monitoring war crimes. With ethnic Chechens facing systematic discrimination within the Russian judicial system, many turned to civil suits before the European Court of Human Rights (ECHR) in

Grozny, Chechnya, after its destruction by Soviet bombing, April 1995. Here, two of the capital's survivors begin the grim task of rebuilding. [TEUN VOETEN]

order to hold Russian army and MVD troops accountable.

Left unchecked, the second Russo-Chechen conflict spawned a demographic crisis comparable, in relative terms, to the Balkan wars. Figures compiled by the U.S. Department of State estimate that at least 80,000 Chechens have died since 1999. Total deaths, including those from the first war, are believed to be around 180,000, though figures compiled by both Russian and international human rights monitors suggest that this number may be closer to 250,000.

Many of the survivors have been driven from their homes. The United Nations High Commissioner for Refugees (UNHCR) reports that approximately 350,000 Chechens were displaced between 1999 and 2002. Of that number, some 150,000 were believed to be sheltering in Ingushetia, with another 30,000 seeking refuge in regions throughout the Russian Federation. Thousands more joined growing diaspora communities in Central Asia, Europe, and North America. All told, half of Chechnya's pre-1989 population was either dead or displaced.

Those remaining in Chechnya are subject to arbitrary detention, beatings, lootings, and torture. Since the start of the war, more than 2,750 Chechen noncombatants have disappeared in Russian cleansing operations. Between 2003 and 2003, human rights organizations discovered some 49 mass burial sites, most near Russian military installations. Documents released in April 2003 by Kremlin-backed Chechen authorities revealed an average of 109 extrajudicial executions by Russian forces each month. Chechnya's per capita murder rate exceeds that recorded for the entire Soviet Union at the height of Stalin's purges.

This human calamity is compounded by an environmental and epidemiological catastrophe. In 2003 the Russian Health Ministry designated one-third of Chechnya as a "zone of ecological disaster" and another 40 percent as a "zone of extreme environmental distress." In 2003 Chechen infant mortality rates were nearly twice as high as those for Russians and almost four times greater than in the United States; and three percent of the Chechen population suffered from tuberculosis—an epidemic comparable to that present in the Russian penal system.

Yet despite documentation of widespread, systematic crimes against humanity, governments and nongovernmental organizations remain reluctant to frame the crisis in Chechnya using the rubric of genocide. Foremost among the relevant considerations is the fact that Chechen combatants have also committed egregious violations of international humanitarian law, though not on the scale perpetrated by their Russian counterparts. Those violations include abductions and extrajudicial executions of Russian loyalists, as well as the 2002 seizure of the Dubrovka Theater in Moscow by gunmen with ties to Chechen organized crime.

Also disturbing is the increasing frequency and intensity of suicide bombings by irregular elements along the radical fringe of Chechen society. Chief among them were the leveling of the pro-Moscow Chechen administration headquarters in December 2002 and the subsequent attacks on the Prokhladny Air Base in North Ossetia in 2003. Attacks against nonmilitary targets are also evident, with Chechen widows launching a series of reprisal bombings in Moscow during the summer and fall of 2003. Though these acts bore a striking similarity to the suicide campaigns by women in the Sri Lankan civil war, the means employed ultimately conflated the Russo-Chechen conflict with the global war on terrorism.

Further complicating efforts to discern ethnic or sectarian motives for the violence is the role of the numerically small but politically significant pro-Kremlin Chechen militia. Continued economic, political, and military cooperation between this armed faction and Russian forces belies suggestions that genocide, at least in the legal sense, is a motivating factor in the conflict. As such, the Russo-Chechen war is best understood as a postcolonial war, rather than an explicitly genocidal crisis.

SEE ALSO Cossacks; Union of Soviet Socialist Republics

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Christopher Swift

Cherokees see Indigenous Peoples; Native Americans; Trail of Tears.

Cheyenne

The *Tse-tsehese-staestse* (the people) are an Algonquian-speaking tribe known to outsiders as the *Cheyenne*—a word possibly derived from their Sioux neighbors, meaning "people of a different language." The Cheyenne originally lived in permanent farming villages around the Great Lakes in Minnesota. Over the next two hundred years, the Cheyenne migrated one thousand miles westward to the Black Hills area, moving their camps, and adapting to a life dependent on the horse and buffalo. It was during this journey that Sweet Medicine, the Cheyenne prophet, appeared, bringing one of the two sacred covenants, their teachings, and their protection to his people. The Cheyenne developed a well-defined system of kinship, organized into bands and military societies, with a council of forty-four chiefs handling peace and trade relations.

The Cheyenne met their first Europeans in 1680 when visiting the French Fort Crevecoeur on the Illinois River. For decades they retained friendly, if distant, relations with the white settlers. The discovery of gold in Colorado in 1858 and the subsequent Sand Creek Massacre significantly altered this relationship. In 1864 Colonel John Chivington, a former Methodist minister with political aspirations, attacked Chief Black

Kettle's camp of five hundred Cheyenne at Sand Creek. Seeking peace with the white man, Black Kettle had surrendered under a promise of protection from Colorado's governor, John Evans. With Chivington reportedly stating, "I have come to kill Indians and believe it is right and honorable to use any means under God's heaven to kill Indians" (Brown, 1970, p. 86), seven hundred U.S. soldiers under his command brutally killed and mutilated nearly two hundred Cheyenne, mostly women and children. Four years later Lieutenant Colonel George Custer attacked Black Kettle's camp on the Washita River, killing the chief and sixty others, mostly women and children who, as before, had surrendered to the military before being slaughtered. In 1876 the Cheyenne, then fighting with the Sioux, defeated Custer at the Battle of the Little Big Horn. A year later several Northern Cheyenne bands surrendered. As retribution, the government sent them to Oklahoma Indian Territory, where they faced confinement and starvation. In January 1879, after the Cheyenne had mounted an unsuccessful escape attempt, the U.S. military brutally murdered their much-respected leader, Dull Knife, and seventy-three other men, women, and children at Fort Robinson.

Some of the Northern Cheyenne nevertheless managed to return to Montana, where, with other tribal members, they settled on a reservation established by executive order in 1884. In the early twenty-first century 6,500 members of the Northern Cheyenne Tribe control a 445,000-acre reservation in southeastern Montana that contains one of the largest coal deposits in the United States. Remembering the words of Sweet Medicine, who instructed them to take care of *Eschehenan* (Mother Earth) above all else, they have, despite high unemployment rates, refused to open their lands to mining. Other bands of Cheyenne, who had traveled southward over the years and became known as the Southern Cheyenne, settled with the Southern Arapahoe on a reservation in Oklahoma. In preparation for Oklahoma's admission to the Union as a state, the federal government dissolved the Oklahoma reservations, allocating the majority of former reservation lands to individual tribe members. As of 2004, a combined Southern Cheyenne and South Arapahoe population of 7,300 reside on approximately 87,000 acres in northwestern Oklahoma.

SEE ALSO Indigenous Peoples; Native Americans; Sand Creek Massacre

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Sharon O'Brien

Children

The rights of the child are human rights. What makes them so special, requiring separate legal treatment, is their link with the social category "childhood." Childhood is a human construct, not a natural phenomenon; its meaning has varied in different historical periods and social environments. An understanding of childhood is necessarily associated with culture, tradition, and social structure. For that reason, children are too often perceived as small adults; once physically ready, they engage in different life activities. That has at times included hard labor, marriages, armed conflict, and other activities now deemed only appropriate to adulthood. However, despite worldwide legal protection, in many places around the world children still engage in all sorts of such harmful activities and situations. Probably the worst of all is a situation of armed conflict.

There is great concern about and awareness of the vulnerability of children, particularly in special circumstances such as armed conflict. So as to be clear in mandating protection, international law, and primarily the 1989 Convention on the Rights of the Child, established an age limit and defined a child as a human being below the age of eighteen. This age limit also applies to situations where children must confront genocide and crimes against humanity. Therefore, the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts forbids recruitment and participation of children younger than eighteen years in any armed conflicts. Only strict respect of those provisions could prevent children becoming either victims or perpetrators of crimes against humanity or genocide.

Bearing automatic weapons, two female adolescent "soldiers" await their perceived enemies. Ganta, Liberia, June 23, 2003. [TEUN VOETEN]

Children as Victims

Throughout history children have been victims of genocide and crimes against humanity. Such criminal acts have been committed against children in both times of peace and armed conflict. In the past, wars were officially announced and waged by armies, far away from the civilian population, on the battlefields. Civilians, including children, were victims of wars, but on a lesser scale than in the twentieth century, when the situation dramatically changed. In World War II, 47 percent of the victims were civilians, including children (compared to 5% in World War I). Children perished as a result of not only aerial bombardment, but also genocidal actions. They were not separated from adults nor spared in the Nazi concentration camps.

After World War II approximately 150 armed conflicts had occurred worldwide by 2004. The previous strict division between civilians and armed forces became weaker, and so did the division between children and adults. In the last two decades of the twentieth century such a development produced a period that was probably the most detrimental of all to the lives of children across the globe. The deaths of an estimated 1.5 million children in the 1980s were directly war-related. Within the timeframe of civil wars in Mozambique, Cambodia, Sierra Leone, the former Yugoslavia, Rwanda, El Salvador, Guatemala, the Middle East, and other locales, several million children died as a direct consequence of atrocities. Relentless warlords and their combatants, more frequently operating outside of the constraints of regular army forces, do not respect the established rules of conduct concerning civilian populations and children; they often commit genocide and crimes against humanity, organizing the campaigns and carrying out the orders to do so.

Being that such crimes should not be forgotten nor go unpunished, the United Nations (UN) established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994, with the task of prosecuting, trying, and punishing individuals who are found guilty of committing genocide or crimes against humanity. In these two countries two terrible wars were waged, conflicts that left many children dead, displaced, abandoned, parentless, wounded, and sick. All who survived bear deep emotional scars.

Energetic prosecutions within both tribunals have resulted in numerous convictions. With regard to the crimes committed, the judgments of both courts have addressed different aspects of crimes against humanity and genocide. Many of them included the charge of atrocities committed against children. At the Rwandan tribunal the most well-known cases that included charges of genocide against children were those of Kayishema and Akayesy. At the tribunal for the former Yugoslavia a general of the army, Krstic, was tried and convicted of genocide, and sentenced to forty-six years in prison. He was found guilty of numerous crimes committed in the small town of Srebrenica in Bosnia and Herzegovina in July 1995. Those crimes included forcibly transferring children from their original place of residence that was considered an element of genocide.

The work of such tribunals, as well as that of national or combined courts (e.g., the Special Court for Sierra Leone), is very important because it deals with individuals who are responsible for genocide and crimes against humanity. By establishing such courts, the international community expresses its commitment to ending the impunity of warlords and criminals. A strong message is delivered to potential war criminals: Genocide and crimes against humanity will not be tolerated and perpetrators will face the consequences of their acts.

Child Soldiers as Perpetrators

As already noted, despite the high level of awareness and means of protection worldwide, children are still perceived as adults in some circumstances. Owing to such attitudes, children, sometimes as early as the age of five, are used as child soldiers. Several sources, including Save the Children UK (report 1989), claim that in the late 1980s children younger than sixteen participated in combat in twenty-five states and territories. In Mozambique, Sierra Leone, Iran, Rwanda, and many other places, children, mostly boys, have been brutally recruited, removed from their families, and forced to participate in all kinds of war activities. In some cases children joined military forces because of the absence of adult family members, and the only means of survival was joining some military group, whether legitimate or not. Child soldiers, usually under force, often perpetrate the most serious atrocities, including the crimes of genocide and those against humanity.

None other but national courts have dealt with children responsible for genocide and crimes against humanity. For example, thousands of children were recruited as soldiers in Rwanda. After the civil war ended, a significant number were arrested for being responsible, allegedly, for genocide against the moderate Hutu and Tutsi in that country. Since 1995 Rwandan authorities have arrested and detained some five thousand children under inhumane conditions for years without trial. In June 2002 four thousand children were still awaiting trial. A large number of the detainees are accused of having committed genocide. Rwandan cases indicate just how difficult it might be for a state to effectively try perpetrators, particularly when they are children.

The 1996 UN study on the impact of armed conflict on children notes: "The dilemma of dealing with children who are accused of committing acts of genocide illustrates the complexity of balancing culpability, a community's sense of justice and the best interest of the child." The severity of the crime involved, however, provides no justification for suspending or abridging the fundamental rights and legal safeguards accorded to children under the Convention on the Rights of the Child.

Only when the Statute of the International Criminal Court (ICC) was drafted in 1998 was the act of recruiting children as soldiers established as a war crime. That should, in the future, serve as a disincentive to the recruitment of children as soldiers and also prevent their participation in such terrible crimes.

International Law Protecting the Rights of Children in Armed Conflicts

The international legal protection of children facing genocide and crimes against humanity is provided through general provisions that apply to children in the situation of armed conflict. The Geneva Convention of 1949, and the two Additional Protocols of 1977, directly recognized such children as having special needs. The 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide protects children by additionally defining the crime of genocide as the forcible transfer of children from one group to another. The 1989 Convention on the Rights of the Child of 1989 pays special attention to the protection of children in armed conflicts and also the prevention of recruitment of children for direct participation, as child soldiers. The same applies to a regional instrument: the African Charter on the Rights of the Child. The 2000 Optional Protocol to the Convention on the Rights of the Child, addressing the involvement of children in armed conflict, raises the standard of child recruitment by establishing an age limit of eighteen. The 1998 Rome Statute of the ICC characterizes as a war crime the conscription or enlistment of children under the age of fifteen into national armed forces, or their use as active participants in hostilities. The International Labor Organization's

Children, because they were too young to work, were often killed immediately upon arrival at Auschwitz. In this photo taken just after Allied forces liberated the camp on January 27, 1945, a group of survivors, Jewish children, stand behind a barbed wire fence.

(ILO's) 1999 Worst Forms of Child Labor Convention includes in its definition of the worst forms of child labor the forced or compulsory recruitment of children for use in armed conflict.

Besides the protection afforded by such binding international documents, there are numerous declarations, protocols, comments, and reports providing guidance to states in dealing with children in armed conflicts.

Key Roles in Protection

Several mechanisms exist whereby children are protected from such crimes. Some are legal, such as national and international courts. Besides legal actions, the numerous efforts of international organizations in the field can make a difference. The UN, United Nations Children's Fund (UNICEF), United Nations Educational, Scientific, and Cultural Organization (UNESCO), World Health Organization (WHO), United Nations High Commissioner for Refugees (UNHCR), and other intergovernmental organizations work actively to protect children. The International Committee of the Red Cross (ICRC) orchestrates various sorts of interventions including, among others, the protection of children, visits to prisoners of war, and tracing family members. International nongovernmental organizations (NGOs), such as Medicines sans Frontier, Save the Children, Cooperative for American Relief to Everywhere (CARE), and other organizations, are also active protectors, particularly in the postwar recovery of children who have participated in armed conflicts, including those who were recruited to fight as soldiers, and the prevention of such activities.

SEE ALSO Guatemala; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Rwanda; United Nations; Yugoslavia

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Nevena Vuckovic Sahovic

Chile

With a promise to nationalize Chile's copper mines, banks, and largest industries, as well as break up its landed estates, Salvador Allende won less than 37 percent of the vote in a thee-way 1970 presidential race. Although opposed by almost two-thirds of the voters, he was still expected to occupy Chile's White House, the Moneda: Chilean law called for the Congress to select the president when no candidate had won a clear majority. And historically, the legislature always voted for the man who had garnered the most votes. Thus, Allende, leading a leftist coalition, the *Unidad Popular,* would win.

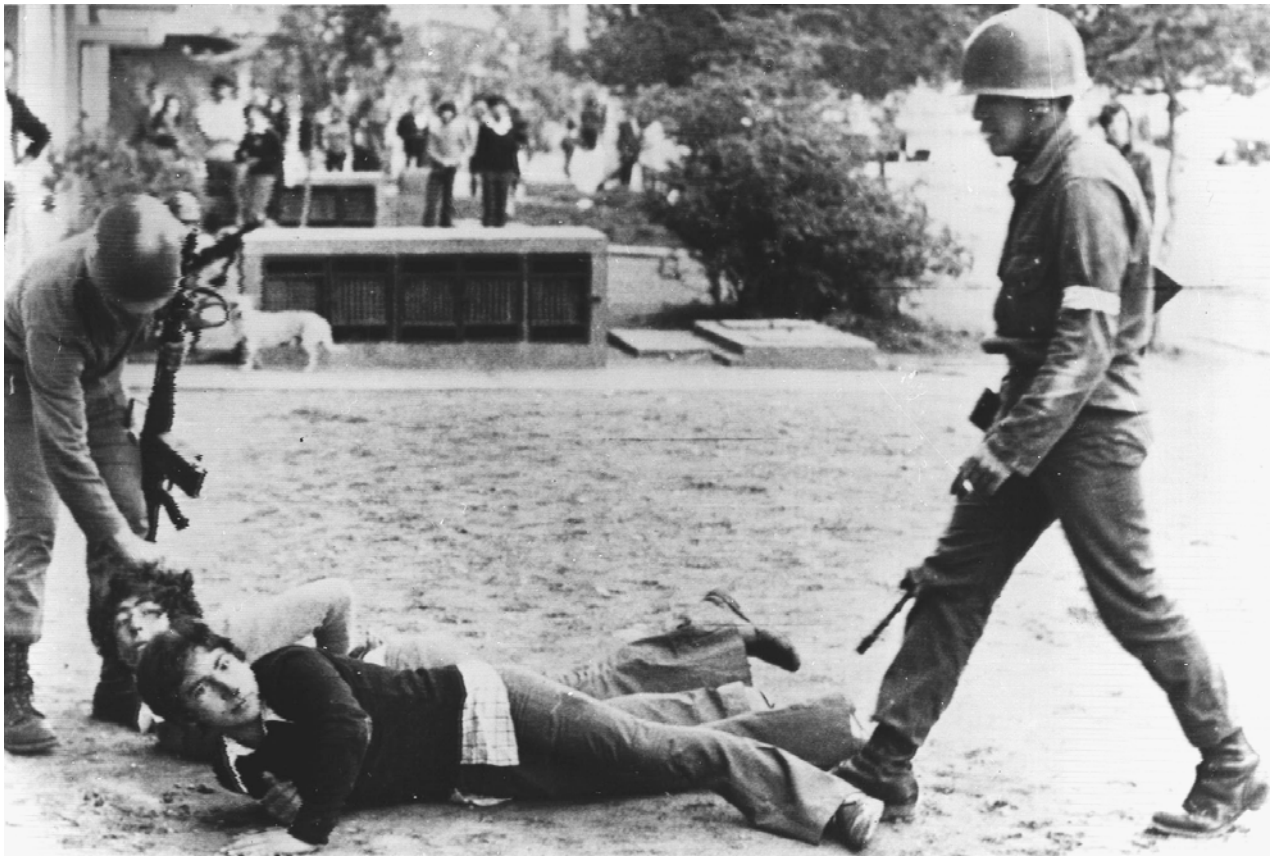
Fearing that Allende might convert Chile into a bastion of Marxism, the vehemently anticommunist U.S. president, Richard M. Nixon, ordered Secretary of State Henry Kissinger, to do something. Kissinger complied: Without informing Edward Korry, the U.S. ambassador to Chile, he encouraged the Central Intelligence Agency (CIA) to prevent Allende's inauguration. One plan called for the United States to bribe the Christian Democratic legislators into voting for Jorge Alessandri, the man who had placed second in the 1970 election. Alessandri had promised that if elected, he would resign, thus allowing the outgoing president, Eduardo Frei, to seek office again. Frei, fearing that Allende's followers might rebel if their candidate did not take office, refused. The CIA then tried another tact: It encouraged a putsch that would begin with the kidnapping of General René Schneider, the commander of the Chilean army. But Korry, noting that the proposed coup's leader, General Roberto Viaux, was too unstable, insisted that Washington scuttle the plan. The CIA did withdraw, but Viaux's men persevered and in their attempt to capture Schneider, they mortally wounded the general. The military plot collapsed and the Christian Democrats voted for Allende, who then became president.

Allende's economic policies proved disastrous. He froze prices while increasing salaries, thus unleashing inflation. When his followers, in contravention of existing laws, seized farm and urban land in addition to factories, both agricultural and industrial productivity plummeted. After the U.S.-owned copper mines were nationalized, without compensation, the United States reduced its economic assistance while trying to prevent Chile from borrowing money from international banks. Allende, however, easily found other nations willing to lend him funds.

By 1973 inflation had reached 1 percent a day. Meanwhile, a series of strikes, as well as the leftist seizures of property and factories, paralyzed the economy. The opposition could do nothing: Allende's party possessed enough congressional seats to prevent his impeachment. Still, the collapse of the economy, a surge in violence, including assassinations, the armed resistance to the military's attempts to disarm worker groups, an abortive naval mutiny supported by an Allende ally, and the threat of creating armed militias convinced the normally apolitical military to rebel on September 11, 1973.

Pinochet Regime

The rebellious armed forces' intelligence services, particularly the army's *Dirección de Inteligencia Nacional* (DINA), arrested and sometimes tortured those whom they suspected of opposing the regime. Approximately 3,000 people, including 132 policemen and servicemen, died during the military's rule: About half of these, 1,205, perished in the last four months of 1973; another 1,216 died between 1974 and 1977. Some of these prisoners died from torture; some were executed. Various individuals fled, although exile, whether self-imposed or not, did not always guarantee safety: DINA agents tracked down and killed the army's former commander, General Carlos Prats, and his wife in Argentina. The government, sometimes in concert with foreign terrorist organizations, pursued others—such as the Christian Democratic politician Bernardo Leighton, whom they shot in Rome. To destroy or intimidate exiled foes, the Chilean authorities launched Operation Condor, under which Chile cooperated with the dictatorial regimes of Brazil, Argentina, Uruguay, and Paraguay to capture, kill, or in some cases repatriate suspected terrorists.



Suspected snipers are guarded by the Chilean army patrol in 1973. [AP/WIDE WORLD PHOTOS]

During the administration of President Jimmy Carter, elected in 1976, the United States ceased lending Chile money as well as providing it with either humanitarian or military assistance. It also pressured the Pinochet regime to become less repressive. In response, Pinochet promised to restore elected and constitutional government to Chile; he even abolished DINA, although he replaced it with another equally sinister organization, the *Centro Nacional de Informaciones* (CNI). In early 1978 he ended the state of siege, replacing it with a state of national emergency; a constitution, which the public supposedly ratified by plebiscite, was promulgated in 1980.

The September 1976 assassination of Orlando Letelier, former ambassador to the United States and a prominent left-wing critic of the Pinochet regime, as well as Ronni Moffit, an American, in Washington, D.C., dramatically altered U.S. policy vis-à-vis Chile. Infuriated by this blatant violation of its sovereignty, the United States ordered an investigation that soon proved Michael Townley, an American living in Santiago, together with Cuban exiles and Chilean army officers had murdered Letelier. Washington demanded that Chile extradite Townley who, receiving a lighter sentence in return for his cooperation, implicated not only his Cuban accomplices but also explained his participation in the assassination of Prats and the attempted murder of Leighton. Townley and the Cubans would go to jail, but the Pinochet regime refused to extradite the Chilean army officers whom Townley named and an American court indicted. (One of the officers voluntarily came to the United States, where he stood trial and was incarcerated.) In retaliation, Carter reduced the American presence in Chile in addition to opposing loans to Santiago. A Chilean court subsequently sentenced General Manuel Contreras, the head of DINA, to jail. The Chilean government also awarded the families of Letelier and Moffit approximately $2.5 million to settle their wrongful death claims.

The Pinochet regime's economic policies, which produced enormous hardship, and its political repression eventually galvanized the opposition. Led by the Roman Catholic Church and their revived political parties, Chileans demanded that the government hold an election, as stipulated by the 1980 constitution, to determine if Pinochet could succeed himself in office. Aided by a clever public relations campaign, funded in part by U.S. human rights foundations, the anti-

Pinochet forces triumphed: A resounding 54 percent refused to give Pinochet another term of office. Under pressure from the armed forces, he resigned from office in 1989.

Return to Democracy

Patricio Aylwin, the newly elected president of Chile, convened the National Commission of Truth and Reconciliation to determine what precisely had occurred during the Pinochet regime. The commission, however, did not possess prosecutorial powers: A 1978 amnesty, which the armed forces and Pinochet regime had demanded and received in return for lifting the state of siege, pardoned the military and police for any illegal acts they might have committed between 1973 and 1978.

Obviously, the amnesty would not stop foreign governments from prosecuting any official who killed any Chilean holding dual citizenship. The first to fall afoul of a foreign court was Pinochet, whom British authorities detained in England when in 1998 a Spanish judge, Baltazar Garzón, demanded his extradition. Chile's foreign minister, José Miguel Insulza, himself an exile during the Pinochet regime, petitioned the British to release the general: Only Chile, he argued, had jurisdiction. Eventually, England's foreign minister overruled the courts that had voted to extradite Pinochet: The general, he stated, was too feeble to stand trial. Pinochet did return to Chile, but his arrest demonstrated his vulnerability. In increasingly declining health, he has become almost superfluous. The commission, however, continues to investigate the crimes committed under Pinochet's aegis and Chileans still have to accept and move beyond this heritage of abuse.

SEE ALSO Immunity; Pinochet, Augusto; Torture; United States Foreign Policies Toward Genocide and Crimes Against Humanity

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William F. Sater

China

As China approached the end of the nineteenth century, it was ravaged by rebellions, warlords, and famines, while the Imperial government had done little to ease the suffering of the common folk. This ancient kingdom had collided with Western intruders and was plunged into wars with foreign powers as well as domestic political violence. In the coming century, hundreds of millions would be slaughtered, starved, tortured, raped, forced into slave labor, or persecuted on political and religious grounds. Crimes against humanity, including genocide and war crimes, accounted for many of the deaths and atrocities. Other than a few Japanese war criminals, culprits—including state and nonstate forces, warlords, rebels, and foreign invaders—have not been scrutinized for their responsibility in such crimes.

The Boxer Rebellion: 1898–1901

Two deadly episodes preceded the Boxer Rebellion: the Opium Wars (1839–1842 and 1856–1860) and the Taiping Rebellion (1851–1864). The Opium Wars were skirmishes between the Imperial troops and the British army over British opium trafficking, which violated a Chinese ban on the trade. The wars ended in China's defeat and the imposition of treaties entirely to Britain's advantage. There were reports of British and French soldiers looting and burning, as well as the torture of prisoners by both sides. In addition, the opium trade resumed, leading to widespread drug use. As a result, many Chinese were debilitated and suffered both bodily and mental injury.

A further weakened Qing Dynasty, along with widespread discontent, and humiliation at the hands of foreign powers, spurred rebellions. One of the bloodiest of these insurgencies against the Qing government was the Taiping Rebellion, led by a failed scholar-official and Christian convert, Hong Xiuquan (1813–1864). Almost thirty million died in the 15-year conflict before the rebellion was crushed by the Qing army, with assistance from the British.

Toward the end of the nineteenth century, China had been defeated by Japan (1895) and had failed to realize the "self-strengthening reform" and the "Hundred Days' Reform" (June–September 1898). Western powers gained commercial privileges and demanded further concessions. The killing of two missionaries in Shandong in 1897 gave Germany an excuse to take Qingdao in the Northeast. Other European countries followed suite and carved up "spheres of interest" for themselves.

The Boxer Rebellion was an uprising against Westerners that took place in northeastern China. Thousands of Chinese, especially Christian converts, and 230 foreigners were killed before the rebellion was suppressed by foreign troops. Boxer was a secret martial art

society in Shandong that had initially opposed both the Qing and Westerners. In early 1898, the Boxers first skirmished with Qing troops. In 1899, however, they reconciled with the government through the clandestine intervention of Empress Dowager Cixi, who saw secret societies a force against foreigners. The Boxers, with Cixi's backing, redirected their violence, attacking missionaries and Christian converts.

These targeted attacks on foreigners angered Western powers. In June 1900, when the Boxers and some Imperial forces attacked foreign compounds in Tianjin and Beijing, the uprising escalated into war. The swift international intervention of overwhelmingly powerful modern militaries and anti-Boxer Chinese provincial forces quickly defeated the rebels. The Imperial government signed the "Boxer Protocol" (1901), executed Chinese officials who had been blamed for the uprising, and had to pay $333 million in war reparations. Europeans gained the right to maintain troops in Beijing. The Boxer Protocol suspended the traditional civil service examination and banned arms imports into China.

The humiliation generated by successive defeats aroused a sense of nationalism, setting the stage for reforms. In 1902 girls were allowed to attend schools, and the school curriculum was expanded to include Western science and technology. The military was modernized under Yuan Shikai (1859–1916). In 1909–1910, provincial assemblies and an elected national Consultative Assembly were established. The 1911 revolution ended the Imperial Dynasty. This turbulent decade, according to historians, claimed as many as 100,000 lives.

The Civil War: 1926–1949

In 1913 Yuan became the first post-Imperial president. He gained office after making a deal with the reformers of Tongmenghui (which evolved into the Nationalist Party, or Kuomintang), which had won a majority in the National Assembly election. Yuan soon dissolved the Assembly, however, and declared himself Emperor in December 1915. He held that title until his death, three months later, in March 1916. Yuan's death began a period of divided rule by warlords, which lasted from 1916 to 1928. During that time, warlords fighting for territory killed more than 910,000 civilians.

The Kuomintang (KMT) was headquartered in Guangzhou and headed by President Sun Yat-sen (1866–1925). He pleaded for Western aid, but without success. Sun Yat-Sen then turned to the Soviet Union, which began supporting both the KMT and the Chinese Communist Party (CCP), which was founded in 1921. The struggle to reunite China became a power struggle between these two parties. The communists were instructed by the Soviets to cooperate with the Kuomintang to create the "first united front" (1923–1926).

From left to right, Chinese Communist Party leaders Qin Bangxian, Zhou Enlai, Zhu De, and Mao Zedong, in Shaanxi Province, after the Red Army's retreat north in the Long March (1934–1935). The Long March—in which some 5,000 miles were traversed—later became an almost mythological event in Chinese revolutionary history. [BETTMANN/CORBIS]

When Sun Yat-sen died in 1925 he was succeeded by Chiang Kai-shek, a young lieutenant who had been trained in the Soviet Union. Chiang Kai-shek soon broke with the CCP and ordered the arrest and execution of hundreds of communists and trade unionists in Shanghai in April 1927. This forced the CCP out of its urban base. It made abortive attempts to take control of other cities and rural areas. One such attempt was the Autumn Harvest Peasant Uprising in Hunan, led by Mao Zedong. The CCP was forced underground in rural areas in the south. Meanwhile, Chiang's northern expedition captured Beijing in 1928 and his Nanjing government received international recognition as the capital of unified China.

From 1927 to 1949, Chiang's troops used murder, torture, and other brutal tactics to wipe out the communists. In one campaign to destroy CCP–Soviet bases in central China in 1934, the KMT killed or starved to death as many as one million people, forcing the CCP to the brink of elimination. In October 1934, the CCP Red Army began its "Long March," retreating to northwest Shaanxi. Mao Zedong emerged from this strategic move as the top leader of the Chinese Communist Party.

The KMT troops reoccupied communist bases. They executed prisoners, communist sympathizers, and collaborators. They looted, raped women, and gunned down civilians as they passed through villages and towns. They were poorly fed, and were beaten or left to die when they fell sick or were wounded. The Nationalist government, corrupt and greedy, did little to ease the suffering from famine, drought, and war. It was responsible for perhaps as many as two million famine deaths during its rule. An estimated four million men died during forced conscription alone. In one battle, to deter advancing Japanese troops, the Nationalists opened the Yellow River dikes, drowning at least 440,000 people in the ensuing flood.

When Japan invaded China's northeast in 1932 and began moving southward in 1935, Chiang at first refused to form an alliance with the Communists to face the new, shared threat. In December 1936, however, KMT generals kidnapped Chiang in Xian and forced him to stop fighting the CCP. The "second united front" was thus formed against the Japanese, even if the unity between the CCP and the KMT was in name only. In December 1940, Chiang ordered the CCP's New Fourth Army to leave its base in Central China, then sent his own troops to ambush the retreating soldiers. This ended the second united front. The CCP and KMT then focused on fighting each other instead of the Japanese. Nonetheless, in 1945, Japan surrendered to the KMT. The United States attempted to broker a ceasefire between the KMT and the CCP, but failed. Civil war resumed.

Rampant corruption and postwar turmoil had weakened Chiang's government. Its troops were demoralized and repeatedly defeated by the more disciplined CCP Liberation Army, which had gained popularity for land reforms in northern China. KMT troops retreated rapidly, despite their advantages in size, weapons, and international support. Beijing fell to the communists peacefully in early 1949, followed by other major cities. The war ended when Mao Zedong proclaimed the birth of the People's Republic in Tiananmen on October 1, 1949. Chiang and his remaining troops fled to Taiwan, declaring Taipei the capital of the Republic of China, and vowing to reunite China. Before Chiang's death and Taiwan's democratization in the 1990s, the KMT ruled in authoritarian style, crushing dissidents and suppressing all indigenous Taiwanese movements for independence.

The communist "liberation" of mainland China provided no relief from the slaughtering and political violence. During the wars, the CCP also used terror in its campaigns. In areas under CCP control, communists executed "counterrevolutionaries," exterminated "bad landlords," and murdered members of the bourgeoisie as part of their program to eliminate "enemy classes," reform society, and redistribute land and property Nearly 3.5 million civilians died at their hands before the civil war ended in 1949. The civil war claimed a total of ten million civilian lives.

The Sino-Japanese War: 1937–1945

The Japanese fought furiously against local and military resistance in China, employing a degree of barbarity rarely seen in modern history. They slaughtered and tortured people indiscriminately, looted and burned whole villages and towns, conducted germ-warfare experiments, and used biochemical weapons. They forced prisoners of war and civilians into slave labor, and systematically raped women or forced them into prostitution.

During the "Rape of Nanking" in December 1937, 300,000 people, mostly civilians, were killed in that city. In northern China, the Japanese executed the "Loot, Kill, and Burn All" policy, designed to terrorize local population. As they took over villages and cities, Japanese soldiers murdered by firing squad, bayoneting, burning their victims alive, or beating them to death. They released flies infected with deadly plague germs during bombing raids over large cities, tossed disease-causing microbes into rivers and reservoirs, and mixed deadly germs with food distributed to the hungry population. Unit 731 of the Japanese Army conducted chemical warfare experiments on POWs and peasants, who were injected with a variety of lethal biochemicals and dumped into mass graves after death.

Studies estimate that about 3.5 million noncombatants were killed by Japanese troops, and as many as 15 million more died from bombing, starvation, and disease that resulted from the Japanese terror campaign. In August 1945, U.S. forces dropped two atomic bombs over the Japanese cities of Hiroshima and Nagasaki, killing many Japanese civilians. This forced Japan to surrender to the Allies, ending World War II, and forced the Japanese Army to retreat from its positions within China.

At the end of the war, a handful of Japanese were tried in Nanking (1946–1947) as war criminals, though not for genocide. Seven were convicted by the International Military Tribunal for the Far East in Tokyo. Many generals who perpetrated war crimes never faced prosecution. The Japanese repatriated their war criminals to Tokyo and systematically kept all mention of their atrocities out of the nation's history textbooks. Emperor Hirohito, whose controversial role in the war was obscured when the Japanese government destroyed many wartime documents, was given immunity from

war-crime responsibility and was allowed to remain on the throne till his death in 1989.

Three-Year Famine: 1959–1961

Immediately after coming to power, the CCP mobilized political campaigns to purge "enemy classes" and fortify a "dictatorship of the proletariat" modeled after Stalin's Soviet Union. During the 1950s, there were several attempts at land reforms, as well as a series of movements to eliminate counterrevolutionaries and institute collectives. In addition, there were the "Anti-Rightist Struggle," and the "Great Leap Forward." These mass campaigns involved beating, torture, and execution, and were responsible for as many as 15 million deaths. One million "rightists" were punished for up to twenty years in internal exile or labor camps. The "Great Leap Forward" alone caused an estimated thirty million famine deaths, the highest number ever recorded in famine history.

The famine was the direct outcome of government policies, official cover-ups, and media censorship by the CCP. By 1957, land had been collectivized and peasants were organized into communes. Mao hoped to achieve rapid growth by doubling the pre-collectivization agricultural output and steel production. He exhorted the people to "leap forward," to "catch up with England and surpass America." This campaign coincided with a strained relationship with the Soviet Union and its withdraw of all aid.

The ailing economy nearly collapsed. The whole country, including 90 million peasants, was forced to recycle steel, even melting down the farm implements needed for food production. In the commune kitchens, food reserves were depleted. Local officials, fearing reprisal and competing for favor, systematically covered up their failures, reporting fabricated statistics of harvests instead. Leaders who spoke candidly, such as Marshal Peng Dehuai, and who tried to convince Mao to reverse the policy, were denounced and purged.

Encouraged by dazzling, but false, statistics, the government allocated food to cities and generously agreed to export the surplus to "socialist brother" countries. When local officials could not produce the food in the quantities that the false production statistics led them to expect, they accused peasants of concealing or stealing food. They tortured and killed thousands to extract confessions of hidden supplies.

The peasants, however, were starving. In some regions, after people had consumed all the mice, insects, and tree bark available, some resorted to cannibalism. The elderly and children especially suffered, starving to death in large numbers. Even more died from malnutrition in the years that followed. In 1957 half of all deaths were under the age of 18; in 1963 half were under the age of 10.

Mao was eventually forced to reverse his policy and ally himself with pragmatists like President Liu Shaoqi and Vice-Premier Deng Xiaoping. Liu and Deng attempted to undo the damage by partially reversing the collectivization policy, but there was no public admission of policy errors before Mao's death. No efforts were made to seek accountability for the famine. In fact, the famine was a taboo subject, referred only as the "Three-Year Natural Disaster."

The Cultural Revolution: 1966–1976

Mao resented Liu and Deng for the popularity they garnered from reversing his policies. The Cultural Revolution was Mao's tactic to secure his power against the reforms offered by "capitalist roaders." He encouraged his Red Guards—students who had pledged personal loyalty to Mao—to challenge local Communist authorities. This quickly led to violent conflicts and anarchy. Historians estimate that a total of seven million were killed during the decade of the Cultural Revolution.

The establishment in 1996 of the "Cultural Revolution Committee" under Mao's wife, Jiang Qing, marked its official start. Jiang tried to root out sympathizers of "capitalist roaders" by building Mao's personality cult. Red Guards were organized under the aegis of the CCP's "Decisions on the Great Proletarian Cultural Revolution" to denounce and purge intellectuals and Mao's rivals. Millions of Red Guards converged on Beijing. Mao praised their actions and received their cheers in Tiananmen Square. Mao issued a public ordinance to suspend police interference in Red Guards activities. Mao even ordered that all transportation and accommodations be provided free of charge to all members of the Red Guards. Meanwhile, Mao ordered all government officials to participate in self-criticism sessions and denounce others for disloyalty. Those who refused would be purged. Such policies succeeded in turning everybody against everybody else.

The Red Guards were joined by workers and civil servants, but the different factions clashed, often violently. "Counterrevolutionaries" and other "bad elements," including prominent intellectuals and artists, were paraded in shame before the public, beaten, detained, or executed without any trial or judicial procedure. Looting was widespread, homes were searched, books were burned, and religious sites and ancient artifacts were destroyed. Many were sent to labor camps; some committed suicide or went insane. In many cities, Red Guards took control of the administrative authority. Lawlessness and anarchy ruled for months. In some areas, the rampage against "class enemies" degenerated

into the worst possible atrocities, including mass cannibalism.

By 1967, Mao's rivals had been purged. In 1968 Mao decided to send the youth "Down to the Countryside." Perhaps Mao realized that the CCP was losing control, or perhaps he became alarmed by the Soviet military build-up along China's borders and its intervention in Czechoslovakia earlier in the year. During the next ten years, middle-school graduates were dispersed to communes or state-run farms to receive "re-education" from "poor, lower or middle class peasants."

The power struggle within the CCP did not stop, however. Mao even became suspicious of his handpicked successor Lin Biao. Lin did attempt a military coup in 1971, but failed and was forced to flee with his family to the Soviet Union. His plane crashed over Mongolia, killing everyone aboard. Meanwhile, Mao's wife Jiang and her ultra-leftist cohorts ("the Gang of Four") helped Mao pick a new successor, the Shanghai official Wang Hongwen. This move was intended to undermine what they saw as Mao's leading rival from the right, Premier Zhou Enlai, who in 1973 had restored Deng Xiaoping to political favor. After Lin's coup attempt, Mao was weary of the leftists, yet he also distrusted the right. His ambivalence encouraged Jiang to start the absurd "Criticizing Lin, Criticizing Confucius" movement (where "Confucius" stood for the right). The campaign roused little enthusiasm from a population that was fatigued by years of purges: the economy had collapsed, strict rationing had been imposed, and people were struggling just to make ends meet.

In January 1976, Zhou died of bladder cancer. Mourners poured into Tiananmen Square, placing wreaths with messages criticizing the Gang of Four at the Monument of the People's Heroes. Deng, who took over Zhou's duties, became the Gang of Four's new target; they saw him as the only obstacle to their ascendance to power after Mao, who was also ill. Mao backed them and once again purged Deng. However, in choosing a new successor, Mao bypassed the Gang of Four and instead picked the little known Hua Guofeng for Premier.

On April 5, Memorial Day, the commemoration of Zhou turned into a rally of two million mourners, all protesting the Gang of Four. The Gang of Four ordered armed security to quell the incipient rebellion. Many protesters were beaten and detained. The protest, dubbed the "4.5 Tiananmen Incident," was labeled "counterrevolutionary." On September 9, 1976, Mao died. Hua became CCP chairman. With backing from revolutionary elders like General Ye Jianying, Hua put the Gang of Four under arrest, officially ending the Cultural Revolution. Hua allowed Deng back into running the State Council and named him vice-premier in July 1977.

In initiating the Cultural Revolution, Mao Zedong shut down China's schools and directed Red Guards (students and others pledging their loyalty to him) to attack "traditional" Chinese values and all things "bourgeois." Here, supporters, Chinese youth from the city of Changchun, march toward Beijing on January 14, 1967. [BETTMANN/CORBIS]

Under Deng, a period known as the "liberation of thoughts" began. The reputations of many purged officials, including Liu, who had died in prison, were rehabilitated. Moderates Hu Yaobang and Zhao Ziyang became, respectively, CCP general-secretary and premier. Deng retired, but remained chairman of the Central Military Committee.

Tiananmen Massacre and Aftermath: Since 1989

On June 4, 1989, the People's Liberation Army, under order from Deng and Premier Li Peng, opened fire on pro-democracy protesters in and around Tiananmen Square in Beijing. The protest movement actually began on April 15, when students converged on Tiananmen to commemorate the death of Hu, who had been purged for sympathizing with earlier student protests in 1986. The April 15 protests, begun by students

and other intellectuals, were eventually joined by workers and ordinary citizens of Beijing. In huge rallies, demonstrators demanded freedom of association, expression, and the press; they called for the rule of law and denounced corruption. The protests quickly spread to other cities. Many traveled to Beijing to support the student leaders and their hunger strike.

Hardliners within the Politburo, such as Li and President Yang Shangkun, with backing from Deng, rejected the students' request for "dialogue." Instead, they imposed martial law and labeled the demonstrations "counterrevolutionary." Zhao and other moderates were willing to reach out to students, but they were overruled by the hardliners in the government. When demonstrators refused to leave Tiananmen Square, Deng and Li ordered the military to "clean up."

For days, the troops had been blocked from entering the square by Beijing's citizens. When the final order came, on the evening of June 3, soldiers advanced toward the Square along Chang-an Avenue, forcing their way through the crowds and firing automatic weapons at civilians. In shock and disbelief, the crowds charged back and skirmished with soldiers, which led to many deaths. Tanks and armored vehicles rolled to the square, and troops cleared the area of demonstrators in the early morning of June 4. Shootings and arrests continued in the surrounding streets, where citizens tried to rescue the wounded and hide the "counterrevolutionary rioters."

The immediate civilian death toll in Beijing was estimated to be around 2,600. The actual death total may never be known, and an unknown number of protesters died in other cities. The troops reportedly burnt many bodies. In Beijing, between 7,000 and 10,000 were wounded. In the aftermath, the government convicted and executed dozens of protesters, mostly workers. A nationwide manhunt began for other participants in the rally. Hundreds were arrested and sentenced to jail or sent to labor camps. Many more were forced to confess, demoted, or fired from their jobs. A few prominent leaders went into hiding and were eventually smuggled out of the country.

The government rolled back many of the reforms and personal liberties that they had introduced during the 1980s. The collapse of communism in Russia and Eastern Europe, combined with the Chinese government's desire to regain international prestige and domestic legitimacy, pressured Deng to speed up economic reform. Jiang Zeming, whose own bloody crackdown on protesters while he was mayor of Shanghai was less known at the time, was brought in Beijing to succeed Zhao.

Political reform remained a taboo subject throughout the 1990s. Since 1989, activists of pro-democracy organizations such as the Democratic Party, independent union organizers, liberal intellectuals broaching sensitive subjects, and religious groups have been relentlessly persecuted. Human rights organizations have documented the torture and arbitrary detention of hundreds of political prisoners who have been incarcerated without trial under harsh prison conditions, including forced labor in "re-education camps." It is impossible to estimate the general population that by 2004 was in Chinese prisons, labor camps, and local detention centers. In the early twenty-first century Tibetan Buddhists, Muslims in Xingjiang, and Catholics loyal to Rome continued to be subjected to persecution. In the crackdown on the quasi-Buddhist sect, Falun Gong, many practitioners were arrested, detained, persecuted, and tortured, and some died in police custody.

As of the mid-2000s, there was no program in place to investigate the war crimes, genocide, or crimes against humanity that have been committed by Chinese forces against their own people. Some activists have urged that the Tiananmen Massacre be investigated for violations of international law regarding genocide and crimes against humanity. They also have argued that other persecutions have been carried out for political and antireligious motivations and have cited instances of "bodily and mental harm" and "physical destruction" "with intent to destroy, in whole or in part" certain religious groups. On technical grounds, such demands have international law and UN conventions on their side. Despite forces within China pushing for political reform and the rule of law, the government has remained in the control of the same unchecked political power that for centuries has been responsible for atrocities against its citizenry.

SEE ALSO Japan; Mao Zedong

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Xiaorong Li

Chittagong Hill Tract, Peoples of the

The Chittagong Hill Tracts (CHT) constitute a geographically mountainous region in eastern Bangladesh, comprising approximately 5,000 square miles, or roughly 10 percent of the country's total land area. Originally populated by thirteen independent, indigenous groups, each with a distinct culture and language, the CHT strategically borders India, Burma, and the Bay of Bengal. The combined indigenous tribal population, currently estimated at 500,000, constitutes less than one percent of Bangladesh's total population. Historically organized into kinship groups who held their land in common, the CHT peoples employed a swidden, or slash-and-burn agricultural practice that required frequent moves to rotate their rice and other crops.

The Bengalis, a predominately Islamic people speaking an Indo-European language, inhabit the plains adjacent to the CHT. Their south Asian culture contrasts with that of the indigenous hill tribes, who, although possessing a variety of languages and religions, are historically tied to south East Asian cultures. In the mid-eighteenth century, the British assumed control over the entire Indian subcontinent, opening the CHT area for the first time to outside businesses and influences. By 1860 the British, in a move to protect their tea plantations and other economic interests, formally annexed the CHT. In 1900, the British extension of administrative control ended one thousand years of political and cultural autonomy for the indigenous tribes.

With Pakistan's independence from Great Britain in 1947, the CHT region became the southernmost district of East Pakistan. Adopting western notions of political integration and development, the Pakistani government moved to assimilate the CHT peoples into the national mainstream. In 1955, Pakistan ended all remnants of CHT's administrative autonomy, and in 1964 terminated its special political status. During this same period, the Pakistani government constructed the Kaptai Dam on the Karnafuli River, submerging 400 square miles of agricultural and culturally significant CHT lands. More than 100,000 CHT peoples were displaced by the dam, although 99 percent of the electricity generated by it is used to power development projects outside of the CHT. Other federal policies prohibited rice production, the basis of the tribal economies, leading to famines and starvation among the previously self-sufficient communities. Equally destructive was Pakistan's decision to end British immigration restrictions and to encourage Bangladeshi resettlement in the area.

In 1971 Bangladesh declared its independence from Pakistan. Cognizant of the CHT's strategic location, gas, coal, copper, and timber resources, and its lower population density, the new Bengali government quickly asserted its control over the region. The 1972 Constitution imposed Bengali as the state language, Islam as the state religion, and Bangladeshi as the national identity. A massive, government-sponsored movement of Bangladeshis into the CHT region altered the population ratio from 98 percent indigenous in 1971 to fifty percent by 2000. To secure its policies, the government sent one-third of the entire Bangladeshi military to the CHT region. Backed by Saudi financial aid, the military employed pressure tactics to force the peoples' conversion to Islam. The indigenous peoples had grown increasingly angry over federal policies and rage over the military's indiscriminate rape of indigenous women, 40 percent under eighteen years of age.

By 1972 that anger had progressed to armed conflict. For the next twenty-five years, the hill people fought a guerilla war against the Bangladesh Army. In 1997 the war-weary hill peoples agreed to a peace accord followed a year later by the Rangamati Declaration. The success of the accord and declaration's promised changes are mixed. Legally described as a "tribal

inhabited region," a twenty-two-member, indigenously elected regional council administers the CHT region, with locally elected councils supervising community affairs. As of 2002, however, a Bangladeshi remained as head of the Ministry of CHT Affairs, the federal agency responsible for the region, and the agreement to withdraw Bangladeshi settlers continued to be unfulfilled. The state retained control over the region's natural resources, and state policies preventing communal land ownership and swidden agricultural practices have persisted.

SEE ALSO Indigenous Peoples

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Sharon O'Brien

Chmielnicki, Bogdan

[1595–AUGUST 6, 1657]
Seventeenth-century Cossack ruler

Frequently identified by the Polish translation of his name, Bogdan (or Bohdan) Chmielnicki was hetman (supreme head) of the Cossacks based in southcentral Ukraine from 1648 until his death. He is also widely known by the Ukrainian form of his name, Bohdan Khmel'nyts'kyi. During the decade of his rule, Chmielnicki was responsible for leading a successful revolt against the Polish-Lithuanian Commonwealth, which dominated Ukraine at the time, and for bringing the lands he controlled under the authority of the tsardom of Muscovy in 1654.

During the first half of the seventeenth century much of Ukraine was a borderland region of southeastern Poland-Lithuania, beyond which a no-man's land separated it from the Ottoman Empire and its client state, the Crimean Tatar Khanate. Until 1648 Chmielnicki was what is known as a registered Cossack, that is, a kind of landowning petty gentryman of Orthodox Christian faith in the service of the Polish kingdom, as opposed to the Zaporozhian Cossacks, that is, military freebooters who lived in the no-man's borderland and opposed any kind of government control. In 1647 Chmielnicki clashed with a local Polish official over financial and personal matters, and finding no legal satisfaction, he fled in early 1648 to join the Zaporozhian Cossacks, who then elected him as their leader or hetman.

In his new role, Chmielnicki formed an alliance with the Crimean Tatars and within a few months he defeated the Polish army in several battles. He then pressed the government to grant further privileges to both the registered and Zaporozhian Cossacks as well as a large degree of autonomy for Ukraine. With the breakdown of Polish authority, spontaneous peasant revolts broke out in central Ukraine in the summer of 1648; the peasants were later joined by Zaporozhian Cossack forces, who expanded the scope of the revolts. The objective of the peasant and Zaporozhian marauders was to remove from Ukraine those who were perceived as their oppressor, first and foremost the Polish noble landlords, Jewish estate managers, Roman Catholic clergy and town dwellers, and fellow Christians known as Uniates (i.e., former Orthodox adherents who recognized the Roman pope as head of their church).

As for Chmielnicki himself, he and his armies did not participate in such revolts nor in the accompanying atrocities against civilians. As a petty gentryman, he hoped to remain under Poland-Lithuania provided that the state granted to the registered Cossacks the privileges that effectively would have amounted to their status as nobles. Chmielnicki was only partially successful, although he did manage to establish a Cossack state in 1649. Conflict with Poland persisted, however, and the civilian population, in particular Poles and Jews, continued to suffer losses until at least 1652.

Polish sources have traditionally depicted Chmielnicki in a very negative light, accusing him of having precipitated the steady decline of Poland's power in eastern Europe until eventually the state completely disappeared in the late eighteenth century. This image of Chmielnicki as a destroyer was preserved in the Polish psyche through the nineteenth-century novels of the Nobel Prize-winning author Henryk Sienkiewicz.

Jewish authors have been even more critical of Chmielnicki, in some cases characterizing him as the government official responsible for the first Holocaust perpetrated against Jews. Seventeenth-century Jewish chronicles, in particular, those of Nathan Hannover and Sabbatai Cohen, reported alleged Jewish losses ranging from 60,000 to 100,000 deaths and the destruction of 300 communities. Present-day Israeli scholars (Shaul Stampfer and Bernard D. Weinryb among them) have pointed out that these figures are grossly exaggerated and speak instead of the annihilation of 18,000 to 20,000 lives. Yet despite the fact that Chmielnicki's "control of events was rather limited," as conceded by the *Encyclopedia Judaica*, that same source also notes he is depicted in Jewish annals as "Chmiel the Wicked, one of the most sinister oppressors of Jews of all generations" (1972, p. 481).

In stark contrast to Polish and Jewish sources, traditional Russian historiography, in part repeated by later Soviet authors, considers Chmielnicki in a positive light as the leader who brought the Orthodox "Little Russians" (i.e., Ukrainians) into the political fold of Muscovy and its successor state, the Russian Empire. Most interesting is the Ukrainian image, which is decidedly mixed. The nineteenth-century national bard of Ukraine, Taras Shevchenko, consistently rejected any notion of Chmielnicki as a hero and portrayed him instead as a treacherous leader who sold out his country to the Muscovites (Russians). Last, general histories of Ukraine depict, and the popular image is, a Chmielnicki who single-handedly created an independent "Ukrainian" state. The strongly contrasting historical memories of Chmielnicki have contributed to the persisting negative stereotypes that Poles and Jews, on the one hand, and Ukrainians, on the other, have of each other.

SEE ALSO Anti-Semitism; Cossacks

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Paul Robert Magocsi

Christians, Roman Persecution of

On November 20, 284 CE, Diocles, an Illyrian officer who had risen to high command in the Roman army, was elevated to the purple by the soldiers at Nicomedia. The new emperor took the name of Gaius Aurelius Valerius Diocletianus (284–305) and is known as Diocletian. Having been acclaimed by the military, Diocletian was the first emperor to disregard the Senate in Rome by not seeking its customary confirmation. Going a step further, he also pronounced that his elevation to the throne of Rome enjoyed divine sanction, having come about through the will of Jupiter Optimus Maximus, Rome's highest deity.

After defeating Carinus, the son of the former Emperor Carus, and warding off several attempts by would-be usurpers to seize power, the emperor implemented a program to restore the tottering empire. Diocletian was a superb administrator, but he was also an autocratic ruler. He expanded the army in order to better defend Rome's imperial borders; provinces were divided and grouped into new administrative units called dioceses. Most important, however, he separated military from civilian power and deprived the Senate of its right to govern provinces. In the economic sphere he legislated to stop rampant inflation by issuing his Edict of Prices that, being impossible to enforce, failed.

In order to govern the vast Roman Empire of late antiquity, he devised the tetrarchy, meaning rule by four men. To guarantee a trouble-free succession, the tetrarchs were bound in an artificial family relationship. A former comrade of Diocletian, Maximian, became Augustus in the West with Diocletian holding the senior position as Augustus in the East. Each man then adopted a "son," who bearing the title of Caesar, was designated as heir to move into the senior position when the first set of Augusti retired or died. Maximian took Constantius (the father of Constantine the Great), and Diocletian chose Galerius as Caesar. Diocletian subsequently placed his dynasty under the protection of Jupiter, while Maximian sought the favor of Hercules. Divine protection by the gods of Rome seemed to contemporaries a necessity if the Roman Empire was to survive. This belief remained constant throughout the reign of Diocletian, as attested to by imperial propaganda, and especially by the images on his coinage.

Besides the many military challenges and economic problems of the era, another source of concern was

Marble bust of Diocletian (245–313 CE), the Roman Emperor who became known for his brutal persecution of Christians. Although initially tolerant of Christianity, he issued a fourth and final edict in 304, whereby all Christians were ordered to worship Roman gods. Mass executions and the widespread destruction of churches and other property followed. [BETTMANN/CORBIS]

the growth of Christianity. By then, many Christians belonged to influential circles, including the army and the bureaucracy. This little understood religion had been first noticed, and persecuted briefly, during the time of Nero (54–68). There had also been a short-lived persecution under Maximinus the Thracian (235–238), which attempted to stop proselytizing and was mostly directed at the higher clergy. The Emperor Decius (249–251) tried to root out the Christian religion by issuing an edict ordering all citizens to worship the state gods or face dire consequences. This persecution had a measure of success, with many well-to-do Christians renouncing their beliefs to save themselves. It ended with the death of Decius in 251.

A more intense attempt to rid the empire of Christians in 257 under Valerian (253–260) renewed the policies of Decius. Meetings between Christians were prohibited, and the clergy was persecuted with much vigor. This effort to eliminate Christianity was once again foiled by the death of the emperor. Valerian's son and successor, Gallienus (253–268), had little sympathy for his father's policy, and under his rule the Christians enjoyed a period of toleration that lasted for forty years.

Diocletian ordered the last and cruelest persecution of the Christians in 305 after he had ruled the empire for twenty years. Why so late in his reign did he try to bring the Christians to heel? Some people have attempted to exonerate Diocletian by blaming the fanatical Galerius for the persecutions, whereas others proposed that the old and ailing emperor was no longer in command. Neither explanation is convincing to explain the final, great persecution of the Christians. There is a hint of Diocletian's attitute toward religions other than the accepted Roman pantheon in an edict of 297 against the Manichaeans. He considered them to be a danger to the state and viewed these followers of the Persian Mani as enemy agents. The first of three edicts against the Christians, issued in 304, aimed to destroy sacred books and churches. The second and third edicts ordered all Christian priests imprisoned unless they worshipped the gods of the Roman state by making appropriate sacrifices. The forth and last edict ordered all Christians to perform these sacrifices under pain of death.

What this meant to condemned Christians is mainly known from hagiographical texts that are by their very nature suspect. By Roman law the death penalty was rarely applied to members of the upper classes (*honestiores*); they were deported or exiled unless convicted of either treason or sacrilege. In the case of the lower classes (*humiliores*), a conviction could result in the prisoner being either burned alive or thrown to wild beasts in the amphitheaters of Roman cities, such as the Coliseum in Rome. In many cases, however, the prisoners would be sent to the mines or public works, which was essentially the same as being executed. Slaves found guilty of a crime faced death by crucifixion. The application of Roman law may have varied from region to region, from governor to governor.

There was no uniform enforcement of the law, but Africa and the eastern provinces, where Christians were numerous, seem to have suffered most. Provinces such as Bythinia, Syria, Egypt, Palestine, and Phrygia experienced great cruelties. In the western provinces, where Constantius held sway, the persecutions were light, giving rise to rumors that the father of Constantine I had been a secret Christian. Diocletian abdicated in 305 and retired to the fortress palace he had built for himself on the Adriatic. He forced an unwilling Maximian to do the same. Diocletian's tetrarchy did not last

much beyond the abdication of its founder. The persecutions, too, did not produce the expected results. In 311, Galerius (305–311), who had succeeded Diocletian in the East and become mortally ill, was forced to issue an edict of toleration that granted the Christians freedom of worship but only as long as "they did not disturb or offend public order."

SEE ALSO Carthage

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Franziska E. Shlosser

Code of Crimes against the Peace and Security of Mankind

The establishment of the International Military Tribunal (IMT) and the International Military Tribunal of the Far East (IMTFE), respectively, in 1945 and 1946, evidences the problem of enforcing international criminal law without having an international criminal code or norms contained in positive international law.

The IMT charter and IMTFE statute provide for three crimes, namely, "crimes against peace," "war crimes," and "crimes against humanity." The first of these was not reflected in positive international law, the second was reflected in conventions embodying customary international law, and the third was an emerging international custom but without precedent in the practice of states. Furthermore, the charter and statute, as well as the jurisprudence, of these two tribunals brought about significant changes in the areas of immunity of heads of state, command responsibility, the defense of obedience to superior orders, and the defense or mitigation arguments of *tu quoque.*

These new developments in the international law of criminal responsibility challenged the "principles of legality," which are well established in the "general principles of law recognized in civilized nations" (Article 38 of the Statute of the International Court of Justice). These principles require that there be no crime without a criminal law, that there be no penalty without law, and that both the crime and the penalty not apply retroactively. To remedy the situation, the General Assembly (G.A.) of the United Nations adopted a resolution in 1946 affirming the "Nuremberg Principles," and in 1947 it adopted a resolution requesting that the International Law Commission (ILC) codify international crimes. That task was given to the ILC in a mandate for the preparation of a Draft Code of Offences Against the Peace and Security of Mankind. At the time, the mandate was envisaged as including the four major international crimes, namely, "crimes against peace," "war crimes," "crimes against humanity," and "genocide," which was embodied in a convention adopted by the G.A. in 1948. The mandate was broad enough to encompass other international crimes that might affect peace and security and to elaborate a draft statute for an international criminal court that would apply the Codes of Offences.

In the early 1950s the cold war and Realpolitik thwarted these efforts. However, because the international community was at that time still under the sway of the Nuremberg and Tokyo trials, as well as other Allied and national proceedings, an abrupt ending or modification of the ILC's 1947 mandate was not politically feasible. Instead, a more subtle approach was developed to hamper progress on the codification of international crimes, paradoxically, by the leading powers of the Eastern and Western blocks. This was done through bureaucratic techniques. Between 1950 and 1952 the ILC's 1947 mandate was curtailed by removing from it "crimes against the peace," which by then had become known as "aggression," and the establishment of an international criminal court. Both of these questions were attributed to two separate committees. The G.A. established a committee of states to define aggression, which was completed in 1974. It also established a committee of experts nominated by governments to prepare a draft statute for an international criminal court that produced a first text in 1951, amended in 1953.

The ILC's work on the Draft Code of Offences was completed in 1954 but did not include aggression, which was still being debated by a special committee. As a result, the 1954 Draft Code of Offences was tabled by the G.A. until such time as the special committee on aggression had completed its definition of that crime. In the meantime, the 1953 Draft Statute for an International Criminal Court had been tabled by the G.A. because the 1954 Draft Code of Offences had not been

ready in 1953. The cascading effect of tabling each initiative because another one was still pending was a political work of art.

The 1954 Draft Code of Offences should have procedurally been taken up again in 1974, when the G.A. adopted by consensus, but not by a vote, the definition of aggression as established by the Special Committee appointed in 1952. But it was not until 1978 that the G.A. gave the ILC a new mandate, which it renamed in 1988 as the Draft Code of Crimes Against the Peace and Security of Mankind. Once again, because of the existing conditions of the cold war, the undertaking that had been delayed for thirty-eight years was not allowed to move at a rapid pace. But the ILC, wittingly or unwittingly, abetted this situation by deciding that precisely because of the passage of all these years, the 1954 Draft Code of Offences and the definition of aggression needed to be reexamined and a new rapporteur was appointed who, after an initial period of some years, came up with an ambitious plan to expand the number of crimes contained in the 1954 Draft Code. From 1978 to 1991 the ILC worked, obviously without great haste, at the development of a new Draft Code of Crimes, which by then contained twenty-six categories of crimes, as opposed to only four, namely, aggression, genocide, crimes against humanity, and war crimes.

The newly proposed crimes were, with respect to some of them, farfetched, and drafted in a manner that contravened accepted practices in most legal systems with respect to codification of crimes. In short, the 1991 Draft Code of Crimes used ambiguous, and more political than legal terminology. For example, the new 1991 Draft Code of Crimes considered among the new international crimes what it vaguely defined as "colonialism," "mercenarism," and "crimes against the environment." As a result of this overreaching and legal imprecision in the definition of these supposed new international crimes, the G.A.'s reaction was to send the project back to the ILC for further consideration. The technical legal flaws of the 1991 Draft Code served the purposes of those who opposed the codification effort.

In 1993 and 1994, the Security Council adopted, respectively, the statutes of the International Criminal Tribunals for former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), which included genocide (as defined in the 1948 convention), war crimes (as defined in the grave breeches of the Geneva Convention and as contained in the Laws and Customs of War), and crimes against humanity (approximately as defined in the Nuremberg Charter). As a result of these developments, as well as the clearly perceived rejection by most states of the 1991 Draft Code of Crimes, the ILC produced a revised and shortened text in 1996 that eliminated most of the crimes contained in the 1991 draft, leaving only aggression (as defined in the 1974 G.A. resolution), genocide (as defined in the 1948 convention), war crimes (as defined in the grave breeches of the Geneva Convention, and as contained in the Laws and Customs of War, but without defining them), and crimes against humanity (as defined in the statutes of the ICTY and ICTR, though there are slight differences between the two definitions).

Notwithstanding this modified and shortened text, as of 2004 the G.A. had failed to adopt the Draft Code of Crimes Against the Peace and Security of Mankind as proposed by the ILC. The long-awaited codification of international criminal law has not materialized, even though it has been in the making for more than a half century. At first, the reasons were the cold war and Realpolitik; more recently, it was opposition by the United States that assumed in the early 2000s a hegemonic role in world affairs, coupled with an aversion for international criminal justice norms and institutions to which its nationals, particularly its senior political and military leaders, could be subjected. The laudable efforts that began in the wake of the IMT and IMTFE withered away, and no official contemporary efforts to codify international crimes have developed, even though the need for it is more dire in the early years of the twenty-first century than it was fifty years ago.

SEE ALSO Crimes Against Humanity; International Law; International Law Commission

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M. Cherif Bassiouni

Collaboration

Genocide in the twentieth century occurred with increasing frequency, from the Armenian catastrophe of World War I, to the Nazi extermination of six million European Jews, to the massacres of their own people by Soviet and Chinese communist leaders. In each of these cases government policies encouraged participation by local populations in the killing, as informants, auxiliary security forces, or even executioners.

Terms and Definitions

The term *collaboration* is often associated with the betrayal of one's nation to serve a foreign power, and many of those who did so believed they were serving the interests of their country, as well as themselves, by participating in actions at the behest of an outside force, usually the political leadership of another state. Collaboration is also the active participation in genocide by groups or individuals. Collaborators differ from perpetrators in that they are not the initiators of mass murder, but instead provide assistance out of opportunism, ideology, religious hatred, or psychological conditioning. For example, although members of the Nazi SS Action Groups (SS *Einsatzgruppen*) on the Eastern Front were the primary perpetrators of the Holocaust, especially in 1941 and 1942, Ukrainian peasants who reported hidden Jews were collaborators. Similarly, while many SS officials in occupied France were perpetrators with the primary task of deporting Jews to death camps, the Vichy French police who aided in the location and arrest of Jews were collaborators.

Genocide

The same terms hold true with other cases of genocide over the past century. In the Armenian genocide of World War I the perpetrators were primarily Ottoman military forces concerned about Armenian identification with the Russian enemy. In the commission of this genocide, however, local Turkish villagers in Eastern Anatolia and other provinces collaborated with the forces of the state, denying refuge and aid to those attempting to escape, and protecting only those Armenian women willing to convert to Islam and abandon their Christian heritage. The genocide of 1.5 million Armenians was made possible by collaboration.

The wars in the former Yugoslavia, from 1991 to 1999, involved not just the Serbian military and police forces of Slobodan Milosevic, but also Serbian vigilante groups recruited from peasants and workers throughout Serbia, Croatia, Kosovo, Bosnia, and other regions. These collaborators, although often not formed into organizations of the Yugoslav government, or given any clear guidance from the regime in Belgrade, nonetheless assisted in attacks on other ethnic groups—principally Croatians and Muslim Bosnians—or took opportunistic advantage by occupying the homes and land of those who had been ethnically cleansed. The result was over 200,000 killed and two million refugees, many murdered or uprooted by their neighbors.

The Holocaust

Even in areas not directly occupied by the perpetrating regime, collaborators can exist among the political leadership and security forces of other states. As the most widespread case of genocide in the twentieth century, the Holocaust of European Jews and other minorities provides examples of every kind of approach to collaboration: coperpetrators, collaborators, bystanders, and resisters.

Wartime collaborator Maurice Papon was convicted in 1998 of complicity in crimes against humanity for his role in the persecution of French Jews during World War II. He is shown here leaving La Santé prison in Paris in 2002, after an appeals court ordered his release for medical reasons. [AP/WIDE WORLD PHOTOS]

Among the Axis nations, which were allies of Nazi Germany, some states joined in its enthusiastic persecution and destruction of Jews, Romani, and others. In Slovakia and Romanian-occupied territory in the former Soviet Union, the Holocaust took on significant similarities to that practiced by the Third Reich. The Hlinka Guard in Slovakia, a clerical fascist party, killed or aided in the deportation of nearly the entire Jewish Slovak population. Romania was unique, in that while the pro-German government refused to exterminate Jewish citizens on its own soil, its forces murdered tens of thousands of Jews in southwestern Ukraine, which it occupied from 1941 to 1944, even Romanian Jews who had been deported to the area.

The Nazis also found collaborators in the territories they occupied, even when their policies were harsh

toward the non-Jewish civilian population. In the USSR local militias in the Baltic states of Estonia, Lithuania, and Latvia welcomed the German invasion as liberation from Communism, an ideology they identified with Jews. Nationalistic Baltic citizens created militia groups in response to the collapse of Soviet authority in the summer of 1941 and actively collaborated in the extermination of Jewish communities, in some cases even before the arrival of the first German military or SS forces. The same held true in the Ukraine, where thousands volunteered to assist in the murder of Jews, or reported on hidden Jews or their protectors.

Even some neutral states aided in Nazi efforts to exterminate the Jews of Europe. Switzerland, for example, routinely returned Jewish refugees to Nazi control, and others, including Turkey and Spain, refused to allow Jews to cross their borders unless they had visas allowing them to transit to a third nation, thereby in effect condemning these victims to a terrible fate.

Vichy France, the rump state left after France's defeat in 1940, is a distinct case. Although never officially a member of the Axis and occupied by Nazi Germany after the November 1942 Allied landings in North Africa, it nonetheless played an important role in extending the Holocaust to France. Although the regime of Marshall Henri Pétain and Pierre Laval never officially joined the Axis, it did provide indispensable support to the Nazi extermination of Jews. Vichy police participated in the round-ups of French and foreign Jews in France, and were very effective collaborators even after the Nazi occupation of 1942.

Some states in the Axis, most notably Bulgaria and Italy, before Benito Mussolini's overthrow in 1943, were less collaborationist. Bulgaria's leadership, despite strong German pressure, refused to surrender Bulgarian Jews to the Holocaust, supported in this decision by the local population, Orthodox clergy, and nearly all political organizations. Even Mussolini, so loyal in his devotion to Hitler in other matters, refused to deport Italian Jews to their deaths in Nazi-occupied territory. Some Jews had even been active in the initial leadership of the Fascist Party, although the anti-Semitic measures introduced by Mussolini's government in 1938 put an end to this involvement. In the two cases it seems to have been national pride, rather than any particular identification with Jews, that protected both communities.

Motivations

What motivates collaboration? Why do some chose to participate in genocide? There are a variety of motives, but one sobering truth remains: No twentieth-century regime bent on committing mass murder or genocide has lacked collaborators. Four major factors have been most important in motivating collaboration in genocide: political ideology, opportunism, religious hatred, and psychological conditioning.

Collaboration based on political ideology occurs when there is a convergence of political objectives between the primary perpetrators and others. An example would be the Arrow Cross movement in Hungary during World War II. Even though a German ally, Hungarian dictator Miklós Horthy opposed the Holocaust and gave sanctuary to Jews until 1944. The Hungarian Arrow Cross movement, however, was enthusiastically pro-Nazi anti-Semitic and willingly assisted in the deportation and execution of Jews, eventually arresting Horthy when he tried to stop the killings. The political identification of the Arrow Cross with Nazi Germany was nearly complete, making collaboration an imperative for party members.

Collaboration also arises from opportunistic motives. In occupied Poland the German Order Police and SS offered bribes to peasants who would inform on hidden Jews or act as guides in leading Nazi forces to their locations. While in some cases the Germans offered direct payments of salt, sugar, or alcohol, in other cases they merely held out the opportunity to plunder the possessions of captured Jews. Other Poles blackmailed Jews to provide money or other treasures rather than reporting them to the occupation authorities, but often did so anyway once the savings of such desperate Jews were exhausted.

In addition, collaboration frequently stems from religious hatred or indifference. Catholic priests and members of religious orders collaborated with genocide perpetrated by the Nazis and the Croatian Ustasha satellite regime, including sanctioning the forced conversions of Serbian Orthodox believers and deportations of Jews, Serbs, and Romani to concentration camps. Although some priests opposed the exterminations that followed, few dissented from the Croatian program to remove the Serbian and Jewish populations, resulting in the deaths of over 200,000 Serbs and 50,000 Yugoslav Jews.

Psychological conditioning was also an important factor in promoting collaboration. On the Eastern Front soldiers received lessons in anti-Semitism and Nazi racial theory from educational officers attached to the German army. This, coupled with years of Nazi propaganda in German schools, entertainment, and military training facilities encouraged German soldiers to regard Jews, Russians, and Poles as subhuman, and unworthy of living. Although regular German military forces in World War II did not initially participate in genocide, soon after the invasion of the USSR in June

1941 their forces did provide support to SS actions, and later participated in atrocities against the civilian population and Soviet prisoners of war.

Collaboration was a widespread response to Nazi occupation policies and military victories, and was more common than direct resistance. Given the dominance of Hitler's Germany on the European continent and the benefits to be derived from cooperation, the question is perhaps not why so many collaborated with the Third Reich, but why more did not.

SEE ALSO Bystanders; Perpetrators

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Wayne H. Bowen

Comics

In his two volumes *Maus: A Survivor's Tale* and *Maus: A Survivor's Tale II*, Art Spiegelman narrates the fate of his parents, a Polish Jewish couple who survive Auschwitz and the Holocaust. The most striking feature of the books is the trivial fact that they are comic strips in which the Jews are represented as mice and the Germans as cats. This metaphorical depiction of Nazi-Jewish relations is not a genuine animal fable, because it is much too complex. Various aspects of meaning are given in the cartoons, and there are different ways of conveying those meanings. They entail, for instance, the narratives of Vladek, the narrator's (Artie's) father, as a single male and how he and his wife Anna are separated and reunited. The narration follows the increasing severity of Nazi persecution and also describes the inner conflict a member of the post-Holocaust generation faces. The flexibility of the comic strip as a medium facilitates a reflective manipulation of the different events in time.

The presentation of a human being as an animal or with some animal features is adopted in political cartoons in order to denigrate, for instance, a political opponent or social group. Its traditional intention is to transfer some negative animal characteristic, such as laziness or stupidity, to the victim of the cartoonist and thus create and/or emphasize a negative stereotypical trait. This, however, is not the case in *Maus*. In this cartoon, on the contrary, two separate mental spaces, that is, the space of human beings and the space of animals (mice, cats, dogs), are blended, creating anthropomorphic creatures who represent real people, for example, Artie, the protagonist and narrator, Vladek, his father, and Anna, his mother. They are drawn with human bodies and appropriately sized mouse heads. The faces are drawn in a neutral way and show very few expressive and distinguishing features.

This creation and blending of two separate mental spaces are everyday features of verbal language. In statements such as "If I were in your shoes, I would quit my job," the speaker takes over the role of the listener and states how he would act in that hypothetical space. Such a blending process activates at least four mental spaces: a generic space, the source space, the target space, and the resulting blended space. The generic space contains a skeletal structure, which reflects the commonalities of the two input spaces.

In the above example, the generic space would be represented by a sentence such as "An agent takes a decision." The first input space would read: "The speaker quits his job" and the second input space would read, "The listener quits his job." The blended space integrates selected parts of the structure from the input spaces and would read: "The speaker quits the job of the listener."

As is seen, the blended space integrates selected parts of the structure from the input spaces. The effect of alienation (*Verfremdungseffekt*) has two causes: Even if readers are familiar with anthropomorphic creatures in comic strips such as Spiderman, combining Spiegelman's hybrid creatures with Nazi terror and the Holocaust may seem strange and the meaning of such a blend is open to interpretation. The meaning potential of this pictorial blending can be described as follows:

the generic space contains a relative assessment of human beings together with other mammals. Depending on people's convictions, mammals do or do not have a distinct personality, dignity, a right to live, and they are or are not regarded as vermin. The first input space allots the positive qualities and rights to human beings and the second input space denies mice these qualities and rights. In the blended space the anthropomorphic mice, who represent the Jews, are denied these qualities and rights.

Because the readers of *Maus* know that Spiegelman is a Jew himself, it is very unlikely that they will interpret the blending in this way. It is clearly an ironic pictorial of Hitler's statement that Jews are vermin. When it is obvious that someone slips into the role of another person and acts in that role, irony is created. Thus, readers are constantly reminded of the ironic stance that the author adopts. He does so because the genocidal atrocities of the Nazis are beyond comprehension and, what is more, beyond description.

SEE ALSO Art as Propaganda; Art as Representation

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Wolfgang K. Hünig

Commission on Responsibilities

World War I was started by the Austro-Hungarian Empire over the assassination of Archduke Ferdinand by a Serb nationalist in Sarajevo. The event gave Germany an opportunity to declare war on August 2, 1914. Two days later it invaded Belgium and France, bringing the British Empire, tsarist Russia, Italy, and later the United States into the conflict. These allies and Japan, Greece, Poland, Romania, and Serbia were called the Entente Powers, but France, the British Empire, Italy, Japan, and the United States referred to themselves as the Great Powers. Germany's allies, called the Central Powers, were the Austro-Hungarian Empire, the Turkish Ottoman Empire, and Bulgaria. The conflict was, until then, the bloodiest in history, resulting in more than 21 million casualties, with 8.5 million dead in slightly more than four years. During the conflict chemical weapons were used for the first time, and as a result of the harm they caused, their use was banned in 1925. Both sides committed violations of the laws and customs of war, particularly the Central Powers, and the Germans and Turks.

The hostilities ended with the signing of an armistice in a railroad car at Compiegnes, France, on November 11, 1918 (a date still celebrated in the United States as Veterans Day), and a formal peace conference and treaty soon ensued. On January 25, 1919, the Preliminary Peace Conference in Paris established the Commission on the Responsibility of the Authors of War and on the Enforcement of Penalties, which would deliberate on just punishment for the Germans and their allies. The Commission's mandate was to investigate individual criminal responsibility for the "authors of the war" and for violations of the laws and customs of war. The mandate included drawing up a list of persons to be prosecuted for such crimes, irrespective of how "highly placed" they were, and establishing procedures for "a tribunal appropriate for the trials of these offenders." The mandate also included what it referred to as a "cognate or ancillary to the above." It was the first time in modern history that such an investigatory commission was established on an international scale and with such a broad mandate.

The Commission consisted of fifteen representatives from the ten Entente Powers who were for the most part senior governmental officials from ministries of foreign affairs, many with a legal background and senior military officers. Each delegation had a support staff of military and legal experts.

The Commission's establishment preceded the signing of the official peace treaty that occurred on June 28, 1919, at the Versailles Palace. The Treaty of Versailles did not come into force until January 1920, a year after the Commission was established. The Commission's work, however, was based on the assumption that the peace treaty would contain provisions for the prosecution of those whom it was able to identify as criminally responsible for the conflict. This was the understanding of the Entente Powers after the Preliminary Peace Conference in Paris and as reflected in the Commission's mandate. The Central Powers, however, had other expectations, arising from the actual language of the earlier 1918 armistice, namely, immunity.

The Treaty of Versailles contained four articles relating to the Commission's work: Article 227 on the criminal responsibility of Kaiser Wilhelm, Articles 228 and 229 on the prosecution of those who violated the laws and customs of war contained in the 1907 Hague Convention No. IV and its Annexed Regulations, and Article 230, which obligated all the Central Powers to surrender for trial those persons wanted for prosecution pursuant to Articles 228 through 229.

The peace treaty, however, did not contain an explicit provision on the prosecution of Turkish officials with respect to the large-scale killing of Armenian civilians during World War I. The Commission nevertheless considered the matter "cognate or ancillary" to other aspects of its mandate, namely violations of the laws and customs of war by the Germans. Accordingly, it examined the responsibility of Turkish officials for what it called "crimes against the laws of humanity."

The Commission's work, which commenced shortly after its establishment, resulted in a preliminary report on March 29, 1919, and a final report on May 18, 1919.

The Commission's work had three legal tracks. The first was determining if the Kaiser bore responsibility for initiating war in Europe. Because no legal prohibition existed against the resort to war as an instrument of national policy, the decision to address the Kaiser's responsibility in the Treaty of Versailles (Article 227) was essentially a political one. This provision was drafted by a member of the British Empire's delegation to the peace conference whose political astuteness is reflected in the language of Article 227. The alleged crime was defined as "the supreme offence against international morality and sanctity of treaties." Because no such defined crime existed in international law, or for that matter in the national laws of almost all countries in the world, it was easy for The Netherlands to give the Kaiser political asylum and he was never prosecuted. This outcome did not displease Europe's monarchies, many of which were related to Germany's. Other than Belgium and France, there were few governments that did not support the preservation of the customary international principle of law granting immunity to a head of state. This is why the Commission's chairman, Secretary of State Robert Lansing, had originally opposed the prosecution of the German head of state, but he was overruled by the Commission's majority.

The U.S. position subsequently changed. American support for the Kaiser's prosecution was the result of a political quid pro quo—the peace conference's recognition of the Monroe Doctrine, thus giving the United States hegemony over the Southern Hemisphere. As a result of this political deal, a new historic development occurred, namely the personal criminal responsibility of a head of state for the newly established international crime contained in Article 227. The precedent paved the way for the Nuremberg Charter to unequivocally deny immunity to a head of state for the three crimes within its jurisdiction—a position followed by the later International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC).

The second track was more conventional and in better keeping with the Commission's mandate and expertise. It related to assessing the violations of the laws and customs of war by Germany and its allies, and preparing a list of persons who would be prosecuted in accordance with Articles 228 and 229. Government delegates on the Commission submitted their own lists of alleged war crimes and their accused perpetrators. The Commission as a whole reviewed these submissions and issued findings as to the facts alleged and the charges against the alleged perpetrators. In doing this, it asked governments to submit documentation to support their allegations. The Commission did not, however, independently investigate the facts; it merely reviewed the allegations and evidence presented by delegates and, when necessary, requested additional evidence. Consequently, it acted more as a gatherer and reviewer of allegations by the governments represented on the Commission than as an investigative organ, as these bodies are known in national criminal justice systems.

In the relatively short period between February and May 1919, the Commission drew up a list of situations in which war crimes were alleged to have been committed by Germans, and named or identified the alleged perpetrators. The categories of crimes charged included: systematic terrorizing of civilian populations, mass and individual murders of civilians, mistreatment of the civilian population, the use of civilians as human shields for the military, torture, rape, displacement of the civilian population, collective punishment, looting of private and public property, pillaging of private property, and the killing and mistreatment of prisoners of war (POWs). The Commission's list of alleged perpetrators, all Germans, exceeded twenty thousand. The Commission did not take into account any similar acts allegedly committed by the Entente Powers against the Central Powers. Also, Articles 228 and 229 of the Treaty of Versailles applied only to the defeated Central Powers. After World War II the Allies, who included all but two of the Great Powers' allies from World War I, adopted this same one-sided approach, thus leading to the label "victors' vengeance" with respect to post-conflict judicial proceedings.

Although the allegations of war crimes committed by German forces were for the most part substantially accurate, the large number of persons alleged to have committed war crimes was probably exaggerated. This may be why the Commission subsequently reconsidered the original number and lowered it to 895. This significant reduction also occurred for political reasons, as well as careful consideration of the time, effort, and costs associated with prosecuting such a large number of individuals.

The Allies' political will to carry out the prosecutions of 895 war criminals based on the findings of the Commission was, however, short-lived. Three years later no tribunals had been established and no prosecutions conducted. In 1922 the Commission abandoned the prospects of such action and asked Germany to assume responsibility for prosecuting its own war criminals. Germany agreed to this scenario and passed a special law for that purpose; in 1923 it prosecuted some 22 individuals on the Commission's scaled down list of 895. Belgium and France expressed outrage, as did the British public, but as time passed, support for postconflict justice waned. Then, as in the twenty-first century, public outrage over crimes of war is short-lived.

The Commission's files on the twenty-two individuals accused of war crimes constituted the basis of the prosecution conducted in Leipzig before the German Supreme Court. Because the work of the Commission was, by nature, more focused on preliminary findings rather than a thorough and complete investigation of the facts, it was easy for the defense at the Leipzig trials to argue against the charges and, at times, even ridicule them. The German public considered those prosecuted to be scapegoats for a defeated Germany and some viewed them as heroes. The German *Reichsgericht* (Supreme Court) nevertheless conducted its proceedings with fairness, and the judges were not partial to the accused, in fact convicting nineteen of them.

The third track was an extension of the second one, namely the prosecution of Turkish officials for crimes against the laws of humanity for the annihilation of its Armenian population. From a legal positivist's perspective, it was as much of a stretch as was the idea of prosecuting the Kaiser for the crime of violating the "sanctity of international treaties." But, in support of the concept of crimes against the laws of humanity, it must be said that the facts warranted the extension of the then existing law of armed conflict on the protection of the civilian population in a state at war, to apply to the same depredation when committed by a state against its own population during time of war. Because the 1907 Hague Convention and its Annexed Regulations prohibited killing the enemy's civilian population, it was reasonable to extend these prohibitions to a state committing the same violations against its own civilian population, provided that such actions were war-related. The gap in protecting civilians during time of war needed to be filled, particularly because the killing of the Armenians was done in such an egregious manner and on such a large scale that it could not be ignored (the estimated numbers of those killed range from 200,000 to 1,000,000). For the Commission, as for the drafters of the Nuremberg Charter some twenty-five years later, the facts drove the law.

The Commission wished to include what was then called "the Armenian massacre" among its list of crimes for which Turkish officials were to be prosecuted. However, there was no legal basis to do so pursuant to the 1907 Hague Convention and its Annexed Regulations because the victims were Turkish nationals and not the nationals of another state with which the Turkish Ottoman Empire was at war. The Commission developed an appropriate, although artful, legal argument based on both the language and spirit of the 1907 Hague Convention's Preamble. The Preamble had been drafted by a Russian diplomat, Fyodor Martens; the portion of it that the Commission cited was named "Martens' clause."

The premise of the Preamble of the 1907 Hague Convention is that international law reflects the human values that have emerged from civilization, and that this is what the term "laws of humanity" refers to. It thus follows that not everything falling under the category of laws of humanity could have been agreed on by state parties for inclusion in the 1907 Hague Convention and its Annexed Regulations. Therefore, the Preamble affirms that what is included in the specific provisions of the Hague Convention is only a portion of the laws of humanity, namely that portion which the signing nations had agreed to. Consequently, when other wartime practices emerge that constitute a violation of the laws of humanity, they would be considered part of the prohibited conduct contained in the original Convention. This represented a new development.

On the basis of such reasoning, the Commission concluded that the widespread and systematic killing of Armenian civilians in 1915 as part of a policy of persecution against the civilian population of a certain ethnic/religious background constituted a crime against the laws of humanity by analogy to war crimes. The assumption was that, if one of the purposes of the Law of Armed Conflict was to protect innocent civilians during time of war, then no distinction should be made based on the nationality of the victims. This was a humanistic perspective ahead of its time. In fact, it has

continued opposed by those who believe that power and not law should control international affairs.

The Commission's majority agreed that Turkish officials, whether military or political, should be prosecuted for crimes against the laws of humanity on the same basis as Germans were to be prosecuted for war crimes. However, two delegations strongly dissented, namely the United States and Japan, insisting that their minority opinions be published as part of the Commission's final report. The legal argument presented by these two delegations was the notion that crimes against the laws of humanity was predicated on natural law and not positive law and therefore could not be recognized as a valid interpretation of existing international law.

Despite this opposition, the recommendation of the majority could have been carried out, but the western allies of the Entente Powers subsequently struck a political deal with Turkey, as reflected in the 1923 Treaty of Lausanne, which granted amnesty to Turkish officials for the period from 1914 to 1922. For political reasons, the Entente's western allies needed Turkey to be on their side: to serve as a buffer with the newly established Union of the Soviet Socialist Republics (USSR) that had come about as a result of the 1917 communist revolution against tsarist Russia. The about-face of the western allies concerning the criminal responsibility of Turkish officials is reflected in the 1923 peace treaty between the Entente Powers and Turkey, the Treaty of Lausanne, which replaced the 1920 Treaty of Sevrès that was not ratified. The latter contained a provision establishing the criminal accountability of Turkish officials before the Entente Powers' tribunals pursuant to Articles 228 and 229 of the Treaty of Versailles. The 1923 Treaty of Lausanne, the agreement that entered into force, did not however contain such a provision. Instead, it included a special protocol that gave amnesty to all Turkish officials for the time period of the Armenian massacre. At the signing of the Treaty of Lausanne, 118 Turkish officials were in British custody, with most of them held in Malta; they were subsequently released.

On August 8, 1945, the four major Allies (France, the United Kingdom, the United States, and the USSR) signed the London Agreement that established the International Military Tribunal (IMT) at Nuremberg; its Article 6(c) defines crimes against humanity. Although unstated in the London Agreement, Article 6(c) was based on the legal reasoning developed by the 1919 Commission with respect to crimes against the laws of humanity. This conclusion is supported by the fact that the definition of crimes against humanity in Article 6(c) requires the need for a connection between these crimes and other crimes within the jurisdiction of the IMT, including war crimes as defined in Article 6(b). The 1919 Commission had posited that crimes against the laws of humanity were an extension of war crimes arising from the laws and customs of war, and in 1945 that concept became part of international law.

The work of the 1919 Commission thus resulted in (1) reversing the customary rule of immunity for heads of state for international crimes, later referred to as "crimes against peace" in the IMT and Tokyo War Crimes Tribunal (or IMTFE) and as "aggression" in the UN Charter; (2) establishing the principle of international criminal responsibility for internationally proscribed crimes (with enforcement before international or national judicial bodies and, in this case, through the prosecution of twenty-two German military personnel before the Supreme Court of Germany sitting at Leipzig); and (3) providing the legal foundation for a new international crime, "crimes against the laws of humanity" (though the Commission failed to prosecute anyone for this crime, its efforts gave rise to the emergence of a customary rule of international law that was more clearly and fully defined in the Charter of the IMT and the Statute of the IMTFE).

All these developments can be traced back to the historic efforts of the 1919 Commission in formulating the concept of crimes against the laws of humanity. In addition, the establishment of international criminal investigatory commissions can be traced to the 1919 Commission. Both the 1943 UN War Crimes Commission established to document the Axis Powers' war crimes in Europe and the 1945 Far East Commission established to document Japanese war crimes in the Far East were, in large part, modeled on the 1919 Commission. In 1992 the Security Council followed a different model when it established, in Resolution 780, the Commission of Experts to Investigate Violations of International Humanitarian Law. The Security Council Commission on Yugoslavia was the only international body mandated to investigate violations by all parties to a conflict.

The work of the 1919 Commission, Articles 227 through 230 of the Treaty of Versailles, and the subsequent 1923 Leipzig trials did not perhaps fulfill the international community's expectations, but they made history and established precedents on which the international community built new advances in international criminal justice.

SEE ALSO Hague Conventions of 1907; Tokyo Trial; War Crimes; World War I Peace Treaties

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M. Cherif Bassiouni

Comparative Genocide

Some of the central questions attending the analysis of any genocide, such as the Holocaust or the Armenian genocide, are: Why did it happen? How did it happen? How similar or different is it from other instances? And, what can be learned to prevent such occurrences in the future? A comparative approach may be helpful in providing some answers because the principle aim of scholarly comparison is to identify essential similarities and underlying patterns in order to arrive at credible explanations or theories for some types of genocide. Such explanations should be able to shed light on particular instances of genocide as well as on the process itself. The juxtaposition and comparison of a number of cases do not imply that they are identical or even similar. Indeed, differences from an underlying pattern, such as the Holocaust or the Armenian genocide, can be instructive in demonstrating the range of variation among cases or in challenging theories that claim to account for similarities.

Theories

Following the United Nations (UN) definition, which distinguishes between genocide in whole or "total genocide," and genocide in part or "partial genocide," and introducing a distinction first suggested by Leo Kuper, between genocide that is domestic and foreign with respect to the geographical and social boundaries of the state, it is possible to distinguish among four basic types of genocide: (1) *total domestic,* for example, German Jews in the Third Reich, Armenians under the Young Turks, the Tutsi in Rwanda; (2) *total foreign,* for example, Polish Jews under Nazi occupation, Native Tasmanians in the nineteenth century, and Herero under German colonialism; (3) *partial domestic,* for example, Bosnian Muslims during the Yugoslav war, gassing of the Kurds in Iraq under the regime of Saddam Hussein; and (4) *partial foreign,* for example, Poles and others under Nazi occupation, destruction without extermination of a number of Native peoples in Africa and the Americas.

Except for noting that genocide entails the dehumanization of its victims, there is no general theory for the phenomenon, nor does space permit discussing in detail theories for the four types of genocide listed above. However, there are a number of key variables that writers have singled out for each type.

For total domestic genocides—even when, as in the case of the Holocaust, these mutate into total foreign genocides—nearly all writers have emphasized the ideology of the perpetrators as causal. This would include Nazi biological racism, the Pan-Turkism and organic nationalism of the Young Turks, the radical Maoism of the Khmer Rouge, and the "Hamitic hypothesis" of Hutu power in the Rwandan genocide. Others have pointed to political, social, cultural, and economic crises for the perpetrator regime. Well-known examples are the many crises of the Weimar Republic following Germany's defeat in World War I, and the defeats and crises that confronted the Young Turks following their coup in 1908. Touching on genocide in Africa, Biafra, in particular, Kuper has emphasized the tensions and contradictions between a sovereign state and the culturally plural society over which it rules. Other writers have stressed social or national revolutions within the context of general war and the dynamics of totalitarianism.

For partial domestic and foreign genocides, especially when, as in Yugoslavia, genocide took the form of ethnic cleansing, writers have emphasized the ideology of integral nationalism and the context of war or civil war. For foreign genocides, both partial and total, especially against indigenous peoples, writers have stressed an attitude of dehumanization of the "savage Other" within a context of imperialism, modernity, and capitalist development.

Fallacies

Most scholars would concur that there are both distinctive and comparative aspects to most genocides, including the Holocaust; however, a comparison may also be misleading and fallacious. This can be most clearly observed in the comparative treatment of the Holocaust wherein two fallacies often occur.

The first, the "equivalence" fallacy, suggests that because the Holocaust may be similar to another instance of genocide, it is therefore equivalent to it. The second, the "uniqueness" fallacy, claims that because it was unique, the Holocaust is incomparable. The first

is a fallacy, because a thing or an instance can be similar in some dimensions without being equivalent in all. The second is a fallacy because a thing or an instance can be distinctive in one or more important ways without being distinctive in all dimensions.

Perhaps because they wish to undermine the significance of the Holocaust, some writers have drawn a false equivalence between it and other seemingly similar events. They discover Holocaust-like events throughout history and the world, not to understand them or even to exaggerate their import but to relativize and therefore make less exceptional the enormity of the Shoah. The recent controversy among German historians, the *Historikerstreit,* is one case in point.

It may be that in order to combat the trivializers and the relativizers, some scholars have insisted on the uniqueness of the Holocaust. Indeed, one writer, Steven Katz, plainly argues that only the Holocaust fits his narrow definition of genocide. He defines genocide as "the actualization of the intent, however, successfully carried out, to murder in its totality any national, ethnic, racial, religious, political, social, gender, or economic group, as these groups are defined by the perpetrator by whatever means" (1994, p. 131). He observes that only the Holocaust fits his definition, and he comes to the conclusion that the Holocaust is unique and incomparable.

It is apparent that Katz departs from the widely accepted UN definition by excluding the partial destruction of groups (genocide in part); these are seen as "tragedies" not genocides. And in his work he claims that in no other cases was there an actual attempt to exterminate a group. Why scholars of genocide should be limited only to the intended extermination of groups is never convincingly explained. Moreover, other scholars have demonstrated that the Armenian, Rwandan, as well as a number of Native-American and African genocides were instances of attempted extermination. These may not have been equivalent in intent or ideology to the Final Solution, but they were similar enough in other dimensions to prompt comparative research.

By reducing it to the ideologically driven intentions of the Nazis, Katz's definition prevents him and other scholars who would rely on his formulation from making valid comparisons to other aspects of the Holocaust. Thus, studies that have demonstrated that the Holocaust and other total genocides have occurred following revolutionary situations and during war-time conditions could not have been conducted had the authors followed the Katz definition. In effect, a misplaced emphasis on the uniqueness of the Holocaust prevents meaningful comparisons that can shed light on the Holocaust itself.

SEE ALSO Genocide; Sociology of Perpetrators; Sociology of Victims

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Robert Melson

Compensation

As used here, *compensation* means providing money or items of economic value to a person or group that has suffered an injury caused by another. Compensation is different from *restitution,* meaning the return of specific property to a previous owner, and *reparations,* usually applied to compensation a defeated country pays to the victors for damages or losses suffered during war.

Compensation has long been a familiar principle in law, business, and everyday life in many societies. Many legal systems provide procedures (e.g., lawsuits in U.S. courts) for determining an amount of compensation that the law regards as equivalent to certain types of injuries. Such compensation is not necessarily intended to punish the party causing the injury, but instead to try to relieve the injury; paying it generally relieves the offending party of further financial obligations.

President Ronald Reagan after signing the Civil Liberties Act of 1988, which provided a payment of $20,000 to every Japanese American who had been either interned or relocated by the U.S. government during World War II.[WALLY MCNAMEE/CORBIS]

Various justifications are offered for these ideas. Some identify their foundations in religious or ethical teachings; authorities ranging from Aristotle to the Qu'ran instruct that those causing harm should repair it. Although starting from different premises, many economists would urge the same result: Parties, even those engaging in lawful behavior, should bear the costs of their actions, including injuries inflicted on others. Whatever their ultimate sanction, these concepts are deeply woven into international law and most national legal systems.

Limitations and Possibilities

The idea of compensation as the equivalent of injury suffered may be accepted in many settings, but is certainly insufficient within the context of genocide or crimes against humanity. These offenses involve profound attacks on human life and dignity. Their enormity and brutality make it impossible to truly restore the situation that existed beforehand. The dead cannot be restored; injuries and traumas cannot be erased; lost communities are lost, except perhaps in memory. Viewing transfers of funds or property as the equivalent of victims' experiences obscures the offenses' gravity and to many seems to trivialize victims' suffering. Further, the notion that providing full compensation relieves the paying party of further responsibility is inadequate for addressing the personal responsibilities of perpetrators of genocide or crimes against humanity.

Nevertheless, survivors of such crimes have needs that must be met, including food, clothing, shelter, medical care, and the physical means to build new lives. Historically, such support often has been absent, leaving survivors in deplorable conditions. However, several innovative mass claims programs have shown that properly conceived compensation programs can ease survivors' material burdens. In addition, such programs provide individuals with validation and recognition. They also may clarify and enlarge the historical record, increasing the broader community's understanding of past crimes.

Relevant International and Domestic Norms

Until recent decades neither international law nor domestic legal systems allowed most individuals or groups injured by genocide or other large-scale abuses to claim and obtain compensation. Before World War II international law placed few restrictions on what states did to their own peoples. It required that states correct or compensate for certain economic injuries they inflicted on aliens, but these rules did not limit a state's abuse of its own people. The rules protecting aliens also included procedural limitations that often limited their effectiveness. For example, they generally required an injured alien to exhaust all remedies under the offending state's domestic law. The procedures for making international claims were likewise restrictive. A state could bring international claims against other states for mistreating the claimant's nationals, but individuals could not make an international claim against a state.

The situation was little better under national law. National legal systems generally applied the principle of sovereign immunity to bar suits against the state unless the authorities consented to such suits and waived immunity. Finally, neither international law nor domestic legal systems generally recognized or protected the rights of communities or groups.

New Norms, New Procedures

The decades after World War II witnessed important changes. The 1945 United Nations (UN) Charter identified the protection of human rights as a key purpose of the organization. There was growing international acceptance of human rights principles expressed in such documents as the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948, international human rights covenants, and other global and regional treaties. These often included provisions like Article 2(3) of the International Covenant on Civil and Political Rights adopted by the UN General Assembly in 1966, which required countries to ensure effective domestic remedies for rights violations. Many states also adopted constitutional provisions or laws requiring both remedies and compensation for such violations. UN human rights bodies studied the right to compensation for rights violations and developed statements of principles elaborating on this. Human rights treaty bodies called for states committing specific violations to compensate victims.

Several large-scale programs to compensate victims paralleled these doctrine-related developments. With varying success these substituted administrative compensation procedures involving simplified procedures and evidence requirements for slow, expensive, and uncertain individual suits in national courts. This development recognized the fact that survivors of mass rights violations rarely have the time, stamina, or resources for long and elaborate individual legal proceedings, nor do they have the documents or other evidence normally required in such proceedings.

A key early precedent arose in 1952, when the Federal Republic of Germany (FRG or West Germany) and the new Jewish State of Israel agreed that West Germany would pay Israel 3.45 billion deutsche marks, most of it directed to the resettlement and rehabilitation of Jewish victims of Nazi persecution. Although fiercely attacked by some as debasing the memory of the Holocaust or as a cynical exercise in Realpolitik, the agreement resulted in the transfer of badly needed resources to Israel and to individual survivors. It also set an important precedent for later large-scale compensation programs. In 1953 West Germany passed an individual indemnification law eventually resulting in the payment of many more billions to victims of Nazi persecution. However, geographic and substantive limitations of the law led to the conclusion of additional compensation agreements between West Germany and several European countries.

Other efforts to compensate victims for large-scale state misconduct followed. The United States adopted the Civil Liberties Act of 1988, authorizing the compensation of Japanese Americans forcibly interned during World War II and formally apologizing for their mistreatment. At least 81,000 former internees each received $20,000 and—more important for many—official recognition of their unfair treatment and affirmation of their American identity. Australia, Canada, New Zealand, and the United States all wrestled in varying ways and with varying success on how to fairly compensate indigenous communities displaced and deeply wounded during the course of national development.

In Europe during the 1990s charges that Swiss banks had pocketed the accounts of Holocaust victims and that neutral Switzerland had benefited through financial transactions with the Nazi regime led to other compensation programs. Responding to such criticisms, major Swiss banks created an international committee to identify accounts dormant since the war and potentially owned by victims, as well as a process to resolve claims to those accounts. To settle class action lawsuits against them in the United States, Swiss banks also agreed to provide $1.25 billion for Holocaust claimants—$800 million to pay claims of deposited assets and $450 million to compensate some victims of Nazi slave labor. The Swiss government additionally proposed the establishment of a significant fund to as-

sist victims and refugees worldwide, but a 2002 referendum to finance it by selling Swiss National Bank gold failed.

In the late 1990s, following settlement of the Swiss bank litigation in the United States, major German companies and the German government established a fund of 10 billion deutsche marks and related mechanisms to compensate the victims of Nazi slave and forced labor programs. Further mass claims programs aimed at redressing past injustices were undertaken with varying success in Eastern European countries and Russia after the fall of the Berlin Wall in 1989. Other programs sought to address tangled claims to real property in Bosnia and Kosovo after the Balkan Wars of the 1990s.

Following September 11, 2001, the U.S. government implemented an extensive program to provide compensation to those who lost family members in the terrorist attacks where the actual perpetrators could not be held liable.

UN Compensation Commission

All of the programs cited thus far rested on the voluntary acceptance of financial responsibility by the state or large private entities. In contrast, in 1991, the UN Security Council created an extensive compensation program funded by the compulsory transfer of Iraqi resources. The United Nations Compensation Commission (UNCC), an agency based in Geneva, has collected and processed more than 2.5 million claims for injuries to non-Iraqis directly caused by Iraq's 1990 invasion of Kuwait. By July 2003 the UNCC completed work on all but a few thousand of its timely filed claims, providing compensation of almost $17.8 billion to injured parties, including full payment to over 1.5 million injured individuals and families, most from developing countries.

The UNCC is the largest international compensation program and has been a laboratory for new techniques to implement large-scale programs intended to compensate rights violations. Although most claims were collected by states, the UNCC also developed procedures for Palestinians and others unable to file a claim through a state. It sought to provide compensation for valid claims when it was most needed, even if this required some approximation or crude estimate of justice. Given its huge caseload, the UNCC determined early on that it generally could not utilize traditional claim-by-claim adversarial legal processes. It instead developed more administrative procedures for collecting and assessing claims, particularly small claims of individuals and families. Initially, the UNCC's procedures, especially for individual and family claims, allowed only limited participation by Iraq, a feature much criticized by some governments and scholars. Iraq was subsequently authorized to present evidence and participate in hearings on many large claims.

To manage 2.5 million claims, the UNCC developed and applied computer-based claims collection and management techniques that since have been modified and applied in other mass claims programs. It identified various subgroups of claims presenting common fact patterns and legal issues, allowing hundreds or even thousands of individual claims to be grouped, analyzed, and checked together.

The largest such group involved more than one million individuals and families, most from developing countries, forced to abandon jobs and property and flee Kuwait or Iraq following the invasion. To check and verify their claims of wrongful departure, the UNCC developed a massive database of official and nongovernmental organization records listing persons who crossed borders after Iraq invaded Kuwait. Powerful software permitted the checking and verification of sample claims using this database and other evidence. Individuals or families received fixed amounts of compensation calculated to approximate the economic injuries suffered by most people who fled. Persons with evidence of more significant injuries could file claims for larger amounts, but those claims were considered somewhat later in the process.

Conclusion

The various innovations introduced by the UNCC and other recent mass claims processes are available for application in other future settings. Nevertheless, one ingredient is essential for any mass compensation program to succeed—money, both to pay claims and to run the program. These programs require sizable financial resources; the few successful efforts to compensate large numbers of rights victims have involved the participation of a state or other significant organization able to supply substantial funding.

In contrast, many contemporary situations of genocide or crimes against humanity involve offenses by fragile and impoverished states or by nonstate players without significant financial resources. The situation involving Iraq's 1990 invasion of Kuwait represented an unusual blending of resources and political will in the international community. This may not be repeated often. Even in cases of significant abuses involving a wealthy state, national policymakers may resist accepting financial responsibility for past wrongs, as attested by the Japanese government's unwillingness to address claims of enforced sexual slavery during World War II.

SEE ALSO Rehabilitation; Reparations; Restitution

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John R. Crook

Complicity

Historically, the commission of genocidal offenses has involved large numbers of perpetrators, whose contributions varied greatly with respect to both form and intensity. From a legal perspective, attributions of criminal responsibility to the involved parties does not mean that the overall responsibility for genocidal acts is somehow divided among them. Each individual involved in genocidal conduct bears responsibility for his or her conduct, and the attribution of individual guilt is organized pursuant to a set of recognized forms of participation. Those who participate in the commission of a genocidal act in accordance with one of those prescribed forms incur responsibility for their conduct.

One form of participation is "complicity" in genocide, pursuant to Article III(e) of the United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). Due in part to the word's terminological ambiguity and its slightly different connotation in several legal environments, the exact meaning of the word in the context of genocide is still subject to much debate, notably that taking place in the ad hoc tribunals for the former Yugoslavia and for Rwanda, and this ambiguity has yielded contradictory interpretations in existing case law.

What is certain is that an individual may be regarded as an accomplice in genocide if it is established that he or she deliberately provided practical assistance, encouragement, or moral support that had a substantial effect on the perpetration of the crime. This forms the minimum standard that a person who has contributed to the commission of the crime must meet if he is to be held responsible for complicity in genocide. His or her acts may take many forms, and the contribution of each accomplice may differ vastly in terms of its gravity. His contribution need not be an indispensable condition to the commission of the crime by the principal offender, but neither can it be entirely innocuous, in that it must have "substantially affected" the commission of the crime. Such complicity may in principle take place before, during, or after the time of the actions of the principal offender. Mere presence at the scene of the crime may, under certain circumstances, be sufficient to qualify as complicity (as, for instance, when such presence may be shown to provide encouragement to the principal offender, or when the individual present had a duty to intervene and failed to do so). So could acts of encouragement or assistance such as transporting executioners to killing sites, identifying members of the targeted group, providing forces and ammunition for the killings, and other forms of aiding and abetting the commission of the crime. The only form of complicity in the context of genocide that appears to have been criminalized, however, is complicity in genocide itself. Complicity in other acts that are related to genocide, such as "conspiracy to commit genocide" or "direct and public incitement to commit genocide," is not regarded as a discrete basis for criminal liability.

It has been suggested in a number of legal decisions that accomplice liability is limited to individuals who, from a hierarchical point of view, are lesser participants, whereas liability for genocide proper is reserved for high-level officials, which reasoning would create a division between the "planners," who would generally be principals to genocide, and "executioners," who would generally be mere accomplices to such crimes. Such a view does not appear to be supported in international criminal law. Anyone, regardless of rank or status, could in principle be found guilty of complicity in genocide, as well as of genocide itself. The law of genocide, as it stands, does not support any suggestion that different forms of liability have been assigned according to the different hierarchical levels of accused persons. What matters in respect of accomplice liability is the nature of the actions or omissions of an accused person, not his or her position within a hierarchy.

It is yet unclear whether, in order to be held responsible as an accomplice to genocide, an individual

must possess the requisite genocidal mens rea (intent), or whether it is sufficient that he or she knows of the genocidal intent of those whom he or she assists. It would appear that the pivotal element of the crime of genocide is this very element of intent, and that genocidal intent should be required of each and every participant (in the establishment of his or her guilt) in a genocidal offense, including accomplices. One would therefore be found responsible for complicity in genocide only if the prosecution were able to establish that the accused possessed the requisite special intent (as opposed to his or her mere knowing of the principal offender's intent). In the absence of genocidal intent on the part of the accomplice, *actus reus* (action) of that accomplice, whatever its degree of atrocity and however similar it might be to the acts described in the Genocide Convention, could not be regarded as genocidal. The distinction between one who commits a genocidal crime and one who is merely an accomplice to it would thus depend on the motivational aspects of their respective contributions to the crime. It is important to note that, in that respect, the sentence imposed on an individual involved in a genocide would not be based primarily, if at all, on the legal classification of his conduct as commission rather than complicity, but would depend on the gravity of his conduct—so that an accomplice could theoretically receive a heavier sentence than a principle.

Complicity in genocide as a form of participation is not freestanding, in that it can only exist when there is a punishable principal act in which the accomplice could be complicit. Consequently, it must be proven that the crime of genocide has indeed been committed before liability for complicity may attach to a lesser participant in this crime. However, the principal offender need not have been prosecuted or convicted, and he need not even have been identified.

Complicity in genocide is sometimes understood in a broader, less technical, sense than the one expounded above, whereby one may be regarded as an accomplice to genocide if one has participated in the commission of a genocidal act in a form criminalized under international law but not explicitly under the Genocide Convention. The ad hoc tribunals for the former Yugoslavia and for Rwanda have recognized, for instance, that criminal liability for genocidal actions is not limited to those who have participated in the commission of these actions in one of the forms provided for under the Genocide Convention, but that other forms of participation are criminalized under customary international law. Two such forms of criminal participation deserve particular attention here: command, or superior, responsibility and joint criminal enterprise or common purpose doctrine.

Command, or Superior, Responsibility and Genocide

A superior—civilian or military—may under certain circumstances be held criminally responsible for the acts of his subordinates, or, to be more precise, for failing to prevent or punish his crimes. Drawing on the jurisprudence of court decisions that date back to World War II (and of later court decisions), the ad hoc tribunals for the former Yugoslavia and for Rwanda have determined that three conditions must be met before a superior can be held responsible for the criminal acts of his subordinates: (1) the existence of a superior-subordinate relationship; (2) the superior knew or had reason to know that the subordinate was about to commit criminal acts or had done so; and (3) the superior failed to take necessary and reasonable measures to prevent such acts, or to punish the offenders thereof. The first condition, the existence of a superior-subordinate relationship, requires that a hierarchical relationship between superior and subordinate exist, which may be demonstrated to exist (or to have existed) by virtue of an accused party's de facto or de jure position of superiority. What must be demonstrated is that the superior had "effective control" over the persons committing the alleged offenses, that is, that he had the material ability to prevent the offenses or to punish the offenders. Second, the superior must be shown to have known or have had reason to know that his or her subordinate was about to commit or had committed a crime. It must be proven that the superior had actual knowledge, established through either direct or circumstantial evidence, that subordinates were planning to commit or had committed crimes within the jurisdiction of the tribunal, or that he possessed information that would have at least put him on notice of the risk of such crimes—such information thereby alerting him to the need for additional investigation to determine whether crimes were about to be committed or had been committed by the subordinates. Third, it must be established that the superior failed to take necessary and reasonable measures to prevent or punish the crimes of his subordinates. The measures required of the superior are limited to those that are feasible in the relevant circumstances and are "within his or her power" to enact. A superior is not obliged to perform "the impossible," but he has a duty to exercise the powers he does have within the confines of these limitations.

A commander would almost be in a position to prevent the development of genocidal intent on the part of his subordinates, nor should the law expect him to do so. What the individual of superior rank is required to do, however, is to prevent acts such as killing and the inflicting of serious physical harm when he knew or had reason to know that these acts were about to be

committed, or to punish the acts when they had already taken place. The measures (to prevent or punish) that the superior is obligated to enact are dictated, in part, by the nature of the crimes committed or about to be committed by subordinates. Because of the seriousness of the offenses that may constitute genocide, a superior is obligated to implement those measures to prevent or punish with some urgency.

The chief difficulty that attaches to the criminal liability of a commanding officer when applied to genocide (as with complicity in genocide) relates to the mental state that the commanding officer must be shown to possess or to have possessed in order that he be held responsible for the acts of subordinates. Although knowledge of the relevant acts (as defined above) is sufficient, in principle, for a superior to be held responsible for the acts of his subordinates, the crime of genocide must take in a specific intent to destroy in whole or in part a group as such. How can these two standards be reconciled? Is it sufficient for a commanding officer to know or to have had reason to know that his subordinates were committing genocidal acts in order that he be held responsible for genocide, as a commanding officer? Or must the commander himself possess the intent to destroy the group in whole or in part? Existing case law on this point is inconsistent, and arguments have been advanced in support of both positions. As was found previously, it seems more appropriate to require that the commanding officer be shown to have possessed the genocidal intent *himself*. The fact that a commander may have known of his subordinates' genocidal mens rea has evidential relevance to the extent that it may serve to establish *his own* genocidal mindset, but it is not in itself sufficient to establish his responsibility, as commander, for genocidal activities.

Joint Criminal Enterprise and Genocide

Joint criminal enterprise or common purpose doctrine is a concept that international law has borrowed from common law. Because this form of liability has the potential to lead to the excessive criminalization of behaviors and has created some legitimate concerns from the perspective of defendants, it has become a very contentious issue indeed.

Three forms of joint criminal enterprise have been recognized under customary international law. One is the instance in which all participants share the same criminal intent. The second is essentially similar to the first in that it too requires the shared intent of participants, but is limited, for all intends and purposes, to cases that involve criminal actions that took place in concentration camps. The third relates to the situation in which all participants share a common intention to carry out particular criminal acts, but in which one of the participants commits an act that falls outside of the intended joint criminal enterprise. If the act were nevertheless a "natural and foreseeable consequence" of the carrying out of the agreed joint criminal enterprise, all participants incur criminal liability for that act.

Joint criminal enterprise liability is different from membership in a criminal organization, which was criminalized as a separate offense in the Nuremberg Trials, and in subsequent trials that came under the sway of Control Council Law No. 10 (where it was determined that knowing and voluntary membership in one such organization was sufficient to entail criminal responsibility). Criminal liability pursuant to a joint criminal enterprise is not a liability for mere membership in an organization or for conspiring to commit crimes, but a form of liability concerned with participation in the commission of a crime as part of a joint criminal enterprise—a different matter.

Joint criminal enterprise is also different from the crime of "conspiracy." Although a judgment of conspiracy requires a showing that several individuals agreed to commit a crime or a number of crimes, proof of a joint criminal enterprise requires, in addition to such a showing, that the parties to an agreement took action in the furtherance of that agreement. For all three forms of joint criminal enterprise, the prosecution must establish the existence of that criminal enterprise and the part therein of the accused. A joint criminal enterprise may be said to exist where there is an understanding or arrangement amounting to an agreement between two or more individuals that they will commit a criminal offense. A person may participate in such a joint criminal enterprise in any of the following ways: (1) by participating directly in the commission of the agreed upon crime itself (as a principal offender); (2) by being a part of the criminal proceedings at the time the crime is committed, and (with knowledge that the crime is being committed or is to be committed) by intentionally assisting or encouraging another participant in the joint criminal enterprise to commit that crime; or (3) by acting in the furtherance of a particular scheme according to which the crime is committed (as evidenced by the position of authority or function of the accused), and with knowledge of the nature of that scheme and intent to further that scheme. If the agreed upon crime is committed by one or other of the participants in that joint criminal enterprise, all of the participants in that enterprise are guilty of the crime, regardless of the part played by each in its commission.

As far as the element of mens rea is concerned, proof of the existence of the first and second types of

joint criminal enterprise requires that the prosecution establish that each of the persons charged and (even if not one of those charged) the principal offender or offenders shared a common state of mind, which is required for the crime's being pursued. Concerning the third type of joint criminal enterprise, the prosecution must show that the accused possessed the intention to participate in and further the criminal activity or criminal purpose of a group and contributed to the joint criminal enterprise or at least to the commission of a crime by the group. Responsibility for a crime or crimes that had not been agreed upon would be incurred by an accused person only when it was foreseeable that such a crime or crimes might be perpetrated by one or more members of the group and the accused willingly embraced the risk that would inevitably attach to a crime's being committed. What then is the mens rea that must be shown to have existed for an individual charged for his or her part in a joint criminal enterprise, the purpose of which was to commit genocide or a genocide-related offense? Would the participant's knowledge of the fact that such a crime or crimes were being envisioned by others be sufficient to establish his or her guilt, or would the participant have to have shared the genocidal intent of the principal offender? In parallel with what has been argued above in relation to "complicity" and "command responsibility," it seems that the most logical, and most sensible, conclusion would be that, regardless of the form of criminal participation, a finding of guilt for any sort of participation in a genocidal offense requires that the accused possess a genocidal intent. The matter, however, is not settled.

SEE ALSO Attempt; Bystanders; Conspiracy; Incitement; Superior (or Command) Responsibility

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Guénaël Mettraux

I am setting forth the above in my personal capacity. This article represents neither the policies of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia nor the United Nations.

Concentration Camps

Although monstrous for most observers, totalitarianism and concentration camps belong to the same family, forming a coherent and in some sense logical entity. Concentration camps were not created *ex nihilo* by totalitarianism. They appeared for the first time in 1896 in Cuba, at the time of an armed insurrection against the Spanish Crown. Valeriano Wyler y Nicolau, the *capitan general* of the island, decided to lock up a large portion of the peasant population in so-called camps of reconcentration, in order to isolate the guerrillas totally. Four years later, Lord Horatio Kitchener would take this as his model during the Boer War in South Africa.

The first camps were temporary, but all the ingredients of what would become the scandal of the concentration camp were nonetheless present: the notion of collectively punishing an entire group; the idea of preemption (with most of the interned being innocent); administrative detention (whereby no court has judged the internees); and bad health conditions (with mortality high from the start). Such a camp is most often hermetically sealed from its surroundings, and rapidly and summarily consigned, to mass together supposedly dangerous or threatening individuals or groups of individuals.

Why did colonial rulers decide, around the beginning of the twentieth century, to intern civilians en masse? The answer lies in the advent of mass politicization, when even the humblest citizen was portrayed as an active subject of the nation, and therefore in time of conflict imagined as a potential enemy. Until 1880 political life was largely restricted to the elite(s), but the early 1880s witnessed a significant change in political conditions, which resulted in the masses acquiring a much stronger sense of political consciousness.

Origins of the Concentration Camp

Two great passions of modern political life—Nation and Revolution—arouse the masses, and through conscription, which began with the Napoleonic Wars, have become enormously important in modern wars. With the confrontation of gigantic armies and each side determined to prevail, major conflicts have given rise to the problem of what to do with captured enemies. The problem is immense, because not only are there many prisoners, but it makes no sense to liberate them, whether shortly after capture, or thereafter. This is because a captured soldier is, and will remain for the duration of the conflict, a potential enemy and thus a distinct threat. From this comes the necessity of neutralizing him for as long as the war lasts. In fact, it was the U.S. Civil War that inaugurated the practice of interning great masses of people. Camps were created urgently and with necessarily scant regard for health factors—to receive on both sides huge populations of prisoners. These camps consisted of canvas tents sur-

The main entrance to Dachau, the first Nazi concentration camp, in 1945. The camp, site of a former gunpowder factory, had been established in February 1933 as a detention center for "enemies of the people." [BETTMANN/CORBIS]

rounded by metal wire fences. Barbed wire was not invented until 1867, two years after the South's capitulation, for the purpose of management and surveillance of the great herds of cattle in the American West. Barbed wire would become an enormous success, because it is cheap and easy to make and install. By 1896 the Spanish began using these "metal thorns" to surround the camps where they reconcentrated Cuban peasants and their families.

By 1900 it was the British who resorted to the practice in South Africa, followed by the Germans in 1904 in Hereroland (now Namibia). The Herero were the first victims of genocide in the twentieth century, but also of the policy of concentration camp elimination through work. The few survivors of the 1904 genocide found themselves penned in forced work camps and/or hired for the day by private enterprises.

The dehumanizing process was unleashed, and nothing henceforward would stop this instrument par excellence of social control. It would spread even to the very heart of the European continent. It is impossible to understand the concentration camp system (from Soviet Russia to Nazi Germany, by way of France during the Third Republic) without considering World War I (1914–1918) and its consequences. The concentration camp universe can be seen as a product of the extreme violence of this war and a result of the brutalization of European society, especially in Germany and Russia, within the context of an increasing scorn for so-called civil society. Soon the detention camp for external enemies (civilian or military) would be destined for the internment of internal enemies; on August 8, 1918, Russian communist leader Leon Trotsky ordained the establishment of two camps, at Mourom and Arzamas, for "'suspicious agitators, counterrevolutionary officers, saboteurs, parasites, speculators' who will be interned until the end of the civil war" (Werth, 1997, p. 85). Soviet writer Alexander Solzhenitsyn correctly points out that for the first time "the word [camp] is

applied to citizens of the country itself" (1974). From this moment on the enemy was seen as internal, and the function of the camp was to render innocuous such subjectively guilty individuals. Adolf Hitler's Germany copied Soviet Russia in this regard—witness the twelve thousand people arrested on February 28, 1933, the morning after the Reichstag fire. A decree promulgated for "the protection of the people and the State" (*Schutz von Volk und Staat, decree of the Reich President for the protection of the state*) aimed to isolate behind barbed wire any person who was or might be opposed to the regime. The detention of people known to be innocent of any crimes was deemed preventive (*Schutzhaft*).

A result of improvisation, the concentration camp system was imposed in the former Soviet Union as well as in Nazi Germany, and quickly became a permanent feature. The will to transform fundamentally an existing order in pursuit of an ideology, whether social or racial, leads to this system. It arises out of deep necessity, as something that is integral to totalitarian regimes, indicated by the fact that all such regimes have been endowed with powerful concentration camp systems: from the former popular democracies of Eastern Europe to communist China, by way of North Korea. Totalitarianism is anti-individualist, a kind of group religion that aspires to remodel the individual, adapting its method as necessary, from positive influences (propaganda) to negative education (brutality). Totalitarian concentration camp experiences are marked by this double perspective; they are terrorist but also "pedagogical."

The creation of Dachau can be very well understood from this point of view, as well as its infamous motto, "*Arbeit macht frei*," which means "Our own labor makes us free." Inaugurated March 21, 1933, by Heinrich Himmler, Dachau was a camp of preventive detention (*Schuzthaftlager*), aimed at both isolating enemies of the people and setting them on the right road. Dachau is often mentioned as the first of the Nazi concentration camps, but the initial camp dates from February 1933, or less than a month after the accession of Hitler to the Chancellery. Something like seventy camps, all told, would spring up just about everywhere in Germany before the end of World War II.

At Dachau an offer was held out to Aryan ideological "deviants," including a few dozen communists, who freshly converted to Nazism, were liberated from the camp. Economic functionality, that is to say productive work, was not necessarily linked to camp life. In the British camps of South Africa (1900), as in the French camps of the Third Republic, there was no work, no more than in the camps of the Algerian War. Work was not a component of nontotalitarian concentration camp institutions. At the beginning even the Nazi camps had no productive goal, nor did they serve any economic purpose. Their essential function was to tame wayward minds, and break the rebels and any other opposition.

Progressively, the notion of profit emerged, to the point of transforming the camps into veritable factories, because it appeared as though the concentration camps would remain permanent institutions. Being that the camps were going to exist, they might as well yield an economic return. The idea of having the cost of the institution borne by the detained themselves arose at the same time in Germany and the former Soviet Union, where the principle of "cash autonomy" would come into use. Confirmed by the testimony Tzvetan Todorov gathered about work in the communist camps, huge profits were sometimes made from unpaid labor. Detainees were unable to refuse any arduous task, no matter how backbreaking. The Nazi camps became guided by the economic needs of the SS in 1937 and 1938, when camps were constructed near quarries and SS factories; not until 1942 were they integrated into the war effort of the Nazi state. By mid-September 1942 Himmler would invent the notion of "extermination through work" for Jews and other victims. Germany's great war machine needed replenishment, so the concentration camp supply of workers started growing exponentially. In 1941 the camps accounted for only 60,000 individuals, mostly Germans or Austrians. In August 1942 this number grew to 115,000. In August 1944 it reached 524,268. By mid-January 1945 a peak of 714,211 detainees was achieved. Hundreds of thousands of people would be sold to German industrial enterprises (Siemens, Daimler-Benz, Krupp, Volkswagen, Knorr, IG Farben, Dynamit Nobel, Dresdner Bank, BMW, AEG).

A Complex Reality

Unquestionably, the camps are creatures of modernity created by various kinds of political regimes, but all camps were not the same. Bloemfontain (the Boer camp in South Africa), Manzanar (in the United States), and Gurs (in France) cannot be compared to Nazi Germany's Buchenwald or the former Soviet Union's Magadan, nor even to Belene (in communist Bulgaria). Using the same term, *concentration camp*, to designate detention centers, work camps, even extermination centers is the source of much confusion and far too much relativism. The Manzanar camp that served to intern Americans of Japanese ancestry during World War II cannot really be compared to a Nazi, Soviet, or Chinese camp. There are at least two kinds of camp, if not three, if the six Nazi centers of extermination are (mistakenly) included:

The Auschwitz concentration camp in a 1995 photograph. A former Polish cavalry barracks, the camp was remodeled in 1940 as part of the plans for the Nazis' Final Solution. It is the site of the largest mass murder in the history of humanity. [DAVE G. HOUSER/CORBIS]

1. *Detention and/or internment camps* whose purpose is to isolate temporarily suspected or dangerous individuals. In this category are camps created during conflicts to imprison national "enemies" (as in August 1914 and September 1939), or those perceived as such (e.g., Japanese Americans in the United States). In most of these camps slave labor is unknown; their function is prophylactic, not productive. Living conditions in them can be harsh and sometimes atrocious whatever the regime and its purpose: colonial (Herero), security (Gurs), or dictatorial (Franco).

2. *Concentration camps*. These are the camps that constitute the most significant category, and are at the heart of the totalitarian concentration camp phenomenon, whether one is speaking of the Nazi KZ, the Soviet gulag, or communist European and Asian (*laogai*) camps. These camps, which are characterized by a quadruple logic of humiliation, reeducation, work, and annihilation, are essential to the regimes that created them. They are usually veritable extermination camps, where the mortality rate could approach 50 percent.

The four Nazi centers of immediate execution (Belzec, Chelmno, Sobibor, and Treblinka) should be excluded from this list, as well as Auschwitz-Birkenau and Majdanek. Technically speaking, these could not be called camps, even of extermination; they were not destined to receive internees, but to immediately exterminate those rounded up from the four corners of Europe.

SEE ALSO Auschwitz

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Joël Kotek

Conspiracy

Conspiracy is one of the four "punishable acts" of genocide, in addition to the crime of genocide itself, declared punishable in Article III of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The other three acts are direct and public incitement, attempt, and complicity. Subsequent instruments of international criminal law, such as the statutes of the ad hoc tribunals for the former Yugoslavia and Rwanda, have maintained this distinction between genocide itself and the four other punishable acts. The distinction reflects similar provisions in many domestic criminal law codes that define a crime, such as murder or rape, and then set out various forms by which an individual may participate in the crime other than as the primary or principal perpetrator.

The word *conspiracy* is derived from Latin and means, literally, to breathe together. By its very nature, therefore, conspiracy is a crime that must be committed collectively, involving a minimum of two offenders. The reference to conspiracy to commit the crime of genocide in Article III of the Genocide Convention is somewhat enigmatic, and there is nothing further in the text to suggest exactly what is meant. It is not necessarily helpful to look at national legal provisions for guidance, because the term *conspiracy* means different things in different criminal codes. In some, notably those based on continental European models like the Napoleonic penal code, *conspiracy* refers to a form of conspiracy. It entails collective planning or organization of a crime that is actually committed. Under the common-law system, on the other hand, conspiracy is a crime that can be committed once two or more persons meet and agree to commit a crime, even if it is not committed. It is thus an "inchoate" or incomplete crime.

Two factors suggest that the common-law approach should be followed in defining the crime of conspiracy to commit genocide. First, the published record of the General Assembly and the other United Nations (UN) bodies involved in drafting the Genocide Convention make it quite clear that this is what was intended. To an extent, it is acceptable under international law to refer to the debates surrounding adoption of a text as a way to interpret it. Second, if the rival interpretation is adopted, whereby conspiracy is treated as a form of complicity, then there is no need for the provision at all. Complicity to commit the crime of genocide is also a punishable act recognized by Article III of the Convention. Because the common-law concept of conspiracy was unfamiliar to lawyers from the continental tradition, there was difficulty finding an appropriate term for the French version of the Convention. Ultimately, the drafters opted for *entente* instead of *complot,* but they admitted there was no entirely appropriate term.

In a late 1990s ruling, the International Criminal Tribunal for Rwanda confirmed that conspiracy to commit genocide is an inchoate or incomplete offense, committed even when there is no evidence that the underlying crime of genocide has actually taken place. In the *Musema* case, the Trial Chamber said it was "of the view that the crime of conspiracy to commit genocide is punishable even if it fails to produce a result, that is to say, even if the substantive offense, in this case genocide, has not actually been perpetrated." Musema had been the director of a Rwandese tea factory during the 1994 genocide. He was convicted by the international criminal tribunal for his role in the killings.

The tension between the two major criminal law systems with respect to the concept of conspiracy had emerged at Nuremberg, three years before the Genocide Convention was adopted. The Charter of the Nuremberg Tribunal had recognized conspiracy as a distinct crime with respect to aggression, referring to "participation in a common plan or conspiracy for the accomplishment" of "a war of aggression, or a war in violation of international treaties, agreements or assurances." At the London conference, where the charter was adopted, the French and Soviet delegations agreed with the British and Americans that conspiracy was a common-law concept, because this was appropriate to the type of crimes being prosecuted. However, the intent of the drafters was not fully grasped by the judges at Nuremberg, who ruled that conspiracy could not stand alone as an autonomous crime and that, instead, it was a form of participation in a crime that had actually been committed. The prosecutor at Nuremberg had indicted Nazi leaders for conspiracy with respect to war crimes and crimes against humanity, as well as aggression, but this was rejected by the judges as being inconsistent with the Charter of the Nuremberg Tribunal.

Difficulty on the issue still persists. The much more recent Rome Statute of the International Criminal Court, adopted in 1998, does not entirely succeed in incorporating the common-law approach to conspiracy to commit genocide. Instead of listing the four other

punishable acts together with the definition of genocide, as is the approach in the statutes of the ad hoc tribunals for the former Yugoslavia and Rwanda, the Rome Statute presents the definitions of three categories of crime—genocide, crimes against humanity, and war crimes—together in a series of provisions, Articles 6 through 8. In a totally separate section of the Rome Statute, Article 25, the various ways in which a person other than the principal offender may actually participate in the crime are enumerated.

The problem with the Rome Statute is that although conspiracy, at least in its inchoate or common-law formulation, was already recognized in international law with respect to the commission of genocide, there is nothing similar for crimes against humanity or war crimes. The same situation exists with respect to another of the punishable acts, direct and public incitement. In the latter case, Article 25 of the Rome Statute resolves this with a separate paragraph, making direct and public incitement to commit genocide a distinct form of the offense, but does not do the same for crimes against humanity and war crimes. It does not, however, do the same with respect to conspiracy to commit genocide. Nowhere does Article 25 actually use the word conspiracy. This is the best example of a failure in the Rome Statute to translate faithfully the terms of the Genocide Convention. Thus, the crime of conspiracy to commit genocide, while a punishable act under the 1948 Convention, cannot be prosecuted before the International Criminal Court.

Although it may be rather exceptional to prosecute crimes that do not actually occur, but that are only discussed and planned, the listing of conspiracy to commit genocide as a punishable act is a way of underscoring the seriousness of the crime and the intention of the world community to prevent it. After all, the 1948 Convention includes the word prevention as well as punishment in its title. Making punishment of conspiracy a distinct offense also provides criminal justice with a tool that can strike at criminal organizations, especially their leaders. Similar approaches are used in various domestic legal systems in order to deal with other particular forms of criminal behavior that elude prosecution, such as organized crime and gangsterism.

It would probably not be acceptable to convict an individual of genocide simply because that person was a member of an organization which had been involved in genocidal activity, such as the Nazi SS or Rwandan *interahamwe.* The Nuremberg Tribunal acquitted some Nazi leaders of conspiracy—Wilhelm Frick, Martin Bormann, and Karl Dönitz—because there was no evidence that they had actual knowledge of planning to commit crimes. But once it can be established that an individual participated in a meeting with others at which the crime was organized, then the crime of conspiracy to commit genocide is committed, and this is as it should be if prevention is to be truly effective. In one case before the International Criminal Tribunal for Rwanda, the Trial Chamber warned the prosecutor that indictments for conspiracy to commit genocide must mention names or other identifying information on coconspirators (*Prosecutor v. Nsengiyumuva,* May 12, 2000).

There has only been one conviction for conspiracy to commit genocide before the International Criminal Tribunal for Rwanda, and none before the International Criminal Tribunal for the Former Yugoslavia, where it has not even been charged in indictments. On September 4, 1998, the man who had been prime minister of Rwanda during the weeks in 1994 in which genocide took place, Jean Kambanda, was found guilty of conspiracy to commit genocide and sentenced to life imprisonment. Kambanda pleaded guilty to the charge and conceded evidence that he had been part of the conspiracy. He was also convicted for the underlying crime of genocide, and to this extent the conviction for conspiracy was really redundant and should not have been imposed. But in a contested case, that of Elizaphan and Gérard Ntakirutimana, the same tribunal acquitted the accused for lack of any evidence that they had been part of meetings at which the crimes were planned, although they were both found guilty of genocide as such.

This has always been the great problem in proving conspiracy. Evidence of the meetings at which the crime is planned is difficult to obtain. Usually, this will require the cooperation of an insider who agrees to inform on his coconspirators. Sometimes international prosecutors will offer an individual immunity and other benefits in exchange for such insider evidence, but this raises other problems. The evidence of such insiders may be dismissed as lacking credibility, because it has in effect been purchased from them in exchange for favorable treatment.

The record of the ad hoc tribunals, and the effective exclusion of conspiracy to commit genocide from the Rome Statute of the International Criminal Court, may simply attest to the practical difficulties involved in such prosecutions. The idea of those who drafted the Genocide Convention in 1948 was a good one, namely to nip genocide in the bud and prosecute its organizers before the crime actually takes place. In practice, regrettably, the international community waits for the crime to occur before intervening. International criminal courts have enough of a burden dealing with genocide that has been committed. In practice, then, the

criminalization of a stand-alone crime of conspiracy to commit genocide, despite the fact that it is not actually committed, has been of no real significance.

SEE ALSO Collaboration; Complicity

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Control Council Law No. 10

Entered into force on December 20, 1945, Control Council Law No. 10 created a framework for the post–World War II trials of German military and civilian personnel. Commanders of the four zones of occupation in postwar Germany made up the Allied Control Council. Major war criminals were to be tried, under the London Charter, by the International Military Tribunal (IMT). Control Council Law No. 10 applied to those individuals not considered major war criminals.

Control Council Law No. 10 provided definitions for specific offenses, so that all the Allied powers would be using the same legal standard. These definitions were taken from the London Charter, with minor adjustments, and included crimes against peace, war crimes, and crimes against humanity. Control Council Law No. 10 did not ascribe particular penalties to offenses; rather, it named penalties that a court could apply to any person convicted of an offense falling into one of the three categories named above. These penalties included life imprisonment, imprisonment for a term of years, and capital punishment.

As it referred to and incorporated the terms of the London Charter, Control Council Law No. 10 did not permit superior orders as a form of defense, but allowed their consideration as a mitigating factor in determining punishment. Further, no one was immune from prosecution by virtue of a governmental position.

Control Council Law No. 10 also referred to the right of the IMT to declare as criminal a particular organization. It provided for the conviction of members of such organizations. The IMT declared as criminal certain categories of leadership within the Nazi Party, Gestapo, and SD, and most members of the SS.

Although Control Council Law No. 10 did not create courts to conduct trials, it assumed that each of the Allied powers would establish appropriate courts for this purpose in its zone of occupation. Each zone commander would then determine the rules of trial.

The Union of Soviet Socialist Republics (USSR) did not hold such trials in its zone of occupation, but did try Nazi military personnel in the USSR for atrocities committed against civilians during Germany's occupation of the former Soviet Union. France held a small number of trials in its zone of occupation and a larger number in France for atrocities committed during Germany's occupation of France. Great Britain conducted numerous trials in its zone of occupation before military courts, a number of them involving the killings of prisoners of war.

In implementing Control Council Law No. 10, the U.S. military government issued Ordinance No. 7, dated October 18, 1946, that provided for three-judge courts. Judges were to be drawn from a pool of attorneys in the United States. A listing of the rights of the accused was included. Judgments would enumerate the reasons behind the justices' decisions; they were final and not subject to appeal.

The United States established six such courts, all at Nuremberg. They heard a total of twelve cases between 1946 and 1948, all but one involving multiple defendants. Charges related to medical experiments performed on concentration camp inmates, the killing of the mentally ill in German hospitals and nursing homes (via the Nazis' euthanasia program), the persecution of Jews and political opponents in Germany, and the killing of Jews and political opponents in occupied countries of the Eastern Front.

German industrialists were tried in these courts for employing forced foreign laborers, concentration camp inmates, and prisoners of war in war industry plants. Military figures were tried for killing civilians in Yugoslavia and Greece as reprisal for partisan attacks on German troops. Some defendants were charged with membership in an organization declared criminal by the IMT, typically in conjunction with other charges.

The U.S. command additionally established military courts at Dachau to focus on violations of the rights of prisoners of war and atrocities committed in the concentration camps. German courts also conducted trials of Germans accused of offenses during World War II.

Even though the International Military Tribunal at Nuremberg, trying, as it did, top Nazi leadership, gained more notoriety, a much larger number of trials were held before the courts created under Control Council Law No. 10. These trials involved thousands of defendants. They were important not only for the penalties imposed on particular defendants, but also for the body of law they developed. The United States published the proceedings of its Nuremberg cases in fifteen volumes: *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10.*

SEE ALSO London Charter; Nuremberg Trials; Nuremberg Trials, Subsequent

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John Quigley

Convention on Apartheid

The International Convention on the Suppression and Punishment of Apartheid was adopted by the United Nations (UN) General Assembly in November 1973. The treaty was an attempt to criminalize racial separation and segregation policies such as those that had been imposed by South Africa's white minority government. Under the Convention, which now has more than one hundred states parties, the crime of apartheid refers to a series of inhuman acts—including murder, torture, arbitrary arrest, illegal imprisonment, exploitation, marginalization, and persecution—committed for the purpose of establishing and maintaining the domination of one racial group by another. The Convention is particularly notable for its departure from the traditional rule of state sovereignty in that it authorizes the national courts of states parties to attribute individual criminal responsibility for the crime to both government leaders and their supporters in certain instances.

Although the UN Security Council and General Assembly had already condemned the apartheid policies of South Africa's national party government previously, the General Assembly's adoption of the Apartheid Convention provided the first formal legal framework within which UN member states could impose individual and collective sanctions aimed at pressing the South African government to change its racist policies. Importantly, the drafters of the Convention chose to formulate it in general terms, so that, in addition to the Convention's direct bearing on the "apartheid government," it would deter and prohibit any other states from adopting similar policies. In doing so, they gave added impetus to the continued development of a general prohibition against crimes against humanity.

Notwithstanding the Convention's stated or ostensible general and specific purposes, the fact that its criminal provisions are so broadly defined as to be practically unworkable raises doubts as to whether the states that adopted it ever really intended to make good on their forewarnings of individual prosecutions. In fact, since its adoption in 1973, no one has been charged under the Convention and, given the negotiated nature of South Africa's democratic transition, it has become very unlikely that anyone from the former regime will ever be prosecuted for the crime of apartheid. Arguably, therefore, the Convention's real significance lies not in individual criminal accountability (which it failed to bring about), but rather in its authoritative condemnation of the policy of apartheid as a crime against humanity—a conclusion also recognized by the majority of the members of South Africa's Truth and Reconciliation Commission.

The future of the Apartheid Convention itself as a legal instrument within the emerging international criminal justice framework is uncertain. Since 1993 only Yugoslavia (which, effectively, did not have a choice in the matter) has bothered to ratify the Convention. Even South Africa's new democratic government has not ratified the Convention. Nevertheless, future perpetrators of apartheid-like policies are on notice as to their potential international criminal liability, thanks less to the Convention itself than to the inclusion of a more precise definition of the crime of apartheid within the Rome Statute of the International Criminal Court (ICC). Within the latter's criminal jurisdiction, the crime of apartheid is a crime against humanity when it is knowingly committed as part of a widespread or systematic attack directed against any civilian population. More specifically, the crime of apartheid refers to inhumane acts (i.e., murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution, and the enforced disappearance of persons) committed in the context of an institutionalized regime of systematic oppression and domination of one racial group by another.

SEE ALSO Apartheid; International Law; Namibia (German South West Africa and South West Africa); South Africa

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Convention on the Prevention and Punishment of Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations (UN) General Assembly on December 9, 1948. Within three years the Convention obtained the twenty ratifications required for entry into force. By 2003 some 130 states had ratified or acceded to the Convention. Accordingly, they are bound as a matter of international law to respect the obligations that it enumerates. But even for those states who have not, the key provisions of the Convention are widely accepted as a codification of customary legal norms that bind all states.

In his 1944 book *Axis Rule in Occupied Europe*, the inventor of the term *genocide*, Raphael Lemkin, deplored the shortcomings in the international legal protection of national minorities. He called for the development within international criminal law of an express prohibition on the destruction of minorities, which he named the crime of genocide. The Nuremberg Trial addressed the Nazi attacks on minorities, especially European Jews, but under the heading "crimes against humanity." The Nuremberg precedent was limited, because it applied only to atrocities committed during international armed conflict.

Within days of the Nuremberg judgment, in October 1946, India, Cuba, and Panama asked that the question of genocide be put on the agenda of the first meeting of the General Assembly, which was then in session. Critical of the failure of the Nuremberg Trial to condemn pre-1939 acts of the Nazi regime, they called on the General Assembly to condemn the crime of genocide, even when committed in peacetime. Also, noting that certain crimes of "relatively lesser importance," such as piracy and trafficking in drugs or pornography, were declared as international crimes, they submitted the same should be the case for genocide. This would authorize the courts of any country to punish the crime, even acts not committed on the territory or by the nationals of such a state, a concept known as universal jurisdiction. In December 1946 the General Assembly adopted a resolution condemning genocide as a crime under international law, and calling for the preparation of a treaty on the subject.

Over the next two years various specialized bodies within the UN labored over the text of the draft convention. The finished text contained a definition of the crime of genocide and made clear that no one—not even a head of state—was exempt. It specified that the crime could be committed in time of peace, and it imposed on states a duty to include the offense in their own national legislation. However, the original hope that the Convention would also recognize universal jurisdiction for genocide failed to obtain sufficient support. It specified that genocide should be punished before the courts of the country where the crime was committed or, alternatively, by an international criminal court. But an international court did not yet exist, and it was only in 2002 when the Rome Statute of the International Criminal Court came into force that the Convention became fully operational in this respect. The text also specified that disputes between states about their obligations under the Convention could be litigated before the International Court of Justice.

The terms of the Convention were a difficult compromise. At the time it was drafted, states were still extremely uncomfortable with the idea that serious violations of human rights, especially those directed against national, ethnic, racial, or religious minorities, committed within their own borders in peacetime might be deemed of concern to the international community. Most of the great powers still held substantial colonial empires, while in the United States racist laws enforced a form of apartheid on the descendants of African slaves, especially in the southern states.

The most important consequence of these issues was an exceedingly narrow definition of the crime of genocide. The General Assembly intended to confine the crime of genocide to intentional acts aimed at the physical destruction of a national, racial, ethnic, or religious group. Acts of cultural genocide, including what might be called ethnic cleansing, were quite intentionally excluded from the Convention. Efforts to include political, economic, and social groups within the Convention were also voted down.

Despite these shortcomings, the Convention on the Prevention and Punishment of the Crime of Genocide remained the preeminent treaty in international criminal law for more than half a decade. By compari-

son, no similar treaty was ever adopted with respect to the related offense of crimes against humanity. At Nuremberg the scope of crimes against humanity had been restricted by the requirement that they be committed within the context of a war. But the acts that they punished were much broader, including such broad concepts as "persecution" and "inhumane acts" that meant they could extend to a wide range of human rights abuses.

As a result, states were willing to accept a treaty like the Genocide Convention, with its narrow definition, but resisted any similar obligation with respect to crimes against humanity. Over the decades that followed adoption of the Convention, there were many attempts to stretch the definition of genocide so as to include human rights abuses that it did not, on a literal reading of the text, appear to cover.

By the 1990s the distinction between genocide and crimes against humanity became less significant. The Rome Statute, which applies to both genocide and crimes against humanity, imposed many of the same obligations on states that they had assumed under the Genocide Convention. This evolution was largely the result of developments in international human rights law. But although it had become less important in a legal sense to establish that an atrocity met the definition of genocide as set forth in the Convention, the word itself retained a terrible stigma and it remains important for many groups that are victims of human rights violations to claim that genocide has been committed.

The definition of genocide in the 1948 Convention has stood the test of time. In contrast with definitions of crimes against humanity and war crimes in various international legal texts, which have changed and, in a general sense, expanded over the decades, attempts to amend the text adopted by the General Assembly in 1948 have met with resistance. The statutes of the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as the International Criminal Court, reproduce the 1948 definition without any change. This argues strongly for the definition being a statement of customary international law, generally accepted by the international community. However, some of the other provisions of the 1948 Convention, such as the rejection of universal jurisdiction and the establishment of the compulsory jurisdiction of the International Criminal Court, cannot be said to correspond to international custom.

The Convention found little concrete application for many decades after its adoption. By the 1990s, however, it found a new dynamism. There were important prosecutions for the crime before the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as several cases alleging genocide before the International Court of Justice. There has also been an increasing tendency to prosecute the crime before national courts. On the fine points of interpretation of the definition and of the Convention as a whole, considerable uncertainty remains. As long as violent ethnic conflict persists, the Genocide Convention will remain an important component of the international legal protection of human rights.

SEE ALSO Genocide; International Law

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Conventions Against Torture and Other Cruel, Inhuman, and Degrading Treatment

Torture is an evil that cannot and will not be tolerated in our times. Since the end of World War II, international human rights treaties (both global and regional) that protect the individual against acts of torture committed by state authorities have come into being. Following the adoption of these treaties, there were calls to strengthen the protections provided for in the treaties, which led to the creation of law enforcement bodies designed to punish and prevent the crime of torture. The United Nations (UN) Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, a global treaty, was adopted in 1984. In the Americas the Inter-American Convention for the Prevention and Punishment of Torture was adopted in 1987. In Europe the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force in 1989. These three treaties, each applicable within specific regions and having an emphasis of its own, constitute the fundamental protection of individuals against acts of torture.

The UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture) was adopted by the UN General Assembly on December 10, 1984, and entered into force on June 28, 1987. By August 2003, 133 states had ratified the treaty and a further twelve states had signed it. The convention is based on a UN General Assembly declaration that was issued on December 9, 1975.

The Obligations Undertaken

Article 1 defines *torture* as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as [obtaining information or a confession, intimidation or coercion, or discrimination]." The convention takes in torture inflicted by state officials, and by private individuals who act with the consent or acquiescence of state officials.

State parties are invested with obligations that appertain to both the national and the international domains. At the national level states are obliged to take measures to prevent acts of torture. No exceptional circumstances, or commands from persons of superior rank, may be invoked as a justification of torture. All acts of torture must be made criminal offenses under national law and must be censured by penalties that take into account the grave nature of the crime. Individuals who complain of having been victims of torture shall have their cases examined promptly and impartially, and they shall be protected against all reprisals. Victims of torture shall be compensated. Confessions obtained under torture shall not be used as evidence in a court of law. Law enforcement personnel shall be educated and informed with regard to the punishment of torture. Rules, instructions, methods, and practices relating to interrogations shall remain under systematic review.

At the international level the convention entrenches the principle of universal jurisdiction. Thus, a state party shall have jurisdiction over persons suspected of having committed acts of torture, irrespective of their nationalities and of the places where the alleged crimes were committed. Acts of torture are to be classified as extraditable offenses in any extradition treaty existing between contracting states, but "no State Party shall expel, return, or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." If suspected persons are not extradited, they shall be tried in the state in which they were found.

Measures of Implementation

Article 17 establishes a Committee Against Torture (CAT). It is composed of "ten experts of high moral standing and recognized competence in the field of human rights who shall serve in their personal capacity." They are elected by state parties for periods of four years and may be reelected.

State parties must report periodically on the measures they have taken to fulfill the obligations with which they have been endowed. These reports are transmitted to all state parties. They are not public, but an individual report will often be made public by the relevant state party. CAT may make general comments on the reports. CAT may also include such comments and any replies it has received from state parties in its Annual Report, as provided for in Article 24. The convention does not provide for any other measure or action on the part of CAT with regard to state reports.

Options for the filing of complaints (by individuals or states who allege severe human rights violations) were modeled after those that pertain to the UN Covenant for Civil and Political Rights. All proceedings that refer to complaints filed by one state against another state are wholly confidential. If no solution to a dispute involving states is found, CAT prepares a report in which it summarizes the available facts, and the report is then transmitted to the relevant state parties.

Complaints may be filed by individuals who claim to be victims of violation by the state party under whose jurisdiction they reside. The claimant must have exhausted domestic pathways for the redress of grievances and must not have submitted a claim to another international body of investigation or settlement. The CAT meetings at which testimonies and available evidence are examined are closed meetings. The conclusions of CAT are forwarded to the claimant and to the relevant state party. A written summary of the argument is put into the CAT's Annual Report to the General Assembly.

Article 20 of the convention allows for a CAT inquiry into an allegation of torture in the absence of a complaint. If CAT receives reliable information that torture is being practiced systematically in the territory of a state party, it must ask that state to respond to the allegation. This kind of discourse can take place only if there is complete cooperation on the part of the state party in question. It is wholly confidential. The findings of CAT are communicated to the state party, together with the committee's recommendations and/or warnings. A state can opt out of this practice at the time of its ratification of the convention (Article 28).

The Inter-American Convention for the Prevention and Punishment of Torture

The Inter-American Convention for the Prevention and Punishment of Torture is the first treaty to come out of the Organization of American States (OAS) whose purpose is to strengthen the systems for the protection of human rights in the Americas, which were introduced under the 1948 OAS Charter and the American Convention on Human Rights of 1969. The Inter-American Convention entered into force on January 29, 1987, and presently binds sixteen states in the Americas. The obligations incumbent on state parties, as well as the methods of the convention's implementation, are very similar to those set forth in the UN Convention Against Torture.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The efforts of several states to amend the Convention Against Torture by adding a provision for the rights of experts to make regular visits to places of detention have so far failed. In March 1980 Costa Rica presented to the UN Commission on Human Rights a Draft Optional Protocol to that effect. The text of the protocol was based on a proposal made in 1976 by the Swiss banker and lawyer Jean-Jacques Gautier, founder of the Swiss Committee Against Torture. Because the efforts to amend the Convention Against Torture were unsuccessful, the Parliamentary Assembly of the Council of Europe (CoE), in 1983, submitted Gautier's proposal to the member states of the CoE. On November 26, 1987, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Anti-Torture Convention) was opened for signature. It entered into force on February 1, 1989. It is ratified by all forty-five member states of the CoE. Ratification of the European Anti-Torture Convention in fact constitutes a condition for membership in the CoE. The convention is nonjudicial and preventive in nature. The European Committee for the Prevention of Torture (CPT), a committee of independent and impartial experts, makes periodic ad hoc visits to places of detention of virtually any kind and submits its findings to the authorities of the state in question. The convention is based on the principle of cooperation, and its work is carried out in strict confidence. The CPT's reports are published only if the state in question fails to cooperate with the committee or refuses to make the improvements that the committee has recommended. Contracting states agree to grant the CPT unlimited access to places of detention, including the right of its inspectors to move freely inside such places and to interview in private any person whom they believe can provide relevant information.

The European Anti-Torture Convention in conjunction with the European Convention on Human Rights are an effective means to combat the crime of torture. It is hoped that a similar protective system will be adopted by the UN.

SEE ALSO International Law; Torture

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Cossacks

On January 24, 1919, the Orgburo, the administrative body subordinate to the Politburo, issued a secret order for the immediate genocide of the Cossacks; local officials were ordered to carry out the policy with the utmost ruthlessness. The categories of those selected for extermination were broad and loosely defined, and within the space of twelve weeks more than ten thousand Don Cossack men, women, and children were executed by revolutionary tribunals. The policy was abruptly abandoned in March 1919 when the Cossacks revolted, driving the Bolsheviks from the Don territory and setting the stage for the climactic phase of the Russian civil war. The policy of genocide against the Cossacks was unique and arose from a complex matrix of Cossack history, Bolshevik beliefs, and the course of the civil war.

In 1914 the Cossacks numbered approximately 4.5 million people scattered across the whole of the Eurasian from the River Don in the west to the River Ussuri in the Far East. The Cossacks had originated in the steppe lands of Russia in the sixteenth century when Slavic frontiersmen and fugitives joined with nomadic

Cossacks wore dark blue uniforms and black fur hats. In this photo from 1910, Cossacks stand in formation in St. Petersburg. Their corps would be liquidated in 1919. [BETTMANN/CORBIS]

peoples of the steppe to form distinct and autonomous communities. For the first two hundred years of their existence, the Cossacks and their way of life had been the incarnation of freedom for the enserfed masses of Russia. From the late eighteenth century, however, the tsarist state succeeded in harnessing the Cossacks' military skills for its own ends, enlisting them to serve either as soldiers or as a form of paramilitary police. By the twentieth century the Cossacks were the most feared defenders of the tsarist state and widely loathed, particularly by the revolutionary movement and the Jews. Cossack attitudes toward the throne and the revolutionary movement were actually far more complex and ambiguous than the popular stereotype suggested. But the perception that all Cossacks were inveterate reactionaries remained an instinctive prejudice for all those opposed to the tsarist regime.

With the Bolsheviks' seizure of power in October 1917 came the civil war. The rapid descent into barbarism by all sides formed the immediate context for the genocide of 1919. But it was the combination of prejudice, the habit of violence, and Cossack behavior during the civil war that coalesced to trigger the policy of genocide. Although divided in their attitudes toward the October Revolution, most Cossacks were much less hostile to the Bolshevik regime than is generally recognized. Nevertheless, the experience of Bolshevik rule in early 1918 led to large-scale rebellions against it in many Cossack territories. These rebellions were not an endorsement of the wider anti-Bolshevik movement; rather, they had the much more limited aim of removing the Bolsheviks from Cossack territories. For the Bolsheviks, however, the rebellions during the spring of 1918 were ample proof of the counterrevolutionary nature of the Cossacks as a whole. Rebellion against Bolshevik rule was seen not as the action of individual Cossacks making choices, but as something inherent in being a Cossack. Already accustomed to using violence and terror on an unprecedented scale, the Bolsheviks took this policy to its logical conclusion with the order for genocide.

Compared to earlier and subsequent genocides and even by the standards of the Russian civil war, the killing of ten thousand Cossacks in the Don region over a three-month period can easily be overlooked. Yet there is no doubt that the genocide which occurred was a state-driven policy. It was devised at the highest level of the Bolshevik state, it targeted a specific community on the basis of who they were, not what they had done, and it was carried out by officials and organizations of that state. It stopped not because the leadership had qualms about the morality of the genocide, but because the Cossacks successfully rebelled and expelled the Bolsheviks. Later the Bolsheviks modified their treatment of the Cossacks, still regarding them suspiciously but acting more circumspect in their dealings with them. By this point, however, the civil war had eviscerated the Cossacks, destroying their communities and way of life. Collectivization was the final catastrophe for the Cossacks, irrevocably ending any possibility of their continued existence as a distinct community.

During World War II many Cossacks fought with the Nazis against the Stalinist regime at whose hands they had suffered so much. The Cossacks retreated with the German army and many thousands of Cossacks ended up in Austria at the war's end. In May 1945 they surrendered to the British. Although many of the Cossacks had never been Soviet citizens, the British decided to comply with a Soviet request for their repatriation. With a great deal of brutality, British soldiers forced the Cossacks onto trains and then to the NKVD. The leaders of the Cossack armies were executed in Moscow, while the rank and file were sent to the Gulag. The regime of Nikita Khrushchev later released any survivors.

SEE ALSO Chechens; Ethnic Cleansing; Famine; Gulag; Kalmyks; Kulaks; Lenin, Vladimir; Pogroms, Pre-Soviet Russia; Stalin, Joseph; Ukraine (Famine)

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Crimes Against Humanity

Crimes against humanity is a category of international crime usually associated with the related concepts of genocide and war crimes. Although international law contains several different definitions of crimes against humanity, they generally involve acts of physical violence or persecution committed against vulnerable groups of civilians. The Tel-Aviv District Court, in a 1952 judgment, said a crime against humanity "must be one of serious character and likely to embitter the life of a human person, to degrade him and cause him great physical or moral suffering." The United Nations (UN) Secretary-General has described them as "inhumane acts of a very serious nature."

Crimes against humanity are closely related to the crime of genocide, yet broader in scope, in that they encompass attacks on a wide range of civilian populations, whereas the crime of genocide is confined to national, ethnic, racial, or religious groups. Moreover, they do not require the physical destruction of the victims. Unlike war crimes, crimes against humanity may be committed in time of peace. It may be convenient to view crimes against humanity as being broadly analogous to serious violations of human rights. In the case of breaches of international human rights law, it is the state that is held responsible, whereas in the case of crimes against humanity, individuals are the perpetrators and they are the ones who are held criminally responsible. The consequence of a serious violation of human rights may be an order to cease the impugned act or to compensate the victim, whereas the consequence of a crime against humanity will generally be a significant term of imprisonment.

Because crimes against humanity are designated as an international crime, they are viewed as an exception to the general rule that it is the sovereign right of states to prosecute crimes committed within their own borders or by their own citizens. Crimes against humanity may be punished by courts of countries other than where the crime took place, and by international courts, such as the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) or the International Criminal Court (ICC).

History of the Term *Crimes Against Humanity*

Perhaps the first use of the expression *crimes against humanity* was by the French revolutionary Maximilien Robespierre, who described the deposed King Louis XVI as a *criminel envers l'humanité* (criminal against humanity). He argued that for this reason King Louis XVI should be executed, although Robespierre had earlier fought for the abolition of capital punishment in the French National Assembly. A century later journalist George Washington Williams wrote to the U.S. Secretary of State, informing him that King Leopold's regime in the Congo Free States was responsible for "crimes against humanity."

A torture room at the Tuol Sleng Prison (the infamous S21), now a museum in Phnom Penh, Cambodia. In the late 1970s the interrogation, torture, and murder of dissident Cambodian Communist Party members were carried out under the direct supervision of Khmer Rouge leaders. [WOLFGANG KAEHLER/CORBIS]

The preamble to the important Hague Conventions of 1899 and 1907, in what is known as the Martens clause, spoke of "the usages established between civilized nations, from the laws." But the concept of crimes against humanity in international law made its first formal appearance in the declaration made by the governments of France, Great Britain, and Russia, dated May 24, 1915, directed at the Turkish massacres of the minority Armenian population, that "[i]n the presence of these new crimes of Turkey against humanity and civilization, the allied Governments publicly inform the Sublime Porte that they will hold personally responsible for the said crimes all members of the Ottoman Government as well as those of its agents who are found to be involved in such massacres." The United States did not joint in the denunciation, with U.S. Secretary of State Robert Lansing explaining this by referring to what he called the "more or less justifiable" right of the Turkish government to deport the Armenians to the extent that they lived "within the zone of military operations."

After the war the victorious Allies attempted to prosecute Turkish officials for what were called "deportations and massacres" of the Armenians. The Turkish authorities actually arrested and detained scores of their leaders, later releasing many as a result of public demonstrations and other pressure. But Turkey refused to ratify the Treaty of Sèvres, signed on August 10, 1920, which imposed an obligation to surrender those who were deemed responsible for the persecutions of the Armenians. It also contemplated the establishment of a tribunal by the League of Nations with jurisdiction to punish those charged. The Treaty of Sèvres was eventually replaced by the Treaty of Lausanne of July 24, 1923. Rather than call for prosecution, it included a "declaration of amnesty" for all offenses committed between August 1, 1914, and November 20, 1922.

The essence of the controversy surrounding the Turkish prosecutions was whether or not atrocities, persecution, and deportations committed by a sovereign government against its own civilian population, including ethnic or national minorities established on its territory, should be subject to international law at all. As outrageous as the crimes against the Armenian minority were, the major victorious powers were nervous about a principle that might return to challenge

their own treatment of vulnerable minorities within their own territories and especially their colonial empires. The debate resurfaced in the early 1940s, as work began to prepare the post-World War II Nazi prosecutions.

As early as 1943 the Allies proclaimed their intention to hold Nazi leaders accountable for war crimes. The United Nations War Crimes Commission was established to prepare the groundwork for postwar prosecutions. Meeting in London, it initially agreed to use the list of offenses that had been drafted by the Responsibilities Commission of the Paris Peace Conference in 1919 as the basis for its prosecutions. The enumeration consisted of a variety of war crimes, already recognized for the purposes of international prosecution, which had been agreed to by Italy and Japan and, at least, tacitly accepted without objection by Germany. These crimes addressed the means and methods of the conduct of warfare, and various acts of persecution committed against civilians in occupied territories.

Nevertheless, from an early stage in its work, efforts were made to extend the jurisdiction of the Commission to civilian atrocities committed against ethnic groups not only within occupied territories but also those within Germany itself. Serving on the Legal Committee of the Commission, the U.S. representative Herbert C. Pell used the term *crimes against humanity* to describe offenses "committed against stateless persons or against any persons because of their race or religion." But the idea that international criminal law extended to atrocities perpetrated against civilians by their own governments remained controversial, and there was ongoing resistance from the British and American governments because of the implications this might have for their own treatment of minorities. Jewish groups and other nongovernmental organizations (NGOs) lobbied members of the Commission to ensure that the postwar trials would not be confined to traditional war crimes, one of the first examples of the influence of NGOs and contributions to law-making in this area.

Within weeks of the end of the war in Europe, the four victorious major powers, the United Kingdom, France, the Soviet Union, and the United States, convened the London Conference, whose purpose was the organization of the postwar trials. In addition to war crimes, the draft treaty on which they worked included a category with as yet no generic name, which was labeled "atrocities, persecutions, and deportations on political, racial or religious grounds." As the Conference concluded, the U.S. delegate, Robert Jackson, suggested the category be given the title "crimes against humanity." Article VI of the Charter of the Nuremberg Tribunal, adopted by the London Conference on August 8, 1945, defined three categories of crimes over which the Tribunal would exercise jurisdiction: war crimes, crimes against peace, and crimes against humanity. Crimes against humanity were defined as follows:

> Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the court where perpetrated.

Crimes against humanity are comprised of two categories of specific punishable behavior. The first, such as murder, extermination, enslavement, and inhumane acts, correspond generally to crimes under virtually all domestic criminal law systems, and cover such offenses as killing, assault, rape, and kidnapping or forcible confinement. The second, persecutions on discriminatory grounds, run afoul of antidiscrimination laws in many countries but fall short of criminal behavior. What elevates these acts to crimes against humanity, as held by the courts, is their commission as part of a widespread or systematic attack on a civilian population, although this is not stated explicitly in the Nuremberg Tribunal's definition.

In late 1945, acting in their role as the occupying government of Germany, the Allies enacted criminal legislation that made crimes against humanity a crime within German law. Although similar to the Nuremberg Charter definition, it was somewhat broader:

> Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

Known as Control Council Law No. 10, it extended to all atrocities and offenses. Moreover, unlike the Nuremberg Charter, it did not require that crimes against humanity be committed "in execution of or in connection with any crime within the jurisdiction of the Tribunal."

Nexus with Aggressive War

The condition in the Nuremberg Charter that crimes against humanity be committed "in execution of or in connection with any crime within the jurisdiction of the Tribunal" is often referred to as the nexus. The Nuremberg Tribunal interpreted this phrase to mean that

atrocities and persecution committed prior to the outbreak of the war, in September 1939, were not punishable as an international crime. It acknowledged that "political opponents were murdered in Germany before the war, and that many of them were kept in concentration camps in circumstances of great horror and cruelty. . . . The persecution of Jews during the same period is established beyond all doubt."

According to the judges at Nuremberg, to constitute a crime against humanity the acts had to be committed in pursuit of an aggressive war. This interpretation would appear to be consistent with what was intended by those who established the Nuremberg Tribunal. At the London Conference, the U.S. delegate, Jackson, spoke of "some regrettable circumstances at times in our own country in which minorities are unfairly treated," and of the concern of his government that such acts might now fall within the scope of crimes against humanity. The way to deal with his concern was to include, as an element of crimes against humanity, this nexus with aggressive war.

There was controversy about the nexus virtually from the day the Nuremberg judgment was issued. Frustrated by this limitation, other countries seized the occasion of the first session of the UN General Assembly to propose that the UN recognize and codify yet another international crime, to be named "genocide," that would not be confined to a link with aggressive war. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly on December 9, 1948, affirmed that genocide could be committed "in time of peace or in time of war" precisely in order to distinguish it from crimes against humanity. The price of this important concession was a definition of genocide that was confined to the destruction of a national, ethnic, racial, or religious group, in other words, to a much narrower class of atrocities than what was covered by the existing definition of crimes against humanity.

Over the years much debate and lingering uncertainty surrounded the link or nexus between crimes against humanity and aggressive war. In 1968 the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity referred to crimes against humanity "whether committed in time of war or in time of peace." Five years later the International Convention on the Suppression and Punishment of the Crime of Apartheid defined apartheid, which was clearly a practice not limited to wartime, as a crime against humanity. But confusion persisted when the Security Council, in establishing the ICTY in May 1993, reaffirmed that crimes against humanity should be punishable only when committed "in armed conflict." In the first major judgment of the ICTY, issued in October 1995, the Appeals Chamber dismissed the significance of these words, saying they were incompatible with customary international law. The issue was rather definitively resolved in 1998, in the Rome Statute of the ICC, which imposes no requirement of a nexus between crimes against humanity and aggressive war, although it does not explicitly state that crimes against humanity may be committed in time of peace as well as in time of war. Thus, for the future, little doubt can exist about this matter, although to the extent that there are prosecutions for crimes against humanity committed between 1945 and 1998, lawyers will continue to argue both sides of the question.

Contextual Elements of Crimes Against Humanity

Because the punishable acts falling within the rubric of crimes against humanity are either punishable as ordinary crimes under national laws or, in the case of persecution-type acts, often not punishable at all, it is fundamental that crimes against humanity be committed within a context of widespread or systematic attacks on a civilian population. If there were no such limitation on the scope of crimes against humanity, states would never accept the right of the courts of other states, or of international tribunals, to prosecute such acts when committed on their own territory. In other words, it is only when murder, extermination, and persecution reach a threshold of great seriousness and broad scale that states are prepared to let down the curtain of sovereignty that traditionally gives them the sole right to criminalize behavior committed within their borders. These additional constraints on the definition of *crimes against humanity* lie at the core of the entire concept, and are often referred to as the "contextual elements."

Crimes against humanity originally derived from a need to prosecute Nazis for acts committed against German nationals within Germany itself. Until 1945 international law clearly protected Jewish civilians within the occupied lands of Europe, such as Poland, Russia, Hungary, France, and the Netherlands, but the same could not be said of the German Jews. To some extent, the acts of persecution committed against the Germany Jews were legal under national legislation and even mandated by German laws. This explains the section of the Nuremberg Charter that states crimes against humanity were punishable "whether or not in violation of the domestic law of the court where perpetrated."

As a result, it may be said that crimes against humanity involve organized persecution that is either directed by a state and carried out in pursuance of its laws, or tolerated by the state and tacitly condoned or encouraged. Although this is probably an accurate

statement of the law in a historical sense, a marked evolution has occurred over the years to weaken the requirement of state policy or plan in the commission of crimes against humanity. One authoritative body, the International Law Commission, stated in 1996 that crimes against humanity are inhumane acts "instigated or directed by a Government or by any organization or group." This matter was the subject of considerable debate when the Rome Statute of the ICC was being adopted in the 1990s. The Rome Statute's definition of *crimes against humanity* requires that they be committed as part of a "widespread or systematic attack on a civilian population," and that this attack be "pursuant to or in furtherance of a State or organizational policy to commit such attack." This definition is large enough to encompass what are sometimes called "non-State actors," and it certainly applies to statelike entities that exercise de facto control over a given territory and fulfill the functions of government.

It is somewhat less clear whether crimes against humanity may also be committed pursuant to a plan or policy of a terrorist organization, which operates without any formal link to a state and often with no obvious ambition to take power. The terrorist attacks of September 11, 2001, were described by many observers, including the United Nations High Commissioner for Human Rights, as crimes against humanity. But in extending the scope of crimes against humanity to terrorist organizations, it becomes increasingly difficult to distinguish them from ordinary crimes punishable under domestic law. While it may seem only logical and proportionate to describe acts such as those committed on September 11 as crimes against humanity, because of their sheer scale and horror, the choice of terminology is far less evident when the crimes are committed on a smaller scale. Indeed, if terrorist groups responsible for atrocities can be held accountable for crimes against humanity, why not organized crime families, motorcycle gangs, and individual serial killers? The distinctions become increasingly difficult to make once the context of a plan or policy of a state or statelike organization is removed from the definition of crimes against humanity. Yet this is precisely what the ICTY has done in its judgments subsequent to adoption of the Rome Statute, suggesting that it considers the Rome Statute requirements to be narrower than what should apply as a matter of customary international law.

The other factor serving to distinguish crimes against humanity as an international crime from ordinary crimes that fall within the scope of national laws is the element of discrimination. The definition in the Nuremberg Charter refers to "persecutions on political, racial or religious grounds," although it does not seem to make the same requirement with respect to other acts, such as murder and extermination. This aspect of crimes against humanity is even more explicit in the definition found in the ICTR Statute, adopted by the Security Council in November 1994:

> The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on *national, political, ethnic, racial or religious grounds.*

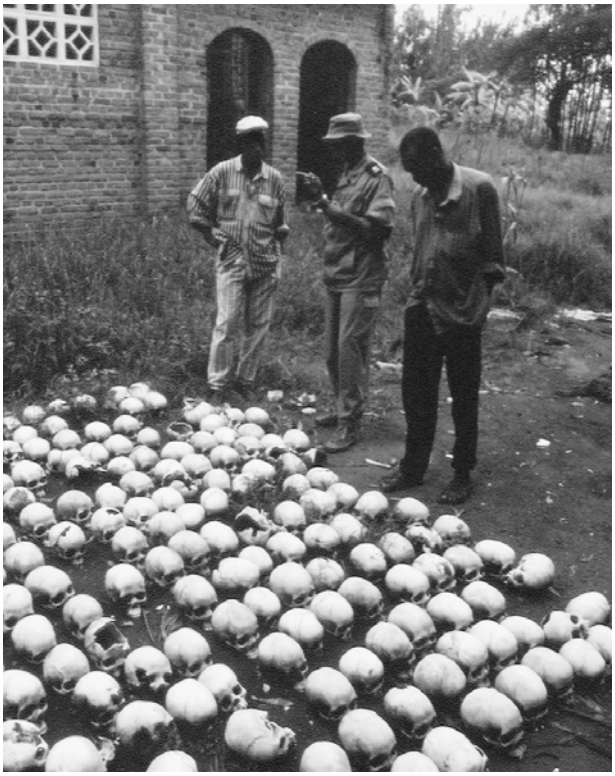
This requirement suggests that a racist or otherwise discriminatory motive must exist for the crime. Therefore, when a defendant charged with crimes against humanity can suggest that a widespread or systematic attack was conducted on grounds that did not involve racial discrimination and that the motive was, for example, to achieve a military victory, the act might not qualify as a crime against humanity. This argument might be submitted, for instance, to counter claims that the atomic bombing of Hiroshima and Nagasaki in August 1945 was a crime against humanity.

Recent case law from the ICTY and ICTR has established that a discriminatory motive is not generally an element of crimes against humanity. This is a relief to prosecutors, for whom proof of motive is a daunting challenge. Exceptionally, discriminatory motive remains an element of the crime against humanity of persecution. This is because persecution-type crimes against humanity may involve acts that are actually authorized by national laws, such as measures preventing intermarriage with persons from specific ethnic groups, as was the case in Nazi Germany.

Punishable Acts

The lists of punishable acts of crimes against humanity are not the same in the various definitions of crimes against humanity. They have at their core the enumeration found in the Nuremberg Charter: murder, extermination, enslavement, deportation, other inhumane acts and persecution. The definition in Control Council Law No. 10, adopted in December 1945, added imprisonment, torture, and rape to the list. The definition was updated to take account of recent developments in international law when the Rome Statute of the ICC added apartheid and the forced disappearance of persons. But the Rome Conference rejected attempts to recognize other new acts of crimes against humanity, such as economic embargo, terrorism, and mass starvation.

The crime of murder is well defined in national legal systems and poses little difficulty within the con-



The 1994 genocide in Rwanda was marked by its savagery. In this photo, a neat row of human skulls, all that remains of some victims. [LANGEVIN JACQUES/CORBIS SYGMA]

text of crimes against humanity. Although there has been some disagreement about this in cases, it is now well established that the murder need not be premeditated.

Extermination as a crime against humanity refers to acts intended to bring about the death of a large number of victims. Evidence must exist that a particular population was targeted and that its members were killed or otherwise subjected to conditions of life calculated to bring about the destruction of a numerically significant part of the population.

Enslavement was widely practiced by the Nazis, who took hundreds of thousands of Jews, other minorities, and foreign nationals conscripted in various parts of their conquered territories, and forced them to work in factories making munitions and rockets and meeting other needs of their military machine. As the Nuremberg judgment pointed out, one of the perverse features of the Nazi slave labor policy was that "useless eaters"—the elderly and infirm, and the disabled—were systematically murdered precisely because they could not be enslaved. In the early twenty-first century international law recognizes various contemporary forms of slavery. The related practice of trafficking in persons, particularly women and children, is associated with modern crimes against humanity of slavery.

The act of deportation involves the forcible expulsion of populations across international borders. The Rome Statute of the ICC added the words "forcible transfer of population" to deportation, thereby recognizing in its condemnation what in recent years has been known as "ethnic cleansing," particularly when this has occurred within a country's own borders. It should be borne in mind that the Allies themselves, following their victory in 1945, indulged in the forced transfer of ethnic Germans from parts of Eastern Europe. To this day some policy makers still entertain the suggestion that population transfer is an effective technique for dealing with ethnic conflict.

Imprisonment is, of course, a normal act of states carried out in the enforcement of criminal justice. For it to rise to the level of a crime against humanity, imprisonment must amount to the deprivation of physical liberty that is in violation of the fundamental rules of international law. Holding captured prisoners indefinitely, while denying them access to ordinary legal remedies, could fit within the parameters of this crime against humanity.

Torture was not explicitly listed in the Nuremberg Charter as a crime against humanity, although it clearly falls within the catch-all term *other inhumane acts.* A substantial body of international law now exists that addresses the issue of torture, including the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. According to the Rome Statute, *torture* means "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions." Human rights law requires that state officials perpetrate torture, but this is because human rights law governs the relationship between the individual and the state. In the case of crimes against humanity, there is no such requirement.

The most dramatic enlargement of the scope of crimes against humanity in recent years has taken place in the now very significant list of gender crimes that complement the more traditional reference to rape. In fact, the Nuremberg Charter did not even recognize rape as a form of crime against humanity, although it would have fallen under "other inhumane acts." In any event, the oversight was corrected some months later in Control Council Law No. 10. Building on the word *rape,* the 1998 Rome Statute enumerates several other related acts, namely "sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any

other form of sexual violence of comparable gravity." Forced pregnancy means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

The crime of apartheid was first defined to describe the racist regime in South Africa during much of the second half of the twentieth century. According to the Rome Statute, it refers to inhumane acts "of a character similar to" other crimes against humanity, when "committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime." Here, then, the involvement of a state in the commission of crimes against humanity is quite explicit.

Enforced disappearance of persons is a phenomenon that became widespread under repressive regimes in Latin America during the 1970s and 1980s. It was first recognized as a crime against humanity by the General Assembly in a 1992 resolution. In the ICC's Rome Statute, the term refers to the

> Arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Most of the lists of crimes against humanity conclude with the term *other inhumane acts*. Its scope is quite obviously vague, and for this reason some national attempts to introduce crimes against humanity have eliminated the reference. Even judges of international criminal tribunals have indicated their discomfort with applying criminal law whose meaning is not sufficiently certain. Reflecting these concerns, the Rome Statute declares that such "other inhumane acts" must not only be similar to those in the list of acts qualifying as crimes against humanity, but must also intentionally cause great suffering, or serious injury to body or to mental or physical health.

Finally, the crime against humanity of persecution comprises acts that are motivated by discrimination against an identifiable group. In the Nuremberg Charter, discrimination was limited to political, racial, or religious grounds, but more recent definitions, such as that of the Rome Statute, enlarge the concept to include nationality, ethnicity, culture, and gender as prohibited forms of discrimination. Moreover, they also extend the definition to "other grounds that are universally recognized as impermissible under international law," thereby allowing for the further evolution of this concept. Perhaps sometime in the near future, it will be unquestioned that the crime against humanity of persecution may also be committed against the disabled, or against persons identified by their sexual orientation.

The case law of international criminal tribunals provides several examples of the crime against humanity of persecution: in general, destruction of property or means of subsistence, destruction and damage of religious or educational institutions, unlawful detention of civilians, harassment, humiliation and psychological abuse, violations of political, social, and economic rights violations. At the same time, these tribunals have rejected the argument that acts such as encouraging and promoting hatred on political grounds, or dismissing and removing members of a specific ethnic group from government, amount to persecution.

Statutory Limitations

Many legal systems provide that after a certain period of time has expired, offenses may no longer be prosecuted. This is known as statutory limitation or, sometimes, "prescription." It reflects a number of concerns, including the fact that with the passage of time prosecution becomes much more difficult because of the unavailability of witnesses and other evidence, as well as the interest of the state in prompt repression of crime, in order to deter the individual offender as well as others. Although these concerns may be relevant for many crimes, they are highly questionable in the context of the seriousness and horror of international crimes.

In the 1960s, when it appeared that some Nazi war criminals who had not yet been caught and prosecuted might escape justice, international law was extended to prohibit statutory limitations for crimes against humanity as well as war crimes. Countries whose laws contained statutory limitations were required to make amendments. Before an international criminal tribunal, no defendant can invoke the passage of time as a defense to a charge. This is stated explicitly in the Rome Statute of the ICC.

There are many examples of prosecutions of persons alleged to be responsible for crimes against humanity many decades after the acts transpired. In the late 1990s French courts convicted Maurice Papon for atrocities committed in occupied France during World War II. Papon was almost ninety years old at the time, but he was found guilty and sentenced to a term of imprisonment.

Prosecution of Crimes Against Humanity

The first prosecutions for crimes against humanity were held at the Nuremberg Tribunal. Most of the lead-

ing Nazi defendants were convicted of crimes against humanity, as well as other crimes punishable by the Tribunal. One of the defendants, Julius Streicher, was convicted only of crimes against humanity. He was executed for his role as propagandist in the Nazi persecution of Jews within Germany.

Crimes against humanity were also very much part of the prosecution at the other international tribunal, in Tokyo, and in a range of other postwar trials held by national military tribunals. After the late 1940s no international prosecutions for crimes against humanity occurred until the establishment of the ICTY and ICTR in 1993 and 1994, respectively.

Many national legal systems have introduced the concept of crimes against humanity into their own criminal legislation. Although neither required nor authorized by any international treaties, these jurisdictions have established that prosecution for crimes against humanity may be conducted even if the crime was committed outside the territory of the state and by a noncitizen. Although this principle of "universal jurisdiction" is increasingly recognized in national laws, it is in practice used rather rarely. Two such important trials were held in Israel: those of former Nazi mastermind Adolf Eichmann and John Demjanjuk, purported to have been a sadistic guard at the Treblinka death camp. In the late 1980s Canada prosecuted a Hungarian Nazi official, Imre Finta, for crimes against humanity committed forty-five years earlier. Of these three prosecutions, two led to acquittals. The difficulties in prosecuting crimes committed elsewhere, and usually many years earlier, pose great challenges to national justice systems and largely explain the reluctance to use the principle of universal jurisdiction on a large scale.

Distinguishing Genocide and Crimes Against Humanity

Two categories of international crime, genocide and crimes against humanity, both emerged in the 1940s as a response to the Nazi atrocities committed before and during World War II. Nervous about the implications that a broad concept of crimes against humanity might have for their own administrations, the great powers confined crimes against humanity to acts committed in the context of aggressive war. Unhappy with such a restriction, other states pushed for recognition of a cognate, genocide, which would require no such connection with armed conflict. As a result, for many decades, in their efforts to condemn and prosecute atrocities, international human rights lawyers attempted to rely on genocide rather than the considerably broader notion of crimes against humanity out of concerns that the acts were perpetrated in peacetime.

The nexus between crimes against humanity and aggressive war no longer exists. As a result, aside from some minor and insignificant technical distinctions, all acts of genocide are subsumed within the definition of crimes against humanity. Genocide can be usefully viewed as the most extreme form of crimes against humanity. The ad hoc tribunals for the former Yugoslavia and Rwanda have christened it "the crime of crimes." But if the distinction is no longer particularly consequential with respect to criminal prosecution, it remains important because there is no real equivalent to the Genocide Convention for crimes against humanity. The Genocide Convention imposes obligations on states to prevent the commission of genocide. It might be argued that this duty also exists with respect to crimes against humanity. However, the Convention, in addition, recognizes the jurisdiction of the International Court of Justice (ICJ) to adjudicate disputes between states with respect to their treaty obligations concerning genocide, and several such lawsuits have in fact been filed. No similar right to litigate crimes against humanity before the ICJ exists.

SEE ALSO Aggression; Genocide; International Court of Justice; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; International Law; Khmer Rouge Prisons and Mass Graves; Massacres; Nuremberg Trials; Rape; Universal Jurisdiction; War Crimes

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William A. Schabas

Croatia, Independent State of

The Independent State of Croatia, generally known as the NDH (the acronym for its Croatian name, Nezavisna Drava Hrvatska), was created with the support of the Axis powers following Adolf Hitler's conquest of Yugoslavia in April 1941, and lasted until the defeat of Germany in May 1945. The NDH incorporated most of Croatia and Bosnia and Herzegovina. It called for the

Yugoslavia before the break-up. [MAP BY XNR PRODUCTIONS. THE GALE GROUP.]

extermination of Jews and Romani, and the elimination of Serbs through physical extermination (one-third), expulsion into Serbia (one-third), and forced conversion to Roman Catholicism (one-third). About 32,000 of 40,000 Jews living in the NDH, and almost all the Romani in the state, about 26,000, were killed. Figures on Serb victims are more controversial, as noted below, but the United States Holocaust Memorial Museum estimates that between 330,000 and 390,000 Serbs were killed by the Ustasha regime of the NDH.

Ethnic and Political Background

The peoples of the western Balkans (Bosnia and Herzegovina, Croatia, Montenegro, and Serbia) speak mutually understandable dialects although they have separate literatures and some differences in their vocabularies, and Serbs and Montenegrins traditionally have preferred to use Cyrillic script while the others employ Latin letters. These groups differ mainly by religion: Serbs and Montenegrins are Orthodox Christians, Croats are Roman Catholics, and Bosniacs are Muslims. Until the end of World War I they were divided by political borders. Croatia belonged to the Austro-Hungarian Empire, while Bosnia had been part of the Ottoman Empire from the fifteenth century until 1878, when it came under Austro-Hungarian control. Serbia was also part of the Ottoman Empire before winning its independence in the middle of the nineteenth century. The assassination in Sarajevo that sparked World War I was carried out by a group that wanted to unify Bosnia with Serbia.

Following World War I Yugoslavia was created as a state for these South Slavic (*jugoslav*) peoples (along with Slovenians and Slavic Macedonians), in the belief that despite their differences in religion and history, they could form one nation on the grounds of their common language. However, by the end of the nineteenth century all the peoples involved had already developed their own separate national identities and separatist politics. Most Croats regarded inclusion in Yugoslavia, ruled by a Serbian king, as a denial of their own right to self-determination. From its founding in

The map that resulted from the Dayton Agreement (1995). [MAP BY XNR PRODUCTIONS. THE GALE GROUP.]

1919 until the start of World War II, Yugoslavia was an unstable state, proclaimed a dictatorship in 1929 in large part to counter the demands of the leading Croatian political parties for independence.

Serbs, Croats, and Bosniaks lived intermingled in parts of Croatia and Bosnia and thus no clean separation was possible. On April 6, 1941, when the Axis powers invaded Yugoslavia and defeated the Yugoslav Army in less than a week, most Croats welcomed what they thought would be liberation from Serb dominance, and there was general support for the proclamation of the NDH on April 10, 1941. The leading Croatian politicians did not agree to form a puppet government dominated by Nazi Germany, so the Axis powers created a government of Croatian nationalists who had been living in exile for more than a decade and who had previously been involved in terrorist actions against Yugoslavia. The Ustasha enjoyed little popular support within Croatia, but initially the local hierarchy of the Roman Catholic Church strongly supported them; they also faced little opposition when they assumed power.

Ustasha Ideology

Like the Nazis who put them in power, the Ustasha placed strong emphasis on the state as the tool that the nation must use to achieve its historical destiny, seeing the nation in racial terms and as engaged in a struggle for biological survival with other nations. Within the

were perceived as inherently threatening foreign bodies in the state. Within weeks of ascending to power, the Ustasha issued racial laws defining Aryan and non-Aryan and prohibiting marriages between Jews and Croats, and adopted the legal system of Nazi Germany. Jews were required to wear yellow stars and deprived of their rights of citizenship and their property. The Cyrillic script was banned. By August 1941 the Ustasha had established concentration camps for political prisoners and so-called racially undesirable peoples: Jews, Romani, and Serbs.

Ustasha ideology, however, seems to have been less consistently racist than that of the Nazis. Jews who supported the Ustasha could become "honorary Aryans." Although Serbs were considered non-Aryan, they were not slated for mass extermination. Serbs were to be eliminated by expulsion and conversion, and when necessary murder, because otherwise, their large numbers (1.9 million, about one-third of the entire population) would prevent the NDH from becoming an exclusively Croat state. The provision for conversion was not so much a racist principle, as a recognition that what distinguished Serbs from Croats was, primarily, religion. However, the Ustasha did not try to convert the Muslims of Bosnia, claiming that they were racially pure Croats whose ancestors had converted to Islam.

Genocide

What the Ustasha lacked in ideological consistency they made up in brutality. They created a number of concentration camps throughout Croatia and Bosnia, the largest of which was a series of five camps on the River Sava, collectively known as Jasenovac. The United States Holocaust Memorial Museum estimates that between 56,000 and 97,000 people were murdered in Jasenovac alone, including some 45,000 to 52,000 Serbs. Estimates of the Jews killed in Jasenovac run from 8,000 to 20,000. From 8,000 to 15,000 Romani were also killed there. In addition, the Ustasha deported another 7,000 Jews to Nazi concentration camps.

Most of the killing in the NDH, however, did not occur in camps, but rather in villages and without the use of sophisticated weapons or technology. Ustasha attacks on villages were not driven by military necessity, but propelled by the desire to drive Serbs out of Croatia by murder, rape, and terror, the same tactics that in Yugoslavia during the 1990s came to be known as "ethnic cleansing." An Ustasha attack would customarily involve the slaughter of anyone remaining in a village, including women, children, and the elderly. The purpose of such a campaign of terror was to convince other Serbs to leave, or convert to Catholicism. The extent of the violence is reflected in the high percentage of Serbs killed in the NDH. Even using the lower estimate suggested by the United States Holocaust Memorial Museum, 330,000, about one-sixth of the Serb population residing in the NDH, were killed between 1941 and 1945, a percentage of deaths exceeded only by those of Jews and Romani during World War II in Europe.

End of the NDH

The brutality of the NDH and its failed policies produced increasing opposition among the Croats whom the state was meant to serve and covert opposition among many Roman Catholic leaders. By mid-1942 increasing numbers of Croats began to join Marshal Tito's partisans, the communist army that had as its goal the reconstitution of a Yugoslav state. With the defeat of the Third Reich, the NDH also collapsed, and Croatia became a republic in the new Yugoslavia. Most of the leaders of the NDH escaped and went into exile in Argentina, Spain, the United States, and Canada. However, the partisans did massacre somewhere between 45,000 to 55,000 NDH soldiers in May 1945.

Politics and the NDH Genocide

As communism weakened in the late 1980s, politicians in Yugoslavia found that the separate (and separatist) nationalism of each major group was an effective message for garnering the votes of members of that group. In Croatia, Franjo Tudjman led a new nationalist movement; he was a former army general who had faced political disgrace in 1971 for claiming that only sixty thousand people had been killed in NDH concentration camps. Tudjman, in fact, published a book in 1990 that referred to the "myth of Jasenovac" and attempted to minimize the genocide perpetrated by the NDH. Yet Tudjman had some legitimate points, being that there was a tendency among Serbs to inflate the numbers of those killed in the NDH, just as there had been a tendency among Croat authors to minimize them. The issue was especially divisive because Tudjman sought and received funding from Croatian émigrés (including many who viewed the NDH as having been a legitimate manifestation of the Croat nation's desire for self-determination) for his movement to gain Croatian independence from Yugoslavia, and he was elected president of Croatia in 1990. Most Serbs in Croatia felt threatened by Tudjman's nationalist project, a feeling that was shared by Serb politicians who themselves stressed the appeals that Tudjman made to supporters of the NDH. Serb resistance to Tudjman's nationalist movement led them to revolt against Croatian independence, a resistance ended militarily by the Croatian army and the North Atlantic Treaty Organization (NATO) intervention in 1995, and through the expulsion of most Serbs from Croatia.

The politicization of the NDH has seen many Serbs exaggerate the crimes of the Ustasha while many Croats have sought to minimize them. In both cases this politicization has been intentionally used to provoke great hostility on either side. Thus, many in the former Yugoslavia have remembered the history of the NDH not in order to avoid tragedy, but rather to provoke it anew.

SEE ALSO Bosnia and Herzegovina; Tudjman, Franjo; Yugoslavia

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Robert M. Hayden

Crusades

Among the best-known events of the Middle Ages, the Crusades were a series of armed expeditions by European Christians to conquer Muslim-controlled territory in the Holy Land. Historians have traditionally bracketed these campaigns between the years 1095, when Pope Urban II preached the First Crusade, and 1291, when the Mamelukes, a caste of Muslim slave soldiers, conquered the city of Acre (Israel), bringing to an end any significant European Christian presence in the Holy Land. Historians disagree over the exact number of crusades, though most agree that there were either seven or eight in total.

Like many historical events, the Crusades are difficult to define. The crusading spirit experienced in Europe also was expressed against Muslims in Spain, pagans in northern Europe, heretics in southern France, and even orthodox Christians in the Byzantine Empire. In addition, just as the geographic boundaries of the Crusades are unstable, so too are their chronological parameters. Although Western European Christians lost for good their last significant base in the Middle East in the late thirteenth century, they continued to make minor attempts to recover territory for centuries.

Background

The Crusades were military campaigns waged between two very different cultures that had developed separately but along paths that eventually brought them into violent contact. The Muslims of the Middle East were believers in an energetic religion of conquest and considered themselves the successors to the covenants God had established first with Jews and, later, with Christians. In the twenty-first century, Muslim-Christian relations in the Middle Ages were complicated. At times, believers in the two faiths lived comfortably side by side; at others, relations between them were difficult at best.

Messages in the *Qur'an*, the sacred book of Islam, about Christians are mixed. While there is hostility toward Christians on account of some of their beliefs, there is also a sense that Jesus's followers are to be respected because they, like Jews, are "people of the Book." Most European Christians, however, failed to realize that Muslims considered themselves successors to a covenant that they (Christians) had once enjoyed. Instead, most Christians considered Muslims to be pagans, and were unaware of Islam's monotheism and its perceived connection between Islam, Judaism, and Christianity.

It is difficult to determine what role these beliefs played in Muslim-Christian relations during the Crusades. It seems likely, though, that the catalyst that channeled European energy into armed pilgrimages to the Holy Land is to be found in developments occurring simultaneously in the Muslim world. The most significant of these was the advent of the Seljuk Turks. Since 1066 the Seljuks had been attacking the Byzantine Empire, a Christian state, and in 1071, under the command of Sultan Alp Arslan, they defeated the armies of Byzantine emperor Romanus IV at the Battle of Manzikert (in present-day Turkey). The victory was significant, a major defeat that wrested Asia Minor (Turkey) from Byzantine control and placed it under Turkish rule. Soon after, Arslan captured Jerusalem from the Fatimids, an Islamic dynasty whose power base was located in Egypt. Under Seljuk rule, Jerusalem became less accessible to Christian pilgrims, who at times were barred from holy sites, attacked, and even murdered.

For the next two decades, the Byzantine Empire continued to lose territory to the Turks. By 1095 the situation was grave and the Seljuks were poised to strike the Byzantine capital city, Constantinople. Seriously threatened, Emperor Alexius I Comnenus turned to the western Church for help. It was a timely appeal. On the eve of the Crusades, Western Europe was entering a period of cultural creativity, economic revival, po-

litical stability, and increased religious devotion. It was a time of energy and confidence, during which many men were willing to take up the cross and travel long distances in search of opportunity and adventure. Pope Urban II, and the nobility of France were willing to indulge this request, believing that it was their duty to help their fellow Christians in the East.

Many also saw the vast potential in such a campaign. Pope Urban called the First Crusade at the Council of Clermont in 1095. His speech played on the pride of the Franks, noted the opportunities available to those who participated, drew attention to the plight of Christian pilgrims to the Holy Land, emphasized the conquests of the Muslim Turks, cast Muslims as the enemies of Christ, and offered those who joined the protection of property as well as indulgences. The speech met with great success, including cries of "Deus vult!" ("God wills it!"), and by the following year the First Crusade was mobilized. In 1099, after a bitter siege followed by a bloody massacre that cost the lives of many women and children as well as combatants, the city of Jerusalem fell to the crusaders. As one Christian writer put it "the slaughter was so great that our men waded in blood up to their ankles."

History

The success of the First Crusade astonished many, including the crusaders themselves. Indeed, it is easily arguable that, from a Western European perspective, the first was the most successful of all the Crusades. The successive campaigns, by and large, were called to help Christians who were already in the Holy Land. For example, when the city of Edessa (Turkey), reverted to Muslim control in 1144, Pope Eugenius III called the Second Crusade, which was preached by no less a person than Bernard of Clairvaux, one of the most influential personalities of the twelfth century. Although backed by the churchman's clout and by the participation of King Louis VII of France and Emperor Conrad III of Germany, the crusade was a miserable failure for Western Europeans. In 1147, the same year the crusade began, Conrad's army was defeated by the Turks at Dorylaeum (Turkey). The remaining soldiers joined with the army of Louis VII, which had left for the field of battle later than the German forces. Both contingents had traveled through the Balkans to reach their destination and, while doing so, had pillaged territories of the Byzantine Empire. Like the Byzantine emperor Alexius, who greeted the armies of the First Crusade, Emperor Manuel I was nervous about having an unruly army in his kingdom. He, again like Alexius, provided transportation for the crusaders to Asia Minor as soon as he could. The crusaders never did recapture Edessa; instead they targeted the city of Damascus (Syria), the unsuccessful siege of which signaled the end of the campaign in 1148.

The Third Crusade was also called as a defensive response, this time in reaction to the military conquests of the Muslim warrior Saladin, who in 1187 recaptured Jerusalem. Although Pope Gregory VII's appeal motivated numerous European leaders, including Kings Richard I and Henry II of England (who died before the crusade left), Philip II of France and Emperor Frederick Barbarossa (who drowned en route in June 1190), the crusade achieved little for those who participated. It came to an end when King Richard signed the Treaty of Jaffa with Saladin in 1192.

The infamous Fourth Crusade followed ten years later, when Pope Innocent III called for a crusade to Egypt. The crusaders arrived in Venice with insufficient money for their passage. In lieu of payment, the Venetians redirected the crusade to the city of Zara, which they wanted recaptured from the Hungarians. The city fell in 1202, and no sooner did it succumb than the army was again redirected—this time by Alexius IV, son of the recently blinded and deposed Emperor Isaac II. Alexius offered the crusaders 200,000 marks, reunification of the Orthodox and Roman churches, and a large army for a crusade if the crusaders would help restore his father to the throne.

The majority of the crusaders agreed to the proposition and in 1203 headed toward Constantinople. They attacked the city in July, and their successful campaign resulted in the co-coronation of Isaac and his son. Within months, however, the clergy and the people of the city, led by the future Alexius V, rioted against the monarchs. Isaac and his son were murdered in January 1204. In response, the crusaders took Constantinople by force. In May, Count Baldwin of Flanders was crowned the first Latin Emperor of Constantinople, an empire that would last until Emperor Michael VIII reclaimed the throne in 1261.

After the Fourth Crusade's failure to reach Egypt, Pope Innocent called another in 1213. The Fifth Crusade left Europe under the direction of Duke Leopold of Austria in 1217, and within two years the crusaders had captured the city of Damietta. However, the crusaders soon became bogged down by internal conflicts, and the Egyptians took advantage of the delay to fortify their positions. With their supply lines cut and facing considerable flooding due to deliberately broken dykes, this first wave of crusaders retreated from Egypt in 1221. There was a hiatus in the crusade until 1228, when Holy Roman Emperor Frederick II took up the cross. The emperor spent the next year peacefully negotiating a treaty that restored a section of Palestine (which included Jerusalem) to Christian control.

The two final crusades, the Six and Seventh, were led by King Louis IX of France. The army departed in August 1248, and by the following June the crusaders retook the city of Damietta and within a few months began marching toward Cairo. In 1250, Louis's army suffered a disastrous defeat at Mansurah (Egypt), which ultimately forced the crusaders to retreat. By April 6, Louis's forces were surrounded and the king was captured; he was ransomed one month later. Louis remained in the Holy Land until 1254 to negotiate various truces and fortify the cities of Acre, Jaffa, Caesarea, and Sidon. He returned to France in April, where he remained until 1270 when, energized by a report that Emir Muhammad I wanted to convert to Christianity, he departed for Tunis. However, immediately upon arrival in Tunis, Louis became gravely ill and died on August 25. Although the leadership of the crusade passed to the king's brother, Charles of Anjou, Louis's death brought an effective end to the crusade. In some ways the end of this crusade sounded the death knell of the movement. Within twenty years there would no longer be any significant Western European presence in the Holy Land.

Consequences for Muslims, Jews, and Orthodox Christians

From the Muslim perspective, the lasting effects of the Crusades on the Islamic Middle East were fairly negligible. To many Muslims, they were just episodes in a long running clash with Christians. In fact, as Carole Hillenbrand notes, it is only in the recent past that Muslims have taken an interest in the Crusades as a discreet set of historical events: modern Arabic terms for "the Cross wars" (*al-salibiyya*) or "the war of the Cross" (*harb al-salib*) were not introduced into the language until the nineteenth century. However, as Thomas Madden points out, the crusading movement did have some negative effects on the Muslim world, including slowing the conquest of Islam. The mere presence of European Christians in the region distracted Muslims and prevented the local populations from forming into a unified Islamic state. It is possible that by diverting Muslim energy and material resources, the Crusades may have bought Europe time to prepare itself for the threats that the Turks would pose to the continent in the fifteenth, sixteenth, and seventeenth centuries.

The consequences of the early crusades for the Jews of Western Europe were dramatic. As Robert Chazan notes, a great paradox of the Crusades is that, although numerous high churchmen condemned violence against Jews, they also initiated undertakings that led to the persecutions that some later tried to suppress. Long embedded in the European psyche was the notion of Jews as the enemies of Christ. The year 1096 was a notably devastating one for German Jews. Whereas John, bishop of the German city of Speyer, was willing and able to protect the Jews of his diocese, the Jews of Worms were not as lucky. Turned on by their neighbors and unable to be protected effectively by the town's bishop, many in this city were massacred or forced to convert. The Jews of Mainz also fell prey to violence, and many chose to die by their own hands rather than succumb to the crusaders. Suddenly and tragically, the once renowned Jewish community of Mainz was decimated.

The Second Crusade brought more attacks upon the Jews of Europe, although none were as severe as those of 1096. The Jews, the Church, and secular governments took precautions as the crusade was called. Indeed, one of the most vocal protectors of the Jews was the preacher of the crusade, Bernard of Clairvaux. The Third Crusade, which came on the heels of the coronation of King Richard I of England, inflamed anti-Jewish passions once again. Riots broke out in London in 1189, followed by others in the kingdom which destroyed a number of Jewish communities. Clearly, then, the Crusades had disastrous social and cultural consequences for Europe's Jews. They had highly negative economic consequences as well, because anti-Jewish violence was not only a religious instrument, it was also a financial one that could be used to force Jews to forgive the debts of the Christian populace.

The consequences of the Crusades for the orthodox Christians of the Byzantine Empire were also devastating. As George Dennis states in *The Crusades from the Perspective of Byzantium and the Muslim World*:

> Muslims believed force might be used to bring all people under the sway of Islam; Western knights believed that they were called not only to defend but "exalt" Christianity and that attacks on its enemies could be holy and meritorious. The Byzantines believed that war was neither good nor holy, but was evil and could be justified only in certain conditions that centered on the defense of the empire and its faith. They were convinced that they were defending Christianity itself and the Christian people, as indeed they were (Laiou and Mottahedeh, 2001, p. 39).

The defense came at a great cost. The pillage and desecration of the holy city of Constantinople in 1204 by their fellow Christians ripped wounds into the communal Orthodox memory that have yet to be healed. The empire lost many of its cultural and sacred treasures, which were carried off to western Europe in general and to Venice in particular. In addition, as the Latin Empire of Constantinople reigned, the outlying territories broke apart into separate independent states, striking a great and lasting blow to the unity of the em-

pire. After the reassertion of Greek political authority in 1261, the politically fragmented state was unable to withstand the military blows it continued to sustain. Its strength would continue to be weakened for the next two hundred and fifty years by attacks from Charles of Anjou, the Venetians, the kingdoms of Serbia and Bulgaria and, most notably, the Ottoman Turks. The Turks would ultimately bring the once great empire to an inglorious end during a siege led by the founder of the Ottoman Empire, Sultan Mehmet II, on May 29, 1453.

SEE ALSO Catholic Church; Religion; Religious Groups

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Dawn Marie Hayes

Cultural Genocide see Ethnocide.

Dance

Dance, in its vernacular, theatrical, and sacred forms, has been used by societies throughout history to incite violence and celebrate victory, as well as express resistance to repressive regimes and heal victims of injustice. Traditional war dances and victory dances may be found in many African cultures and among aboriginal peoples; as such, descriptions of dancing appear in human rights reports of the genocide in Rwanda and human rights abuses in Angola. Forms of folk dance are often promoted by states as a means of propaganda to further the cause of ruling powers. Examples include the widespread popularizing of Bavarian and Austrian folk dancing by the Nazis, and the promotion of Serbian folk dancing and *turbo folk* during Slobodan Milosevic's regime. Forcing people to dance and sing political slogans is not uncommon in such contexts, as is using dance as a means of humiliating those from opposing groups—for example, when men, and especially women, are forced to dance (and possibly strip naked) in front of their captors, as reported in Sierra Leone and Chechnya. The trafficking of women and children also may involve dancing as a means of humiliation, with victims forced to perform as nightclub dancers in addition to working as sex slaves.

As a creative, expressive, communal activity, however, dance is also a central means of resisting crimes against humanity. Historically, slaves from Africa employed dancing as a means of communication when they were denied other basic rights. During the Holocaust groups of German youth danced swing and listened to jazz as a form of resistance to Hitler's regime. The individuality and syncopation characteristic of swing embodied their refusal to follow the lock-step mass psychology of the Nazis. More recent examples reveal the important role of dance in preserving the memory of genocide. Youth from the Northern Marianas Islands still perform a jig as a reminder of a massacre that occurred in the 1860s and as a symbol that their race will never be exterminated. In Chile women who are members of the *Asociación de Familiares de los Detenidos y Desaparecidos* (Association of the Relatives of the Detained and Disappeared) have chosen to perform a traditional couples dance as a solo, the *Cueca Solo,* as a living reminder of their missing partners.

In theatrical venues choreographers have long created works that represent and recreate a sense of the horror, suffering, and courage of the victims of genocide, as well as the brutality of the victimizers. They achieve this by using a variety of techniques, including parody and satire, metaphor and allegory, and perhaps most important, the somatic experience of trauma, from uncontrollable shaking to severe immobility, that can be recreated on stage to powerful effect. Of these pieces, the most celebrated include *The Green Table* by Kurt Jooss (1932) about the horrors of war; *Dreams* (1961) by Anna Sokolow about the Nazi concentration camps; *Soweto* (1977) by Mats Ek about apartheid in South Africa; and *Ghost Dances* (1983) by Christopher Bruce about the Chilean military coup. Some dance companies, such as Barro Rojo Arte Escénico (BRAE) in Mexico, have made it their mission to concentrate on human rights issues. This company's specific focus has been the horrors perpetuated in Latin America, with pieces like Arturo Garrido's *El Camino* (The path,

1982), which addressed the people of El Salvador's fight for liberty, and Laura Rocha's *Crujía H* (Ward H, 1987), which explores the theme of political prisoners.

Of special note are the many stage pieces and dances created for film and video that focus on the Holocaust. Examining these works sheds light on the more literal to abstract ways that the subject of genocide may be approached through the medium of dance. Tamar Rogoff's *Ivye Project* (1994), for instance, is set in the woods of Belarus at the actual site where 2,500 Jews were massacred in 1942. In this piece the audience is transported back through time to watch various life events, such as the dance of an elderly couple, a father and daughter preparing for bedtime, and an intensely moving scene at a cemetery where the performers appear and disappear behind the gravestones. However, in Danial Shapiro's *What Dark/Falling Into Light* (1996), emphasis is placed more on universal symbolism: A dancer sits and shakes, a young woman repeatedly hurls herself through the air toward her lover, and a man is supported by a group of prone dancers, as if being comforted by his dead ancestors. Allen Kaeja's trilogy of dance films, *Witnessed* (1997), *Sarah* (1999), and *Zummel* (1999), codirected with Mark Adam, combines these approaches by drawing on familiar Holocaust imagery such as train stations and people running through a forest, as well as metaphorical imagery that is more unique and general in its associations, as when a group of alternately desperate and hopeful dancers performs on a deserted raft in the middle of the ocean.

Finally, dance plays a major therapeutic role in recovery programs for the victims of genocide and crimes against humanity. Seen as a central means of bridging the mind/body gap and linking explicit and implicit memories through nonverbal expression, dance/movement therapy (d/mt) is common in trauma centers for refugees and torture survivors in Germany (Düsseldorf, Cologne, and Munich) and the United States (Boulder, Colorado), a community center in Tuzla, Bosnia, and the Trauma Clinic at the Centre for the Study of Violence and Reconciliation (CSVR) in Johannesburg, South Africa. In these settings dance is regarded as a treatment modality especially beneficial to victims of torture because it restores patients' sense of safety in their own bodies and rebuilds their capacity to experience joy and well-being. Related dance groups especially designed for children, include the "War Child's Ethiopian Dance Project," "Alive Kids" located in South Africa, and "Children of Uganda."

SEE ALSO Music, Holocaust Hidden and Protest; Music and Musicians Persecuted during the Holocaust; Music at Theresienstadt; Music Based on the Armenian Genocide; Music of Reconciliation; Music of the Holocaust

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Naomi Jackson

Death Camps see Extermination Centers; Holocaust.

Death March

Death march is another of the horrific terms that have sprung up in the context of genocide. It signifies the process by which a regime, usually a government or an occupying power, begins to summon members of a particular nation, group, or subgroup—on the basis of their ethnicity, religion, language, or culture—with a view to their elimination. The term death march signifies the physical action by which the gathered persons are then lined up and marched to certain mass death.

Perhaps the most "classical" example of the death march was the one that occurred as part of the Armenian genocide in Ottoman Turkey (part of the fading Ottoman Empire) in 1915. The events leading up to that death march were paradigmatic of the experience of genocide victims in other places.

The death march of the Armenian population of the Ottoman Empire took place against the backdrop of the hostilities of World War I. In the spring of 1915 Ottoman rulers ordered that all Armenians be expelled from their homes in areas outside of war zones. The Armenians—men, women, and children—were then lined up and made to walk in convoys of tens of thousands toward the Syrian desert. Although the expulsions resembled deportations, the treatment of the people making the march by Turkish "guards" made it clear that a more sinister agenda was driving the march: a planned elimination of the Armenian population through a process of starvation and exhaustion. The death march was a culmination of decades of Turkish discrimination against Armenians, which had long con-

The Japanese force-marched 70,000 American and Filipino prisoners of war from the Bataan peninsula to transport trains fifty-five miles inland. The prisoners were often bound, beaten, or killed by their captors; some were bayoneted when they fell from exhaustion. Only 56,000 prisoners reached the internment camps alive. [CORBIS]

sisted of the barring of Armenians from serving in the Turkish army, executions of small groups of Armenians, and mass killings by special forces known as *Teshkilâti Mahsusa*—gangs of violent ex-convicts ordered by the Ottoman/Turkish government to commit murders of Armenians.

During the march many Armenians were killed indiscriminately by Ottoman forces, which left a trail of corpses along the route of the march. To break the will of the marchers, the killings were performed with swords, resulting in great bloodshed. Marchers who survived these attacks faced starvation, as no provisions for food were made; many elderly and infirm marchers died in this way during the march. The significantly reduced numbers of marchers who finally made it to the Syrian desert were put into concentration camps located between the towns of Jerablus and Deir ez-Zor, and then released into the scorching desert (with no food or water) to certain death.

The historical record suggests that the death march was methodically orchestrated, carried out in a systematized manner, clearly intended as genocide, and calculated to achieve this through a host of measures, including outright brutal killings, slow starvation and dehydration, death through trauma and exhaustion. It is estimated that this genocide was responsible for the deaths of up to half a million Armenians. While it is hard to estimate the exact number of those who perished in the march, the ways in which the expelled Armenians met their deaths make this episode of human history stand out, even among other death marches, as singularly brutal and horrifying.

The death march was one means used by the Ottoman government to wage an unofficial war against the Armenians, with the prime goals of eradicating them and furthering the creation of a pan-Turkish empire.

In many respects, the death march can be compared to the *death row phenomenon*. In both cases, the victims await elimination through a process dictated by the government in power. Both involve the slow march of time toward certain death. However, the death row

These American prisoners of war surrendered to the Japanese Imperial Army and were forced to march for six days without food or water in what is known as the Bataan Death March.

phenomenon applies to individuals and usually occurs within the context of due legal process, whereas death marches consist of an entire mass of people marched between fully armed soldiers to the place of their final execution. The length of such death marches varies tremendously, but they are characterized by starvation, exhaustion, and brutality.

The Armenian genocide is not the only death march whose details are part of the historical record. The phenomenon was also repeated in World War II by the Nazi regime and Japan. In Germany Nazi forces, under siege from the advancing Allies in the winter of 1944 and 1945, began to frantically move Jewish populations that they had imprisoned in concentration camps outside the camps. Although many of the inmates were marched to nearby labor camps, others were made to walk long distances, to labor camps much further away, in bitter cold, with little or no food, water, or rest. Those who fell behind the main column were summarily shot by Nazi soldiers, while numerous others died of exhaustion, starvation, or exposure to the elements.

The largest death marches in World War II are recorded as having occurred that same final winter of the war, when the Red Army (armed forces of the Soviet Union) had begun its liberation of Poland. Sensing defeat, Nazi forces marched 60,000 prisoners out of the concentration camp at Auschwitz (a small town in Poland) toward another small town 35 miles away, where they were put on trains bound for other camps. As much as 25 percent of that group is calculated to have died en route. Many were killed during the march or immediately prior to the end of the march.

In another episode, in January 1945, SS officers ordered the further evacuation of prisoners from camps inside Germany in the face of the advancing Red Army. These marches were a continuation of the genocidal policies of the Nazi regime, but were also designed to

keep the prisoners out of Allied hands, in fear of the evidence of Nazi atrocities that they would unquestionably find.

According to the United States Holocaust Memorial Museum, "[T]he term *death march* was probably coined by concentration camp prisoners. It referred to forced marches of prisoners over long distances under heavy guard in extremely harsh winter conditions. . . . Thousands . . . died of exposure, starvation and exhaustion." It is clear, in the context of the death marches perpetrated by the Nazi regime, that they were intended to accomplish the destruction of a particular group; at the same time, the Nazis sought to disguise their agenda of destruction and to make it look as though the mass killings were fallout of the attacks on Germany by the Allied forces.

Another World War II death march, occurring in the Pacific Theater, was that perpetrated by Japanese forces against U.S. and Filipino servicemen captured during the course of battles in the Philippine Islands, at Bataan and Corregidor. Stripped of their possessions, the prisoners who surrendered to the Japanese Imperial Army were made to march for six days along the road from Bataan to San Fernando in Pampanga province with no food and water—and to certain death. This particular death march can be differentiated from the marches perpetrated against the Armenians and European Jews in that it targeted military prisoners rather than civilians, but the results were similar.

Although the Armenian genocide is often described as the first death march, the term has been used to refer to events that took place prior to 1915. In 1830 the U.S. Congress passed the Indian Removal Act, despite the objection of Senator Davy Crockett of Tennessee and attempts to challenge it through the courts. The U.S. government wanted to remove the Cherokee from the state of Georgia, in part because of the demand for land coming from the non-Native population of Georgia. U.S. government policy led to the *Nunna dual Tsuny,* or Trail of Tears, in which, in 1838, several thousand Cherokee were forced off their lands and marched into the wilderness. Although the net effect of this action was the deaths of significant numbers of Cherokee, it should be distinguished from the Armenian and European concentration camp prisoner death marches, which had clear intents of the elimination of races. In the case of the Cherokee nation, the action of the U.S. Congress was aimed more at securing the lands on which Cherokee lived. Of course, for the victims of this death march and surviving family members, such a technical difference provides little succor.

SEE ALSO Armenians in Ottoman Turkey and the Armenian Genocide; Auschwitz; Famine; Japan; Trail of Tears

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Joshua Castellino

Death Squads

In many civil and regional conflicts in the world since the 1950s, states, state agencies (most often the military or police), or semiprivate groups have formed special death squads in an effort to eliminate unwanted ideological, ethnic, or religious opponents. Death squads have been responsible for tens of thousands of deaths, and perhaps more, during this time. The phenomenon has been most commonly associated in the public mind with Latin American countries such as Argentina, Brazil, Colombia, Chile, El Salvador, Guatemala, and Honduras, but in fact, death squads have surfaced in many other countries and most parts of the world, including Indonesia, the Philippines, India, Turkey, Algeria, Uganda, apartheid South Africa, and Northern Ireland.

Death squads are clandestine and usually irregular organizations, often paramilitary in nature, that carry out extrajudicial executions and other violent acts (i.e., torture, rape, arson, bombing) against clearly defined individuals or groups of people. Murder is their primary or even sole activity. Except in the rare case where an insurgent group forms them, death squads operate with the support, complicity, or acquiescence of a government, or at least some parts of it. In many cases government security forces have participated directly. However, at the same time death squads may be privately constituted, almost always involve the support and participation of elements outside of government, and develop considerable independence from their backers. Except in unusual circumstances, organiza-

tions or units involved in the killing of combatants in the context of war between sovereign states, even when irregular forces of resistance are involved, do not fall under this definition, although the killing of noncombatants may indeed be so described.

A key element of the definition—that death squads are clandestine—helps explain why government agencies and sometimes private entities resort to their formation and use. Death squads give no visible indication that they exercise the legitimate use of force and they make no public acknowledgment of whose orders they follow. This makes it possible for the state and other backers of death squads to claim no knowledge of or influence over them, and therefore to deny any responsibility for their actions. This "plausible deniability" is vital to many states that want to appear to be upholding international norms of justice and human rights so they can qualify for foreign aid and be accepted as legitimate partners for foreign trade, or, conversely, so that they do not attain the pariah status that openly oppressive states acquire. For example, in the Bosnian war of the early to mid-1990s the government of Slobodan Milosevic materially supported ethnic cleansing by Serbian paramilitaries, but denied that it exercised any control over them. Later, while on trial at the International Criminal Tribunal for the Former Yugoslavia in the Hague in 2002 and 2003, Milosevic cited this alleged lack of control over the paramilitaries in his defense against charges of crimes against humanity.

The work of death squads is usually intended to spread terror, which can multiply their repressive effect, so their acts are not kept completely secret. For this reason most (but not all) death squads make sure that their actions are very public: They discard their victims in public places; they torture and mutilate them in horrific ways that will long be remembered; and they sometimes leave notes or visible signs that the tortured or killed were victims of a particular unit. In some cases lists of intended victims are even published in advance in the public media.

The irregular, informal organization of death squads and the demands of covert action make the exercise of control over them very difficult. They exist outside the law, which practically requires that their members be granted the widest possible exemption from prosecution and interference. The independence of death squads may also mean that they develop their own political agendas, while as appendages of a bureaucratic system (no matter how informal their organization), they often act according to organizational imperatives stemming from competition with other agencies.

The involvement of private or nonstate actors in death squads usually arises from a confluence of interests between private groups and governments: The government's need for deniability may induce it to have extrajudicial killing funded, organized, and committed by people who are not formally or officially associated with the state and who in some way share the government's ideological, economic, political, or religious ambitions. In El Salvador in the 1970s and 1980s, for example, death squads benefited from the considerable support and influence of large landowners and were often directed by a political movement (the Nationalist Republican Alliance), even though some arose organizationally within state agencies, such as the national guard, and all worked in some form of cooperation with state forces to stamp out an internal insurgency.

SEE ALSO Argentina; Chile; Einsatzgruppen; El Salvador; Guatemala

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Deception, Perpetrators

The Nazi Holocaust, the extermination of Armenians in Turkey between 1915 and 1917, and the killings in Rwanda in 1994 are prime examples of genocide during the twentieth century. In each case, the initial victim group lived within the political boundaries of the countries that carried out the genocide, thus necessitating the establishment of an extermination system that maximized willful participation from the executioners, minimized resistance from the victims, and encouraged passive complicity from external and internal bystanders.

Perhaps the greatest obstacles that instigators of genocide face are inhibitions against killing on the part of those whose participation and complicity are required. The Nazi Holocaust is perhaps unsurpassed in terms of the sheer number of killings. Yet the monstrous efficiency with which they were carried out over a long period of time cannot be explained easily by references to bloodlust on the part of the executioners or coercion from leaders. Rather, participation and complicity were at least partly enabled through the wide-

spread use of deception that began early on with propaganda. In the three genocides of the twentieth century, Armenians were marked as enemies of the Turkish Republic, the Jews as enemies of the German people, and the Tutsi as enemies of the Hutu. During the Holocaust the Nazi bureaucracy created very stringent rules on the use of language that specifically discouraged the use of terms such as *killing, liquidation,* and *extermination,* at least in official documents and written orders. In the Rwandan genocide euphemisms were employed—weapons were called tools, Tutsi were referred to as "infiltrators" and *inyenzi* (cockroaches), organizing for murder was described as *umuganda* (communal work). The Turks' forced deportations and marches of the Armenians (called "resettlements") through rural regions and rugged mountains allowed an area emptied of Armenians to become a wasteland of skeletons. In Nazi Germany most death camps were built in the occupied countries to the east of Germany, particularly in Poland. In Rwanda the Tutsi population was driven toward schools and churches where they sought sanctuary, but which turned out to be places to concentrate the slaughter. These efforts removed the killing from the larger populace both physically and psychologically, and in Turkey and Germany, it enabled the large-scale deception that those who were rounded up and transported to the death camps were instead marked for resettlement and "labor duty in the East."

In Nazi Germany the rules on language were entirely consistent with the outcome of the infamous Wannsee Conference of 1942, which provided the blueprint for "The Final Solution to the Jewish Problem in Europe." The resulting document contained no references to actual killing or extermination, yet it made the Holocaust part of another lie, namely that of "the battle of destiny for the German people," just as the resettlement of the Armenians was a battle for the soul of Turkey, and the extermination of Tutsi was intended to reverse the so-called victimhood of the Hutu. These lies suggested that the war against a part of the civilian population was not a choice, but a war forced on the perpetrators by destiny, and that in each case it was a matter of life and death for a dominant population who must annihilate its enemies or be annihilated.

Deception of this sort helps produce compliance because it ultimately allows for self-deception, especially if the lie is repeated over time. It allows perpetrators, bystanders, and victims alike to construe events in alternate and less threatening ways that elicit inhibition to a lesser degree, conceal the crime, and sew confusion. Knowing that a trainload of people will be killed may trigger more inhibition than believing that they are merely being resettled. This kind of self-deception not only helps to soothe one's conscience, it also takes responsibility away from all but those relatively few who do the actual killing. Even the concentration camp guard who dropped the cyanide into a gas chamber could deceive himself about the nature of his actions by identifying them with an abstract concept on a higher level. Rather than putting people to death, he was contributing to "the battle of destiny."

How important these types of self-deception are for the execution of genocide is underscored by the actions of bystanders who did not adopt the official deception. They did not remain passive, but instead influenced other bystanders and in some cases even perpetrators into taking actions aimed at rescuing those marked for death. Prime examples are the rescue of seven thousand Jews from Denmark with the help of small boats and delayed deportation orders from German officials, Bulgaria's refusal to surrender its Jewish population to the Germans in light of public demonstrations, the heroic efforts in the French village of La Chambon that saved thousands of refugees yet escaped reprisals from German officials, and the actions of a few lightly armed peacekeepers under General Romeo Dallaire who rounded up Tutsi and secreted them in a stadium where they remained under their protectors' guard. In all of these cases, deception did not lead to self-deception, but instead inspired individuals into taking responsibility for pro-social action.

SEE ALSO Bystanders; Complicity; Deception, Victims; Propaganda; Sociology of Perpetrators

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Ralph Erber

Deception, Victims

Deception is a key element of genocide. The perpetrators, always a government or other organized group, are able to operate in secrecy, whereas the victims, usually dispersed or leaderless, find it difficult to coordinate their knowledge and actions, and are also hampered by psychological barriers to belief and action. For these reasons victims can not only be easily deceived, but can be co-opted or coerced into helping to deceive outsiders. On the other hand, victims are sometimes able to evade genocide by hiding, fleeing, or assuming false identities, and to the extent that groups of victims are able to discover the truth and organize themselves, armed resistance may also be possible. All these responses require concealment both in preparation and execution, and hence are possible only if the victims in turn are able to deceive the perpetrators.

Ironically, past patterns of persecution short of genocide can help the perpetrators deceive the victims. Perpetrators and victims have typically lived side by side for many years, often in conflict but with long periods of peaceful coexistence. When violence begins to escalate, the victims tend to expect a repetition of previously experienced events and may fail to respond as decisively as they might if they knew what was coming. Perpetrators can thus deceive their victims by approaching genocide by degrees, recapitulating past persecutions. The Nazis, for example, started off by stripping Jews of property and civil rights, introducing discriminatory measures, expelling many of them, forcing them to wear identifying symbols, and confining them to ghettos: The Jews had experienced all these forms of persecution in the past and expected to be able to survive them, but this time they set the stage for genocide.

Either flight or some form of counter-deception, such as forging protective documents, or living under assumed identities or in concealed hiding places, usually provides the best chance of survival. In Cambodia individuals survived by such expedients as throwing away eyeglasses that could mark them as "intellectuals." In the case of pogroms or massacres of short duration, victims can also occasionally survive by feigning death. The very few eyewitnesses to the Cambodian Killing Fields survived in this way and played an important role in unmasking the genocide of the Khmer Rouge.

Totalitarian regimes have complete control of the media and are able to lie and mislead at will. A typical early move is to shut down all information channels but the official ones: For example, immediately after taking Phnom Penh, the Khmer Rouge confiscated all radios and televisions. Killing is usually not done in full view (Rwanda was an exception); victims may instead be transported to camps or remote locations, ostensibly for "resettlement." The Nazis went so far as to disguise gas chambers as shower rooms, with false showerheads, so as to continue the deception until the last moment.

The Holocaust was exceptional in that it allowed its victims many opportunities to practice counter-deception. Within some of the Nazi ghettos a political underground developed that published clandestine newspapers and was able to maintain a surprising degree of contact with the outside world. It was even able to smuggle out news of atrocities to the West and eventually organized a number of armed revolts. Deception within the ghettos took several other forms as well, for example, a thriving smuggling enterprise, which in the Warsaw ghetto was estimated to account for 80 percent of the ghetto's food and export income. Smuggling partly defeated the Nazis' intention of reducing the Jewish population through starvation. Once deportations to the death camps started, in 1942, the Jewish underground was able to track the deportation trains to their destinations and ascertain the true meaning of resettlement. But the Nazis continued to deceive the Jews by offering apparent exemptions from deportation and "amnesties" for those who had escaped from the ghettos. These deceptions persuaded some Jews to stay in the ghettos even after they knew what deportation entailed. Other Jews tried to evade the deportations by building hideouts in the ghettos, or by escaping and going into hiding "on the Aryan side."

The Nazis and the Jews thus played a cat-and-mouse game of deception and counter-deception. Victory went to the perpetrators, who killed nearly six million Jews; but some 200,000 Jews survived in hiding across Europe and more than a million managed to flee across borders to the Soviet Union, Sweden, Switzerland, and other countries of refuge.

Perpetrators often used Potemkin villages, and staged events to deceive outside observers, forcing the victims to cooperate in the deception. During the Anfal campaign against the Kurds in Iraq, reporters were given a guided tour of selected Kurdish areas and then attended a festive Kurdish wedding. In June 1944 a delegation of the International Red Cross visited the Nazi *Paradeisghetto* of Theresienstadt (in Czech Terezín), which had been spruced up for the occasion. The dele-

gation was allowed to speak with a few prisoners who had been told what to say. The Nazis also forced Jews to take part in propaganda films depicting life at Theresienstadt and in the Warsaw ghetto.

Although most books that deal with genocide contain some discussion of deception by the perpetrators, the subject of evasion and deception by the victims has not been well served by the scholarly literature. There are a great many studies of victimization and its consequences (such as posttraumatic stress disorder), and many also of resistance and rescue, but the efforts of victims to save themselves by deceiving the perpetrators have only recently begun to draw the attention of scholars. Such experiences are described in memoirs and diaries too numerous to mention. The Bibliography here includes a small sample of these.

SEE ALSO Cambodia; Deception, Perpetrators; Ghetto; Propaganda

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Gunnar S. Paulsson

Defenses

A legal defense is the offering of substantive and procedural obstacles to the prosecution of a crime in a court of law. Regarding crimes of genocide, war crimes, and crimes against humanity, the first issue to consider is whether a particular defense or defense strategy can be sustained according to the general principles of international criminal law. Article 31 of the Rome Statute of the International Criminal Court (ICC) is significant in this regard. This statute is based on a mixture of common and civil law principles, as well as provisions drawn from comparative criminal law, and refers to "grounds for excluding criminal responsibility." However, Article 31 of the ICC statute accentuates the civil law dimension of this concept by refraining from the common law practice of distinguishing between certain types of defenses.

Significantly, the ICC statute does not differentiate between justifications and excuses offered in regard to the commission of a crime. A justification is a defense to the extent that the defendant argues that he is not to be punished for breaking a law, because certain special (justifying) circumstances exist that legitimize the particular action. An excuse, on the other hand, does not legitimize the criminal act. Rather, it amounts to the claim that the defendant cannot be held personally responsible for his act at the time of the crime. In the case of excuses, the act remains criminal, and therefore punishable—it is the perpetrator who is excused from culpability.

Many legal systems do differentiate between a defense based on justification and one that offers an excuse. This distinction seems relevant when seeking an exoneration for a charge of genocide and crimes against humanity. A justification emerges when a particular act is deemed to be morally just, whereas an excuse only exonerates the accused—not his or her act. An excuse, therefore, identifies the blameworthiness of the perpetrator. At its most fundamental level, therefore, the qualification of a defense to a charge of genocide or crimes against humanity may be perceived as a personal excuse, offered on a purely personal level, on the presumption that the accused cannot be held personally responsible for the particular genocidal act, since any ordinary person would have behaved in the same way.

Contrary to the 1948 Genocide Convention, which only addresses the issue of defenses in Article IV (which deals with the defense of heads of state), the ICC Statute (in Article 31) codifies a potentially wider scope of defenses that, at first sight, embraces the crime of genocide. Article 33(2) of the ICC Statute, however, places certain limits on defenses, declaring that orders to commit genocide or crimes against humanity are manifestly unlawful, which raises an obstacle for mounting a defense based on claims that the accused was following the orders of his or her superior.

The Status of Defenses to Genocide and Crimes against Humanity

The International Law Commission Draft Code of Crimes against the Peace and Security of Mankind, in its report of July 26, 1996, mentions that a competent court shall determine the admissibility of defenses "in accordance with the general principles of law, in the light of the character of each crime." These general

principles of law include the contents of the Genocide Convention and the jurisprudence, which evolved from the Nuremberg Trials. This jurisprudence, as well as international legal instruments, have focused primarily on the defense of duress in connection with superior orders; and on defense claims of insanity, diminished responsibility, and intoxication, as well as self-defense, which did not feature in the Nuremberg Trials.

The law of the International Criminal Tribunals is informed by the fact that nearly every major legal system in the world recognizes a similar collection of defenses as admissible. However, the ICC at times employs somewhat different criteria in assessing the admissibility of some of these defenses.

The Head-of-State Immunity Defense

Claims of immunity for heads of states were not found admissible at the Nuremberg Trials or in other post–World War II international legal proceedings. Article IV of the Genocide Convention provides that a head of state's defense based on claims of immunity from prosecution cannot be invoked in case of a genocide charge. The inadmissibility of this defense therefore expresses a general principle within the meaning of Article 38(1)(c) of the International Court of Justice (ICJ) Statute.

Article 7 of the International Criminal Tribunal for the Former Yugoslavia (ICTY) Statute and Article 6 of the International Criminal Tribunal for Rwanda (ICTR) Statute also disallow a defense based on the claim of head-of-state immunity from prosecution. Specifically, the official position of any accused person, including the position of head of state, does not relieve such person of criminal responsibility, nor can it be used to mitigate punishment. Article 27 of the ICC Statute thus reaffirms the existing customary international law. In fact, it goes further, by specifically excluding this defense in the realm of genocide and crimes against humanity.

A case illustrating the inadmissibility of a head-of-state immunity defense is found in the ruling of the British House of Lords on March 24, 1999, in *R. v. Bow Street Stipendiary Magistrate and others, ex parte Pinochet Ugarte (Amnesty International and others intervening)*. In this ruling, Lord Phillips of Worth Matravers held that it was superfluous to invoke Article IV of the Genocide Convention to exclude the head-of-state defense, because both customary international law and conventional codification already achieved this aim. Furthermore, Article 13 of the 1991 Draft Code of Crimes of the International Law Commission reaffirmed this position. He noted that Article 13 declares that heads of state should be held accountable for their crimes against the peace and security of mankind.

The "Superior Orders" Defense

The perpetration of an international crime as the result of an order of a superior appears to be excusable only if it is clear that the accused did not know the order was manifestly illegal. Accordingly, the defense of superior orders does not appear in the Genocide Convention, because any order to commit genocidal acts is considered to be manifestly illegal. The Apartheid Convention also does not address this defense directly, for similar reasons, whereas Article 2 of the 1984 Torture Convention explicitly excludes the use of this defense as a justification of torture. Furthermore, Article 8 of the Charter of the International Military Tribunal at Nuremberg also explicitly excludes any defense based on claims that the perpetrator was obeying superior orders. The Allied Control Council Law No. 10, which came into force on December 20, 1945, did not contain a similar provision. Nonetheless, several judicial pronouncements of the post–World War II U.S. military tribunals, including *United States v. Von Leeb* (the German High Command Trial) and *United States v. Ohlendorf et al* (the Einsatzgruppen Trial), did explicitly exclude this defense.

A review of scholarly opinions and judgments of post–World War II tribunals and international instruments leads to the conclusion that "obedience to superior orders" is not a defense under customary international law to an international crime when the order is manifestly illegal, even when the subordinate has no moral choice with respect to either obeying or refusing to obey the order. This reasoning also applies to charges of genocide or crimes against humanity. In cases where the subordinate is mentally compelled to fulfil the order, the claim of duress, as a personal excuse, is the applicable defense.

By contrast, Article 7(4) of the ICTY Statute and Article 6(4) of the ICTR Statute exclude the defense of superior orders as a means of claiming nonculpability, and offers no exceptions. They do, however, allow the invocation of this defense for a defendant who seeks a potential mitigation of punishment. Article 33 of the ICC Statute, however, follows a different approach by allowing this defense, but imposes certain conditions upon its use. Still, the practical effect of the various articles of the ICC Statute, when taken as a whole, is to limit the use of this defense to the punishment phase of a trial, where it may be introduced as a mitigating factor.

Self-Defense

The claim of self-defense can be advanced when the individual charged with committing a crime has resorted to the use of force specifically in order to defend him-

self (or herself) from the imminent threat of illegitimate force, and when the force used is proportionate to the threat that occasioned it. Self-defense can also be invoked when the force was used in defense of a third party. In principle, the plea of self-defense can be invoked in the context of any crime, even in the case of genocide and crimes against humanity. What matters in this defense is the specific intent of a person. He or she must have acted with the intent to protect his or her life or the life of another. This raises problems when the defense is used to answer a charge of genocide, which by definition requires its own specific intentionality: the intent to destroy a national, racial, ethnic, or religious group as such.

The concept of self-defense can be invoked at either the state or the individual level. Several major legal instruments recognize the right of an individual to use proportionate force when acting in legitimate self-defense. Article 2(2) of the European Convention on Human Rights refers to self-defense as an exception to the principle of respect for the right of life. During the Nuremberg Trials, however, self-defense was not accorded any status as an international criminal law defense. In *U.S. v. Krupp et al.,* the claim of self-defense by individuals was assessed in connection with necessity. In one of the post–World War II cases (*Tressmann et al.*), this defense was accepted as "last resort." In several other post–World War II cases, this defense was invoked by individuals, and it was sometimes permitted, but not as a plea to genocide or crimes against humanity. Therefore it does not represent a rule of customary international law.

Self-defense is not explicitly mentioned in the ICTR and ICTY Statutes, but ICTY case law did refer to it. In the case of *Kordic and Cerkez,* the defense held that the Bosnian Croats acted in self-defense. The ICTY Trial Chamber, referring to Article 31(1)(c) of the ICC (Rome) Statute, ruled that military defensive operations in self-defense do not provide a justification for serious violations of international humanitarian law. This reasoning seems also relevant to the crime of genocide and crimes against humanity.

Article 31(1)(c) of the Rome Statute expressly codifies the admissibility of self-defense in the event of the crime of genocide and crimes against humanity, as well as in the case of war crimes, if the defensive act is done to defend property that is essential for survival or property that is essential for accomplishing a military mission. However, defense of property is not admissible with respect to a charge of genocide or crimes against humanity.

Duress

The defense of duress is offered as an excuse (as opposed to a justification), and is based on an external circumstance that causes an extreme mental pressure that the accused cannot reasonably be expected to have resisted. This defense was referred to in the Nuremberg judgments, albeit in conjunction with necessity. However, despite the fact that the defense of duress to charges of war crimes was assessed by the United States Military Tribunal in the German High Command Trials (in the *Krupp* and *Einsatzgruppen* cases), it did not exempt the particular accused in these cases, nor did it exonerate Adolf Eichmann during his trial in Israel in 1961, because he was shown to have willingly volunteered and never to have protested against the heinous crimes.

The Genocide Convention is silent on the defense of duress. The special rapporteur of the International Law Commission, Doudou Thiam, argued that this defense was admissible as a plea to genocide in the event of "an imminent and grave peril to life or physical well-being," whereby this peril is irremediable and otherwise inescapable. The final report of the International Law Commission concluded that there exist different views as to whether even the most extreme duress can ever constitute a valid defense or extenuating circumstance with respect with a particularly heinous crime, such as the killing of an innocent human being.

A close reading of the judgment of the U.S. Military Tribunal in the mentioned *Einsatzgruppen* case discloses that a defense of superior orders was refused because there was no evidence of compulsion or duress. Therefore, it follows that the use of "following a superior's orders" is, in fact admissible, but only if it results in causing duress. The difference between a plea based on superior orders and one based on duress is that the former defense may be invoked without the presence of any threats to life or limb, whereas the latter defense can only be raised when someone is compelled to commit a crime by a threat of his or her life, or to the life of another person. A person acting in duress has no realistic moral choice. Only in such a situation is the plea of superior orders admissible as a defense against the charge of genocide or crimes against humanity.

This view was accepted by the ICTY Trial Chamber decision of November 29, 1996, in *Prosecutor v. Erdemovic*. However, the ICTY Appeals Chamber, in its decision of October 7, 1997, held that duress was not admissible as a defense to genocide or crimes against humanity. In contrast, Article 31(1)(d) of the ICC Statute allows for the defense of duress, even when it concerns a genocide charge, under certain specific conditions. The accused must have acted to avoid a threat of

imminent death or of continuing or imminent serious bodily harm against that person or another person, and the accused must not intend to cause a greater harm than the one sought to be avoided. In other words, the accused's acts must have been necessary, reasonable, and proportionate to the threat. In the event of a genocide charge, it is questionable whether these conditions—and especially the condition of proportionality—can ever be met. According to Judge Cassese, in his dissenting opinion to the ICTY decision in *Prosecutor v. Erdemovic,* it may be possible to meet the conditions allowing for a defense of duress even in the case of genocide, if the innocent civilians would be killed no matter what the defendant might have done.

Article 31(1)(d) of the ICC Statute strongly suggests that only physical threats can result in the kind of overwhelming mental pressure required to justify the defense of duress. When duress is invoked because the imminent threat of harm was presented not to the accused but to a third party, there seems to be no requirement of any special relationship between the person threatened and the person accused. However, it is reasonable to assume that assessments of the mental pressure suffered by the accused might be valued differently in the event the person threatened is a relative of the accused.

It does not seem unreasonable to suggest that extreme duress might be admissible as a defense against a charge of war crimes, crimes against humanity, and genocide. It must be remembered, however, that duress qualifies as an excuse, unlike the defense of necessity, which can be offered as a justification. In case of necessity, the accused is faced with a choice of evils, which leads to a decision in favor of the lesser evil—the incriminating qualification of the act is superseded by the fact that the accused intended to protect a higher legal norm. A further distinction between the two defenses is that, in duress, the external pressure stems from an individual, whereas in the event of necessity, the pressure arises from natural causes. Duress only exonerates an accused from his or her criminal responsibility, while leaving the unlawfulness of the act intact.

Military Necessity

The defense of military necessity relates to a choice of evils, similar to necessity as a criminal law defense. The choice is between military and humanitarian interests, and implies a deliberate choice to negate a norm of international humanitarian law. It appears to be admissible, even when it concerns a war crime charge. The distinguishing characteristic of military necessity is that it is affiliated with the furtherance of a specific interest of the state in the context of a particular armed conflict, so that this defense can only be used to exonerate an individual in his or her capacity as an instrument of the state.

The ICC Statute does not mention this defense explicitly in Article 31(1). However, Article 8(2)(e)(xii) defines destruction of property as a war crime when it is not justified by military necessity. Furthermore, close reading of the documents generated during the preparation of the ICC Statute discloses that the drafters believed that this defense could be admitted as one of the special defenses referred to in Article 31(3). Nonetheless, it is unlikely that a defense based on the claim of military necessity could encompass the killing of innocent civilians. Such a defense is therefore not likely to be admissible against a charge of genocide or crimes against humanity.

Insanity, Mental Defect, and Diminished Responsibility

The defense of insanity or mental incapacity as such has no origin in international law. Instead, it was developed based on national criminal law, especially framed on the famous M'Naghten case of 1843, which was tried in a common law system. This defense played a modest role during the later Nuremberg Trials. For instance, the trial against Rudolf Hess suggests that insanity can indeed be of relevance in establishing criminal responsibility for international crimes.

It is better to speak of mental disease or defect, rather than insanity, and in fact this terminology has been adopted in Article 31 paragraph 1(a) of the ICC Statute, which article reflects the M'Naghten jurisprudence. Although the M'Naghten case was based on common law, the civil law systems generally follow the same reasoning with regard to the defense of mental disease or defect.

The M'Naghten rules are based on the concept of a disease of mind which produces such a defect of reason that the accused does not know the nature of his or her act, or, if he or she does, then the accused does not know that the act was wrong. Proof of either of these matters entails that the accused is legally insane.

The mental defect defense should be distinguished from the defense of diminished mental capacity. To claim mental defect requires the destruction—and not merely the impairment—of the defendant's mental condition. Such a claim, if proven, may lead to an acquittal. From a common law point of view, the defense of diminished mental capacity, when offered in response to a murder charge, eliminates the requirement of special intent, namely the elements of premeditation and deliberation, and is therefore not only relevant to the sentencing. Similarly, this defense could affect the special

intent required for a charge of genocide as well as the intent required for crimes against humanity.

The ICTY and ICTR refer to this defense only in its Rules of Procedure and Evidence (RPE). The rules require that the prosecution must be informed of the intent to invoke this defense prior to the start of the trial, and must be provided with details regarding potential expert witnesses whom the accused intends to rely on for his or her defense.

In *Prosecutor v. Delalic et al.* (November 16, 1998), the ICTY Trial Chamber rejected the defense of diminished responsibility as put forward by the accused, noting that the defense did not establish the fact that the accused was unable to distinguish between right and wrong. The ICTY relied on the expert opinions offered by three forensic psychiatrists who were called by the accused to testify on his behalf, and a fourth who was called upon by the prosecution to offer a rebuttal. All of the defense expert witnesses agreed that the accused suffered from a personality disorder. The Trial Chamber opined that the burden of proof was not met by establishing a disorder as such, making a distinction between suffering from a personality disorder on the one hand, and being unable to control one's physical acts on account of abnormality of mind, on the other hand. Only the latter situation may justify this defense, which may be invoked in defense against a charge of genocide or crimes against humanity.

In *Prosecutor v. Vasiljevic,* Mitar Vasiljevic was charged with ten counts of crimes against humanity under Article 5 of the ICTY Statute, as well as with violations of the laws on customs of war (Article 3). In its judgment of November 29, 2002, the ICTY found Vasiljevic guilty of persecution and murder—he allegedly participated in leading seven Bosnian Muslim men to the bank of the Drina River, where five of them were shot to death (the other two managed to escape). As an alternative defense, the accused claimed that his sentence should be mitigated because during the incident he had suffered from diminished responsibility as a result of chronic alcoholism, and backed up his claim with testimony from three expert witnesses.

The Trial Chamber held that the accused bears the onus of establishing the defense of mental disease or diminished mental responsibility. This standard means that the accused must show that more probably than not, his impaired condition existed at the time of the commission of the crime. It also opined that the defense of mental disease or diminished responsibility is only admissible in two (alternative) events: either the accused must have been unable to appreciate the unlawfulness of or the nature of his conduct; or he must have been unable to control his conduct in order to conform to the requirements of the law.

The ICC Statute, in Article 31(1)(a) and (b), sets the standard for the defense of mental disease (and for the related defense of intoxication). The article is in general agreement with the findings of the ICTY Trial Chambers, but does not touch upon the requirement that the defendant bear the burden of proof to establish the defense. In practical terms, this could lead to a situation where mere reasonable doubt concerning the existence of sufficient mental capacity is sufficient to meet the requirements for mounting this type of defense.

Intoxication

A defense based on claims of intoxication is closely related to one based on mental defect or diminished responsibility. Most criminal law systems do not recognize a separate statutory exception in the case of intoxication. Furthermore, at the level of international criminal litigation, the defense of intoxication has played almost no role. There are no precedents for this defense at the level of genocide and crimes against humanity. One of the rare occasions in which this defense was invoked concerned the case of *Yamamoto Chusuburo,* tried in 1946 by the British Military Court in Kuala Lumpur. In this case, the defense of intoxication was actually tried on the basis of British legal doctrine regarding voluntary drunkenness.

This defense lacks a foundation in international criminal law, but, it evolves at the international level from comparative criminal law. Its international status emerged for the first time within the Draft International Criminal Code and the ILA Model Draft Statute for the ICC. It is reasonable to conclude, therefore, that the defense of voluntary intoxication is not considered to be part of any rule of international customary law. Generally the defense of intoxication may be qualified as a derivative of the mental disease exception. It is important to note, however, that the ICC Statute codifies the defense of intoxication in its Article 31, paragraph 1, subparagraph (b).

The drafters of the Rome Statute followed the same approach as that taken by the British Military Court in the *Yamamoto Chusaburo* case. In practical terms, however, this defense as a plea to a genocide charge will be restricted to low-ranking officers and soldiers. Furthermore, the fact that acts of genocide generally take place over protracted periods of time, which further militates against the admissibility of an intoxication defense, due to an exception provided in Article 31(1)(b): "the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk that, as a result of the intoxication, he or she was

likely to engage in conduct constituted a crime (. . .)." In contrast, it may be argued that an intoxication defense could erase the special knowledge element required for bringing a charge of crimes against humanity.

A defendant invokes the defense of intoxication in order to advance the claim that he or she lacked the requisite mental element of intentionality. It is, therefore, a claim to exoneration, not mitigation. However, any such claim must meet specific criteria if it is to be successful.

Article 31(1)(b) of the ICC Statute sets forth just such criteria. It allows for the defense of intoxication if that intoxication has destroyed the accused's capacity to control his or her conduct to conform to the requirements of law. The intoxication need not be caused by alcohol, but may have derived from the use of drugs or medication. This condition is treated as the equivalent of a mental defect.

The intoxication defense fails if it can be shown that the accused became intoxicated voluntarily, knowing the risk of indulging in criminal behavior but disregarding it. This provision raised two questions that the ICC Statute leaves unanswered. First, it fails to define the term *voluntary*. Can an addict be considered to have voluntarily become intoxicated when the addiction is beyond his or her mental control? Second, does this defense also potentially apply to military commanders, or is its use restricted to cases involving individual soldiers? The ICC was founded with the intention to prosecute mainly political and military leaders and policymakers. If the intoxication defense can only be admitted for lower-ranking individuals, why would it be specifically included within the ICC Statute? Apparently, the ICC drafters did not exclude this defense at the latter prominent level and even not with regard to heinous crimes.

SEE ALSO Crimes Against Humanity; International Court of Justice; International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Nuremberg Trials; Tokyo Trial; War Crimes

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Geert Jan Alexander Knoops

Del Ponte, Carla

[FEBRUARY 9, 1947–]
Swiss attorney, named as prosecutor for the International Criminal Tribunals of the Former Yugoslavia and Rwanda.

Carla Del Ponte was born on February 9, 1947, in Lugano, Tessin, the sole Italian-speaking Swiss canton. After studying law in Bern and Geneva, Switzerland, she began her legal career in 1972, where she quickly gained a reputation as an independent and controversial figure. She worked closely with Judge Giovanni

Falcone, who enlisted her aid in his campaign against Italian mafia crime bosses. With Falcone, she escaped an assassination attempt (by underworld figures) in 1989. (Falcone was later assassinated in 1992.) She was appointed attorney general in 1994 and spent the next several years prosecuting the presumed godfathers of the Russia mafia, drug traffickers, and money launderers.

Although a member of the Swiss Radical Party, which has close ties to Switzerland's business interests, Del Ponte has nonetheless earned the enmity of much of the Swiss financial community for having focused international attention on banking scandals. In the summer of 1999, she was selected by UN Secretary-General Kofi Annan to assume the position of prosecutor for the International Criminal Tribunals for the Former Yugoslavia and Rwanda (ICTY and ICTR). She assumed the post the following autumn, replacing Louise Arbour.

On May 25, 1999, then-prosecutor Arbour indicted Serbian president Slobodan Milosevic for war crimes and crimes against humanity, alleged to have occurred before and during the North Atlantic Treaty Organisation (NATO) aerial bombardment of Kosovo. Because of political considerations, several UN member states began to criticize the ICTY as being the puppet of the NATO states. Russia, in particular, demanded that the prosecutor for the ICTY not be a national of any of the NATO members. Switzerland is not a member of NATO, making Del Ponte an acceptable choice for prosecutor.

Del Ponte's first challenge was to decide whether or not to open an inquiry into allegations that NATO's military intervention involved serious violations of the Geneva Conventions. In June 2000 she addressed this option before the UN Security Council in the following terms:

> I am very satisfied there was no deliberate targeting of civilians or of unlawful military targets by NATO during the bombing campaign. I am now able to announce my conclusion, following a full consideration of my team's assessment of all complaints and allegations, that there is no basis for opening an investigation into any of those allegations or into other incidents related to the NATO bombing.

Del Ponte's decision set off an international uproar that forced her to make public the Final Report to the Prosecutor, produced by a committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia. This degree of public disclosure by a UN prosecutor was unprecedented, but the move succeeded in disarming her critics and settling the issue.

Carla Del Ponte at the trial of former Yugoslav president Slobodan Milosevic in February 2002. At that time Del Ponte was chief prosecutor for both the ICTY and ICTR. Thus, she was responsible for bringing Milosevic to trial and for prosecuting an entire government for genocide in Rwanda. [REUTERS/CORBIS]

Her second challenge at the ICTY was the prosecution of Slobodan Milosevic. Thanks to pressure from the United States and the member states of NATO, she obtained Milosevic's arrest and transfer to The Hague, where he would stand trial. This was an historic first—never before had a head of state been brought to judgment for international crimes. At the end of 2001, Del Ponte expanded Louise Arbour's initial indictment to cover allegations of genocide and crimes against humanity that occurred during the wars in Bosnia and Croatia. Milosevic now stands accused of genocide for his responsibility in the massacres of Srebrenica in July 1995.

On February 12, 2002, the trial opened against Milosevic. A lawyer by training, he invoked the right to defend himself and launched into an attack on the legitimacy of the tribunal itself. Del Ponte crafted her prosecution to show that Milosevic was the main architect of a plan to create an ethnically cleansed Greater

Serbia. Throughout the trial, Serbian public opinion was hostile to the tribunal and the authorities had balked at cooperating with the prosecutor. After two years, Del Ponte finally brought the prosecutorial phase to a close on February 25, 2004. Her presentation relied on the testimony of 296 witnesses and thousands of pages of evidentiary documents. The defense phase of the trial was expected to last another two years, without counting the likelihood of an appeal.

Del Ponte has been under extreme pressure to bring her work for the ICTY to a close. She publicly denounced Serbia's lack of cooperation with the tribunal and criticized the delay in arresting another Serbian leader implicated in the ethnic cleansing policies in Bosnia: Radovan Karadzic.

As of 2004, fifteen perpetrators have entered guilty pleas to reduced charges. Some have criticized the use of plea bargains such as these in the context of crimes against humanity. This prosecutorial strategy has led to judgments that appear unequal, even arbitrary. For instance, Milomir Stakic, the unrepentant ex-mayor of Prijedor, was sentenced to life imprisonment for crimes committed locally, but his superior, Bijlana Plavsic, a member of the government of the Srpska Republic and, as such, a leading figure in ethnic cleansing, received a much lighter sentence of eleven years in prison, solely because he was willing to admit his guilt.

Del Ponte's work with the ICTY is only half of her prosecutorial responsibility. She also serves as prosecutor of the International Criminal Tribunal for Rwanda. The ICTR has been accused of inefficiency and disorder from its very inception. During the first ten years of its existence, the tribunal has succeeded in passing sentence on only about twenty accused, at a cumulative cost of $700 million. Del Ponte has been hindered in her Rwanda prosecutions by political obstacles. The Rwandan government has been resolutely hostile to the work of the tribunal. Over time, relations deteriorated so badly between Del Ponte and the Rwandan government that, on September 4, 2003, the UN Security Council decided to split the post of prosecutor of the two tribunals and to replace Del Ponte as prosecutor of the ICTR, allowing her to concentrate her attention and energies on the ICTY.

SEE ALSO Arbour, Louise; Goldstone, Richard; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Milosevic, Slobodan; Rwanda; Yugoslavia

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Pierre Hazan

Demjanjuk Trial

John Demjanjuk was a Ukrainian national born in the village of Dub Macharenzi on April 3, 1920. He was a tractor driver on the collective farm of his native village. In 1940, the Red Army conscripted Demjanjuk. After the Nazi invasion, he served in the artillery in the Crimea until being captured by the Germans in May 1942. After the war ended he immigrated to the United States, becoming a naturalized citizen in 1952. Little is known about the intervening ten years of his life.

In 1977 Demjanjuk was accused of being "Ivan the Terrible," a Nazi war criminal from the infamous Treblinka death camp. It was alleged that he ran the gas chamber there, and that he earned his nickname as a result of his brutal treatment of the camp's inmates. The accusation triggered a court action, filed by the U.S. Immigration and Naturalization Service, to strip Demjanjuk of his U.S. citizenship. He lost this court case and his citizenship in 1981. The United States then faced two options: Demjanjuk could be deported to the Ukraine, or he could be extradited to Israel, which wanted to put him on trial. The United States chose the second option, and, in 1987, Demjanjuk was extradited to Israel to face criminal prosecution for the crime of genocide. Israel was chosen as the venue for the trial because its laws permit prosecution of Nazi war criminals on the basis of universal jurisdiction.

Demjanjuk's trial commenced on November 26, 1986. He was found guilty of committing genocide by the District Court of Jerusalem on April 18, 1988, and was sentenced to death on April 25. While his lawyers appealed the court's decision, new evidence surfaced

John Demjanjuk on trial in Israel, March 18, 1987. Extradited from the United States where he had resided as a naturalized citizen for over thirty years, Demjanjuk faced charges of war crimes he allegedly committed at Treblinka, a Nazi death camp. [REUTERS/CORBIS]

that cast doubt on the original verdict. Newly discovered documents, primarily recovered from the archives of the former Soviet Union, supported the defense's claim that "Ivan the Terrible" was not Ivan Demjanjuk after all, but rather referred to a man named Ivan Marchenko. Consequently the Israeli Supreme Court granted an appeal. As the identification of Demjanjuk as "Ivan the Terrible" was no longer proved beyond reasonable doubt, the Supreme Court acquitted him. The Attorney General of Israel "refused to proceed with new charges, despite compelling evidence that Demjanjuk had in fact served as a guard in the Trawniki camp" (Schabas, 2000, p. 388).

The court held that Demjanjuk did not have "a reasonable opportunity to defend himself against the new charge" (Kremnitzer, 1996, p. 327), which had not been the focus of the original trial in the lower court. Further, U.S. extradition laws would not permit Demjanjuk to be prosecuted on charges that had not been cited in the original extradition order. Even the High Court of Justice of Israel declined to intervene in favor of a new trial.

Some observers remain very critical of the Demjanjuk trial. Geoffrey Robertson wrote: "The trial stands not only as a warning of the unreliability of eye-witness evidence and of justice miscarrying when it is too long delayed, but more importantly of the danger that some states will exploit universal jurisdiction for political ends" (Robertson, 1999, p. 233). The establishment of the International Criminal Court could ensure that there is less partisanship in the future, but it must be recalled that the ICC does not have jurisdiction over alleged offenses that occurred before its establishment in 2002.

SEE ALSO Concentration Camps; Prosecution

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Vinodh Jaichand

Denationalization

The Commission on the Responsibility of the Authors of War and on Enforcement of Penalties first used the term *denationalization* in 1919 in an early effort to describe crimes similar to genocide that were committed during World War I. It cited many examples of Bulgarian, German, and Austrian official attempts to "denationalize the inhabitants of the occupied territory" in Serbia. Among the specific violations mentioned were the prohibition of the Serb language; the destruction of archives, churches, monasteries, and law courts; and the closure of schools.

Genocide was first described as the destruction of the national pattern or character of the victimized group and replacing it with the national pattern or character of the oppressor. Therefore, genocide involved a two-stage process. It was the first stage, which entailed the destruction of the national pattern of the victimized group, for which the word denationalization was used. The national pattern or character would include the political and social institutions; the culture, language, national feelings, religion, and economic existence; and the personal security of national groups, as well as such basic concepts as life, liberty, health, and dignity. The destruction of these was tantamount to the destruction of a nation, or of an ethnic group, through a coordinated plan of different actions aiming at the destruction of essential foundations of life within the group, with the aim of destroying the group itself.

There are many features of the concept of denationalization that are also evident in the crime of genocide, war crimes, or crimes against humanity as they are defined today. One distinction, however, is that even these shared features are, in denationalization, specifically related to the treatment of national groups rather than groups in general. Another distinction between denationalization and genocide in particular is that genocide is seen in more explicitly physical terms—the killing of groups of people—whereas denationalization includes the destruction of the foundations of national groups, such as the group's culture.

An example of denationalization can be found in the 1947 Nuremburg trial of *Ulrich Greifelt and Others*. During the proceedings, reference was made to the war crime of denationalization, citing the policy of forcibly "Germanizing" some groups within the local population of occupied Poland. Among the groups so treated were Poles, Alsace-Lorrainers, and Slovenes, as well as others deemed eligible for Germanization under the German People's List.

History

Over the years and in numerous international documents, various attempts have been made to define genocide. In many instances, what is now known as the international crime of genocide overlaps with other war crimes and crimes against humanity. Recognition of denationalization as a war crime had its origins in the Hague Convention IV of 1907, which attempted to create proper divisions between the responsibility of the state at war and the treatment of innocent civilian in occupied territories. This Convention now forms a part of established international humanitarian law, and applies only in times of armed conflict. Legal scholar William A. Schabas has noted that Section III of the Hague Convention might serve as a legal basis for acts related to denationalization as a war crime. This section deals with military authority over the territory of the hostile state, and includes a provision that makes it illegal to "compel the inhabitants of an occupied territory to swear allegiance to the hostile power" and another which exhorts respect for "the lives of persons and private property, as well as religious convictions and practice."

The preamble of the Hague Conventions of 1907 further promises broad protection under international humanitarian law, stating that "the inhabitants and the belligerents remain under the protection and the principles of the law of nations, derived from the usages established among civilized peoples from the laws of humanity and the dictates of public conscience."

The governments of France, Great Britain, and Russia declared on May 24, 1915, that they would hold all members of the Turkish government personally responsible for "crimes against humanity" for the massacre of Armenians that was ongoing at the time. Earlier, the International Commission to Inquire into the Causes and Conduct of the Balkan Wars (1912–1913) had enumerated thirty-two broad categories of violations committed during that conflict, among them: "Attempts to denationalize the inhabitants of occupied territory."

At the second plenary session of the Paris Peace Conference, on January 25, 1919, the Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties was established. The task of this Commission was to inquire into and report upon the violations of international law committed by Germany and its allies during World War I. At this time, however, there was no mention of individual prosecutions for atrocities against civilians, because the Commission's

members were more preoccupied with developing offenses against the laws of war and felt that the principle of sovereignty required them to focus their examination on the atrocities committed by a government against peoples within its own borders.

In 1941 Nazi Germany passed a decree that denationalized German Jews, stripping them of their property and, later, their lives. It was not until 1945, however, after the atrocities committed against the Jews by the Nazis, that the Nuremberg Charter defined crimes against humanity to include acts against a civilian population whether they occurred before or during the war. The offenses included murder, extermination, enslavement, deportation, imprisonment, torture, and persecution. Subsequent international legislation has further refined and extended the definition of war crimes and crimes against humanity, including protections not only for national groups but to all groups at risk of victimization.

Recent Uses of Denationalization

Another legal scholar, John Dugard, has maintained that the South African apartheid government's official plan to assign all blacks to homelands effectively constituted an act of denationalization. The apartheid laws meant that blacks ceased to be nationals of South Africa, thus depriving them of political and civil rights in the land of their birth. Instead, blacks were reassigned to fictitious nationalities, of Transkei, Bophuthutswana, Venda, and Ciskei, ostensibly because of their association by birth, language, or culture with one or another of those territories. This was contrary to the prohibition on denationalization on grounds of race that has been confirmed by the Universal Declaration of Human Rights, the Convention on the Reduction of Statelessness, and the International Convention on the Elimination of All Forms of Racial Discrimination. Apartheid, including its denationalizing aspects, is a crime against humanity and is now recognised as such by the Rome Statute.

Current Status of Denationalization

Denationalization is presently listed in the Ethiopian Criminal Code in Article 282 (e). Both Australia and the Netherlands also make it a specific offense to attempt "to denationalize the inhabitants of occupied territory" within their respective borders. Whether or not a state's domestic law recognizes the offense, however, that state may still be charged with war crimes in cases of denationalization. The *United States Department of Army Field Manual,* in section 27–10, "The Law of Land Warfare," recognizes the Nuremberg principles of nonimmunity for government officials and disallows any defense based on domestic law "for an act which constitutes a crime under international law." The List of War Crimes prepared by the Responsibilities Commission of the Paris Peace Conference of 1919, as a schedule attached to the Manual, contains the crime of denationalization.

Nationality and Statelessness

Under international law, a state has the discretion to withdraw nationality from its citizens. However, this discretion has limitations, largely limiting such withdrawals to a case-by-case basis. The wholesale deprivation of nationality from an entire group or denationalization on grounds of race, as occurred in Nazi Germany and apartheid South Africa, is prohibited by the Convention on the Reduction of Statelessness of 1961. Yet the problem still persists. Events in the Middle East have led to the denationalization of 3.7 million Palestinians and the confiscation of their property. At the start of the twenty-first century, it remained as yet unclear whether there would be any political will within the international community to resolve this situation.

SEE ALSO Commission on Responsibilities; Hague Conventions of 1907

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Vinodh Jaichand

Denial

Deniers of genocide and other massive human rights violations are engaged in obsessive quests to demonstrate, via fallacious arguments, erroneous facts, and historical distortions, that the events never occurred or are grossly exaggerated. The denial speech, notwith-

standing its effort to be perceived as an historical debate, is about contemporary political motivation, racism, and anti-Semitism. It is an ideology, not an historical endeavor. Deniers' conclusions precede their research and analyses. They aim, not to destroy the truth, which is indestructible, but to eradicate the awareness of the truth that prevents the resurgence of past criminal ideologies.

Denial of the Armenian Genocide

Denial of the Armenian genocide is the most patent example of a state's denial of its past. In this case, the state of Turkey officially denies the genocide committed against its Armenian population. Turkey has tried for decades to deny the burden of guilt that the genocide represents for an emerging nation trying to build itself a different past. The debate created by the Turkish state centers on the definition of genocide and its application to the crimes committed against the Armenians, rather than on whether the massacres ever actually occurred. Thus, the spurious debate about the Armenian genocide is more political than the one invoked in Holocaust denial, which is racially motivated. The international community, for the most part, acknowledges the existence of the Armenian genocide, but Turkey still threatens other states with diplomatic reprisals when the question of such recognition is debated.

Denial of Japan's Atrocities

Historical revisionism controversies are becoming frequent in Japan. Radicals from the Japanese political right reject historical accounts in which Japan is portrayed as guilty of crimes against the Chinese population. They deny or outrageously minimize the aggression and atrocities committed by the Imperial Army in the first half of the twentieth century. An example of the massive human rights abuses that the Japanese right minimizes or denies is the Rape of Nanking, during which Chinese women were held in confinement to be used as sex slaves and tortured. Similar to Turkey in its intent, the Japanese denial movement aims, not at perpetuating discriminatory behavior toward Chinese, but to exonerate Japan for atrocities committed on behalf of the state. Denial of events such as the Rape of Nanking has recently even found its way into schoolbooks. The books were later withdrawn, however. South Korea and China protested the introduction of the books in the classrooms, and most public schools rejected them. Denial also recently found its way into Japanese comic-book novels called *manga.*

Denial of the Rwandan Genocide

The denial movement of the 1994 Genocide in Rwanda is still limited in size and influence. The proximity in time of the killings of approximately 800,000 Tutsis and moderate Hutus makes it more difficult for deniers to claim that Tutsis were not targeted and killed. In this context, deniers focus more on the notion of "double genocide" than on the nonexistence per se of the genocide of the Tutsis. Extremist Hutus, both from the diaspora and within Rwanda, plead that a genocide was committed against them by Tutsis and the Front Patriotique Rwandais (FPR). By doing so, they put the two events—the genocidal violence against Tutsis and the killing of Hutus—on an equal footing. The difference between the concepts of genocide and killings, or even slaughter, is not only etymological, however. By assimilating the concepts, Hutu deniers downplay the importance of the crime and the intent behind the genocide. It removes the stigma of killers from the Hutu extremists. It suggests that, since genocide was committed on both sides, there are no victims and no perpetrators; and that all are equal in the scale of crimes. Some Rwandans, working primarily through survivors' associations, are lobbying for legislation in the Rwanda legal corpus prohibiting the denial and the minimization of the 1994 genocide.

Denial of the Holocaust

Holocaust denial has, over the last couple of decades, become an important and active anti-Semitic movement. It consists of the denial or minimization of all aspects of the Nazi genocidal enterprise—its intent, its means, as well as its results. It aims at reshaping history in order to rehabilitate the reputation of the Nazis. The movement focuses on denying the existence of the gas chambers and challenging the validity of the claim that six million Jews were killed, because these are the Holocaust's most vivid and most frequently used symbols. It is mainly active in Canada, in the United States, and in Western Europe. Deniers are also becoming active in some Arab countries.

France is considered the cradle of the movement. Maurice Bardèche and, even more so, Paul Rasinnier are considered by many to be the fathers of the movement, but Robert Faurisson, a literature professor at the University of Lyons, has been its true leader. *La Vieille Taupe,* a publishing house, has played a significant role throughout the years in the promotion and distribution of Holocaust denial materials. Henri Roques, Roger Garaudy, and Jean-Marie LePen, who brought Holocaust denial into politics, are other prominent members of the movement.

The origin of a structured Holocaust denial movement in the United States goes back to the creation of the Institute for Historical Review (IHR), a so-called academic organization, in the late seventies. The IHR uses

its *Journal of Historical Review* and conferences to disseminate its propaganda. Contrary to what its name seems to suggest, the IHR is not engaged in good-faith historical research, but serves instead as a platform for racist publications and speeches. Members of the IHR include anti-Semite propagandists such as Ernst Zündel, David Irving, Roques, Faurisson, and Bradley Smith. They can also count on the support of self-proclaimed scholars such as Arthur Butz. Bradley Smith, under the guise of the Committee for Open Debate on the Holocaust, was active in the 1990s, placing paid advertisements in college newspapers inviting students to engage in "open debate" on the Holocaust, thereby implying that its very occurrence is subject to legitimate controversy.

Deniers' Arsenal

Holocaust deniers question what is indisputable, volunteer false evidence while denying historical evidence detrimental to their thesis, dwell on details to reject all testimonies of survivors, and hide behind claims of scientific or scholarly status without having any relevant scholarly background. Deniers plead the absence of specific written orders emanating from Hitler proving the genocidal intent. For deniers, the gas chamber is a myth. On that point, they rely heavily on a false report produced by Arthur Butz, who claims to prove that the Nazis lacked the technical capability to build the chambers. Having dismissed the technical feasibility of the killing centers, deniers move on to claim that places such as Treblinka, Chelmo, and Sobidor, but even more importantly for deniers, Auschwitz-Birkenau, are propagandist fantasies created by Jews. From this, they argue that the figure of six million Jewish victims also cannot be true. Finally, they claim that the International Military Tribunal was a fraud, set up by the Allies to make Germans feel guilty in order to obtain financial compensation for Jews.

By denying the Holocaust's most outstanding features, deniers achieve three goals. First, they remove the status and significance of the Holocaust as a point of reference. The deniers want to erase the teaching of the event, its prophylactic role. In other words, by eliminating the event from conscience and history, deniers hope to influence the present. This is why they disavow the existence of the gas chambers and the genocidal function of Auschwitz. Their agenda is the rehabilitation of the reputation of the Nazis: If such a crime was never committed, then there is nothing wrong with pursuing Nazi policies again. Finally, if the Holocaust is itself a propagandist fraud, deniers can confirm the basis of their racist rationale, which is that the Jews manipulated the world before World War II and still do. The evidence of this ongoing manipulation, claim the deniers, is their ability to impose a lie of such magnitude—the Holocaust, in other words—for so long. In all cases, Jews are the targets.

When they do not simply deny that it occurred, deniers argue the Holocaust was only one event in a long list of similar crimes committed in the past. By putting aside the unique aspects of the Shoah and by minimizing the suffering of the Jews, deniers disavow the specific racist intent of the Nazis. But it is pointless to indulge in claims of comparative pain suffering, nor is it useful to enter into a competition over the head count of victims. To attempt to say, as deniers do, that all crimes are equivalent is to engage in historical distortion. For example, the use of the gas chambers is not just a different kind of technology employed in war—it has wider implications. The chambers were built with the specific intent of killing a mass of people, and were used with the goal of total annihilation of a group. When deniers seek to expunge the gas chambers from history, they are denying not just a detail of the larger event but one of that event's defining concepts.

Debate, Censorship, and the Prosecution of Deniers

Those who wish to confront the deniers of genocide face a dilemma. Should they engage in refuting deniers' allegations? Should the state forbid the publication of denial literature and depict it as "hate propaganda"? Should the state prosecute deniers, or does freedom of expression protect deniers' rights to promulgate their propaganda? Solutions have varied considerably from one region to another, but the issue is always the same: balancing the deniers' rights to freedom of speech against the protection of the rights of the people targeted, who are mainly minorities.

Freedom of speech is a basic element of any democratic society. Fundamental international, regional, and national laws protect it. Most of those laws, however, reject the idea that freedom of speech is absolute and not subject to certain restrictions. In most countries, Holocaust denial exceeds the limit of freedom of speech and is considered an act of racism. Countries facing active and influential denier movements, such as France and Germany, have specifically adopted and adapted legislation penalizing the denial of gross human rights violations. Other countries, for instance Canada, have relied on the prohibition of hate speech. In the United States, the First Amendment guarantee of the freedom of speech is sacrosanct and, it is argued, cannot be subject to much limitation. For this reason, there is a relative absence of jurisprudence against Holocaust deniers in the United States.

In Europe, where most Holocaust denial jurisprudence originates, the European Commission of Human

Rights has generally ruled that deniers' complaints about limitation of their freedoms were manifestly ill founded. It has also determined that deniers' speeches and writings are aimed at the destruction of the other rights and freedoms as set forth in the European Convention for Human Rights, and that they are engaged in a campaign against peace and justice, the values on which the Convention is based. For the European Court of Human Rights, the protection of the interests of the victims of the Nazi regime outweighs the freedom to impart views denying the existence of gas chambers. Thus, in the opinion of the Commission, Holocaust denial exceeds the freedom of speech.

The Gayssot Act, adopted in 1990 in France, makes it a punishable offense to engage in the denial of any of the crimes mentioned in the Charter of the International Military Tribunal of August 8, 1945. It was on the basis of this charter that Nazis were tried in Nuremberg. The prominent Holocaust denier, Robert Faurisson, was convicted in 1992 by the French court, but challenged the legitimacy of the Gayssot Act before the United Nations Human Rights Committee, charging that it violated his freedom of speech according to section 19 of the International Covenant on Civil and Political Rights. The Committee dismissed Faurisson's claim.

In Canada, where no specifically adapted legislation exists, Ernst Zündel was unsuccessfully prosecuted for spreading false news. Zündel's pamphlet, entitled *Did Six Million Really Die?,* suggested that the Holocaust was a myth perpetrated by a worldwide Jewish conspiracy. The Supreme Court of Canada found the scope of the provision (i.e., the statute prohibiting the spread of false news) to be too broad and, thus, that the limitation of freedom of speech was in this context unjustifiable. Other cases brought against deniers in Canada were prosecuted under laws prohibiting hate propaganda. In the case of *Q. v. Keegstra* (1990), the Canadian Supreme Court held that the defendant's expressive activity (denial propaganda) was only tenuously connected with the values underlying the guarantee of freedom of expression, that is the quest for truth and the promotion of individual self-development. Thus, the court went on to rule, the prohibition of such propaganda does not unduly impair freedom of expression. More recently, Canadian courts found Zündel, who hosted a web site dedicated to Holocaust denial, guilty of using telecommunication devices to spread heinous messages against minorities.

In Great Britain, the High Court rejected David Irving's claim that Professor Deborah Lipstadt and Penguin Books had slandered him when she named him as a Holocaust denier in one of her books. In court, Irving persistently and deliberately misrepresented and manipulated historical evidence to portray Hitler in an unwarrantedly favorable light, principally in relation to his attitude toward and responsibility for the treatment of the Jews. The court agreed with Lipstadt that Irving was indeed an anti-Semite, a racist, and an active Holocaust denier.

It is worth mentioning that not all legislation prohibiting denial of gross human rights violation applies to all such events. The Gayssot Act, for instance, leaves outside its scope the Armenian genocide, in part because an independent judicial body did not establish the genocide. In Switzerland, to the contrary, section 261*bis* of the Criminal Code, prohibits the denial or the gross minimization of any genocide or other crimes against humanity.

An increasing body of international legislation condemning the denial of crimes against humanity and the Holocaust has contributed to the formation of a soft-law corpus, or multilateral non-treaty agreements, on the issue. Some legal authorities have recommended combating the dissemination of negationist (denial) theories by introducing or strengthening penalties and improving the opportunities for prosecution. Those who still oppose the prosecution of deniers argue that that everything can and should be debated and that truth ought not to be imposed by governments or the law. This utopian belief assumes that lies are always revealed when they are freely debated, and that this would benefit everyone in a free society. This is the "light-of-day" argument taken to its extreme. But the deniers' debate exists only because of such utopian protections.

History vs. Pseudo-History

Deniers aim to confound history. By their denials, they aim to confound history. They pretend to be engaged in a legitimate and credible scholarly effort, a genuine attempt at presenting alternative historical interpretation. But denial propaganda is not interpretation; instead, it is a tissue of lies and distortions. Denial literature and other forms of denial propaganda oppose truth with lies. Historians may engage in historical revision of past events when new evidence supports a rethinking of earlier interpretations, but no such new evidence exists to raise serious questions about the fact that the Holocaust occurred. The deniers' only true goal is a racist one: to attack genocide targets for a second time.

Some fear that prosecuting deniers will lead to the imposition of state-sponsored versions of historical truth. Such fears seem unjustified. The prosecution of deniers is not done with the intent to impose a state-sponsored version of historical truth, but rather to pro-

tect the historical record. The fact that the Third Reich is responsible for the Holocaust has been established in trials around the world, but none of the fraudulent allegations of the deniers has ever been established on the strength of verifiable evidence. In addition, legislation such as the Gayssot Act does not preclude research on the historical facts. It only sets aside one historical fact—the very existence of the Holocaust—on the basis of authoritative evidence, such as that which was presented at the Nuremberg Trials, that the Holocaust did, indeed, occur. Postmodernists argue that history is subjective, pointing out that it is an intellectual reconstruction of events that the historians themselves have not lived through or witnessed. History may indeed contain subjective elements, but this does not mean that a good-faith reconstruction of the past is impossible, or that interpretations can be based solely on ideology and still make a claim to legitimacy. Even historians of the postmodern school cannot escape the supremacy of evidence—including physical evidence and eyewitness accounts—and therefore must concede that the Holocaust did, in fact, occur, or they cease to be historians.

SEE ALSO Holocaust; Propaganda

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Martin Imbleau

Der Stürmer

Julius Streicher has been known as the "Jew-Baiter Number One." He was not a career politician, but saw political parties as an efficient tool through which his racist propaganda could reach a larger audience. Streicher's initial political attempt was with the German socialist party (DSP), in which he was responsible for the publication of the *Deutsche Sozialist,* the DSP's journal. The DSP was not radical enough for his tastes, however. It would not let him use the party for mass propaganda against the Jews. This incited Streicher to join a new radical movement, the *Deutsche Werkgemeinschaft* (the first group to adopt the swastika), and to publish a new paper, the *Deutscher Volkswille,* to disseminate its propaganda. Three thousand copies of the *Deutscher Volkswille* were sold each week. Once again, however, Streicher's anti-Semitism was too strong for his ostensible allies. He lost influence among the movement's leaders, was forced to quit the movement, and abandoned control of the *Volkswille.* In the Nazi party, however, he finally found the ultimate vehicle for his racist sentiments.

Streicher took part in the Munich putsch of November 1923. From 1925 to 1940 he held the rank of *Gauleiter* (local party leader) of Franconia. Elected to the Reichstag in 1933, he was granted an honorary commission in the SA, with the rank of general. His duties, however, were only marginally military in nature. Streicher was above all the publisher of the notorious anti-Semitic newspaper *Der Stürmer* from 1923 to 1945, and served as its editor in chief for the first ten years of the paper's existence. The aim of *Der Stürmer* was to attack, denounce, and promote discrimination against Jews in every way possible. In the 1920s, Streicher's anti-Semitic publication elicited many charges of libel and slander, for which he, as publisher, editor, and author, served a total of eight months in prison. Other anti-Semitic Nazis may be more notorious, but Julius Streicher was by far the most vicious and prolific of them. As chairman of the Central Committee for the Defense against Jewish Atrocities and Boycott Propaganda, Streicher was responsible for the boycotts against Jewish businesses.

Originally, *Der Stürmer* had a fairly limited circulation, contained only a few pages, and even temporarily ceased publication. By the mid-1920s, however, the paper was growing in size, and the number of copies printed each issue began to increase. In 1927, approximately 15,000 copies were sold weekly, and by 1935, circulation had attained 500,000. At that time, *Der Stürmer* was widely distributed in Germany and was read by German citizens from all social classes, including Hitler himself. Members of the Nazi party were


Preis 30 Pfennig

Der Stürmer

Deutsches Wochenblatt zum Kampfe um die Wahrheit

HERAUSGEBER: JULIUS STREICHER

Nürnberg, im Mai 1934

1934

Jüdischer Mordplan

gegen die nichtjüdische Menschheit aufgedeckt

Das Mördervolk

Judenopfer

Die Juden sind unser Unglück!

In a front-page illustration of a May 1934 issue of Julius Streicher's *Der Stürmer,* the blood of an innocent Germany flows to awaiting Jews. In later convicting Streicher of crimes against humanity, the Nuremberg Tribunal referred to the publication as a "poison injected into the minds of thousands of Germans."
[HULTON-DEUTSCH COLLECTION/CORBIS]

strongly encouraged to subscribe to *Der Stürmer*. In addition to distribution through subscription, *Der Stürmer* was displayed in public places throughout Germany, where passersby could stop to read the propagandist titles or look at the racist cartoons of Philippe Rupprecht. Rupprecht, known as Fips, regularly drew anti-Semitic cartoons that employed all the popular stereotypes of the time to portray the physical characteristics of Jews. Streicher and *Der Stürmer* also published many special editions dedicated to anti-Jewish propaganda, including children's books. With the beginning of the war, the paper's circulation dropped significantly. One reason was the wartime shortage of paper, but the other was far more ironic: the absence of Jews in Germany. To boost circulation, *Der Stürmer* added more cartoons and used doctored photographs to further its propagandist aims.

The first issue of *Der Stürmer,* published in 1923, promoted the view that Germans were under the control of Jewish people and that Jews must be forced to leave Germany. Following a policy of gradual development, Streicher initially limited himself to vague expressions, such as "the black shadow of foreign blood," to describe the alleged omnipresence of Jews in German society. Subsequently, however, *Der Stürmer* became more specific. In his articles, Streicher began targeting specific Jewish individuals, or claiming bluntly that Jews were deadly vermin. The paper frequently provided lists of names of Jews toward whom a boycott was to be initiated or who were to be physically assaulted.

For *Der Stürmer,* racial differences explained everything, and repeating this idea in different forms, again and again, was the paper's most effective technique. It did not seek to convince its readers with strong and sound arguments, but instead used an inflammatory style to further its anti-Semitic agenda. Its primary technique was the use of short articles and very simple language to explain in a direct way the so-called reality of the Germans vis-à-vis the Jews. For its racist propaganda to remain effective, and in order to reach the broadest possible readership, *Der Stürmer* repeated the same stories in different ways without bothering to supply new evidence, and used examples to which the general, non-Jewish public could relate. *Der Stürmer* both reported on scandals and initiated them. It created anti-Jewish stories, often relying on old stereotypes, such as the accusation that Jews were responsible for ritual murder and that they kept the blood of their victims, reporting on them as if they were ongoing events. Then, again in the guise of reporting, it publicized the stories far and wide.

Before the International Military Tribunal (IMT) in Nuremberg, Streicher was indicted for crimes against peace and for crimes against humanity, specifically because of his involvement with *Der Stürmer*. The prosecution filed dozens of his published articles, in which Streicher incited people to annihilate the Jews. On the charge of crimes against peace, the IMT concluded that, notwithstanding Streicher's unequivocal support of Hitler's policies, there was no evidence that Streicher was actually responsible for originating the policies that led to war, or that he even knew of such policies. The IMT thus found him not guilty of the crime of conspiracy to wage aggressive war.

On the charge of crimes against humanity, however, Streicher was less fortunate. In his defense, Streicher argued that he promoted his solution to the Jewish question not with the intent of annihilating the Jewish population, but to further the classification of Jews as aliens and to promote the adoption of discriminatory legislation such as the Nuremberg Laws. He even claimed his ultimate goal was the creation of a separate

Jewish state. The IMT rejected this defense, found him guilty, and sentenced him to death.

The IMT's conclusions focused more on Streicher's anti-Jewish incitements during the war, at the very moment that massive crimes were being perpetrated against the Jews, than on Streicher's role in creating a climate favorable to anti-Jewish policies. The tribunal concluded that Streicher's incitements to murder and extermination, even as Jews were being killed in great numbers, constituted persecution on political and racial grounds in connection with war crimes and thus qualified as a crime against humanity. He was sentenced to death on October 1, 1946, and was hanged on October 16, 1946. Among those convicted by the IMT, Streicher was the only one who shouted "Heil Hitler" before he was hanged.

SEE ALSO Incitement; Propaganda

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Martin Imbleau

Developmental Genocide

In many parts of the world, the view of indigenous peoples has been informed by the overarching European view of "others." This has resulted in expectations regarding tribal or native peoples that have less to do with the reality of these populations and more to do with the preconceived notions of Europeans. This phenomenon has had a powerful impact on the development of European political philosophy regarding emancipation and history of thought. It infused the project of colonial intervention and colonial ideology, and has persevered in postcolonial times to infuse the concepts of modernization, nation-building, and, particularly, the concept of development. The effect was something that came to be called developmental genocide. *Developmental genocide* can be defined as the destruction of the culture and way of life of a people, usually accompanied by massive dislocation, as a result of economic development in the name of progress and modernization.

Examples of developmental genocide can be found throughout the world. One striking example of the unbroken relation of colonial intervention, the project of development, and the resultant developmental genocide occurred in the Chittagong Hill Tracts after Bangladesh achieved independence in 1971. Europeans initially perceived the people of the Chittagong Hill Tracts as noble savages who were masters of their life. They were considered rich by the very existence of their sense of freedom, independence, and reciprocity. However, they were considered poor in terms of the so-called higher values of Western civilization—for instance, in terms of their religious practice or material wealth. This perception of indigenous poverty legitimated certain other attitudes that were highly convenient for development planners. It became possible to rationalize development practices as a way to "uplift" the indigenous people, who were now viewed as ignorant, poor, and downtrodden primitives.

Colonial intervention had intended the substitution of indigenous concepts of economy by introducing capitalist notions of accumulation, production, and distribution. This process was only partially successful, and did not endanger the lives of the hill people. However, the nation-building approach adopted after Pakistan achieved independence (in 1947) had somewhat greater impact. It made the hill people's economies the target of a structural change: The Chittagong Hill Tracts region, hitherto a restricted area, was opened for settlement by Bengali peasants. Shifting cultivation, as practiced by the indigenous peoples, was to be suppressed and substituted by cash crop farming for the national market. Hydroelectric resources had to be developed.

In 1964 a dam and a hydroelectric power plant were completed in the hills. The lake destroyed the backbone of the hill people's economy. An estimated 100,000 persons lost their lands, fields, and homesteads. Resistance to the project was widespread, but political pressure on the indigenous peasants was severe; 40 000 felt forced to migrate to India.

After the war of independence against West Pakistan (1971), the Hill Tracts were once again made the target of authoritarian, top-down development planning. At this point, a number of issues emerged: Oversettlement and exploitation of land in the plains of Bengal created a demand for new areas for settlement. The hill peoples' region, which was largely covered in tropical rainforest, seemed an ideal solution, especially because the area was believed to shelter an abundance of natural resources.

The long-term repercussions of the hydroelectric project, the ongoing process of destruction of the indigenous economy, and rising poverty in the region led to an increasing awareness among the hill people of a shared ethnicity. As more and more Bengali farmers migrated into the hill peoples' lands, another step was

taken in the process of the planned destruction of indigenous cultures by the state. For more than ten years, the government turned a blind eye to raids on hill peoples' villages, looting, arson, rape, large-scale killings, eviction, and the destruction of holy sites, and even authorized military participation in these actions. The violence drove a large part of the hill people from their lands and forced them to take refuge in India. Bengali peasants were then settled on the newly vacated lands. A guerrilla force consisting of members of different hill peoples tried, with varying success, to resist the advancement of the army and Bengali settlers. By the mid-1980s, however, Bengali settlers outnumbered the hill people.

The military occupation of the hills set a frame for the change of the indigenous structures of proprietorship. Indigenous peasants were evicted from their legally occupied lands and were driven into wage labor, in the name of development. Such projects were partly supported by international agencies. When, in 1997, the government of Bangladesh and the representatives of the hill peoples signed a peace accord, there was no change the parameters of state intervention. The government's political aim (to force "backward tribes" into the national mainstream) and economic aims (to settle landless Bengali peasants and to gain undisputed command over and monopolize the natural resources of the hills) are legitimated by the state's notion of progress and development. Projects launched after the peace accord have repeated earlier strategies: In the name of the development, new projects, often funded by international agencies, have continued to alienate hill peasants from their land, evict indigenous farmers, deprive them of their property, and transform private and communal land of the hill peoples into state or private property of immigrant settlers.

The Chittagong Hill Tracts example is but one instance of genocidal development policies. In other parts of the world, the damming of rivers has led to a similar wider-scale loss of land and peasant evictions, and the sale of rainforest territories to international logging companies in South- and Southeast Asia are equally profound examples of the destruction of minority peoples legitimated by the imposition of development policies.

SEE ALSO Bangladesh/East Pakistan; Chittagong Hill Tract, Peoples of the; Genocide; Indigenous Peoples; Sri Lanka

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Wolfgang Mey

Diaries

Diaries about genocide are works that provide the contemporaneous perspective and invaluable first-hand observations of individuals living under regimes that are either heading toward or overtly planning, even actively pursuing, genocide. They are a record of the experiences, sights, sounds, rumors, and insights into the daily life of such individuals, and sometimes even detail the actual events of the genocide. By their very nature, diaries offer one person's limited but on-the-spot observations, commentary, and questions regarding his or her own fate, and the lives of family, friends, and colleagues—and perhaps even the fates of people whom the diarist does not know personally. The most powerful and most valuable diaries often reveal the diarist's self-inquiry into his or her own beliefs, the facts surrounding his or her own existence, and the circumstances of the government and of those carrying out genocidal polices. They can also disclose the diarist's assessment of the possibilities, for good or ill, available in the face of approaching or ongoing genocide. For historians, diaries are of inestimable value for they, in most cases, constitute "authentic and reliable sources of information" (Gutman, 1985, p. 371).

Every genocide is the result of specific and unique antecedents, causes, decisions, and the enactment of

such decisions. Nonetheless, the diaries written by individuals who suffered through it, survived it, or witnessed it (such as the missionaries from various nations serving in the Ottoman Empire during the course of the Armenian genocide) may share common themes. These may include propaganda issued by perpetrators against a victim group, the fear instilled by perpetrators in the general populace, the call for the removal of certain groups from society, the incipient incitement of violence against a particular group of people, the "disappearance" of people, or the outright mass killing of targeted victims. Diarists focus on those experiences, issues, concerns, anxieties, fears, and hardships that they personally suspect, witness, or experience.

What must be understood and appreciated is that each diary provides but a single piece—as significant as that is—of the larger "puzzle" of a specific genocide. Many genocidal acts last several years, take place over enormous expanses of land, and involve hundreds of thousands—if not millions—of people. For example, between 1915 and 1919, the Armenian people were persecuted in their villages. Many were driven out into the desert of Syria and Mesopotamia from all across the Ottoman Empire, the primary exceptions being those who lived in Constantinople and Smyrna, where there was a heavy foreign presence. The Soviet manmade famine in Ukraine, which took place between 1932 and 1933, claimed an estimated three to eight million Ukrainians living in an area of some 232,000 square miles. The Holocaust encompassed all of continental Europe, from which Jews, Romani, and others were rounded up, forced into ghettos, and deported to concentration, slave labor, or death camps, where, ultimately, approximately 5.8 million Jews were starved, worked to death, or outright murdered. In 1994, within a period of three short but chaotic months, some 800,000 Tutsi and moderate Hutu were slain by Hutu extremists in Rwanda. The point is that no individual can possibly provide a comprehensive picture of a genocidal act based solely on his or her observations and experiences. Instead, diaries provide uniquely personal views of specific acts occurring within the context of the larger genocidal crimes.

Understandably, diaries written during actual periods of genocide are relatively rare. More common are such first-person accounts as memoirs, interviews, oral histories, and autobiographies that are written or provided in the aftermath of a particular genocidal period. The rarity of on-the-spot, contemporaneous accounts is a result of numerous factors. During an ongoing genocide, individuals are understandably more concerned about securing their own welfare and that of their immediate family than maintaining a record of events; in many cases. During the deportations of entire Armenian communities by the Ottoman authorities, the withering work and horrific conditions in Nazi slave labor camps, and the chaos of the 1994 Rwandan genocide, few of the victims had the opportunity or means to keep such records. In numerous instances of genocide—the Nazi genocide of the Romani being a classic case—the local populace may not be literate, and thus may not be capable of maintaining diaries.

During the 1990s and the early years of the twenty-first century, an ever-increasing number of diaries concerning genocides have been translated and published in English, dramatically adding to the store of such first-hand accounts that have accumulated over the years since World War I. The vast majority of the more recently discovered diaries are being uncovered in different repositories across the globe, such as the Armenian Genocide Museum-Institute in Yerevan, Armenia, and Yad Vashem Martyrs and Heroes Remembrance Authority in Jerusalem. To a lesser extent, some are being discovered by the families of victims or survivors. Such a phenomenon is a direct result of increased scholarly appreciation of the value of such diaries, and the efforts of researchers and victim's advocacy groups to make such works available to other academics and the general public.

A notable diary by a survivor of the Armenian genocide is Vahakn Dadrian's *To the Desert: Pages from My Diary*. Reportedly, Dadrian began his diary on May 24, 1915, in order to document the Ottoman Turks' ill-treatment of the Armenians and to keep track of the rumors then afloat regarding the fate of the Armenians. The members of Dadrian's community, Chorum, were deported to Aleppo and then to Jeresh (Jordan), where they struggled to survive. By the conclusion of World War I, half of Dadrian's family had perished or was murdered as a result of the genocide. In 1919 the surviving members of the family moved to Constantinople, where Dadrian assembled his diary notes for publication. Written in Armenian, the book was first published in 1945 and has only recently been published in English.

Some of the earliest diaries of a genocide were written not by victims or survivors, but by missionaries working in the Ottoman Empire during the Armenian genocide. One of the most informative diaries is *Diaries of a Danish Missionary: Harpoot, 1907–1919,* by Maria Jacobsen. Jacobsen remained in the area thoughout the period of genocide and World War I, and her diary is considered to be one of the more complete records of the Armenian genocide in Turkey. She observed the persecution of Armenians first hand, and attempted to save as many Armenian women and children as she

could by pleading with the Ottoman authorities to release them and by providing clandestine assistance.

Another major diary of the Armenian genocide is entitled *Marsovan 1915: The Diaries of Bertha Morely*. Bertha Morely was an American music teacher who resided and worked in Marsovan, and who witnessed the Armenian genocide perpetrated in Marsovan between April and September 1915. In her diary, Morley comments on the arrest of Armenian community leaders and intellectuals in Marsovan, the subsequent deportation of the town's entire Armenian population, and the ultimate death of countless Armenians. She also describes how Armenian property was ransacked and stolen by Ottoman officials, and how Armenian women and children were forced, on the threat of death, to convert to Islam and then taken in by Muslim families, whom they served as anything from slave labor to concubines.

It is worth nothing that the officials of various governments, including the United States, maintained important documentation of the Armenian genocide, but these works were do not qualify as diaries, strictly speaking. Rather, they are narratives that reflect their own experiences, mediated by their role as representatives of other nations. A classic example of this type of work latter is *Ambassador Morgenthau's Story* by Henry Morgenthau, originally published in 1918. This volume is considered by many scholars to be one of the key sources on the Armenian genocide. Another significant work is Viscount Bryce's *The Treatment of the Armenians in the Ottoman Empire, 1915–1916*. This book, although not a diary, provides a massive collection of eyewitness accounts, and was written and published during the period in which the Armenian genocide was still in progress.

The Ukraine famine, is far less documented by diaries. Nonetheless, many first-person testimonies have been collected by the U.S. Commission on the Ukraine Famine, under the directorship of Dr. James Mace. In 1998, commenting in an article for the newspaper, The Day, Mace stated that

> [A]s early as 1927 Serhiy Yefremov wrote in his diaries about hundreds of thousands of hungry in Kyiv, about the terrible lines for bread, about over 200,000 Kyivans who had been denied the right to buy bread at all, and about peasant unrest provoked by state grain seizures.

In an article for the Encyclopedia of the Holocaust (1995), Israel Gutman observes that diaries of the Holocaust can be classified into four distinct categories: day-by day records of public events; public diaries; private diaries; and diaries written by teenagers and children. He notes the relative abundance of such records, explaining it as follows:

> [E]verybody was writing—journalists, writers, teachers, public figures, the teenagers, and even the children. Mostly they kept diaries, in which they described the tragic events unfolding before their eyes as the personal experiences that they indeed were [experiencing]. . . . Many of the diarists were Jews who were hiding among the Christian population or under their protection (as was the case of Anne Frank).
>
> Many of the diaries and other writings composed during the Holocaust have been lost Even so, a tremendous amount of material has been preserved. In the Warsaw Jewish Historical Institute, which has a large collection of diaries, 272 of them are listed under "diaries," 65 of them from the Warsaw ghetto, in Polish and Yiddish. . . . A relatively large number of important diaries were rescued as part of the Ringelblum Archive. . . . So rich is the Warsaw diary collection in both quantity and quality, regarding the life of the Jews in the ghetto, the structure of the ghetto with its various institutions, and a range of details, that a day-by-day history of the Warsaw ghetto can be reconstructed based on this material alone (p. 272).

Among some of the most remarkable diaries kept during the Holocaust period were those of the *Sonderkommando* who were forced to work in the Auschwitz-Birkenau crematorium. The diaries provide extensive, vivid, and significant commentary on the horror of the death camps and the fate of the Jewish population and others. In addition, they provide significant information about the planning and execution of the *Sonderkommando* uprising in Birkenau. Although *The Diary of Anne Frank* is certainly the most famous diary related to the Holocaust, there are many diaries in English that supply much more in-depth and detailed commentary about a wide variety of issues and concerns, such as Nazi decrees and legislation in Germany, Nazi roundups and murders, and tales of life and death in the ghettos and death camps in Poland. They offer invaluable information to historians and others who seek to understand what transpired during the Holocaust and why it happened. Some of the notable diaries available in English are *A Cup of Tears: A Diary of the Wars Ghetto* by Abraham Lewin; *In the Beginning Was the Ghetto: Notebooks from Lódz* by Oskar Rosenfeld; *The Last Days of the Jerusalem of Lithuania: Chronicles from the Vilna Ghetto and the Camps, 1939–1944* by Herman Kurk; *I Will Bear Witness: A Diary of the Nazi Years* (2 volumes, 1933–1941 and 1942–1945) by Victor Klemperer; *In Those Terrible Days: Notes from the Lódz Ghetto* by Josef Zelkowicz; *The Diary of Dawid Sierakowiak: Five Notebooks from the Lódz Ghetto* edited by Alan Adleson, and *Salvaged Pages: Young Writers' Diaries of the Holocaust*

compiled and edited by Alexandra Zapruder. Also worthy of mention is *Lódz Ghetto: Inside a Community under Siege*, a compilation of diaries and notes, assembled and edited by Alan Adelson and Robert Lapides, and *Children in the Holocaust and World War II: Their Secret Diaries*, which contains, in part, excerpts from diaries by children who endured the Holocaust, edited by Laurel Holliday.

Most of the genocides perpetrated in the aftermath of the Holocaust and following the establishment of the United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide have not been addressed in diaries, but rather in first-person accounts by journalists, collections of interviews and oral histories by interested historians or survivor groups, and some major autobiographies (especially those related to the Cambodian genocide). Nonetheless, one book, *Zlata's Diary: A Child's Life in Sarajevo*, derives from the 1990s, when genocide was being perpetrated in the former Yugoslavia. Although the diary is not about any specific genocide, it does describe the conflict and war that eventually degenerated, in part, into genocide. Whether any diaries were written during the genocide of the Kurds residing in northern Iraq in 1988, the genocide in Rwanda in 1994, or the genocide perpetrated by the Serbs against the Muslim population in Srebrenica in 1995, is, as yet, unknown.

SEE ALSO Biographies; Memoirs of Perpetrators; Memoirs of Survivors

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Samuel Totten

Disabilities, People with

People with disabilities share the experience of stigma, discrimination, and segregation and, as a result, often find themselves denied the basic human rights and fundamental freedoms to work, pursue an education, live where they wish, move freely about society, and generally participate in the lives of their communities. Beyond these human rights infringements, however, lies a darker side to the reality of discrimination against people with disabilities. This includes egregious human rights abuses such as forced abortion and sterilization, coercive medical intervention and experimentation, selective euthanasia (often excused as "mercy killing") and, finally, in the case of Nazi Germany, massive extermination. The twenty-first century offers some hope for the human rights promise that has thus far gone unfulfilled for people with disabilities, as an international movement of disabled advocates gains momentum and international disability rights standards progressively develop.

Over the last two decades, the global community of people with disabilities has combated the perception that disabled people are objects of pity and charity, or that they are sick people in need of a cure by medical professionals. The goal has been to redefine people with disabilities as full members of society, with important contributions to make to their families and communities. This revised thinking, often called the social model of disability, emphasizes that disabled people are prevented from reaching their full potential not by their disabilities, but rather by the unhealthy and disempowering attitudes and actions of their society. This social perspective is concerned principally with identifying, exposing, and examining the limitations imposed on people with disabilities by the physical and social environments in which they live.

People with Disabilities in Historical Context

Historically, societies have held competing attitudes about disability, making generalizations on the subject difficult. Still, it can be said that pejorative attitudes toward people with disabilities appear across cultures and historical periods.

Evidence supports the contention that children born with disabilities in ancient Greece and Rome were killed (infanticide), although perhaps not as extensively as was once assumed. Spartan law specifically mandated that children born with visible physical disabilities be put to death. During the Middle Ages, there was a pronounced tendency to credit certain disabilities—particularly deafness, epilepsy and mental disabilities—with demonological origin. Attempts to treat disabilities in medieval times reflected then-current beliefs in the curative power of magic and religious rites. At the same time, disability was also viewed as part of the natural order, an expected manifestation of human variation.

After the seventeenth century, developments in the medical sciences and the proliferation of custodial institutions to house people with disabilities led to the segregation and isolation of disabled people from their families, communities, and, more generally, from society. Science was invoked to justify social, economic,

Group portrait of T-4 Euthanasia program personnel at a social gathering. The euthanasia program began by killing disabled infants and toddlers. More facilities had to be created when the program was expanded to include older children and adults in institutions, resulting in six killing centers by 1940.[USHMM, COURTESY OF NATIONAL ARCHIVES.]

and educational barriers that prevented people with disabilities from fully participating in community life. This social segregation reinforced generally held negative attitudes toward disabled people. In the mid-nineteenth century, a highly popular form of entertainment was the freak shows, in which people with disabilities were put on display at circuses, fairs, and exhibitions. In addition to reinforcing notions of disability as abnormal and deviant, such displays constituted a largely untold story of extreme abuse and assaults to human dignity. Indeed, such displays were very often enabled by contractual arrangements granting show organizers the right to display disabled people for the duration of their lives, in according to terms closely akin to slavery. From the social attitudes of this time came the eugenic agendas that were pursued with enthusiastic abandon by the early twentieth century.

People with Disabilities and the Eugenics Movement

The rise of the eugenics movement in America and Europe during the late nineteenth century led to the specific and widespread targeting of people with disabilities for abuses, and ultimately, to mass murder in Nazi Germany. Theories of race were couched in a biological framework, and appeals to science lent legitimacy to decidedly racist ideologies. Eugenicists warned that the birthrate of the "fit" and "talented" members of society had declined to an alarming extent, whereas less desirable members of society continued to multiply. There

was a perception of racial degeneration, and it was feared that medical care for weak or unfit members of the population might compromise optimal human evolution.

In the United States, eugenic theories were applied with vigor, and populations of people with disabilities were primary targets. The infamous Eugenics Record Office (ERO), founded in 1910 at Cold Spring Harbor, New York, furthered eugenicists' goals through flawed and fraudulent research programs. The ERO received a steady stream of funding from notable philanthropists of the time, including John D. Rockefeller, Jr. and Mary Harriman. In 1914, one of the ERO's advisory committees concluded that 10 percent of the American population was defective and should be sterilized. In 1926 the American Eugenics Society (AES) was founded to build broad public support for eugenics, and forced sterilization in particular, and was financed by the Rockefeller Foundation, the Carnegie Institution, and George Eastman of Eastman Kodak, among others. In conjunction with this movement, many doctors began refusing treatment to infants born with disabilities.

The AES campaign largely succeeded in its mission. Among the world's nations, the United States stood at the forefront of forced sterilizations imposed upon disabled persons, particularly people with intellectual disabilities, as bogus studies linked this community to criminality, immoral behavior, and pauperism. Between 1907 and 1939, more than thirty thousand people in twenty-nine states were sterilized during incarceration in prisons or mental institutions. In 1927 the United States Supreme Court placed its imprimatur on forced sterilization in *Buck v. Bell,* where an eight to one majority upheld the constitutionality of the 1924 Virginia Eugenical Sterilization Act. Writing for the majority, Justice Oliver Wendell Holmes, Jr. stated:

> We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. Three generations of imbeciles are enough.

"Racial Hygiene" in Nazi Germany

The appointment of Adolf Hitler as German chancellor in 1933 created the political context for the rapid implementation of eugenic and racial policies. Legal enactments affecting the lives of disabled people and responsive to the eugenics movement were swiftly introduced. The Law for the Prevention of Offspring with Hereditary Diseases was adopted in July 1933, and served as the foundation for successive eugenic and racial policies against Jewish and Roma populations, among others, throughout the Nazi era. This legislation authorized compulsory sterilization for persons found to have any of a broad range of physical and mental disabilities. Estimates suggest that at least 300,000 disabled persons were sterilized under the law prior to the outset of World War II, with an additional 75,000 sterilized soon thereafter.

In October 1935 the Marriage Health Law was introduced to prevent marriage by disabled persons. The law introduced mandatory screening of the entire population, and the issuance of a marriage license required proof that any offspring from the proposed union would not be affected with a disabling hereditary disease. This legislation paved the way for the enactment of similar laws barring marriage between Jews and Germans.

Nazi Targeting of Disabled Children for Extermination

Children with disabilities were targeted for systematic killing under a separate Nazi program that was implemented before the state began the mass murder of disabled adults. The origins of the program have been linked by historians to a 1938 request, by a father, that doctors perform a "mercy killing" on a child born with multiple disabilities—the request was granted by Hitler himself.

In August 1939 Hitler instructed his physicians to appoint a committee to oversee the killing of disabled children in a more systematic fashion. The Reich Committee for Scientific Research of Serious Illness of Hereditary and Protonic Origin was established, and it issued a decree mandating that all newborns and infants under three years of age born with suspected "hereditary diseases" (including, among others, Down's syndrome, deafness, blindness, paralysis, and congenital physical disabilities) be reported to a committee. Doctors were required to answer detailed questionnaires about quality of life and submit their results to the committee. Those selected by the committee for killing were transferred to one of twenty-eight official institutions, usually the wing of a regular hospital and among them some of Germany's finest hospitals.

A variety of particularly horrific killing methods were used to eliminate these patients, including mas-

[T-4]

In 1933 the German Ministry of Justice proposed legislation authorizing physicians to grant "mercy deaths" in order to "end the tortures of incurable patients, upon request, in the interests of true humanity." The legislation was never formally enacted, yet its objectives—not euthanasia but the mass killing of people with mental and physical disabilities—were implemented in the form of a program known as Operation T-4, a reference to the address of its headquarters in Berlin: Tiergartenstrasse 4.

Under the top-secret T-4 program, patients in all government- and church-run sanatoria or nursing homes with a wide range of physical, sensory, and mental disabilities perceived to be hereditary in nature were targeted for extermination. Included were those with blindness, deafness, epilepsy, intellectual disabilities, autism, depression, bipolar disorder, mobility impairments, or congenital disabilities. The pool of victims later expanded to include sick residents of poorhouses and old-age homes.

Under the T-4 program by mandate, the Interior Ministry collected data from institutions about the health and capacity for work of all patients. Expert assessors, including psychiatrists, served in review commissions that evaluated completed forms. Forms were marked "+" in red for those designated for death, "–" in blue for those designated to live, and "?" for cases requiring additional review.

Six major sites existed where people with disabilities were killed under the T-4 program, of which Hadamar was the most notorious. At the Hadamar euthanasia center, authorities would issue death notices following mass executions of people with disabilities, with newspaper obituary columns stating the date and place of death. After the killing of its ten thousandth victim in 1941, the hospital staff at Hadamar held a celebration complete with a polka band, words of praise for the important work accomplished under the program, and a celebratory corpse burning, garnished with fresh flowers and small flags emblazoned with swastikas.

The T-4 program served as a testing ground for the Nazi killing machine. At the outset T-4 victims were killed by lethal injection, but they soon became the first victims of an experimental gas chamber at Brandenberg Prison. In a test run in January 1940, patients diagnosed with mental disabilities were gassed to death in an experiment intended to show the effectiveness of poison gas over other methods of killing. Nazi techniques of outfitting killing chambers with false showerheads and bathroom tiling were developed under the T-4 program.

The secrecy of the program became compromised on account of mistakes made by officials and because of the sheer scope of the program, which made it impossible to conceal from the public. The Third Reich officially halted T-4 in August 1941, after some seventy thousand disabled people had been killed. This halt related only to the official operation of killing centers and use of poison gas. The mass killing of people with disabilities continued through the end of World War II, in institutions as well as concentration camps.

In October 1945 the U.S. Military Commission considered the case of seven former staff members at Hadamar. They were tried for violations of international law for their role in the killing of over four hundred mentally disabled Polish and Soviet nationals. All accused in the Hadamar case were found guilty: Three were sentenced to death and summarily executed, one was sentenced to life imprisonment, and three served lengthy prison terms.

sive lethal injection to the heart, poison administrated over an extended period of time, gassing with cyanide or chemical warfare agents, starvation, and exposure. The latter two methods were sometimes selected so that doctors could attribute the death to natural causes or to routine illness such as pneumonia. The program soon expanded, in the manner of other Nazi killing programs. In time, medical officials were asked to register all minor children with disabilities up to the age of seventeen. Estimates suggest that at least 5,000 disabled children were killed under the euthanasia program during World War II.

Forced Labor Programs and Medical Experimentation

Although the Nazis characterized people with disabilities as a burden on society without productive use, large numbers of disabled people were nonetheless subjected to forced labor in concentration camps, institutions, and elsewhere. Survivors were interviewed for a 2000 report by Disability Advocates, an American disability rights organization, as a part of a project to uncover and expose human rights abuses against disabled people during World War II. These witnesses described a wide array of abuses, including the threat made to fac-

tory laborers who sewed uniforms, that they would be sent to a concentration camp if they broke five needles. One such survivor, whose disability was a degree of hearing loss, reported the fierce pressure of enduring many more months of labor after having already broken four needles.

Disabled people were also subjected to horrific medical experiments during the Nazi era. On December 9, 1946, an American military tribunal opened criminal proceedings against twenty-three leading German physicians and administrators for their willing participation in these experiments, which were classified by the tribunal as war crimes and crimes against humanity. Sixteen of the accused were found guilty, and seven were sentenced to death.

Legal Implications of Nazi Persecution against People with Disabilities

In order to assess whether abuses against disabled people in Nazi Germany constituted the modern crime of genocide, it is first necessary to determine whether that law applies to disabled people as a protected group. A cursory examination of the definition of genocide suggests that it does not. Genocide, as defined in Article 2 of the Genocide Convention, is premised upon the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. Disabled persons would not fall within the parameters of a national or religious group, defined under international law, respectively as a group with a legal bond grounded in citizenship, or as a group sharing a common religious denomination or mode of worship. Nor would the majority of the disabled community appear to fall within the meaning of the term *ethnic group,* whose members share a common language or culture, although the German deaf community could indeed be considered an ethnic group so defined.

Significantly, in 1998, in the *Akayesu* case, the International Tribunal for Rwanda defined *racial group* as a stable and permanent group "based on the hereditary and physical traits often identified with a geographical region, irrespective of linguistics, cultural, national, or religious factors." The racial hygiene policies of Nazi Germany that targeted people with disabilities were based explicitly on an imagined threat to the national "germ plasm." Physical traits—whether real or perceived—were employed as distinguishing factors for the Nazi policy. The thinking, grounded in bogus scientific findings by some of the most respected scientists of the time, assumed that hereditary deafness and blindness, congenital physical disabilities, and mental disability represented direct threats to the racial health of the nation and to the mythic construction of a racially pure and strong people. The "intent to destroy in whole or in part," which is a core component of the legal definition of genocide, was made explicit in Nazi policies.

Forced sterilization and extermination programs targeting people with disabilities were thus directly related to the racist Nazi effort to "purify" and "cleanse" the nation. Accordingly, the Nazi "racial" policies would indeed appear to fall within the definition of racial group as understood in the *Akayesu* case. Significantly, the court in that case approached the definition of *ethnic group* not by reference to any universally accepted understanding, rather, it relied upon the usage of the term by the Rwandan people.

Even assuming that people with disabilities cannot be considered a "racial group" under the law of genocide, the tribunal recognized in the *Akayesu* case that genocide can indeed occur without meeting the definition of any of the four groups expressly protected, provided the group in question is a "permanent and stable group." This would appear to apply in relation to the atrocities against disabled persons in Nazi Germany. Notably, the Nazis had an array of classifications and registrations according to which disabled people were subjected. While the classification systems were ever expanding under the system, the subjective test remained constant—a group defined by a real or imagined hereditary characteristic linked to a mental, physical, or sensory disability—and was tied to the relentless pursuit of racial hygiene.

Linking the specific acts carried out against disabled people by the Nazis to genocidal acts as defined by the law of genocide is relatively straightforward. The systematic mass sterilizations of disabled people fall within one of the specifically prohibited acts under the Genocide Convention: "[i]mposing measures intended to prevent births within the group." The mass exterminations of disabled children and adults under the euthanasia programs clearly constitute killing members of the group. Medical experimentation, exploitative labor practices, and the appalling conditions in institutions, among other abuses, constitute "causing serious bodily or mental harm."

Finally, separate and distinct contraventions of international law apply to the atrocities against disabled people in Nazi Germany, including crimes against humanity. As defined in Article 7 of the Statute of the International Criminal Court, certain acts committed as part of a widespread, systematic attack directed against any civilian population, with knowledge of the attack, constitute crimes against humanity, including, among others, murder, extermination, severe deprivation of physical liberty, and enforced sterilization.

Modern Manifestations

Widespread abuses against people with disabilities are by no means confined to the Nazi era. Indeed, many of the attitudes and prejudices that fueled the Nazi mass murder against the disabled persist today, reflected in laws and policies that reinforce stereotypical perceptions of people with disabilities as passive, sick, dependent, in need of medical cure and charity, and, in the case of people with mental disabilities, dangerous. Such attitudes, while they have not led to the large-scale genocidal persecutions of the Nazis, have nonetheless supported a devaluing of the lives of people with disabilities that has real currency in an age of genetic engineering and renewed debate surrounding the "mercy killings" of disabled people.

While international humanitarian law and international human rights law are fully applicable to people with disabilities, massive human rights abuses experienced by this community remain largely unaddressed. People with disabilities are subjected to a variety of abuses, including forced abortion and sterilization. The February 2000 U.S. State Department Human Rights Report indicates that in 1997, the government of Japan acknowledged that some 16,500 disabled women were sterilized without their consent between 1949 and 1992. (Japan has denied compensation to the victims.) In *Mad in America,* Robert Whitaker details decades of electroshock "treatment," forced brain damaging surgery, and the coercive drugging of people with mental disabilities. In institutional settings, physical and mental abuses and gross neglect endangering the lives of people with disabilities are widespread. Reports issued by Mental Disability Rights International on conditions for people with mental disabilities warehoused in dismal and dangerous institutions detail unhygienic conditions of detention; excessive use of physical restraints; lack of adequate food, water, clothing, and medical care; and other life-threatening conditions, including instances of patients freezing to death.

Genocidal policies pursued relentlessly against people with disabilities in Nazi Germany are part of a long and persistent pattern of human rights abuses. Efforts by disability advocates to expose continuing discrimination and abuse, some of which may indeed amount to crimes against humanity, along with improved awareness about people with disabilities and law and policy reform at the national, regional, and international level, are of critical importance to the lives of some 600,000 disabled persons worldwide.

SEE ALSO Eugenics; Euthanasia; Germany; Medical Experimentation

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Mothers and other relatives of the missing stage a demonstration near the Plaza de Mayo in Buenos Aires, 1982. A 1976 coup in Argentina resulted in a seven-year military dictatorship, during which an estimated 30,000 people "disappeared." [HORACIO VILLALOBOS/CORBIS]

Disappearances

Enforced disappearances constitute a set of particularly invidious violations of human rights, not only for the victims, who are deprived of their liberty, frequently tortured, and in fear for their lives, but also for their families and friends, who are left in ignorance regarding the fate of their disappeared loved one. The Universal Declaration of Human Rights outlaws the practice, as do the two UN Covenants: the Covenant on Civil and Political Rights and the Covenant on Economic, Social, and Cultural Rights. Other international human rights instruments take up the issue of enforced disappearances, as well.

Historical Background and International and Regional Reaction

Human rights groups are said to have first coined the term "disappeared" ("desaparecido") in 1966, referring to the victims of secret governmental crackdowns on political dissidents in Guatemala. Thousands of cases of disappearances were reported in the 1970s, primarily but by no means only from Central and Latin American countries. In response, the UN General Assembly adopted Resolution 33/173, entitled "disappeared persons," on December 20, 1978. In it, the General Assembly voiced concern over reports of enforced or involuntary disappearances from many countries. The disappearances were alleged to be the a result of unlawful actions and violence, and of excesses committed by law enforcement officials or security forces, and it was claimed that they often occurred while the persons were detained or imprisoned. The resolution further expressed concern over reports of difficulties in obtaining reliable information from the competent authorities about the situation of such persons, including reports of the persistent refusal of such authorities or organizations to account for such persons or even to acknowledge that they held such persons in their custody.

Regional organizations were similarly faced with the issue of disappearances. In October 1979 the General Assembly of the Organization of American States (OAS), at its ninth regular session, declared that the phenomenon of disappearances was a stain on the conscience of the hemisphere and contrary to traditional

A forensic anthropologist exhumes the remains of one victim of Argentina's dirty war. [HORACIO VILLALOBOS/CORBIS]

values and the declarations and agreements signed by the American States. A similar resolution was passed by the OAS General Assembly in November 1980.

In Europe, the Committee of Ministers of the Council of Europe adopted Recommendation No. R(79)6 on April 20, 1979, concerning the search for missing persons. On July 11, 1980, the European Parliament adopted a resolution on a report of enforced or involuntary disappearances in which the Parliament made an urgent appeal that everything possible be done to trace all persons reported as missing.

Definitional Issues and Rights Violated by the Practice of Disappearances

By resolution No.43/133 of December 18, 1992, the UN General Assembly adopted the Declaration on the Protection of All Persons From Enforced Disappearance. The preamble of the declaration sets forth the conditions defining an enforced disappearance:

> [P]ersons are arrested, detained, and abducted against their will or otherwise deprived of their liberty by officials or different branches or levels of Government, or by organized groups, or private individuals acting on behalf of, or with the support, direct or indirect, consent, or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

Article 7 of the Rome Statute of the International Criminal Court (ICC) reiterates these definitional elements and adds to them by specifically referring to the intention of the perpetrators to remove the disappeared persons from the protection of the law for a prolonged period of time. Article 2 of the Inter-American Convention on Forced Disappearance of Persons, adopted in Brazil in September 1994 and in force since March 28, 1996, adds the further stipulation that the disappearance of a person impedes the victim's "recourse to the applicable legal remedies and procedural guarantees."

Pursuant to article 1, paragraph 2, of the UN Declaration, any act of disappearance constitutes a violation of the rules of international law which guarantee, among other things, the individual's right to recognition as a person before the law, his or her right to liberty and security of their person, and the right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment. It further frequently violates or constitutes a grave threat to the right to life. Some of the most fundamental principles enshrined in the Universal Declaration of Human Rights have been further spelled out in General Comments, which were adopted by the UN Working Group on Enforced and Involuntary Disappearances.

In addition, the preamble of the UN Declaration also notes that disappearances may entail violations of the UN Standard Minimum Rules for the Treatment of Prisoners (adopted in 1957), the Code of Conduct for Law Enforcement Officials (1979), and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

Characterizing Disappearances as a Crime against Humanity

The fourth preambular paragraph of the Declaration on the Protection of All Persons from Enforced Disappearance clearly states that the systematic practice of disappearances "is of the nature of a crime against humanity." The Rome Statute of the International Criminal Court (ICC), also expressly states that the practice of enforced disappearances constitutes a crime against humanity. Because of this, when disappearances occur on a large scale, such as in Argentina under military rule until 1983, in Sri Lanka during the armed conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE) during the 1980s and 1990s, or

in the former Yugoslavia in the early 1990s, it is in principle possible to prosecute the principal perpetrators on charges of crimes against humanity.

A Belgian law adopted in June 1993 established universal jurisdiction for the prosecution of war crimes and crimes against humanity. Prosecutors in Spain have invoked this law to initiate judicial investigations against several individuals, including former Chilean president Augusto Pinochet and other heads of state. Four individuals were convicted under this law by the Brussels Assises Court in April 2001 for their participation in the genocide in Rwanda. This conviction has prompted others to attempt to bring charges against acting or former heads of state. Even though this law was replaced in August 2003 with new legislation that severely limited the instances in which Belgian tribunals may assert universal jurisdiction, forced disappearances is nonetheless still recognized as a crime against humanity.

In contrast, a case brought against former Chadian president, Hissène Habré, was dismissed by the Senegalese Court of Cassation in a judgment dated March 20, 2001. The court held that no procedure confers universal jurisdiction upon Senegalese tribunals that would allow them to prosecute and judge foreigners under Senegalese jurisdiction for acts committed outside Senegal. The ICC, however, may be expected to prosecute disappearances where such acts are committed as part of a widespread or systematic attack against a civilian population.

Monitoring Mechanisms and Bodies

In Resolution No. 33/173, the General Assembly requested the UN Commission on Human Rights to consider the issue of disappearances. On February 29, 1980, the Commission passed Resolution 20 (XXXVI) and established a working group "consisting of five of its members, to serve as experts in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons." The group was given a five-year mandate, and was the first mechanism established within the UN human rights program to specifically deal with flagrant and consistent human rights violations occurring on a global scale. Since 1980, the mandate of the Working Group has been renewed consistently every three years.

Since its creation, the Working Group has dealt with over 50,000 cases reported from more than seventy countries, but despite the group's best efforts, some 42,000 cases remain outstanding. The mandate of the group is primarily humanitarian in nature, and its working methods are designed to help it meet its main objective: to assist families in ascertaining the fate and the location of missing relatives who have been deprived of the protection of the law. The group seeks to establish channels of communication between the families and the governments concerned. Whenever appropriately documented and clearly identified cases are brought to the group's attention, it tries to ensure that these cases are investigated by the relevant government, with the ultimate goal of discovering the location of the missing person.

The group meets three times annually and reports on its activities to the Commission on Human Rights. For its part, the Commission has urged governments to take steps to protect the families of disappeared persons against any intimidation or ill-treatment to which they might be subjected. It has also asked these governments to give serious consideration to inviting the Working Group into their country for a visit. Since 1982, the working group has conducted a total of thirteen missions to ten countries.

The Human Rights Committee was established under Article 28 of the International Covenant on Civil and Political Rights (ICCPR). Among its other duties it regularly examines issues pertaining to disappearances. These may take the form of individual complaints that have been submitted for consideration, or they may arise from reports submitted by member states. If it determines that a country may have failed to thoroughly investigate charges of disappearances, or that it has neglected its duty to bring the responsible parties to justice, the Committee makes reference to these concerns. It has done so on several occasions in recent years, for example in its concluding observations on the periodic reports of Guatemala and Sri Lanka. In addition, it has held that the prohibitions against unacknowledged detentions (one of the principal root causes for disappearances), hostage taking, and abductions are absolute and cannot be annulled, not even during a state of emergency. The Inter-American Convention similarly outlaws the practice of forced disappearances in all circumstances, even during an emergency.

In addition to the UN Working Group and the Human Rights Committee, there is one other agency that is authorized to deal with and monitor cases of missing and disappeared persons. This is the International Committee of the Red Cross, which is granted such authority in situations of international armed conflict, by the Geneva Conventions of 1949 and their 1977 Protocols.

Selected Jurisprudence

The Human Rights Committee has dealt with a number of complaints involving enforced disappearances. In

the 1981 case of *Elena Quinteros v. Uruguay,* the complainant's daughter was arrested by members of the military and held incommunicado. Later, she managed to elude her captors and to enter the grounds of the Venezuelan embassy in Montevideo, but was abducted from there by Uruguayan police officers. Although the Committee failed to determine her subsequent whereabouts, it did find that the Uruguayan authorities were in violation of the ICCPR on several counts, although the specific definition of forced disappearance was not invoked.

The 1991 case of *Barbarin Mojica v. Dominican Republic* provides another example of the Committee's work. In this case the son of a well-known Dominican labor leader was last seen by his family on May 5, 1990. The missing man had been receiving death threats in the weeks prior to his disappearance. Witnesses testified that they had seen him board a taxi in which other unidentified men were traveling. His father repeatedly asked the authorities to open an investigation into his son's disappearance, but his requests were ignored. The Committee found that the Dominican authorities were in violation of the ICCPR. What is interesting in this case is that although there was no specific allegation of torture of the disappeared, the Committee nonetheless felt justified in concluding that "the disappearance of persons is inseparably linked to" such treatment.

In 1996 the Committee decided the case of *Ana Celis Laureano v. Peru.* Here, the petitioner reported that his granddaughter had been abducted in Huaura province by unknown armed men, presumed to be members of the Shining Path movement. Several months later, the granddaughter was released, only to be picked up by the Peruvian military on suspicion of collaboration with the Shining Path. The military held the young woman incommunicado. A a judge ordered her release on the ground that she was a minor, and she was returned to the care of her grandfather. She was abducted again, and this time her grandfather could not discover where she was being kept. Upon investigating her disappearance, a civil court judge concluded that military or special police units were responsible for her disappearance, and found these bodies to be in violation of several articles of the Covenant on Civil and Political Rights. Once again, however, the specific definitional language of forced disappearances was not invoked.

The case of *Sarma v. Sri Lanka,* decided in 2003, is the first in which the specific legal definition of forced disappearance was explicitly invoked by the Committee. In this case the complainant, his son, and other individuals were taken from their family home by army officers in the presence of several witnesses. The complainant's son, suspected of membership in the Tamil Tigers, was later transferred to an army camp, while the complainant (Sarma) and others were released. Sarma then made several attempts to locate his son and to secure his release, but was frustrated on both counts. Upon investigation of the case, the Committee found the Sri Lankan authorities guilty of several violations contained under the general rubric of forced disappearances.

Over the years, the Committee has become more and more specific in its recommendations on appropriate remedies in disappearance cases. Thus, in the last-mentioned case, the Committee urges Sri Lanka to "expedite the current criminal proceedings and ensure the prompt trial of all persons responsible for the abduction of the [complainant's] son under Section 365 of the Sri Lankan Penal Code." This tendency toward greater specificity indicates the Committee's determination that all countries party to the ICCPR recognize the need for rigorous investigation whenever disappearance has been formally alleged, and that they honor their obligation to provide effective remedies to the victims.

The Inter-American Court of Human Rights has also dealt with the issue of unacknowledged and incommunicado detention. In January 1987, it delivered an Advisory Opinion on the right to habeas corpus in Emergency Situations, in which it held that the legal remedies guaranteed under to victims of forced disappearance—including the right to habeas corpus—are absolute and may not be suspended. The court was prompted to render this decision at the request of the Inter-American Commission, which was troubled by the tendency of several Latin American countries to enact special laws in order to provide legal cover for their practice of holding detainees in incommunicado custody for prolonged period of times. The court's opinion rendered such all such special laws invalid, so that they could no longer be asserted as a defense against a charge of forced disappearance.

Duty to Investigate and to Provide Effective Judicial Remedies

In resolution 33/173, the UN General Assembly calls upon member states to conduct rapid and impartial investigations into cases of enforced or involuntary disappearances, and to ensure that law enforcement and security authorities are held fully accountable in the discharge of their functions. Article 3 of the Disappearances Declaration further stipulates that each state "shall take effective legislative, administrative, judicial, or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdic-

tion." The declaration asserts that acts of enforced disappearance "shall be offenses under criminal law punishable by appropriate penalties." Similarly the Human Rights Committee notes that "States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life." It is unfortunately the case that few countries have taken steps to incorporate the principles embodied in the Disappearances Declaration into their domestic legislation. The Working Group on Enforced or Involuntary Disappearances has consistently emphasized that the obligation to implement the Declaration applies to all states, not only to those in which disappearances actually have occurred or continue to occur.

The Working Group has noted that the presumption of impunity has been the major reason behind the continued practice of forced disappearance. In its report to the Commission on Human Rights in 2002, the Group stressed the importance of bringing perpetrators to justice. This is a difficult challenge to meet, for in many countries with a high incidence of cases of disappearances, such as Iraq, Algeria, and Guatemala, the absence of specific legislation and/or the unwillingness or inability of the authorities to properly investigate disappearances or prosecute the perpetrators remains a serious problem. So does the tendency of some countries to grant amnesty to the perpetrators of acts of disappearance and torture, in the name of national reconciliation, because such amnesty helps to reinforce the idea that perpetrators can commit these crimes with impunity.

Several countries have passed specific legislation to assist national authorities in successfully investigating and prosecuting acts of disappearances. Among these success stories is Argentina. In October 2000 the Human Rights Committee welcomed the criminal prosecution and conviction of several former high-ranking Argentinian military officers who had been accused of acts of disappearance and torture.

Argentina has taken a number of other steps to ameliorate the damage done by the practice of forced disappearances. It has set up a mechanism to facilitate the identification of children who had been taken by force from their parents, when it became clear that the parents had disappeared. It has passed legislation that gives constitutional rank to the Inter-American Convention on Forced Disappearance of Persons. The Argentinian Constitution of 1994 introduces forced disappearance as a ground for habeas corpus proceedings. Mindful of the disappearances that occurred during the military regime in the 1970s and 1980s, the government signed into law an act that offers compensation to the survivors of certain victims of forced disappearance and of those who had died as a result of action by the armed forces, security forces, or any paramilitary group prior to December 1983. The law was passed in 1994, and in June 1995 a second law was passed that extended the time limit for submitting benefit applications by five years.

The government of Sri Lanka has also attempted to come to grips with the large number of disappearances resulting from the armed conflict. Three regional Presidential Commissions of Inquiry into Involuntary Removal or Disappearance of Persons were set up in November 1994. Over the next three years they investigated more than 27,500 complaints and found evidence of forced disappearance in 16,742 of them. On September 3, 1997, they submitted their reports to the Sri Lankan president.

While the commissions conducted their investigations, the Sri Lankan Parliament enacted the Human Rights Commission of Sri Lanka Act of August 1996. The National Human Rights Commission is entrusted with many human rights tasks. It investigates complaints about disappearances and conducts surprise visits to police stations and detention centers. In May 1999, the government established a special unit charged with computerizing lists of all reported cases of disappearances, in an effort to facilitate investigations. These computerized lists, together with the enactment of new legislation, have greatly expedited the process of issuing death certificates in respect to missing persons who are presumed dead. Between 1995 and 1999, some 15,000 death certificates were issued, permitting more than 12,000 families to receive compensation from the government for their loss.

The Sri Lanka Criminal Code includes the abduction of persons as a criminal offense. However, the Human Rights Committee has noted after examining a report submitted by Sri Lanka that this is a difficult charge to prove. The majority of prosecutions initiated against members of the armed forces on charges of abduction and unlawful confinement have been inconclusive because of the lack of satisfactory evidence and unavailability of witnesses, and only very few police or army officers have been found guilty and punished.

Toward a Binding New Instrument

In spite of the existing international instruments and mechanisms in place to deal with the practice of disappearances, the UN Sub-Commission on Protection and Promotion of Human Rights submitted a Draft Convention on Disappearance to its parent body, the Commission on Human Rights, in 1999. The aim of the drafters was to further strengthen legal protections for all per-

sons threatened with enforced disappearance. Comments on the draft were solicited from member nations, intergovernmental institutions, and nongovernmental institutions operating in the international arena. These comments were published in 2001.

Publication of the draft and its comments was followed in January 2003 by the formation of a working group of the Commission on Human Rights. The group was charged with the task of determining what new legal instrument might be needed, what provisions should be included in it, and how to best monitor its application. In January of 2004, the group held its second meeting, during which a number of unresolved and contentious issues emerged.

For instance, many states wanted to entrust the monitoring functions to the Human Rights Committee or a special chamber thereof. Discussion also centered on the mechanics of monitoring, with some states recommending that the monitoring agency be granted fact-finding capabilities and perhaps periodic country visits by the Committee's special chamber. Participants in the meeting were clear that the new monitoring agency should not adversely affect the role of the UN Working Group on Enforced and Involuntary Disappearances.

The inclusion of enforced disappearances as a crime against humanity was another well-debated issue. Many states favor a prominent reference in the Preamble of the new instrument to enforced disappearances that occur on a massive or systematic scale as a crime against humanity, using the definition of such crimes that has been established by the Rome Statute of the International Criminal Court. Other states prefer a separate provision stipulating that disappearances committed in a massive or systematic manner constitute a crime against humanity and carry consequences in accordance with international law. The specific wording of the definition of enforced disappearances was also subject to debate, as was the question as to whether there should be any statute of limitations applied to the crime. Also unresolved was the exact nature of the obligations of each state to enact domestic legislation that incorporates the crime of enforced disappearance, the propriety of granting amnesty or pardons to perpetrators of this crime, and the designation of jurisdictions in which crimes of force disappearances might most competently be prosecuted. Finally, the group debated what might be appropriate preventive measures that could be taken by states to reduce the incidence of this crime.

SEE ALSO Argentina; Chile; United Nations Commission on Human Rights; United Nations General Assembly

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Doctors see Disabilities, People with; Eugenics; Euthanasia; Physicians.

Documentation

Genocide is not created or perpetrated in a vacuum. It is generally preceded by key decisions and acts and the plan for its conduct is usually mapped out ahead of time, whether in fits or starts or as a well-orchestrated process. Many perpetrators have left revealing and detailed documents that delineate—some extremely clearly, others not so clearly or under the cover of euphemism—the genesis and evolution of a genocidal process.

German Genocide of Hereros in Southwest Africa

In 1904 German military and government officials documented all aspects of the uprising of the Hereros of southwestern Africa and the colonial reaction to the uprising, including genocidal actions against the Hereros. *Die Kämpfe der deutschen Truppen in Südwesafrika,* published in 1907, is considered to be the "major source for the military operations of the Germans. [It]

is based on official materials and was written by the Ministry History Section of the German General Staff" (Bridgman, 1981, p. 175). The General Staff produced and submitted fairly regular reports on the war to the German government, which were printed as appendices to the Reichstag debates over actions in Southwest Africa. The German Colonial Office also published a weekly magazine, *Deutsches Koloniablatt,* which included an overview of what was taking place under German rule, particularly as it pertained to the Hereros and other oppressed groups.

Ottoman Turk Genocide of the Armenians

The Ottoman Turks produced ample records (primarily directives, memoranda, and telegrams) of their plans and actions vis-à-vis the Armenian genocide. Most of the documents were riddled with intentional euphemisms (e.g., the use of the term *deportation* served as a code for "massacre" or "destruction"). Telegrams containing specifics about the genocide were burned immediately after they were read, by direct orders from the Central Committee of the Young Turks' Ittihad party government. Furthermore, fearful of prosecution and "drastic retributive justice" at the conclusion of World War I, the perpetrators destroyed "batches of state and party documents" (Dadrian, 1991, p. 86, 87). The obliteration of the vast bulk of the records produced and maintained by the Young Turks Central Committee, destruction of personal documents by the three key leaders of the Ittihad (Talat, Enver, and Cemal), and "the burning of all the evidence of the activities of the Special Organization," gutted the invaluable paper trail (Dadrian, 1999, p. 93).

Vahakn N. Dadrian, an expert on the Armenian genocide and the documentation of the Armenian genocide in Turkish sources, reported in 1999 that:

> Nevertheless, a host of high-ranking officials supplied first-hand evidence in the course of a series of court-martial proceedings instituted in the 1918–1920 Armistice period by successive Ottoman governments anxious to exact punishment from the perpetrators involved. However exercised and reluctant, these officials in various forms of testimony grudgingly admitted to a scheme of deportation, the covert intent and end-result of which was the actual destruction of the masses of the deportees. Another group of Turks, most former military commanders and civil officials, recounted their relevant observations and knowledge through memoirs (p. 87).

Key information was gleaned from various Turkish documents that survived, and is now contained in the archives of the Turkish Military Tribunal, among other sources. The documents were used in the few prosecutions that took place. The Fifth Committee of the Ottoman Chapter of Deputies interrogated and deposed ministers who had served in the wartime government, and among those interrogated were two *Seyhulislams* (highest ranking religious official in the Ottoman Empire). During the months from October to December of 1918, the subject of the genocide was taken up in debates within the Turkish parliament.

The most voluminous and accurate information available on the Ottoman Turk genocide of the Armenians is located in the reports and archives of the German and United States governments. Dadrian asserts, "In terms of reliability and verifiability, no other single source may compare to the critical importance of official German records on the Armenian Genocide in documenting the capital crime of the genocide" (1999, p. 90). Beginning in mid-June 1915, reports of German consuls throughout the Ottoman Empire began to awaken the German government to the reality of what was taking place on the ground. A mountainous pile of German reports detailed the deportations, the looting of Armenian property, and the killing of Armenian civilians.

As for the information and documentation collected by the U.S. government within and during the Armenian genocide, the United States National Archives and Library of Congress now contains a microfiche set of 37,000 pages of documentation. Compiled and edited in the 1990s by Rouben Adalian, Director of the Armenian National Institute in Washington, D.C., the collection contains approximately 4,500 documents that were located in official U.S. archives. The collection is accompanied by a 475-page *Guide* that Adalian developed.

Nazi-Perpetrated Genocide of Mentally and Physically Handicapped, Jews, and Gypsies

The German leaders of the Third Reich and the perpetrators of the Holocaust kept meticulously detailed and voluminous records of all aspects of the events leading up to and culminating in the Holocaust (1933–1945). The records and pages, numbering in the tens of millions, are now held in various documentation centers. These include but are not limited to the Berlin Documents Center; the Centre de Documentation Juive Contemporaine in Paris, France; the Centro di Documentazione Ebraica Contemporanea in Milan, Italy; the Main Commission for Investigation of Nazi Crimes in Poland; the Rijksinstituut voor Oorlogsdocumentatie (Netherlands State Institute for War Documentation); the Wiener Library in London; Yad Vashem in Jerusalem; and the Zydowski Instytut Historyczny in Warsaw).

The collection housed in the Berlin Documents Center is extensive, and features detailed information regarding major government officials in the Third Reich, including Joseph Goebbels, Herman Göring, Julius Streicher, and Joachim von Ribbentrop, as well as voluminous data on lower-ranking individuals. The documentation also includes correspondence carried out within the Nazi party and government offices, "ranging from the *Gaue* (the territorial units into which the Reich was divided for Nazi party purposes) all the way up to the Reich chancellery—and papers produced and used by the People's court and the Reich's supreme court" (Mushkat, 1995, p. 391).

The Centre de Documentation Juive Contemporaine was secretly established in 1943 in Grenoble. It contains key records on the Nazi occupation of France, the actions of the Vichy French collaborators, and the fate of the Jews captured, incarcerated, or deported by the Nazis.

The Centro di Documentazione Ebraica Contemporanea contains important records regarding the fate of the Italian Jews at the hands of the Fascists and Nazis, with a particular emphasis on the period from 1938 to 1945. The records include information on the persecution of the Jews as well as the role of Jews in the Italian resistance movement.

The Rijksinstituut voor Oorlogsdocumentatie holds hundreds of archives and collections of documents related to a wide variety of issues and events that deal directly with the impact of the Holocaust on the Jews of the Netherlands. Among the specific records housed here are documents collected by the Committee for Jewish Refugees (Comité voor Joodsche Vluchtelingen) and the Jewish Council (Joodse Raad), as well as documents pertaining to the Westerbork transit camp and the Vught concentration camp. Further collections include records of the Reichssicherheitshauptamt (RSHA; Reich Security Main Office) branch in The Hague, and particularly those records that pertain to the RSHA's IV B 4 section, which dealt specifically with Jews. The institute also houses papers from The Hague branch of the Omnia Treuhandgesellschaft (Trust Company), which dealt with the policy of "aryanization" of Dutch-Jewish enterprises, as well as numerous German propaganda materials.

A particularly valuable set of captured German documents recorded the plans and actions of the *Einsatzgruppen.* These were the mobile killing units that operated in certain German-occupied territories during World War II and resulted in the murder of approximately 1.25 million Jews and hundreds of thousands of Soviet citizens, including both Soviet and Jewish prisoners of war.

Following the end of World War II, a series of trials were held, during which defendants were tried on charges of conspiracy, crimes against peace, crimes against humanity, and war crimes. The most famous of the trials was conducted by the International Military Tribunal (IMT) and later came to be known as the Nuremberg Trial. Subsequent trials were also held, for example, by Great Britain (two of which were the Bergen-Belsen Trial and the Zyklon B Trial), West Germany, Hungary, the Netherlands, Norway, and Romania. There was also the Eichmann Trial, held by Israel in 1961. Not only did such trials make use of Nazi-produced documentation, they also produced invaluable records of the charges and the evidence for such and detailed documentation of the cross-examination of the witnesses. Equally important is the record of the defendants' own words, and that is true even when the latter consisted of disclaimers, deceit, and outright denial of their involvement or guilt in the crimes of which they were accused.

The transcripts of the first Nuremburg Trial were published under the official title: *Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14, November 1945-October 1946.* It ultimately filled forty-two volumes, and came to be known as the "Blue Series." These transcripts constitute the official text of the proceedings in the English, French, and German languages. The set contains the transcripts of testimony given by the defendants, the witnesses for the prosecution and defense, and tens of thousands of documents of incriminating documentary evidence.

Cambodian Genocide

The Khmer Rouge, the communist leaders of Democratic Kampuchea (Cambodia) and the perpetrators of the Cambodian genocide from 1975 to 1979, produced and maintained extensive documentation of its genocidal activities. The main repository of the various documents produced by the Khmer Rouge is housed at two major centers: Yale University's Cambodian Genocide Program and the Documentation Center of Cambodia, in Phnom Penh, Cambodia. Yale's Cambodian Genocide Program is developing a computer database that will contain all of the primary and secondary source material directly related to the Khmer Rouge overthrow of the Cambodian government and the Khmer Rouge's rule and activities between 1975 and 1979. The Documentation Center of Cambodia is an autonomous research institute, containing copies of all of Yale's documentation and research of the genocide.

The Khmer Rouge documents comprise two major sets: the archive of material maintained, produced, and collected by the Tuol Sleng prison, where the Khmer

Rouge incarcerated, interrogated, tortured, and, ultimately, murdered suspected dissidents or enemies of the revolution; and the archive maintained by the Khmer Rouge's national security force, the Santebal, which was responsible for carrying out surveillance on and repression of its own people throughout Cambodia during the Khmer Rouge's rule.

When the Vietnamese invaded Kampuchea in 1979, the chief of Tuol Sleng Prison attempted to destroy the documents in his possession, but in his rush to escape he left over 100,000 pages behind. These documents provide detailed accounts of the Khmer Rouge's "security activities" beginning in 1974. Likewise, approximately 100,000 Santebal documents were discovered in a house that is thought to have been the residence of Son Sen, Democratic Kampuchea's Deputy Prime Minister for Defense.

Iraq Genocide of the Iraqi Kurds

In May 1992 and August of 1993, eighteen tons of official Iraqi state documents captured by Kurdish parties during the course of the March 1991 uprising were shipped to the United States for safekeeping and analysis. The human rights group Middle East Watch led a team that began researching the documents in 1992. The materials provide an in-depth view of Iraq's 1988 Anfal campaign of extermination against its northern Kurdish population.

The materials include "memoranda, correspondence, arrest warrants, background information on suspects, official decrees, activity and investigation reports, logbooks, minutes of meetings, membership rosters, lists of names, census forms and salary tables" (Human Rights Watch, 1994, pp. 1–2). Among the many documents included in the tons of materials are the Ali Hassan al-Majid tapes. These are more than a dozen audiotapes of meetings between Ali Hassan al-Majid, the Secretary General of the Ba'ath party's Northern Bureau, and senior Ba'ath officials in 1988 and 1989, during which he specifically commented on the chemical attacks he had carried out against the Kurds.

1994 Rwandan Genocide

A wide variety of documents—some produced or disseminated by high government officials, others by local leaders and perpetrators of the Rwandan genocide, and still others by radio announcers—were discovered in the aftermath of the genocide. Such records are being used by scholars in an attempt to understand the reasons for and process of the genocide, and are also being used in the trials of alleged perpetrators being held in Rwanda and at the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania. Among the documents that have been unearthed, catalogued, analyzed, or used in one or both of the two court settings are examples of virulent anti-Tutsi propaganda, much of which was disseminated by hand or posted on local bulletin boards. Also included are speeches and directives issued by high governmental officials on *Radio Télévision Libre des Mille Collines* (RTLM) that were aimed at inciting members of the Hutu general public to seek out and kill Tutsis in general as well as specific, named individuals. The RTLM was jointly owned by members of Hutu Power, or the *génocidaires,* and virtually became the "voice" of the genocide.

In addition to these records, there are speeches by the Rwandan president and prime minister to the general Hutu populace urging them to continue to seek "security" for the nation, in which the term "seeking security" was a euphemism for "continue the killing." The documentation also includes letters from leading perpetrators seeking to instill fear in the Hutu masses and calling on the Tutsis to carry out "wartime security" measures (another euphemism for the mass killings of Tutsis). There are administrative records from governmental meetings and from communes and prefectures throughout Rwanda; government reports (disseminated throughout the country) falsely accusing the Tutsis of planning an armed insurrection; and "minutes of local meetings where operations against Tutsi were planned and correspondence in which administrators congratulated their subordinates for successfully destroying 'the enemy'" (Des Forges, 1999, p. 3). Equally important among these documents are the censuses carried out prior to the genocide for the express purpose of ascertaining how many Tutsis lived in each village; and carefully detailed records that tallied the number of people killed and "not just of overall numbers of dead, but also of the elimination of those persons named as priority targets for their communes" (Des Forges, 1999, p. 241). Two major sources for locating such documentation are the reports issued by Human Rights Watch and the trial records issued by the International Criminal Tribunal for Rwanda (ICTR).

Yugoslavia

Many of the former leaders who are now alleged suspects in the commission of genocide in the former Yugoslavia were careful not to leave a paper trial of their true intentions. Nonetheless, many alleged perpetrators of genocide—including the leaders of the various factions—did make a plethora of assertions, announcements, and propaganda statements on both radio and televisions during the genocide, and both the transcripts and tapes of such broadcasts are still available.

These clearly indicate the actual intent and motivation of the Serbian government, including its contempt and disregard for the safely and welfare of its foes and the desire to "cleanse" the area of groups it considered hostile. The intent and motivation come through clearly, despite the purposeful use of euphemistic words and phrases.

Over and above the broadcasts, other forms of documentation (including minutes of meetings, correspondence, reports, and internal governmental documents) have been collected and are being used by the prosecutors, defense attorneys, and accused at the trials being conducted by the International Criminal Tribunal for the Former Yugoslavia (ICTY). Much of this documentation is available for use by scholars and students, but to obtain information about or access to actual governmental documentation or documents produced by paramilitary groups that have been introduced during the course of a trial, a researcher must provide the press and public information personnel with the specific case name and exhibit number of the document.

Conclusion

While not all who perpetrate genocide meticulously document their plans and actions, many do. The minutes of meetings, memoranda, records of debates in governmental councils, legislation, mandates, and even records of the killing process and "body counts," among other types of information, all provide scholars with invaluable information and insights into the thinking, motives, decisions, and actions of the perpetrators of genocide.

SEE ALSO Evidence; Videotaped Testimonials

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Samuel Totten

Drama, Holocaust

Notwithstanding reservations on moral and artistic ground, plays and performances addressing the Holocaust and its repercussions are gaining in number the more time passes since the actual event. Can and should the Holocaust be staged in the first place? Is a representation of the horror appropriate and commendable? What happens to the actor who takes on the part of a Nazi perpetrator, or, alternatively, the role of the victim, and how can a play affect spectators without being overtly didactic?

In his 1988 seminal book *The Darkness We Carry: The Drama of the Holocaust*, Robert Skloot notes five objectives that underscore serious dramas dealing with the Holocaust: "honouring the victims, teaching history to audiences, evoking emotional responses, discussing ethical issues, and suggesting solutions to universal, contemporary problems" (p. 10).

Instances of drama depicting the agonies of the victims of the Nazi ascent to power can be traced back to the early 1930s. Ferdinand Bruckner's *Rassen* (Races, 1933) shows the effect of Germany's new racial laws on students, whereas Friedrich Wolf's *Professor Mamlock* (1934) stages the tragedy of a prominent physician. Written in 1941 during his internment in a camp, Rudolf Leonhard's *Geiseln* (Hostages) depicts the plight of Jews and communists who were brutally executed on charges of plotting against Hitler's regime. All of these plays were designed to open people's eyes to the infamous crimes perpetrated by the Nazis and to warn of possible greater evil. *Eli* is a surrealistic, poetic drama depicting martyrdom and redemption, a modern mystery written by Nelly Sachs in 1943 while she was in Swedish exile.

Most of the plays written soon after the war follow a realistic style. In Germany attempts were made to

confront German collective guilt through the character of a Nazi who came to acknowledge his mistake or make amends as an act of atonement. Ingeborg Drewitz's *Alle Tore waren bewacht* (All gates were watched, 1955) is one example of such an approach. Other plays tried to lend the anonymous suffering a concrete form in the figure of a single representative victim. Best known among these plays is the stage adaptation (by Frances Goodrich and Albert Hackett) of the world-famous *Diary of Anne Frank,* a melodrama that has enjoyed great success since its premiere in 1956. The East German writer Hedda Zinner sets her *Ravensbrücker Ballade* (1961) in an internment center for women; in *Playing for Time* (1985), Arthur Miller explores the fate of singer Fania Fénelon, from her arrest in Paris to Auschwitz, where she was forced to join the camp's all-women orchestra; Martin Sherman devotes his attention in *Bent* (1979) to the sufferings of homosexuals during the Third Reich. Special mention should also be made of Thomas Strittmatter, a German who enjoyed the *Gnade der späten Geburt*—the grace of belated birth, having been born in 1961—and the author of a number of plays (e.g., *Viehjud Levi,* 1983) that delineate the fate of outcasts under the Nazis.

A fairly large group of plays address the guilt and agonies of Holocaust survivors. Charlotte Delbo, a survivor of Auschwitz, creates in *Et toi, comment as-tu fait?* (Crawling from the Wreckage, 1978) a semidocumentary montage of interviews with other survivors; Hans Joachim Haecker in *Dreht Euch nicht um* (Don't Turn Around, 1961) and René Kalisky in *Jim the Lionhearted* (1972), concentrate on the continued aftereffects of victims' traumatic experiences. The survivors are often shown as mentally and physically broken people, such as in Yoram Kaniuk's *Adam's Purim Party* (1981). Questions of nemesis and justice figure in Franz Theodor Csokor's *Das Zeichen an der Wand* (The Writing on the Wall, 1962), and in Heinar Kipphardt's controversial play about Adolf Eichmann, *Bruder Eichmann* (Brother Eichmann, 1983).

Dissatisfied with psychological realism, some authors have sought other dramatic venues to stage that which cannot be grasped, imagined, or represented. Erwin Sylvanus offered a Pirandellian staging of the final journey of *Dr. Korczak and the Children* (1957). Other German playwrights sought to present the bare facts, relying on documents (Rolf Hochhuth, *Der Stellvertreter,* The Representative, 1963) and the testimony of witnesses (Peter Weiss, *Die Ermittlung,* The investigation, 1965). *The Cannibals* (1968) was George Tabori's first experiment with the theater as a locus of remembrance; it was followed, among other works, by *My Mother's Courage* (1979), *Jubilee* (1983), and *Mein Kampf* (1987). The Israeli playwright Joshua Sobol created a trilogy about everyday life in Vilna (*Ghetto,* 1983, *Adam,* 1989, and *The Underground,* 1991), focusing on life in the ghetto, in which the lines demarcating theater and reality, past and present, are deliberately blurred. Liliane Atlan combined pageantry and modern techniques in *Les Messies ou le mal de terre* (The Messiahs, 1969), while her fellow-countryman, Armand Gatti, depicted his Holocaust images in a surrealistic (*Chroniques d'une planète provisoire,* Chronicles of a provisional planet, 1963) or avant-garde context (*Le Cinécadre de l'Esplanade Loreto,* 1990). Other experimental productions include *Akropolis* (1962) by Jerzy Grotowski, an innovator in the Polish theater, and *Arbeit macht frei from Toitland Europa* by the Israelis David Maayan and Smadar Yaron, a performance in which the audience joins the actors in various spaces connected to the Holocaust (such as the Holocaust Museum in a kibbutz founded by Holocaust survivors). Most of these experimental performances shun sentimental pity and sanctimonious judgment, calling instead for the audience's immersion in memory, in survivors' traumatic pain, and for genuine reflection.

SEE ALSO Films, Holocaust Documentary; Holocaust

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Anat Feinberg

Early Warning

The genocides in Rwanda (in 1994) and in Bosnia (during the period between 1992 and 1995) were alarming evidence of the failure of the United Nations (UN) Security Council and its member states to prevent genocides and other crimes against humanity. Studies by the UN Commissions of Inquiry concluded that reform in four areas is needed to prevent such crimes: institutions for early warning, programs for prevention, capacity for rapid response, and courts for punishment. Willingness to use these institutions on the part of political leaders is necessary to render reform measures effective. Public pressure is needed to motivate leaders to act.

One of the most common false assumptions about genocide is that it is the result of conflict—the resolution of which would be a preventive to genocide. Most genocide does not result from conflict. Genocide is one-sided mass murder. Empirical research by Helen Fein, Matthew Krain, Barbara Harff, Benjamin Valentino, and others has shown that genocide is most often committed by elites that are attempting to stay in power in the face of perceived threats to their dominance. Fein and Harff have found that six factors enhance the likelihood of genocide: prior genocide in the same polity, autocracy, ethnic minority rule, political upheaval during war or revolution, exclusionary ideology, and closure of borders to international trade.

Wishing to complement these statistical models, Gregory H. Stanton has devised a developmental model of the stages of genocide. The eight stages of genocide are classification ("us vs. them"), symbolization, dehumanization, organization (the formation of hate groups), polarization, preparation (the identification, expropriation, rounding up, and transportation of victims), extermination, and denial. Stanton's model is designed so that policy makers can recognize early warning signs and implement specific countermeasures to prevent genocide.

Who should be warned of the likelihood of impending genocide? Members of the victim group should surely come first, so that they can prepare to flee or defend themselves. Others who should receive this warning are political moderates, the members of religious and human rights groups, and the members of antigovernment opposition forces (who would be likely to oppose the impending genocide). If the government is not party to an impending genocide, it should be called upon to intervene and to protect its citizens. (This approach has halted ethnic and religious massacres in Kalimantan, Sulawesi, and the Moluccas [all part of Indonesia], and in Nigeria.) But because most genocides are committed by governments (either directly or indirectly through militias), regional and international leaders must be warned as well—with the idea that they will be able to bring pressure to bear on the government planning the genocide. In democracies, leaders seldom act without the stimulus of public pressure, so early warning must get through to the media and groups that can organize campaigns for action.

How early must warning come if it is to trigger action that will contribute to the prevention of genocide? The answer depends on the action that is being sought. In the context of long-term efforts to prevent genocide,

the warning should be given as early as possible. Because structural factors such as totalitarian or autocratic government and minority rule correlate substantially with the incidence of genocide, long-term policies for genocide prevention should promote democracy, freedom, and pluralist tolerance. Rudy Rummel's meticulously documented conclusion that democracies do not commit genocide against their own enfranchised populations has often been challenged, but never refuted. The protection of democracies requires that, in the face of threats by extremist, military, or totalitarian movements to overthrow those democracies, the warning be communicated as early as possible.

Freedom House, which tracks information pertaining to the relative freedoms of many countries and publishes an annual report on the subject, in its 2003 report counted 121 electoral democracies out of the 192 countries it evaluated (leaving 71 nondemocracies). Ted Robert Gurr has pointed out that periods of transition (from autocratic governments to democratic ones) can be particularly dangerous periods—at which times minority elites attempt to hold onto their power and are sometimes willing to commit mass murder to do so. The foreign policies of other nations should promote the peaceful transition to democracy, but must avoid the enunciation of mortal threats that would set off the undertaking of genocide by elites determined to maintain their power.

Rwanda was a case in which early warning failed. In 1992 the Belgian Ambassador to Rwanda warned the Belgian government that Hutu Power advocates were "planning the extermination of the Tutsi of Rwanda." In April 1993 the UN Special Rapporteur on Summary, Arbitrary, and Extrajudicial Executions issued a statement that the massacres of Tutsi in Rwanda already constituted genocide. General Roméo Dallaire, Commander of the UN Assistance Mission in Rwanda, in a cable sent on January 11, 1994, warned the UN Department of Peacekeeping Operations, headed by Kofi Annan, of the plan of extremist Hutu to exterminate Tutsis. The UN denied Dallaire permission to confiscate the cache of 500,000 machetes that had been shipped to Rwanda for the Hutu militias (the existence of which had come to his attention). Both early and late warnings of the Rwandan genocide were ignored by UN and other policy makers who denied the facts, who resisted calling the genocide by its proper name, and who refused to consider options for intervention—and who refused to risk the lives of any of their own soldiers. Instead they withdrew 2,000 UN Assistance Mission for Rwanda (UNAMIR) troops and sacrificed the lives of over 500,000 defenseless Rwandans.

There had been a similar failure of early warning in Cambodia in 1975, at which time reporters and diplomats were predicting a Khmer Rouge bloodbath. Political leftists in other countries refused to believe the warnings, and denied the mass killing while it was underway. Worn out by the wars in Indochina, the United States and western European nations were unwilling to intervene to overthrow the murderous Khmer Rouge. The UN General Assembly even condemned Vietnam for its intervention.

Instances of early warning that were successful in generating courses of action to prevent or frustrate genocidal massacres and the commission of crimes against humanity include Macedonia (in 1992 and 2001, when several hundred UN peacekeepers prevented the Balkan wars from widening); East Timor (in 1999, when, after East Timor had voted for independence, coordinated warnings coming from human rights groups and the intervention of Australian troops brought to a halt the massacre of East Timorese by Indonesian troops and militias); and Côte d'Ivoire (in 2002, when warnings by the Belgian organization *Prévention Génocides,* followed by French military and diplomatic intervention, helped to avert massacres).

What steps have been taken to develop early warning systems? The early warning of threats to national interests has long been a job of the intelligence agencies that inform government policy makers. Threats of genocide were added to that task by the U.S. Central Intelligence Agency (CIA) in 1994, when that organization inaugurated its "State Failure Task Force," whose mission includes the analysis of factors that predispose states to genocide. Efforts to develop systems of early warning on the part of think tanks and university officers have also been funded by governments—in the United Kingdom, the Netherlands, Denmark, Sweden, and Germany.

At the UN, the Framework for Coordination was established within the Department of Political Affairs to convene high-level planners from UN departments and agencies to discuss and plan responses to crises that are judged to be capable of generating genocical aggression. On April 7, 2004, Annan announced that he would appoint a Special Adviser on the Prevention of Genocide. In July Juan Mendez was named to the post.

Nongovernmental organizations (NGOs) and university-based organizations in Europe and the United States have also focused on early warning—notably the International Crisis Group, the Forum on Early Warning and Early Response (FEWER), Genocide Watch, and the International Campaign to End Genocide (a

global coalition of organizations dedicated to preventing genocide).

Early warning is meaningless without early response. But early warning is the necessary first step toward prevention.

SEE ALSO Prevention; Rwanda

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Gregory H. Stanton

East Timor

In 1975 Indonesian military forces (the TNI) invaded the Portuguese colony of East Timor, then under the administration of the pro-independence Fretilin Party (the Revolutionary Front for the Independent East Timor), which had just unilaterally declared independence. From the outset, the invasion was strongly resisted by the heavily out-gunned and outnumbered Fretilin armed forces. The invaders treated the local population harshly, indiscriminately killing hundreds of mostly civilian Dili residents in the first two weeks of the occupation.

The Indonesian occupation lasted twenty-four years, until the intervention of the UN authorized Interfet force in September 1999. The UN intervention followed a plebicite in which 78.5 percent of the population rejected integration with Indonesia. In the first decade of the occupation, the treatment of the population at large by the occupying forces displayed genocidal characteristics. The worst period was between December 1975 and 1980, when intense military operations were carried out across the island. Then East Timor was closed to the outside world, and even the International Red Cross was denied access until some four years after the invasion. According to East Timorese sources, including the Catholic Church which traditionally maintained population statistics and monitored the humanitarian situation, as many as 200,000 East Timorese died. Tens of thousands were killed by troops, while many others died from disease and starvation, conditions resulting directly or indirectly from occupation policies. A study of the population decline supports these charges. East Timor's population was estimated at 688,000 in the months before the invasion, and was growing at about 2 percent per year. According to Indonesia's census assessment in 1980, the population had fallen to 550,000.

Following visits to the territory by the International Red Cross and foreign diplomats in 1979, the human rights situation began to improve, but major atrocities continued. One of the worst of these was the massacre at Creras in 1983, where more than a thousand East Timorese, including women and children, were massacred in reprisal for the killing of several Indonesian soldiers in an engagement with resistance forces of the Falintil (the Armed Forces of National Liberation of East Timor). Summary executions and disappearances continued to feature in the annual reports of Amnesty International and Human Rights Watch. In 1991 the massacre of more than 200 East Timorese by TNI troops at a peaceful demonstration in Santa Cruz cemetary attracted world condemnation. This atrocity had a systematic character, reflecting a determination on the part of the Indonesian authorities to eliminate opponents of integration. However, in the case of the Santa Cruz massacre the Suharto government bowed to international pressure, and a number of soldiers were tried by a military court. The few who were found guilty were given only short sentences, ranging from six to eighteen months. This punishment was in stark contrast to the long terms of imprisonment handed out to surviving demonstrators in a separate trial, where they were sentenced to periods of imprisonment ranging from six to more than twenty years.

Since Indonesia's withdrawal in 1999, UN agencies and other humanitarian organizations have had free access to East Timor, and revelations of past events reveals beyond doubt that the humanitarian costs of this

act of forced integration reached genocidal proportions. The East Timor case is manifestly one of the most serious of its kind in modern history. Indonesia's education policy banned the teaching of Tetum, East Timor's lingua franca, and Portuguese. This was a clear effort to eradicate a portion of East Timorian culture. Indonesia's policy of sending thousands of Indonesian settlers into the province also seemed designed to achieve the destruction of the distinctive culture of East Timor.

The international response to Indonesia's serious violation of international law was at first characterized by indifference and irresolution. As a result, the Suharto government, despite its heavy dependence on Western economic aid, did not feel the need to respond to international concerns in a positive way. The expressions of international concern at the deteriorating humanitarian situation in the years following the invasion were so weak that Indonesian authorities became openly defiant of world opinion. In the 1980s, however, East Timor's Bishop Carlos Belo, began to expose the situation to the international media and visiting foreign dignitaries. The Santa Cruz massacre in November 1991 forced the Indonesian authorities onto the defensive. The Suharto government's concessions were nevertheless of little real significance, falling well short of popular demands by East Timor's leaders for the removal of the Indonesian military, and for the right of self-determination.

Indonesia agreed to hold a plebiscite under UN auspices, in August 1999. This concession was attributable less to international pressures than to the fall of Suharto following the Asian economic collapse. The flexible stance adopted by President Habibie and the determined efforts of Kofi Annan, the newly appointed UN Secretary-General, were the key elements in the fortuitous sequence of events that led to East Timor's liberation in September 1999, after twenty-four years of occupation. As it happened, the Indonesian military maintained its oppression until the very end. TNI generals formed a militia force with the aim of preventing the loss of the province. When the results of the plebiscite were announced, a large-scale TNI operation swung into action. Pro-independence supporters, now representing the majority opinion, were the subject of violence and intimidation. In the space of a few weeks, more than 1,500 were killed. An estimated 250,000 were deported to West Timor, and 73 percent of all building and houses were destroyed. This spate of killing and destruction was interrupted by the Interfet intervention, and by President Habibie's decision to withdraw from East Timor in the face of strong international protests.

The pattern of the atrocities carried out by Indonesian troops reveals a systemic character. Until Santa Cruz, no TNI troops or commanders were ever placed on trial for these crimes against humanity. In the case of the events of 1999, the tribunal set up by the Indonesian government was apparently designed to prevent disclosure of TNI command responsibility. The few TNI commanders placed on trial were charged not with their role in organizing the violence, but with having failed to stop it. Even so, most were acquitted, while the few who were found guilty won their appeals to a higher court.

SEE ALSO Indonesia; Peacekeeping; West Papua, Indonesia (Irian Jaya)

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James Dunn

Economic Groups

Protection has traditionally been offered to those groups whose defining characteristics are as inflexible

as their race. Amorphous qualities such as monetary wealth or property ownership can change. For this reason economic status alone probably is insufficient to qualify for protection under the laws concerning genocide or crimes against humanity, despite the fact that economic groups have been the target of persecution throughout history. Slaves, serfs, wage laborers, Africans in the trans-Atlantic slave trade, Native Americans, wealthy Jewish money lenders, the Chinese in southeast Asia, East Indians in Uganda, and caste members in Asia and Africa—all have at various times been the target of persecution. In almost all these situations, the desire for wealth and greed motivated the persecutors, but the economic status of the victims often was not the sole means of identifying them, because their economic status was coupled with race, religion, or nationality.

Situations have arisen in which persecution was based purely on economics, such as the struggles confronting serfs, peasants, wage laborers, labor unions, and communist class warfare. Classes within feudalistic societies were clearly defined by law. During both the Bolshevik Revolution in Russia and the French Revolution lower economic classes targeted wealthy landowners. In the nineteenth and twentieth centuries labor union leaders in the United States were imprisoned, deported, and executed for their role in organizing and directing the actions of the labor movement.

In the majority of instances, however, economic status was not the sole criterion for persecution. Slaves have traditionally been regarded as property, and in most cases that status is transmitted from one generation to the next. Slaves were frequently branded or marked in order to more easily identify them, but the origins of enslavement can often be traced to racial, ethnic, or religious groups. The Chinese minority in Indonesia has been persecuted for their wealth, but their ethnicity and religion also set them apart from the Muslim majority. They have been forced to give up their Chinese names, their language, their schools, and their traditions. In addition, repression reaches down to the entire Chinese minority in Indonesia and does not target only the wealthy.

Indians in East Africa also have been persecuted for their perceived wealth. In the 1970s Idi Amin threatened to imprison nearly 55,000 Asians (Indians and Pakistanis who made up the majority of the merchant class) if they did not leave Uganda. Upon their departure, he nationalized their shops. In 1980 Tanzania nationalized Asian-owned businesses. In 1982 following an unsuccessful coup in Kenya, Asian-owned shops and homes were looted and Asian women raped.

The International Convention on the Elimination of All Forms of Racial Discrimination protects caste members based on their descent. The notion of caste may have originated as an economic concept, or it may have had racial or ethnic connotations. The lowest caste, the untouchables, were given the dirtiest jobs and persecuted as "subhuman." Some theories suggest that Aryans initiated the caste system following their invasion of India and categorized those with the darkest skin as untouchables.

Economic status can thus factor into genocide and crimes against humanity. At a post-World War II war crimes tribunal, the court, with a U.S.–led prosecution team, found executives at a German firm guilty of crimes against humanity for the economic sanctions and political pressures they had imposed on the Jewish owners of industrial businesses that they later seized with Nazi support. In Rwanda Belgian colonists were unable to differentiate between the Hutu and Tutsi so they used the number of cattle a family might own to determine its ethnic origin and legal status. Tutsi were generally wealthier and more powerful than the Hutu. This simplistic system of ethnic determination was the foundation for the genocide that later occurred in the 1990s.

The 1948 United Nations (UN) Convention for the Prevention and Punishment of the Crime of Genocide protects "national, ethnical, racial, and religious" groups. Political groups had been included in the draft of the Convention, but last-minute negotiations ended in the deletion of that reference in order to get more member nation-states to sign the treaty. The Universal Declaration of Human Rights calls for the individual freedom to change one's nationality and religion if so desired. But if peoples worldwide freely change their nationality and religion, then groups become mutable. Domestic legislatures have thus expanded the definition of genocide without reference to the permanence of group membership. France legally defines genocide as the intentional destruction of any group.

If economic groups constitute a subgroup of one of the protected groups, they would fall under the protection of the Genocide Convention. The Convention clearly defines genocide as the intent to destroy a group even in part. If only the wealthy Chinese were targeted in Southeast Asia, for example, it would still be considered a case of genocide.

The International Criminal Court (ICC), in its Rome Statute, defines crimes against humanity as actions committed as part of a widespread or systematic attack directed against any civilian population. The statute includes the persecution of identifiable groups based on grounds that are universally recognized as im-

permissible under international law. The phrase "any civilian population" could be interpreted to include the targeting of economic groups, even those groups that are more loosely defined.

Historical instances of persecution based on economic status have often led to the persecution of a larger ethnic group, but if persecutors stopped short and merely targeted an economic group, using no other basis in their selection, such persecution may not rise to the level of genocide or crimes against humanity.

SEE ALSO Slavery, Historical

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Rebecca L. Barbisch

Economics see Economic Groups.

Education

In the U.S. educational system, courses focusing on genocide and other gross human rights violations developed in the early 1970s as part of a larger response to rewriting the curriculum by including subjects and issues traditionally ignored or silenced. University courses introduced issues of gender, class, race, and ethnicity, including histories of slavery, colonialism, and other atrocities perpetrated against individuals because they were members of targeted civilian groups. From the destruction of indigenous peoples of the Americas to the Great Famine in Ireland to the Armenian Genocide, new scholarship and courses emphasized the intentional patterns, brutality, range of accomplices, and ongoing denial by alleged perpetrator-states of these events. In the following decades, an increasing number of courses have been developed to deal with comparative genocide and other crimes against humanity, human rights issues, and connections with state policy and international affairs.

The majority of courses have focused on the Holocaust, in particular the Nazi destruction of European Jewry. Interest in World War II, liberation of the concentration camps, and the Nuremberg Trials, all contributed to interest in the subject. Popular representation and misrepresentation, such as the Pulitzer Prize winning play *Diary of Anne Frank* and the television mini-series *The Holocaust*, as well as literary works by Elie Weisel, Andre Schwartz-Bart, Primo Levi and others have generated further interest in the subject. Writings by Hannah Arendt as well as Raul Hilberg's *Destruction of European Jewry*, Lucy Dawidowicz' *War Against the Jews*, Zygmunt Baumann's *Holocaust and Modernity*, and Christopher Browning's *Ordinary Men* are among texts used in classrooms. Scholarship in the field is substantial and controversies and debates about interpretation continue among scholars, worldwide. Popular classroom resources include Art Spiegelman's *Maus* and films such as Claude Lanzmann's *Shoah* and Steven Spielberg's *Schindler's List*.

A small sample of the range of courses include: *Sociology of the Holocaust, History of Anti-Semitism, Dutch Holocaust Literature, The Holocaust Theme in Western Drama, The Holocaust: Historical, and Philosophical and Literary Aspects*, and *The Holocaust and Law*. This last course includes coverage of issues of reparations and restitution. The establishment of museums and memorials, worldwide, as well as the funding of university chairs and Holocaust Centers provide institutional support for study of the Holocaust. Most notable among these institutions is the U.S. Holocaust Memorial Museum in Washington, D.C., which supports research and teacher training, as well as offering public exhibits and programs.

In the United States, primary and secondary Holocaust education has been mandated in some states. For example, the Florida school system focuses on the Holocaust, and the state of New Jersey mandates the study of other genocides as well. Peter Novick's *The Holocaust in American Life* provides a useful critique of the politics of U.S. Holocaust education. While many courses reinforce the Holocaust as "uniquely unique" and subscribe to the hegemonic model of understanding the phenomenon, some courses also include the study of Roma Gypsies and other groups that were targeted by the Nazis for elimination, and raise the issue of other genocides, particularly the Armenian Genocide, as possible precursors of the Holocaust.

Leo Kuper's work on genocide from the 1970s on (for instance, *Genocide and Genocide: Its Political Uses in the Twentieth Century*, 1981) was influential in the emergence of a small but growing number of international researchers and academics who were developing scholarship and multidisciplinary courses that emphasized a comparative approach to studying mass destruction. Definitions, content, classifications, and interpretations varied across this emergent discipline. Some relied on the definition developed by the U.N. Genocide Convention. Others added political and other categories. Rudolph Rummel coined the term "democide," which is a broad category that includes the murder of any individual or people by a government, including genocide, politicide and mass murder. An example of the analytic utility of Rummel's concepts can be found in his *Statistics of Democide: Genocide and Mass Murder since 1900*. The pedagogical goal of such courses was to demystify genocide and move away from its depiction as irrational, as well as to counter an academic trend toward the "ghettoization" of genocide studies and the creation of hierachies of victimization. It was hoped that this could be accomplished by examining recurrent patterns of genocidal behavior in order to better understand it and to work toward prevention. Mass destruction in Cambodia (1974–1979) and Rwanda (1994), and targeted killings from Guatemala to Indonesia, as well as ethnic cleansing in the former Yugoslavia, ironically have provided ongoing course materials that have helped to prove how widespread such crimes are.

In 1980, for example, Kurt Jonassohn and Frank Chalk, on the faculty at Concordia University in Montreal, developed a two semester multidisciplinary model called *A History and Sociology of Genocide* (their book, published a decade later with the same title, is used as an introductory course text). Their course traces genocidal events from ancient to modern times. Most courses on genocide and ethnic cleansing last a single semester and concentrate on events in the twentieth century. Many such courses employ the text *Century of Genocide: Eyewitness Accounts and Critical Views*, edited by Samuel Totten, William S. Parsons and W. Charny. This is a collection of specific genocidal events that occurred throughout the twentieth century, along with eyewitness testimony. African specialist Rene Lemarchand has taught a course entitled *Comparative Genocide* in the United States, Canada, and Denmark, and his presentation reflects the major themes generally touched upon in one semester courses. Lemarchand begins with conceptual and theoretical issues and follows with case studies divided into categories: Ideological Genocides (The Holocaust, Armenia, Cambodia); Colonial Genocide (Herreros), and Retributive Genocides (Burundi and Rwanda). A third section of the course discusses intervention and prevention strategies, including international tribunals, truth commissions, and the politics of denial.

Denial has become an increasing theme in genocide courses from the Turkish government's ongoing, official denial campaign of the Armenian Genocide to the trial of Holocaust denier Clifford Irving and including the continued denial by the United States of its complicity in different stages of genocide in settings ranging from Cambodia to Guatemala. The publication of the multi-volume *Encyclopedia of Genocide* (1999) and the *Journal of Genocide Research* (2002), as well as Samantha Power's Pulitzer Prize and Lemkin Award winning *"A Problem from Hell" America and the Age of Genocide* (2002) reflect growing scholarship and interest in the field. A text aimed specifically at educators is *Teaching about Genocide* (2002) coedited by Joyce Apsel and Helen Fein, providing resources, essays, centers (such as the Cambodian Genocide Project at Yale University), and syllabi devoted to genocide studies.

In 1995 the International Association of Genocide Scholars (www.iags-isg.org) was founded by Israel Charny, Helen Fein, Robert Melson, and Roger Smith, and in 2002 more than 200 members participated in the fifth biennial conference on *Genocide and the World Community* at the Irish Human Rights Center, University of Ireland, Galway. The last decade has seen a shift in the study of genocide and other life-integrity violations, another rewriting of history that places greater emphasis on human rights, international law, and foreign policy. From truth commissions in Central America and South Africa to release of documents on state terror and mass killings in the Soviet Union, to debate on "just humanitarian military intervention," from Kosovo to Iraq to the AIDS pandemic, new undergraduate and graduate courses have multiplied. The establishment and rulings of the international criminal tribunals, the proceedings against Chilean dictator Augusto Pinochet, the establishment of the International Criminal Court, new national constitutions from South Africa to Russia, transnational terrorism, and military interventions throughout the world have all contributed to the increase in human rights clinics in law schools and courses in international human rights law, including international criminal justice, refugee law, and comparative constitutional law.

Jack Donnelly's *International Human Rights* (1997) is one of the widely used introductory undergraduate texts on the subject, and contains a valuable essay on further suggested readings by topics and areas. A growing interest in legal studies, politics, and history as they relate to genocide and human rights issues is re-

flected in courses such as *Women and Rights in Africa, Health and Human Rights, Anatomy of War Crime Trials, The Culture of Human Rights in Latin America, China and Human Rights*, and *Truth and Reconciliation or Justice and Vengeance*. These courses reflect a cross-disciplinary interest in crimes against humanity and other forms of violence as an integral part of modernity, from state building to foreign policy and globalization. In addition to academic courses, the establishment of human rights centers around the world has contributed to the process of documenting past and present abuses and attempted to address the ongoing challenges of war, humanitarian crises, recovery, and prevention. Legal and other scholarly journals such as the *Human Rights Quarterly* provide forums for the burgeoning research in the field. Growing on-line scholarship and internet sources provide access to ongoing resources and reports. For example, www.umn.edu/humanrts/center/hronline connects to the University of Minnesota Human Rights Library, which contains over 14,000 documents on treaties and other international instruments, U.N. documents, and other resources. Internet websites provide links to monitoring agencies such as Human Rights Watch and Freedom House. The trend is toward the development of more undergraduate and graduate curricula that include multidisciplinary courses on human rights, crimes against humanity, and related subjects.

SEE ALSO Biographies; Films, Dramatizations in

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Joyce A. Apsel

Eichmann Trial

The Eichmann trial began on April 11, 1961, in the theater house Beit-Ha'am (in Hebrew, "House of the People") in Jerusalem. Adolf, the son of Karl Eichmann, was charged with crimes against Jews, Gypsies, and others during the years of Nazi reign in Germany and in the Nazi-occupied areas. He was tried under a special Israeli law, the Nazis and Nazi Collaborators (Punishment) Law of 1950. The trial was viewed from the outset as a historical event of great importance. In a dramatic announcement before the Knesset (the Israeli parliament) David Ben-Gurion, then Prime Minister of Israel, declared that Eichmann had been captured by Israeli security services in Argentina, where he was hiding under a false identity. Eichmann's kidnapping was a violation of Argentina's sovereignty. The Security Council intervened, but Argentina did not press the matter, and Eichmann failed when he attempted to raise this as an objection to his trial. He was brought to Israel in a special plane in May 1960. A special panel of judges—which included Supreme Court Justice Moshe Landau, who headed the bench, and District Court judges Benjamin Halevy and Isaac Raveh—was appointed. The auditorium was packed with representatives of the international media as well as interested members of the Israeli public, Holocaust survivors were alongside native Israelis. The prosecution was headed by Gideon Hausner, Israel's attorney general, and the defense was conducted by a German attorney, Robert Servatius, who had previously defended Nazis at the Nuremberg trials.

During World War II, Eichmann was in charge of the Nazi security police's Jewish Department. In September 1939 he became head of the Jewish Section in the Gestapo. It was his job to oversee the transfer of Jews from the countries conquered and annexed by the Nazis and from Germany itself to concentration and extermination camps in the east. In this role he became responsible for the deaths of millions. From his early

days in the service of the Nazi apparatus Eichmann specialized in questions relating to Jews and Zionism, and in 1937 he even visited Palestine incognito. His first noteworthy role was to organize the enforced emigration of Jews from Austria after the Anschluss (the annexation of Austria by Germany in March 1938), where in a short time he and his team managed to force more than 50,000 Jews to emigrate by stripping them of their property. By the end of 1940 Eichmann's office had the authority over all the Jews within the Reich. Later, he personally directed the 1944 deportations from Hungary while negotiating with Jewish representatives over a deal to exchange Jewish lives for goods or money. This deal never materialized and about 400,000 Hungarian Jews were sent to their deaths. His importance for the implementation of the Final Solution, however, did not derive from his formal rank in Nazi bureaucracy, as he had never attained a rank higher than the equivalent of a lieutenant colonel (*Oberstleutnant*) and was thus separated from Interior Minister Himmler by at least two ranks. Instead, the main source of his influence was his expertise in connection with Jewish affairs and his having dealt with them throughout the Nazi period.

Former SS Lieutenant Colonel Adolf Eichmann, the "Man in the Glass Booth," on trial for his crimes against the Jewish people committed some two decades earlier. Israeli officials built the booth for his protection because they feared his assassination before a verdict was reached. [CORBIS]

At the Jerusalem District Court Eichmann was indicted on fifteen counts, including crimes against the Jewish people, crimes against humanity, war crimes, and membership in various criminal organizations, including the SS, the Security Service (SD), and the Gestapo. Trying Eichmann in a domestic criminal court raised some very difficult questions. First, there was the problem of judging him according to an extraterritorial and retroactive law. Second, the connection of the judges to the community of the victims seemed to undermine the objectivity of the court. Third, the focus of the trial on victims' testimonies and on their suffering was unprecedented. Aside from these legalistic problems, the judges had to resort to doctrines of domestic criminal law to adjudicate the novel category of crimes against humanity that were committed over an extended period of time, in different places, and by numerous actors. The court refused to rely on the law of conspiracy that was used in the Nuremberg trial, because of its overreach, and its tendency to blur important distinctions of the criminal law. Thus, although the Anglo-American doctrine of conspiracy offered a simple solution to adjudicating collective crimes, it also threatened to undermine the age-old distinction between the principal agent and the accessories to the crime. Instead, the Israeli court developed a unique interpretation of the Final Solution as a crime that implicated different agents in its various stages of implementation and was able in this way to attribute responsibility to Eichmann as a principal agent. Eichmann relied on the defense of "obeying superior orders," but the court rejected it on the basis of the doctrine of "manifest illegality" that was previously recognized by the Nuremberg tribunal. The task of the court was not simple. It had to find a way to adjust its jurisdiction rules and to interpret domestic criminal law so that it could address the novel categories of Nazi crimes without undermining the procedural guarantees of a fair trial.

The special significance of the Eichmann trial both to the international community and to the national community in Israel can be understood in light of two earlier trials: the Nuremberg trial, conducted after World War II, and the Gruenwald libel trial (better known by its popular name the Kastner trial), which took place in Israel during 1954 and 1955. Many of the prosecution's decisions regarding the way in which to structure the Eichmann trial were undertaken to avoid the risks that had materialized in those two earlier trials. Eichmann was not tried by the international military tribunal at Nuremberg, together with other Nazi criminals, because he had managed to escape to Argentina. Not only was Eichmann absent from Nuremberg but the full story of the Holocaust of European Jewry was absent as well, as Ben-Gurion emphasized in press interviews. Among the reasons for this were the jurisdictional limitations imposed by the charter of the International Military Tribunal, which held the great Nuremberg trial. The charter authorized the court to

adjudicate only those actions falling under the category of "crimes against the peace" and "war crimes" that took place after 1939. These limitations stemmed from the novelty of the legal category of "crimes against humanity" and from the fear that the precedent might unduly serve to undermine the sovereignty of states later on. By contrast, the Jerusalem court, which derived its authority from the Israeli law, was able to consider the whole range of Eichmann's actions throughout the prewar and wartime period (1933–1945), because the law did not impose a similar time limitation. In addition, the court was called to focus on crimes against the Jews, alongside crimes against humanity.

The prosecution used the platform of the trial to tell the missing story of the Jewish Holocaust. For this purpose it brought 112 witnesses who testified about the events of the Holocaust and Eichmann's involvement in coordinating and carrying out the Final Solution. In addition, it submitted 1,600 documents that described the systematic persecution of European Jewry in all its phases. This evidence helped the prosecution draw a picture of the full extent of the Holocaust, even though some of the facts it sought to establish were not controversial, since the defendant did not contest the facts about the "extermination" of Jews, or the authenticity of the documents. The main line of defense was of "obeying orders" and it therefore called for a much narrower scope of factual examination in the trial. Accordingly, the defense decided not to cross-examine witnesses whose testimony did not relate directly to the actions of Eichmann. Although the court did not adopt this view of the defense, it noted in its verdict the undue extension of the trial's scope, saying that the attorney general "occasionally deviated to a small extent from the path which the court had deemed correct to delineate."

Relying solely on Israeli law, however, raised other concerns, because it was an ex post facto legislation that extended the jurisdiction of the Israeli court to adjudicate crimes that occurred outside the state of Israel, and before its establishment. For this reason the appellate court advanced an alternative basis for the court's jurisdiction, known as the doctrine of universal jurisdiction for trying crimes against humanity. The doctrine of universal jurisdiction remained dormant for forty years, because the international community viewed with suspicion the political aspects of the Eichmann trial. However, during the 1990s, when the international community was struggling to establish a permanent criminal international court, the ruling in the Eichmann trial came to serve as one of the main precedents for national courts that were beginning to adjudicate crimes against humanity that had taken place outside their territorial borders.

The second trial that Eichmann's prosecutors had in mind and that had a crucial impact on their approach was the Kastner trial, as noted earlier. During the 1950s the Israeli law for trying the Nazis and their collaborators was used mainly to try "their collaborators" among the Jews in Israel. One trial that caught much of the public attention and gave rise to an intense controversy within Israel dealt with the failed negotiations that the Zionist leader Rudolph Kastner had conducted with Adolf Eichmann. Israeli public opinion divided over the appropriate course of action taken by Jews to the Nazi oppressor. Some favored armed resistance, whereas others upheld the course of negotiations and cooperation. This debate reached a tragic climax when Kastner was assassinated a short time after the trial court reached its verdict, in which it strongly condemned Kastner for collaborating with the "devil." The prosecution in the Eichmann trial, aware of this traumatic event, attempted to change the atmosphere of blaming the victims' leaders by focusing on the guilt of the Nazi perpetrator—the defendant Adolf Eichmann. The Eichmann trial was to play a crucial role in unifying the ranks in Israel and in helping to construct a collective Israeli memory of the Holocaust. The prosecution asked key witnesses to avoid the debate over the cooperation of the *Judenrate* (Jewish leaders) with the Nazis and instead focused on the suffering of the victims. This decision to rely on the victims' testimonies had an enormous symbolic significance in legitimizing their words and lifting the taboo on discussing the Holocaust from the point of view of the victims, both for legal and for historical purposes.

These decisions of the prosecution—turning the trial into a platform for telling the story of the Jewish Holocaust by the victims, as well as avoiding the issue of Jewish cooperation with the Nazis—were sharply criticized by philosopher Hannah Arendt. Arendt, a German Jew, was living in France at the start of World War II. Interned in southern France along with other stateless Germans in 1940, she escaped and reached America in 1941. She made her name in 1951 with *The Origins of Totalitarianism,* a thorough account of the historical and philosophical origins of the totalitarian state that drew parallels between Nazi Germany and Stalinist Russia. In 1961 *The New Yorker* sent Arendt to Jerusalem to cover the Eichmann trial. Her reports, which harshly criticized the Israeli prosecution, were later published in expanded form in the book *Eichmann in Jerusalem.* She disagreed especially with the prosecution's decision to cast the trial's spotlight on the Jewish Holocaust and its victims. Arendt believed that instead of employing a category created by Israeli law, "crimes against the Jewish people," the prosecution should have based its case solely on "crimes against humani-

ty." However, unlike many in the international community, she did not doubt the wisdom of using a legal process against Eichmann, or the right of Israel to judge him. In her opinion the systematic plan of the Nazis to annihilate the Jewish people justified the trial of Eichmann by a tribunal belonging to the victims' new political community. She praised the judges, especially Justice Landau, for resisting the temptation to allow politics into the court.

The parts of Arendt's narrative that stirred much controversy discussed the complicity of the Jewish leaders in the destruction of their own communities, and the depiction of Eichmann's state of mind as "banal." Jacob Robinson, who served as an advisor on international law to the prosecution team, devoted a book, *And the Crooked Shall Be Made Straight*, to refuting the inaccuracies in Arendt's report. Gershom Scholem, an eminent scholar and public intellectual, published a letter questioning Arendt's unforgiving condemnation of the *Judenrate*. The report sparked a furor and an intense debate that was waged primarily in the American press. Notwithstanding the controversy, Arendt's book remained one of the classic sources addressing the philosophical and jurisprudential aspects of the Eichmann trial. Ironically, it was Arendt's book that kept the trial from losing its pertinence some forty years later. The book was belatedly translated into Hebrew in the year 2000, stirring a new public debate, this time, regarding historical representations of the period.

In its verdict, the district court rejected Eichmann's arguments, both those challenging the jurisdiction of the court and those raising the substantive defense of obeying superiors' orders. Eichmann was found guilty on all counts and on December 15, 1961, was sentenced to death. He appealed, but the Supreme Court upheld the district court's decision. His appeal for clemency was also denied by Israel's president, notwithstanding the pleas of several public intellectuals on his behalf. Eichmann was hanged on the night of May 31, 1962. His body was cremated, and the ashes were scattered at sea. It was the only death sentence to be carried out in the history of the state of Israel.

Above all, the Eichmann trial is symbolized by the bulletproof glass booth in which Adolf Eichmann had been seated to protect his life. Abba Kovner, a leader of a Jewish Resistance group and a witness in the trial, proposed seeing the glass booth as a symbol of the predicament of the Jews themselves under Nazi rule. Today, after the publication of numerous historical studies of the crimes of the Nazis, we may understand the glass booth as a symbol of the Nazi criminals themselves. By resorting to "clean language" and by distancing the higher members of the Nazi apparatus from the daily murder and brutality that was the fate of the victims, the Nazis succeeded in introducing to the world a new form of crime that threatens to pervert the technological achievements of civilization into the instruments of its destruction. In this regard, the Eichmann trial stands as a warning sign to humanity.

SEE ALSO Arendt, Hannah; Nuremberg Trials; Universal Jurisdiction; War Crimes

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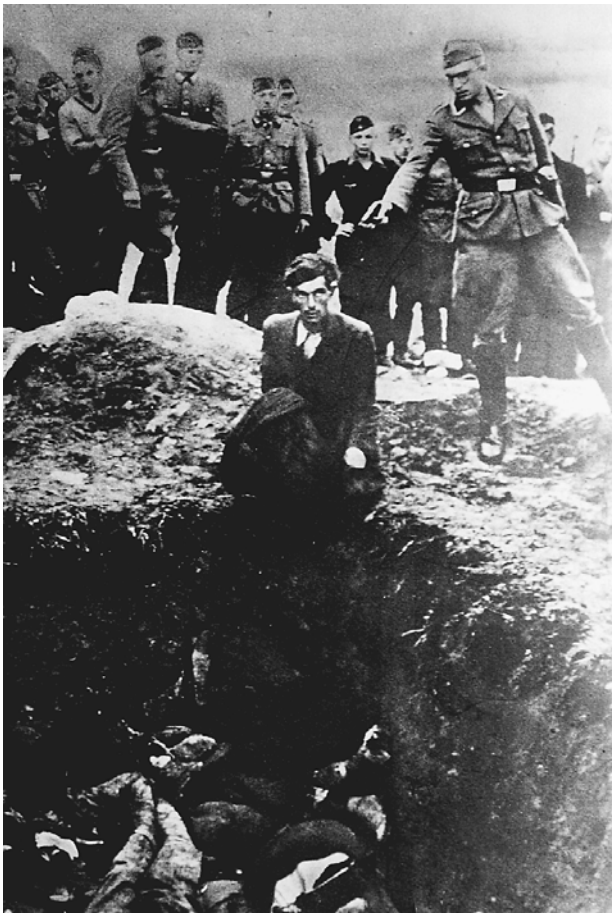
Leora Bilsky

Einsatzgruppen

No satisfactory English translation has been found for the German term *Einsatzgruppen* (EG). An accurate description might be "special extermination groups." Their primary assignment was to kill every Jewish man, woman, or child they could lay their hands on. Romani (pejoratively called "gypsies") were to suffer the same fate. Communist leaders or others suspected of any future threat to Adolf Hitler's conquests would also be targets for annihilation. Security Chief Reinhard Heydrich issued the order on September 21, 1939: "The total measures planned are to be kept strictly secret" (1949, p.120).

In May 1941, with Germany's assault against the Soviet Union imminent, four Einsatz groups were assembled. Each encompassed 500 to 800 men commanded by leading Nazis. The German army provided help and logistic support. On orders from Hitler, the EG were to break all possible civilian resistance behind the fighting front by ruthlessly destroying those deemed undesirable by the Führer or his supporters.

Einsatz units issued daily top secret reports that were consolidated in Berlin. These captured records revealed the full depravity of their deeds, despite euphemisms that sought to conceal their criminality. Victims were "given special treatment," "rendered harmless," or "resettled." EG A reported that it had liquidated 118,430 Jews and 3,398 communists. EG D reported 90,000 Jews eliminated. On September 29 and 30, 1941, one unit of EG C dispatched 33,771 Jews into a ravine that became known as Babi Yar. It has been min-



The SS Einsatzgruppen, the mobile killing units of the Third Reich, rounded up their victims (who were overwhelmingly Jewish) and transported them to secluded sites. They were shot and buried in ditches, gorges, quarries, and the like. In this photo, a Ukrainian Jew is summarily executed before a mass grave. [USHMM]

imally estimated that between one and two million innocent and helpless civilians were murdered in cold blood by these Nazi killing squads.

The procedures for mass murder were basically similar. Jews and Romani, who were earmarked for total annihilation, were ordered to assemble under penalty of death. They were transported by trucks to a hidden site where their clothing and possessions were seized. The helpless were directed to stand or kneel near the edge of a large pit that had been prepared. An EG firing squad of about ten men would shoot for about an hour before being rotated. Each row of victims fell into the pit on top of the corpses that lay dead or dying below.

In the spring of 1942 some EG units were equipped with gas vans for the easier "resettlement" of women, children, the old and infirm. Exhaust fumes were piped back into the camouflaged van. By the time the van reached its destination, the passengers were asphyxiated.

Upon conviction for their crimes against humanity at Nuremberg, EG leaders showed no remorse. They argued that Hitler had declared Germany was fighting a defensive war and they were bound to follow his orders. In a "total war" against Bolshevism, they contended, all potential enemies had to be eliminated by every possible means. Secret killing squads were a military necessity. They left no doubt that they would do it again.

In delivering his judgment, Presiding Judge Michael Musmanno noted: ". . . Mankind pleads for an understanding which will prevent anything like this happening again" (1949, p. 509). Nazi Einsatzgruppen wrote the blackest page in human history. Their cruel deeds illustrate the dangers of blind obedience to an authoritarian leader who defies the rule of law.

SEE ALSO Death Squads; SS

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Benjamin B. Ferencz

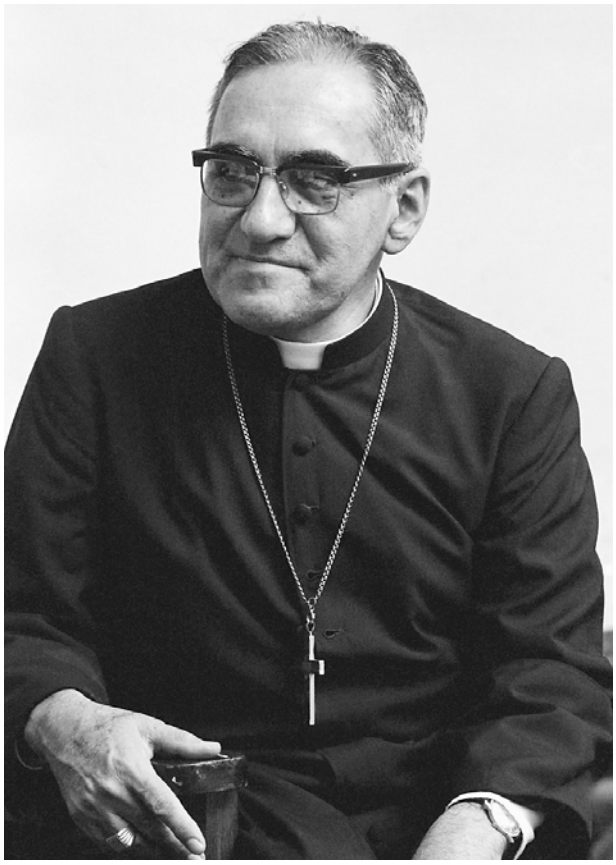
El Salvador

Between 1980 and 1992, the tiny Central American republic of El Salvador was engulfed in a brutal civil war. The Salvadoran armed forces, internal security forces such as the National Guard and National Police, and death squads allied with them killed tens of thousands of Salvadoran civilians in an effort to wipe out the guerrilla insurgency of the Farabundo Martí National Liberation Front (FMLN). Throughout the conflict, but most particularly in its early years, state forces committed grave and systematic abuses of human rights, including massacres, murders, disappearance, and torture. The FMLN carried out a smaller but nonetheless serious number of violations of international humanitarian law, including targeted assassinations of prominent public figures, kidnappings for ransom, and harming civilians in violation of the rule of proportionality of the laws of war. A United Nations-sponsored Commission on the Truth for El Salvador, created in 1992 as part of a UN-brokered peace accord, concluded that 85 percent of the human rights cases brought to its attention involved state agents, paramilitary groups, or death squads allied with official forces. Five percent of cases brought to the Truth Commission were attributed to the FMLN.

Political factors that led to the outbreak of war included decades of military rule, blatant fraud when civilians won the 1972 and 1977 presidential elections, and increasingly violent suppression of the regime's opponents. These political factors were coupled with the domination of the economic life of the country by a small landed elite that was opposed to reforms, especially agrarian reform, and who derived their control from the economic transformation of the country in the late nineteenth century. That period saw the rapid expansion of coffee cultivation, the abolition of indigenous tribal lands, and the creation of rural police forces for the explicit purpose of evicting peasants from communally held properties.

A landmark event in El Salvador's modern history was the 1932 peasant revolt, which was prompted by worldwide depression and plunging coffee prices. In December 1931, Minister of War General Maximiliano Hernández Martínez seized power in a military coup. Poorly armed and poorly organized peasants staged an uprising, led by communist organizer Farabundo Martí (from whom the latter-day guerrillas took their name). In quelling the rebellion, Hernández Martínez and his troops massacred between 10,000 and 30,000 people in a matter of weeks. According to the U.S. Central Intelligence Agency (CIA), in a 1985 assessment, "the resulting endemic national paranoia over the Communist threat reinforced authoritarian rule by the armed forces and its affluent civilian backers for the next half century. The chain of military regimes provided order and stability, and largely gave the plantation owners and monopolist businessmen a free hand over the economic life of the country."

Political violence dramatically increased in 1979, following a reformist military coup aimed at staving off a violent revolution like the one that had begun in 1978 in neighboring Nicaragua. Efforts by military officers and progressive civilians to promote reforms, including an end to human rights abuses, were blocked by a wave of violence unleashed by the army and security forces. Through mass demonstrations and sit-ins, grassroots organizations, some with direct or indirect links to guerrilla groups that had emerged in the early 1970s, challenged the junta to rapidly fulfill its promises. Targeted killings by state forces and increasing confrontations between government troops and demonstrators brought the civilian death toll to a record 9,000 to 10,000 in 1980. High-profile victims included El Salvador's Archbishop, Oscar Romero, who was shot by a death squad as he celebrated mass. Six leaders of the leftist political opposition were kidnapped by security forces from a press conference and then tortured and murdered, and four U.S. churchwomen were abducted, raped, and killed by troops of the National Guard. Amid the escalating repression, guerrilla groups coalesced to form the Farabundo Martí National Liberation Front (FMLN). Their failed "final offensive" in January 1981 effectively launched the country into full-scale civil war.



San Salvador's Archbishop Oscar Arnulfo Romero, a well-known critic of violence and injustice, was assassinated while celebrating mass on March 24, 1980. The UN Truth Commission later determined that Major Robert D'Aubuisson had ordered his death. [BETTMANN/CORBIS]

The years 1980 to 1983 witnessed the heaviest repression. Massacres in rural areas, gruesome murders by death squads, and the killing or disappearance of teachers, trade unionists, students, religious and humanitarian workers, journalists, and members of opposition political parties were the products of a military mindset that equated opposition with subversion and that viewed civilians in combat zones as legitimate targets of attack. The scale of the killings in rural as well as urban areas subsided in the second half of the decade, largely as the result of pressure from the United States, which provided approximately $6 billion in military and economic assistance to the Salvadoran government over the course of the war. El Salvador became

Funeral mass for six Jesuit priests gunned down in San Salvador. When several army officers were directly linked to their murder, it became a human rights case with international repercussions and was one of several factors that led to a negotiated peace in late 1989. [REUTERS/CORBIS]

one of the most contentious U.S. foreign policy issues of the cold war. Pressure for improvements in human rights originating in the U.S. Congress was coupled with the persistent downplaying or outright denial of abuses by senior U.S. authorities who were concerned with maintaining a flow of aid to defeat the insurgency.

The December 1981 massacre in El Mozote and surrounding villages epitomized both Salvadoran army practices and the pattern of U.S. denial. According to the Truth Commission, the army's elite Atlacatl Battalion "deliberately and systematically" executed more than 500 men, women, and children over a period of several days, torturing some victims and setting fire to buildings. Exhumations in and around El Mozote after the war revealed that, in one parish house alone, 131 of the 143 victims were children whose average age was six. The Truth Commission found "no evidence" to support arguments made publicly by the U.S. government at the time of the massacre that the victims had participated in combat or had been trapped in crossfire between combatant forces.

Other large-scale massacres of civilians in rural areas took place at the Sumpul River (1980), San Francisco Guajoyo (1980), El Junquillo (1981), the Lempa River (1981), El Calabozo (1982), Las Hojas (1983), the Gualsinga River (1984), Los Llanitos (1984), and San Sebastián (1988). While the death toll in massacres subsided as the decade wore on, hundreds of civilians were killed and many more thousands were displaced or forced to flee the country by indiscriminate aerial bombing campaigns conducted by the Salvadoran Air Force from 1983 to 1986. The goal was to drive civilians out of zones where the guerrillas were active. Bombing attacks subsided after 1986, a result of international pressure and a change in FMLN tactic, which emphasized small unit operations over the massing of large numbers of fighters.

Guerrilla abuses against the civilian population took place mainly but not exclusively in the context of the conflict. Before the outbreak of war, the guerrillas kidnapped prominent individuals for ransom, including the Salvadoran foreign minister in 1978 (he was subsequently executed). Beginning in the 1970s and continuing throughout the conflict, the FMLN summarily executed civilians suspected of being government informants. Such individuals were known as *orejas*, or "ears."

Targeted killings and disappearances of civilians by the FMLN were smaller in number than those of state forces, but constituted serious violations of international humanitarian law, nonetheless. Victims included more than eleven mayors, who were executed between 1985 and 1988 in areas the guerrillas considered their zones of control. Also killed were four off-duty U.S. Marines, who were machine-gunned at an outdoor café in 1985; and conservative public figures such as Attorney General José Roberto García Alvarado and intellectual Francisco Peccorini, both assassinated in 1989. Other episodes of FMLN abuse included the mass execution of a group of captured civilians in Morazán (1984), the kidnapping of the daughter of President José Napoleón Duarte (1985), and the killing of civilians who refused to stop at guerrilla roadblocks. Scores of civilians were killed and hundreds were wounded by the guerrillas' indiscriminate use of land mines. On numerous occasions, the use of crude and inaccurate homemade weapons and explosives resulted in civilian deaths.

Nothing so epitomized the terror of the Salvadoran war as the activities of the death squads. According to the Truth Commission, the squads' share of abuses was relatively small (just over 10% of documented cases), but they "gained such control that they ceased to be an isolated or marginal phenomenon and became an instrument of terror used systematically for the physical elimination of political opponents." The Truth Commission reported that civilian as well as military authorities during the 1980s participated in, encouraged, and tolerated death squad activities, offering "complete impunity" for those who worked in them.

Official U.S. documents that were declassified after the end of the war contain a wealth of information on death squad operations, structure, and personnel. For instance, Roberto D'Aubuisson, a cashiered National Guard officer, was a key figure in death squad violence. According to the U.S. Embassy in San Salvador, one of his most notorious crimes was overseeing the drawing of lots for the "privilege" of assassinating Archbishop Romero. According to a 1981 CIA memo, D'Aubuisson was funded by members of the "extreme right-wing Salvadoran elite" who "have reportedly spent millions of dollars" in an effort to return the country to right-wing military rule. Another 1981 CIA report said that D'Aubuisson favored the "physical elimination" of leftists, whom he defined as "anyone not supportive of the traditional status quo." According to the Truth Commission, D'Aubuisson maintained close contact with the intelligence sections of the security forces, combining "two elements in a strategic relationship": money (and weapons, vehicles, and safehouses) provided by the extreme right, and ideology, providing "the definition of a political line," for the intelligence units of the security forces.

To give a political front to the death squads, D'Aubuisson organized the *Frente Amplio Nacional* (Broad National Front), which later became the Nationalist Republican Alliance (*Alianza Republicana Nationalista*, or ARENA) party. As ARENA's candidate, D'Aubuisson was elected to the Constituent Assembly in 1982, later becoming its president. From that post, according to the CIA in 1984, he directed a team that engaged in "political intimidation, including abduction, torture, and murder." In 1985, the CIA identified the notorious Secret Anticommunist Army (*Ejército Secreto Anticomunista*, or ESA) as the public face of the ARENA death squad.

Other death squads operated out of the military and security forces, occasionally conducting joint operations. These included death squads organized out of the intelligence sections of the National Guard and National Police. The army's First Brigade, Signal Corps, Second Brigade, and cavalry, artillery, engineer, and infantry detachments throughout the country also participated in death-squad killings. A death squad operating out of an intelligence unit of the Air Force in the early 1990s threw bound but living prisoners out of aircraft over the Pacific Ocean, a practice referred to as "night free-fall training."

Negotiations to end the Salvadoran conflict began in late 1989, the result of a military stalemate, the end of the cold war, and the international disrepute of the armed forces following the army's murder of six prominent Jesuit priests. This atrocity led to a human rights case with broad international repercussions. The sweeping accord signed in 1992 under UN auspices established a Truth Commission composed of non-Salvadorans to investigate grave acts of violence, and an Ad Hoc Commission of Salvadoran citizens to review the records of military officers with an eye to purging those who had violated human rights. Those recommended for dismissal eventually included the minister and vice-minister of defense. The accord also abolished the security forces, established a new National Civilian Police, and reduced the role of the military in postwar society. While most of the provisions of the peace accord were implemented, the majority of the recommendations of the Truth Commission remained unfulfilled. In 1993, amid death threats and high-profile killings of demobilized FMLN leaders, the Salvadoran government created a Joint Group (*Grupo Conjunto*) for the Investigation of Politically Motivated Illegal Armed Groups. It found that politically motivated violence was linked to "the broad network of organized crime"

operating in El Salvador, and raised questions about the ties between earlier death squad participants and the "highly organized criminal structures" engaged in a host of illegal activities, including drug trafficking.

SEE ALSO Death Squads; Truth Commissions

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Cynthia J. Arnson

Enlightenment

To mount concerted opposition to mankind's inhumanity was one of the central objectives of the Enlightenment, an intellectual movement prevalent in Europe and some European colonies for around one hundred years from the late seventeenth century. Progressive ideas of toleration and of civil and human rights such as came to be realized in the American and French revolutions were largely inspired by Enlightenment principles. Religious intolerance, especially in England and France, offered many Enlightenment thinkers their main focus of criticism, as they resisted, in the first case, the efforts of King James II to debar Protestants from the monarchy and public office and defied, in the second, the revocation of the Edict of Nantes, which in 1685 abruptly terminated the long truce that had followed the ravages of sectarian wars associated with the Reformation and the Counterreformation.

Understood in this way the Enlightenment was committed to humanitarian ideals, cosmopolitan notions of citizenship, and a spirit of toleration. Its principles were to come to fruition in England's so-called Glorious Revolution of 1688. On the Continent these principles were mobilized against political and theological institutions that had driven French Huguenots in particular into exile, until a century later, when the *ancien régime* itself was overthrown. William and Mary's Act of Toleration and John Locke's *Letter Concerning Toleration,* both dating from 1689, as well as many of the chief writings of Spinoza, Bayle, Montesquieu, Rousseau, and Diderot, were designed to combat religious bigotry and sectarian violence. Voltaire was perhaps the eighteenth century's preeminent campaigner for toleration, rallying other luminaries of his age around his battlecry, *Ecrasez l'infâme.* It was in the mid-eighteenth century that the term *civilization* came to acquire its modern meaning as opposition to barbarism, which, in addition to primitive morals, arbitrary power, and ruthless violence, was now deemed also to embrace religious fundamentalism, such as had plunged Europe into darkness during the time of the Crusades and the Inquisition. From this point of view the French Revolutionary Declaration of the Rights of Man and the Citizen in 1789—one of the principal sources for twentieth-century charters of human rights—may be seen as marking the Enlightenment's triumph, in heralding, at least in principle, a new and secular age of toleration.

Following the rise of totalitarianism and the advent of the Holocaust in the twentieth century, an altogether different image of the Enlightenment has sometimes been proferred, concentrating instead on its commitment to the advancement of science and reason as the main vehicles of human progress. When conceived as providing a philosophical foundation for the scientific revolution through the contributions of Bacon, Descartes, Newton, and French materialists, the Enlightenment's origins are characteristically dated from around sixty or seventy years earlier in the seventeenth century, and critics have sugggested that this intelletual movement did not so much abandon Christianity as turn Christianity inside out, substituting the pursuit of earthly happiness for the unworldly salvation of our

souls, replacing one form of absolutism with another, dogmatic reason for dogmatic faith.

Three major implications with respect to the problem of genocide and crimes against humanity have been drawn from that assessment of the Enlightenment, each of which trades on the facts that modern barbarism embraced science rather than rejected it and that the Holocaust was perpetrated through the use of scientifically enlightened practices. The first is that by way of the Enlightenment, Western civilization itself became barbarous, in implementing strategic plans for moral and social reconstruction that encapsulated an Enlightenment faith in the unity of all the sciences. The second is that the Enlightenment's blind devotion to science and reason destroyed the ethical moorings of classical and Christian values alike, replacing them with merely instrumental notions of rationality by virtue of which a program of genocide could be scientifically organized. The third is that the Enlightenment's trust in the idea of scientific progress made it particularly hostile to Judaism as a mystical religion more primitive even than the Christianity it engendered, so that the attainment of cosmopolitan human rights implied the creation of a world without Jews.

Insofar as some Enlightenment thinkers, including Voltaire, showed little interest in preserving Jewish rituals, they in fact subscribed not to the Jews' annihilation but to their assimilation and enjoyment of rights belonging to all citizens. The contention that genocide is characterized by unrestrained rationality turns around ideas of reason peculiar to a German tradition of discourse over the past three hundred years rather than to mainstream English or French contributors to Enlightenment thought. And the truth of the proposition that crimes against humanity are evidence of civilization's own barbarism has been obscured by the religious fundamentalism that inspires much of terrorism today. The survival and current resurgence of crimes against humanity perhaps demonstrate how limited has been the Enlightenment's success in marshalling support for its objectives.

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Robert Wokler

Ennals, Martin

[JULY 27, 1927–1991]
Human rights activist

Charismatic but modest, Martin Ennals was one of a handful of figures who catapulted human rights from the fringes of transnational political relevance into the center of international relations in the second half of the twentieth century. This he did primarily by transforming a small, recently formed body, Amnesty International (AI), into the premier human rights organization.

Educated at Walsall Grammar School (in England, 1935–1945) and the London School of Economics (where he pursued a B.S. in international relations, 1945–1949), Ennals was present at the 1948 United Nations (UN) General Assembly when it adopted the Universal Declaration of Human Rights. Not long afterward he began working at the United Nations Educational, Scientific, and Cultural Organization (UNESCO) in Paris (1951–1959), where he found himself prominently involved in a historic human rights issue. As secretary and then president of the UNESCO staff association, he defended U.S. citizens, members of the international civil service, who risked dismissal because they, in his words, "refused to break the UNESCO and UN staff rules by completing political questionnaires demanded of them by the U.S. State Department during the McCarthy period."

Ennals left UNESCO to become general secretary (1960–1966) of the prominent human rights activist group in the United Kingdom, the National Council for Civil Liberties (NCCL, now known as Liberty). Among the issues NCCL concentrated on during his tenure (with some success) was the need for legislation against racial discrimination and the incitement of racial hatred. Ennals continued working on race relations after departing from the NCCL, and in 1968, appalled by the adoption of the Commonwealth Immigration Act, which deprived nonresident British passport holders without British ancestry of the right to live in the United Kingdom, he undertook a study on the predicaments of the East African Asians with UK passports who were affected by the act.

That same year Ennals began his twelve-year tenure as secretary general of AI (1968–1980). At the inception of his tenure, the organization's international secretariat had a staff of seven and an annual budget of £17,000. By the time Ennals resigned, AI had a staff

Martin Ennals was behind the creation of at least ten human rights organizations, which together span the full spectrum of human rights. From left to right, Lord Gardiner, Sean MacBride (a founding member of Amnesty International), and Martin Ennals, at the start of Amnesty International's first worldwide campaign for the abolition of torture, 1972. [HULTON ARCHIVE/GETTY IMAGES]

of 150 and an annual budget of approximately £2,000,000; AI also received the Nobel Peace Price in 1977. For Ennals, effectiveness demanded professionalism. His special skill was mobilizing a truly international movement of activists through the leadership of a professional core. The work of AI ranges from grassroots work on behalf of imprisoned individuals, to the development of international standards and implementation mechanisms at the highest intergovernmental levels. Ennals led all this with a pervasive institutional commitment to factual accuracy and political impartiality.

After his tenure at AI, Ennals was associated with various nongovernmental organizations (NGOs), several of which he helped found. These included the International Human Rights Information and Documentation System (HURIDOCS), Article 19 (the freedom of expression and information organization) and International Alert (IA). The latter was the merged result of two initiatives: the Standing International Forum on Ethnic Conflict, and International Alert on Genocide and Massacres, and Ennals was its first secretary general (1985–1990). Not shirking the greatest challenges, IA started to promote cross-community contacts in Sri Lanka.

Ennals died of cancer on October 15, 1991, in Saskatoon, Canada, where he had recently begun a year's residency at the University of Saskatchewan as the Ariel Fellows Chair of Human Rights.

SEE ALSO Nongovernmental Organizations

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Nigel S. Rodley

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[NOVEMBER 22, 1881–AUGUST 4, 1922]
Turkish Minister of War in the Ottoman Empire during World War I; better known as Enver Pasha

Ismail Enver was born on November 22, 1881, into a well-to-do family in Istanbul. His father was a civil servant. Enver studied in Germany, where he was particularly influenced by German military theory and organization, which he tried to emulate upon his return to the Ottoman Empire. He was quickly promoted in the army, attaining the title of Pasha (Bashaw) in 1913, when he was but thirty-two years old. He married Naciye Sultana, the Sultan's daughter. He was one of the leaders of the Committee for Union and Progress, also known as Ittihadists or Young Turks, together with Talaat Pasha and Cemal Pasha. He was a vocal supporter of a pan-Turkish Empire extending deep into the Caucasus, Iran, India, and Central Asia.

A bloodless revolution in July 1908 deposed Sultan Abdul Hamit and led the Ittihadists to power. At their 1910 congress in Saloniki, the Ittihadists discussed a plan for the "complete Ottomanization of all Turkish subjects." Their aggressive nationalist policies contributed to the outbreak of the Balkan war of 1912, where ethnic cleansing was practiced on all sides. In 1912 the loss of Libya to Italy eroded the Ittihadists power and drove them into a coalition with the Liberal Union. However, on January 23, 1913, the Three Pashas putsched and established a military dictatorship. This eventually drew the Ottoman Empire into World War I on the side of the Central Powers.

Enver's Third Army suffered a disastrous defeat at Sarikamish during the December 1914 offensive against Russia, in which some 80,000 Turkish soldiers perished. This diminished Enver's prestige, but he blamed the Armenians for his defeat, unjustly accusing them of connivance with the Russians. Together with Talaat Pasha, then serving as Minister of the Interior, he conceived the plan to physically eliminate all Christian minorities—including the Armenians, Assyrians, and Orthodox Greeks—that, theoretically, might have sympathies with the enemy. The genocide against the Armenians was begun on April 24, 1915, with the arrest and murder of Armenian leaders and intellectuals in Istanbul. The Armenian civilian population in Eastern Anatolia was then subjected to massacres and deportations that cost 1 to 1.5 million lives. Within the Ministry of War, Enver gave responsibility to a Special Organization (*Teshkilâti Mahsusa*); one of its assignments was the liquidation of the Armenians.

Pursuant to Article 230 of the Treaty of Sèvres between the Allies and the Ottoman Empire, Turkish officers and politicians responsible for the genocide of non-Turkish populations were to be tried by an international tribunal. On November 23, 1918, an Ottoman Parliamentary Commission started an inquiry into the massacres, which led to the indictment of Enver, Talaat, and former Minister of Justice Ibrahim Bey. They were tried in absentia before a Turkish court martial in Istanbul, found guilty pursuant to Articles 45 and 170 of the Ottoman Penal Code, and sentenced to death. The sentences were not carried out, however, because the Young Turk cabinet had resigned and gone into exile shortly before capitulation.

Enver fled to Germany in October 1918 and established contacts with German communists, including Karl Radek. In 1920 he went to Moscow and eventually traveled to Asia, where he supported an anti-Bolshevik revolt. He was killed in battle on August 4, 1922, near Baldzhuan in Turkestan (present-day Tajikistan).

SEE ALSO Armenians in Ottoman Turkey and the Armenian Genocide; Atatürk, Mustafa Kemal Pasha; Talaat

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Alfred de Zayas

Eritrea

Eritrea is one of the world's newest states, having been created in 1993 at the conclusion of a thirty-year war of independence waged against Ethiopia. The territory that is Eritrea was first associated with Ethiopia as part of its precursor kingdom, Aksum, which flourished in the fourth century CE. Eritrea's present-day population is almost equally divided today between Christian and Muslim faiths, but the nation began a history distinct from Ethiopia with its incorporation in the Ottoman empire prior to becoming an Italian colony in 1890. Italy briefly joined Eritrea with Ethiopia, which it conquered in 1936 and occupied until 1941, when British armies liberated the entire region. Discouraged from

One of the newer countries in the world, Eritrea won its indepedence from Ethiopia in 1993. [MARYLAND CARTOGRAPHICS]

contemplating post–World War II colonization of Ethiopia, Britain administered Eritrea until 1949 as a trust territory on behalf of the United Nations.

As an early and important accomplishment, the United Nations rejected both Eritrea's bid for independence and its incorporation within Ethiopia, opting instead for federating it with Ethiopia in 1951. Ethiopian emperor Haile Selassie I then systematically undermined this agreement, eventually co-opting the Eritrean parliament to vote for full union with Ethiopia. This prompted the birth of the Eritrean Liberation Front (ELF). The ELF was later rivaled and then supplanted by the Eritrean People's Liberation Front (EPLF), which led the war against Ethiopia, achieved victory in 1991, and successfully gained formal independence in 1993. The EPLF has since renamed itself the People's Front for Democracy and Justice (PFDJ).

An independent commission named by the Eritrean government produced a thoroughly democratic constitution developed through extensive and exemplary consultations with all Eritrean communities, including citizens residing outside the country. The government, however, comprehensively failed to implement its constitutional provisions for the protection of human rights and democratic elections. In the estimation of Freedom House, a respected pro-democracy and human rights watch group, Eritrea's record on human rights has become one of the poorest in sub-Saharan Africa. Renewed war with Ethiopia from 1998 to 2000, prompted by a border dispute, caused incalculable suffering in both countries and seems to have been a factor

in Eritrea's increasingly severe abuse of basic human rights.

Eritrea has, however, been severely victimized by Ethiopian abuses of human rights, both during its war of liberation and in the recent border war. Under its military dictator, Mengistu Haile Mariam (1974–1991), Ethiopia indiscriminately bombed Eritrean civilians in both urban and rural areas, in a futile effort to stamp out the guerrilla-based liberation movement by conventional military means. No formal international tribunal was subsequently proposed or convened to investigate war crimes committed during this conflict, although for more than a decade, Ethiopia's Special Prosecutor has brought former Mengistu regime officials to trial for egregious crimes now prosecuted under the Rome Statute of the International Criminal Court regarding genocide, war crimes, and crimes against humanity. Had he been brought before an international criminal tribunal, Mengistu would no doubt have claimed that his government was seeking to restore and preserve the unity of the Ethiopian state, which constitutes a mitigating factor within the meaning of the applicable Rome Statute's provisions. The statute is less clear on how the outlawing of war crimes applies to a liberation movement such as Eritrea's, which functioned entirely within the borders of what it regarded as its own territory. The statute distinguishes between international and non-international conflicts, but Eritrea's long history in relation to Ethiopia makes it unclear as to which category (international or internal) applies.

The Liberation War, 1962–1991

That war crimes were committed on a massive scale, at least by Ethiopian troops during the liberation war, is beyond dispute. These crimes included, inter alia, willful killing and willful causing of great suffering. Ethiopian armies inevitably directed attacks against civilian populations given the difficulty in guerrilla warfare of distinguishing between military and civilian personnel.

Mengistu insisted throughout his rule that the only acceptable end to the conflict would be an Ethiopian military victory. In a region where the average age of the population is under the age of twenty, it is all but certain that "children" participated in this conflict and in the subsequent border war, which automatically qualifies as a violation of international laws regarding war crimes as established by the Rome Statute.

Domestic Human Rights Performance, 1993–2004

To an observer not schooled in international law, Eritrea's very poor human rights record, especially since the border war, appears not to include genocide, since its transgressions have not been directed against any ethnic, religious, national, or racial community within its borders. Indeed, the PFDJ regime has gone to some lengths to try to protect each of its two major and nine distinct ethnic communities and to insure their equitable representation within the government. Pervasive abuse of the civil and political rights that are generally understood as essential to democracy does conflict with the Rome Statute's proscription of crimes against humanity, however, in so far as these include torture and imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law. Assessments of Eritrea's poor human rights record by Amnesty International, Freedom House, Human Rights Watch, and the U.S. Department of State have found these abuses to be widespread and comprehensive.

Eritrea does not appear to have been guilty in any major way of violating the other major categories of crimes against humanity identified by the Rome Statute. By contrast, Eritrea has consistently and flagrantly violated political and civil rights normally deemed essential to democracy but that are not, however, considered genocide or crimes against humanity. These violations have included pervasive denial of freedom of speech and association, blocking the emergence of a free and independent press, and arrests, trials, and incarcerations that are in direct violation of due process as it is understood by judiciaries in democratic countries. Eritrea has indefinitely postponed the holding of the free and fair multiparty national elections that are mandated by its draft constitution. Jehovah's Witnesses have been persecuted because of their refusal to accept compulsory military service.

The Border War, 1998–2000

Eritrea's border war with Ethiopia has profoundly victimized hundreds of thousands of people in both countries. The most easily identifiable war crime, of which both countries were guilty, was unlawful deportation within the meaning of the Rome Statute. Each country identified citizens with heritage traceable to its opponent, and then forcibly deported them to their putative "home" country. Numerically, Ethiopia's transgression was far greater than that of Eritrea. The United Nations-sponsored agreement ending the war contained provisions for the repatriation of such involuntary deportees.

The Rome Statute appears implicitly to presume a distinction between soldiers and citizens that the border war blurred. It was a war between peoples notwithstanding their important ties of consanguinity and their historically intertwined economies, politics, and cul-

tures. Both countries mobilized hastily trained "civilian soldiers" as well as their professional military personnel. As one consequence there was no clear empirical distinction between military targets and civilian enterprises, which were destroyed in the thousands. Nor was there a clear delineation between military personnel and civilians, whom the Rome Statute seeks to protect. Hundreds of thousands of people were killed, maimed, and rendered destitute, whether or not they were unarmed civilians or professional soldiers.

The Rome Statute's focus on "intent" is similarly problematic in the case of Eritrea and Ethiopia. Given their historic interdependence, neither side has fully come to terms with Eritrea's still new independence. Each has felt—and continues to feel—betrayed, violated, and threatened by the other's "unilateral" and contrary courses of political and economic action.

Both the liberation war and the subsequent border war, and their aftermath, have greatly exacerbated longstanding environmental degradation in both countries. Eritrea and Ethiopia face "natural" disasters that have their roots in the damage of the war years and which have strained the capacities of humanitarian relief agencies, and deepened some of the worst, most comprehensive, and most pervasive poverty anywhere in the world.

SEE ALSO Ethiopia

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John W. Harbeson

Ethiopia

Ethiopia is a large, multi-ethnic country located in the eastern part of Africa. It covers 437,600 square miles of land, as much as California, Oregon, Missouri and Idaho combined. Ethiopia's population in 2004 is estimated at approximately 68 million and includes about seventy different ethnic groups. The largest group is the Oromo. They live mainly in the central and southwestern parts of the country and constitute about 40 percent of the national population. The Amhara and Tigre ethnic groups are found in the central and northern highland regions of Ethiopia, and together make up 32 percent of the country's population. Minority ethnic groups such as the Anywaa, popularly called Anuak (less than 1%), Afar (4%), Somali (6%) and Gumuz (6%) make up the remaining 28 percent of the national population. Amharinya, the language of the Amhara ethnic group, is the official language of the country.

Ethiopia is one of only two African territories that were never European colonies. (The other is Liberia.) Italy's attempt to conquer and colonize Ethiopia in the late nineteenth century ended in disaster and humiliation when Italian forces were crushed in the northern Tigrean town of Adwa, on March 1, 1896. Ethiopia thus became "an insulting symbol" of Italy's failure to achieve its imperial ambitions in Africa (Bahru, 1996, p. 151).

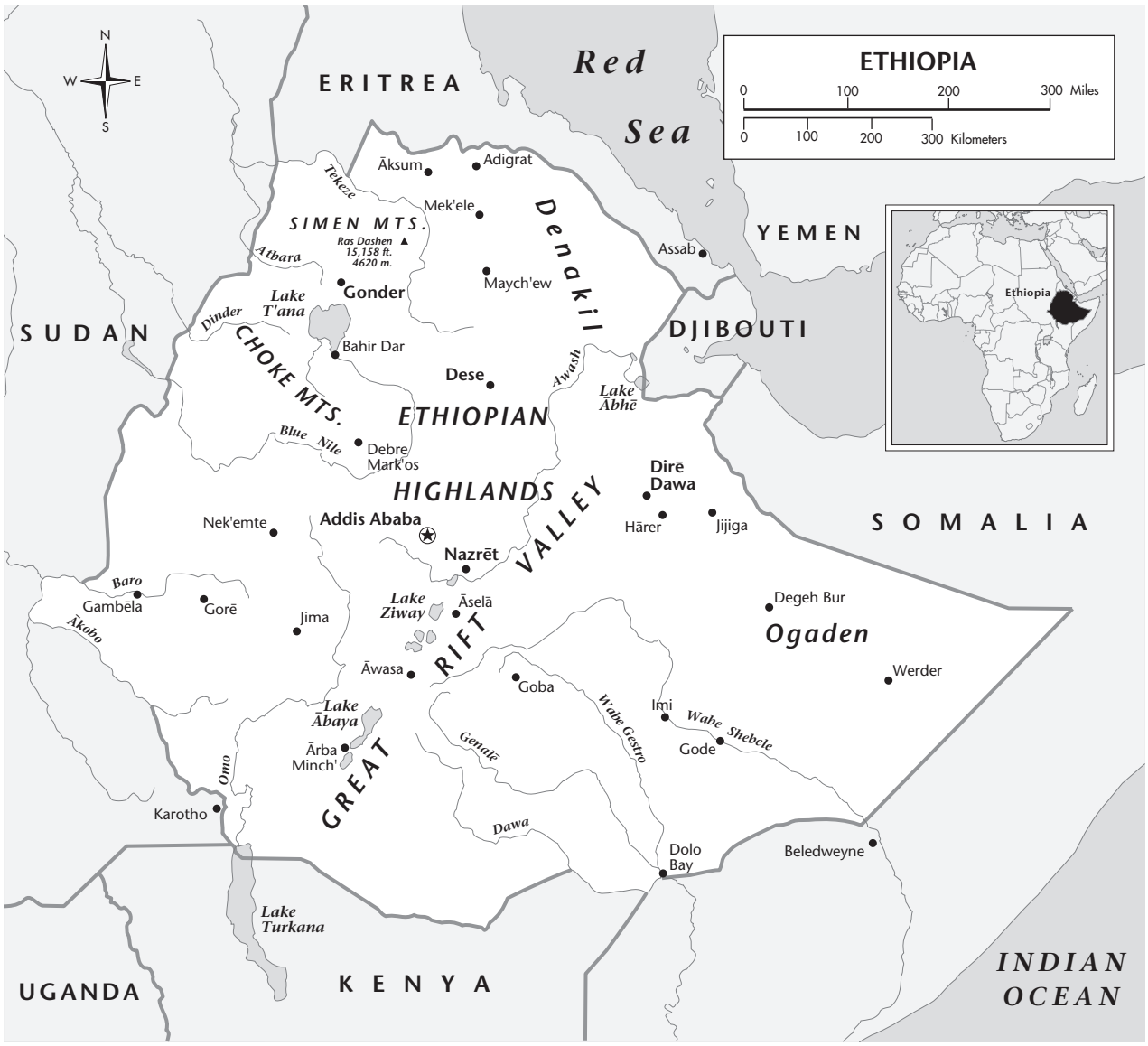
Ethiopia's most popular and well known ruler was Ras Tafari Makonnen, popularly known as Haile Selassie I. He ruled Ethiopia as Emperor from 1930 to 1974. He was regarded as the 225th Emperor in a line of Ethiopian monarchs who claimed to be descendants of a legendary marriage between King Solomon of Israel and the Ethiopian "Queen of Sheba" in the tenth century BC (Bahru, 1996, pp 7–9).

The Italian Invasion of 1935-36

Italy invaded Ethiopia for a second time on October 3, 1935 with a hundred thousand troops and two hundred and fifty airplanes equipped with mechanisms for spraying poison gas. Many historians agree that this invasion was undertaken in part to vindicate Italy's national honor, which had been bruised by the Ethiopians in 1896. Another reason for the invasion was that Italy's fascist dictator, Benito Mussolini, had promised to give Italy's poor large tracts of Ethiopian land for cultivation.

The Italians launched a well-planned attack, bombarding defenseless civilians. Since Italy had ratified the Geneva Protocol of 1925 on April 3, 1928, banning the use of poison gas in warfare, the actions of Italian troops in Ethiopia clearly violated international law.

The Office of Chemical Warfare of the Italian Ministry of War had long admired Germany's use of poison gas warfare. Between 1930 and 1932, the Office of Chemical Warfare produced tons of mustard gas bombs and secretly shipped one thousand of them closer to the Ethiopian heartland. In these same years, the Italian Ministry of War authorized the shipment of "56,000 artillery shells loaded with arsine gas" to Eritrea, then the northern province of Ethiopia that Italy had controlled as a protectorate or informal colony, with the consent of Ethiopia, since the 1880s.



Map of Ethiopia showing locations of Sudan, Somalia, Uganda, Kenya, Saudi Arabia, Red Sea, and Eritrea, 1994. [EASTWORD PUBLICATIONS DEVELOPMENT]

The shipment of chemical weapons close to Ethiopia suggests that Italy's military plans to use poison gas in Ethiopia began five years before the actual invasion. By the time the invasion began, 45 tons of C-500T lethal mustard gas, 265 tons of other poison gas as well as 7,483 gas bombs were ready for use at the Eritrean seaport of Massawa.

Mussolini's troops first used gas on October 10 and 29, 1935. Afterwards, the use of poison gas in aerial bombardment of Ethiopia became routine policy. In November, 1935 Marshall Pietro Badoglio, then High Commander of all Italian forces in East Africa, ordered Italian military planes to spray villages, livestock, pastures and all water sources with mustard gas. Badoglio prevented Ethiopian soldiers and civilians gasping for breath, under suffocating mustard and arsine gas, from fleeing to safety. Badoglio ordered Italian military pilots to bombard any fleeing or retreating Ethiopians with mustard gas.

On June 5, 1936, one month after Ethiopian forces surrendered, and Italian troops occupied Addis Ababa, Mussolini ordered his Viceroy in Ethiopia, Marshall Rodolfo Graziani, to impose a reign of terror on the country. Under these orders, Graziani waged a campaign of total destruction. About 250 Italian planes dropped poison gases in all regions of Ethiopia and tar-

In the 1990s, as the decades-long conflict between Ethiopia and Eritrea raged on, severe drought threatened a catastrophic famine. The government of Ethiopia was severely criticized for its continual spending on war as thousands of its citizens were dying of starvation. In this photo, taken June 14, 1998, Ethiopians displaced by the war wait for food distribution in the Ethiopian town of Adi Gudom, near Makelle. [AP/WIDE WORLD PHOTOS]

geted not only the kingdom's peasant volunteer army, but also noncombatant civilians in nonmilitary villages. Sbacchi has estimated that for the entire length of the military campaign (October 3, 1935–June 10, 1940), the Italian Royal Air Force dropped 2,100 poison gas bombs, containing about 500 tons of poison gas, on Ethiopia.

Effects of Poison Gas in Ethiopia

Poison gas had a devastating effect on military morale and civilian life in Ethiopia. The mustard gas bombs contained a corrosive liquid. When they exploded, they emitted lethal vapors that penetrated the human skin and produced both internal and external lesions that ultimately killed some victims. Others were blinded by the toxic gases. Many of those who escaped the deadly rain of mustard gas on the battlefield finally succumbed to its lethal effects when they drank water from the rivers and lakes contaminated by the gas.

Even the comparatively nonlethal C 100 P bombs filled with the chemical arsine had devastating results. Exploding C 100 P bombs filled the air with thick vapors and infected the respiratory tracts of people who inhaled them. The result was instant suffocation.

Fumes from phosgene bombs were just as deadly. Their vapors choked the lungs of their victims and killed them instantly. The Italian Southern Air Command used such bombs in Southeastern Ethiopia, on December 24, 1936, to kill Ethiopian troops in desert trenches who had not yet surrendered.

Related Italian Atrocities in Ethiopia

Italy committed other atrocities in its colonial war in Ethiopia. Italian soldiers bombed Red Cross ambulances and hospitals, and targeted Ethiopian intellectuals and priests. On February 19, 1937, two Ethiopians, Abraha Daboch and Mogas Asgadom, tried but failed to assassinate the Italian Viceroy of Ethiopia, Rudolfo Graziani. After this, the Blackshirts, the Italian fascist occupation army, unleashed a ferocious terror on Ethiopia, with official backing from Rome. The atrocities included beheadings, burning down houses, and disembowelling pregnant women. The Blackshirts also targeted educated Ethiopians, especially those who occupied administrative positions, and other religious fig-

ures. The massacre of February, 19–21, 1937, robbed Ethiopia of one of the kingdom's finest generation of intellectuals. Some monks and priests of the Ethiopian Orthodox Church were also murdered on Graziani's orders. In one private telegram to Mussolini, Graziani proclaimed that "nothing anymore remained" of the priesthood of the medieval Debra Libanos monastery, in northeastern Ethiopia (Imani, 2003, p.18).

International Reaction

Ethiopian protest at the League of Nations for recognition of the crimes against humanity that they suffered at the hands of the Italians bore little fruit. On June 30, 1936, Emperor Haile Selassie gave a high profile, and now famous speech to the League, asking for international protection of small nations against the designs of the powerful. Even this, however, drew little international sympathy and brought no condemnation of Italy.

Rome worked successfully to divert attention from its aggression and crimes. It sought to direct any international condemnation toward alleged Ethiopian war crimes against Italian troops. The Italian government produced questionable pictures and eyewitness reports of alleged Ethiopian atrocities against captured Italian soldiers from the Greek Consulate at Dire-Dawa, in southeastern Ethiopia, and three members of the Egyptian Red Cross operating in Ethiopia. Their accounts claimed that the Ethiopians had tortured, crucified, and decapitated captured Italian pilots and tank drivers in violation of the Geneva Accords. In this way Rome sought to quash international condemnation of its own violations of the same accords, which banned the use of poison gas. The supposed Ethiopian barbarities turned out, upon serious investigation, to be trumped-up allegations that bore no comparison to the Italian atrocities.

Revamping Ethiopia's Military: 1941–1970

Unfortunately, Italy's justification of its crimes by portraying Ethiopia as a kingdom that showed no respect for international humanitarian law seemed to have worked. No serious condemnation of Italy came from any European capital. Thus, the Italian invasion of Ethiopia and its aerial bombardment with poison gas had little or no consequence internationally. Italian troops occupied the Ethiopian capital on May 5, 1936. Four days later, on May 9, Mussolini formally proclaimed Ethiopia a colony, and therefore part of Italy's East African Empire.

But the occupation was to last for only five years, the shortest European colonial experience on the African continent. On May 5, 1941, the Italians were defeated by a British-led combined force of Ethiopians and other Africans from British and French colonies under the command of Major Orde Wingate. In June 1941 Haile Selassie returned to Ethiopia from exile in London to resume his rule as Emperor. However many Ethiopians who stayed at home to resist the Italians, as well as the post–World War II generation of educated Ethiopians were not pleased to see an Emperor who had abandoned his subjects at such a critical moment in their history return to power.

The entire Italian campaign taught Haile Selassie an important lesson about military power, modern warfare and international relations. In the post-1941 period, Haile Selassie made a strong modern national army, equipped with the latest weaponry, the centerpiece of Ethiopia's foreign policy. Through various military agreements with the United States and the former Soviet Union, during the cold war period, Haile Selassie built the fourth largest armed forces on the African continent (after Egypt, South Africa, and Nigeria). The Ethiopian defense forces increased threefold in the 1970s and 1980s.

Famine in Ethiopia: 1970–1974

Unfortunately Ethiopia's peasant agricultural economy was not modernized at the same rate as the kingdom's military. Peasants in the central and highlands regions of Ethiopia continued to depend upon rainfall for the cultivation of their crops. Inadequate rainfall in February and March 1972 not only delayed the planting season, but also caused sprouting crops to wither. Had the June and September rains been adequate, many peasants could have grown enough food or revived withering crops, but drought in June through September caused food shortages in the northern regions.

By June 1973, as many as two million people in northern Ethiopia were in desperate need of food. The conditions of peasants in Wollo, in northeastern Ethiopia had been worsened by the outbreak of cholera. Large numbers of the nomadic Afar ethnic group, who live in the remote semi-desert areas of northeastern Ethiopia, died when drought or lack of rain killed the cattle upon which they depended for their milk diets.

The scope of the disaster was equally overwhelming in other parts of the country. More than two million people are estimated to have died of famine-induced starvation and epidemics in Ethiopia between 1972 and 1973.

In hindsight, many lives could have been saved had the Imperial Government acknowledged the famine, and imported large quantities of food, or publicly and vigorously sought international relief assistance. The Emperor's cavalier response to the famine added to the famine-related deaths in the early 1970s. The tepid offi-

cial response has also raised questions about the extent of the Emperor's knowledge of the famine.

There are several plausible reasons for the failure of the Haile Selassie government to publicly acknowledge the famine and openly seek help. Acknowledging famine and seeking relief aid would have embarrassed a government that had since the 1940s spent huge public funds on military security and denied that famine was a serious problem in Ethiopia. Many Ethiopians accepted as fact the Emperor's claims, in his annual televised speeches, that theirs was a rich and fertile kingdom.

Because Ethiopians construed famines as normal occurences in a prosperous empire, this distorted the ways state officials responded to famine. Moreover, any worldwide publicity about famine and starvation in Ethiopia hurt the Emperor's personal image and Ethiopia's international prestige.

Famine and the Rise of the *Dergue*

Haile Selassie's indifference to famine set in motion a series of developments that eventually led to his deposition and the overthrow of his government. The famine of 1972–1973 provided an opportunity for discontented groups in the kingdom to rise up against the Imperial Government and to promote their quest for change in the name of protecting peasants and preserving the human rights of oppressed ethnic groups.

The conduct of some parliamentarians, between January and September 1974, highlighted a new attitude in Ethiopia that famine could no longer be accepted as natural disasters, as the Emperor often asserted. These politicians, and students, began to view famine in Ethiopia as not only a product of government indifference, but also as a crime against humanity that should be prosecuted by the courts.

On March 1, 1973, Mohammed Madawa, the Member of Parliament for Elkerre, in Bale province in southeastern Ethiopia, called for the indictment and trial of the Ministers of Agriculture, Finance and Interior for failing to respond to his January 16, 1973, appeal for immediate state famine-relief assistance to save the dying in his constituency. The lukewarm attitude of the officials, Madawa alleged, had resulted in the needless death of 50 people in Elkerre. The representatives of the pastoral Afars and Issas, in northeastern Ethiopia, joined this new spirit of parliamentary militancy.

In May 1973 the Haile Selassie I University Famine Relief and Rehabilitation Organization (UFFRO) launched the first large-scale domestic relief operation in Ethiopian history with money it had collected from students and faculty. The students and soldiers used their relief operations as a framework to voice their grievances against the Emporer's government. Encouraged by the relief efforts of the University, the Army and other organizations bypassed the state and took their contributions directly to the victims of famine in northeastern Ethiopia.

On June 28, 1974, a group of junior officers of the Ethiopian military established their own committee (*Dergue*, in Amharinya) to coordinate the grievances of the army, police, and air force. In keeping with the new militancy induced by the lukewarm official response to the famine, some of the *Dergue*'s junior officers arrested government officials alleged to have concealed the famine, and delivered them to the Emperor as "enemies of Ethiopia" be prosecuted for crimes against humanity (Kissi, 1997, pp. 176–177). By September 1974, these junior officers had concluded that deposing the Emperor and overthrowing his government would be the best way to address the problem of famine in Ethiopia.

On September 12, 1974, under the instigation of Majors Mengistu Haile Mariam and Atnafu Abate, some members of the *Dergue* entered Haile Selassie's palace, read out a proclamation of deposition to the Emperor, and whisked him away in a Volkswagen vehicle. He was later murdered in the presence of Mengistu and Atnafu, and then secretly buried in the capital city. The *Dergue* elevated itself, by proclamation, into a Provisional Military Administrative Council (PMAC) to take over the reins of government. Many Ethiopians saw the deposition of Haile Selassie as a necessary ending of that era in national politics in which government overlooked the plight of the famine-stricken. But a government led by soldiers, who had propped up the Emperor's regime since his return from exile, drew mixed responses throughout the country.

In its early years in power, the *Dergue* military government actually showed more eagerness to deal with the intractable problem of famine in Ethiopia than the civilian Imperial Government had. The soldiers reformed the semi-feudal land tenure system and improved the mechanisms for delivering state famine-relief assistance. But like its predecessor, the military government could not reconcile its political interests with public welfare. Failure to deal with famine, therefore, became a pattern in Ethiopian history that did not change with the change of government. The *Dergue* and its many armed opponents used famine and the control of relief supplies as weapons in their prolonged struggle for power from September 12, 1974, to May, 28, 1991.

The *Dergue*'s most determined armed opponents included the Eritrean People's Liberation Front (EPLF), Ethiopian People's Revolutionary Party

(EPRP), Tigrayan People's Liberation Front (TPLF) and the Oromo Liberation Front (OLF). Each group had a substantial, independent and organized military machinery and controlled particular regions of the country. Ultimately, it was the TPLF's and EPRP's objective of overthrowing the *Dergue*, and the EPLF's and OLF's ethnic self-determination and secessionist ideology, that resulted in a protracted and violent power struggle between these insurgent groups and the military regime that advocated absolute national unity. This struggle was characterized by terror and extra-judicial killings.

The White and Red Terror Campaigns

In September 1976 the EPRP, a multi-ethnic political group with Amhara leadership, initiated a systematic rural and urban campaign of assassination of supporters and sympathizers of the military regime.

The EPRP called its extrajudicial killing campaign the White Terror. That provoked the *Dergue*'s infamous counter-campaign of assassination of EPRP members and supporters. Between February 1977 and March 1979, the *Dergue* ordered state security forces and the government's own trained civilian death squads to eliminate EPRP leaders and members. The military government in turn called its extrajudicial murderous campaign, the Red Terror. Thus the competitors for power in Ethiopia after Haile Selassie, sought to emulate the political murders that characterized the Bolshevik revolution and the Stalinist period in Russian history.

In its Red Terror campaign, the *Dergue* targeted anyone who opposed the military regime or was suspected of having any link with or sympathy for the EPRP regardless of age, religion, gender or ethnicity. To intimidate its political opponents, the *Dergue*'s killing squads left the corpses of their victims on public streets for many hours often with notices around their necks labeling them as counter-revolutionaries. Worse still, the *Dergue* prevented bereaved families from mourning these so-called "counter-revolutionaries." In some cases, the families were required to participate in state-organized public demonstrations supporting these extra-judicial killings.

Both the White and Red Terror campaigns claimed between 20,000 and 30,000 lives. The terror campaigns went beyond extra-judicial killings. They also included arbitrary arrests, imprisonments without trial and torture of political opponents.

It was fashionable for the *Dergue*, in the face of protests from Western human rights organizations such as Amnesty International, to describe its Red Terror crimes as necessary for national security and political stability. But forcing political opponents to dig their own graves before being executed, mutilating the bodies of murdered political opponents, and compelling surviving family members to pay money for the bullets used to kill their relatives were, indeed, inhumane: they constituted crimes against humanity, possibly involving genocide.

Mengistu Haile Mariam, an army officer who participated in Haile Selassie's overthrow in 1974, as military ruler and then president of Ethiopia was responsible for human rights violations on a truly massive scale. Tens of thousands were murdered or "disappeared." Forced to flee in 1991, Mengistu currently lives on his private ranch in Zimbabwe. [CAMPBELL WILLIAM/CORBIS SYGMA]

However, Jean-Claude Guillebaud, and others have accurately noted the extrajudicial killing of political opponents in Ethiopia, in the mid-1970s, was "not all the work of one side" (Guillebaud, 1978, pp. 11, 13). Members and sympathizers of the EPRP and the TPLF, for instance, demonized one another and settled their ideological scores by murder. Kiflu Tadesse, a former EPRP member, has added that hundreds of EPRP members were killed by the TPLF and vice-versa, all in the name of ridding the new Ethiopia of "counter-revolutionaries," "narrow nationalists," "booklickers," and "traitors" (Kiflu, 1998, p. 259). Indeed, while the crimes of the Dergue are well documented, the compa-

rable deeds of anti-government groups such as the EPRP and TPLF are not well-known because they have yet to be researched.

Famine and Food Relief As Weapons

While the White and Red terror campaigns continued, the famine of the early 1970s reared its head again. Unlike the Emperor's government, the military administration did not suppress information about famine during its tenure in office. In fact the *Dergue* publicly and vigorously sought and received international relief aid.

However, the *Dergue* regulated the operations of foreign relief workers, tightened visa regulations, and charged exorbitant fees for discharging relief cargo at Ethiopia's ports.

Anti-government groups also used relief aid as a military tool. The TPLF and EPLF concluded that international relief assistance provided the military government with a source of food and international legitimacy that prolonged its existence and enabled it to target its opponents. Therefore, by attacking relief convoys heading for zones under government control, as the EPLF did on October 23, 1987, the armed movement heightened starvation conditions in areas outside its control. Acute starvation in government-held areas forced many of the starving to move to rebel-held areas where their loyalties and military services were enlisted in the war against the *Dergue*.

Also, by providing food, shelter and medicine to many famine victims, as the TPLF did, and by encouraging and helping peasants who could not get food from the RRC to cross the Ethiopian border to the Sudan, where the relief organizations of the TPLF and EPLF operated, these two antigovernment groups successfully integrated public welfare into their military strategies. As a result, they broadened their political support, gained new recruits and kept the war going.

It is fair to state that mass death from famine and starvation in Ethiopia under the *Dergue* was mainly the result of war and politically motivated use of famine, starvation and relief food as weapons of war. Again, as in the White and Red terror campaigns of the mid-1970s, all sides in the Ethiopian civil war stand guilty of committing crimes against humanity. By pursuing military strategies that accentuated starvation, the *Dergue*, the EPRP, TPLF, and indeed all antigovernment groups violated the Geneva Conventions prohibiting the intentional use of starvation of civilians as a weapon of war.

Fall of the *Dergue* and the Ethiopian Genocide Trial

Ethiopia's oppressive military junta was overthrown on May 28, 1991, by the Ethiopian Peoples Revolutionary Democratic Front (EPRDF), a coalition of anti-government groups organized and led by the TPLF. In 1994, the EPRDF established a Central High Court to try Ethiopia's former head of state Mengistu Haile Mariam, who fled into exile in Zimbabwe, thirty-seven of his top officials, and many supporters and mid-level bureaucrats of the ousted regime, for "genocide" and "crimes against humanity."

Ethiopia was the first nation to ratify the UN Genocide Convention of December 9, 1948, on July 1, 1949. Eight years after ratifying the Genocide Convention, Ethiopia incorporated the basic ideas of the Convention into its national laws. In fact, Ethiopia went further and became, arguably, the first country to redefine the legal concept of genocide broadly to include protection of political groups—an important and vulnerable group that the framers of the Genocide Convention, for political reasons, left out of the list of protected groups in the international law on genocide.

The Genocide Convention obliges its signatories to prevent and punish genocide. But the Ethiopian High Court trying Mengistu and his officials for genocide and crimes against humanity is not doing so under international law, but rather under Ethiopia's own domestic laws on genocide. Under Ethiopian law, genocide and crimes against humanity are defined as acts committed "with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group." Individual perpetrators or groups acting as such are guilty of genocide or crimes against humanity if, "in time of war or in time of peace," they organize, order or engage directly, in:

(a) killings, [or causing] bodily harm or serious injury to the physical or mental health of members of the [protected] group, in any way whatsoever; or

(b) measures to prevent the propagation or continued survival of its members or their progeny; or

(c) the compulsory movement or dispersion of peoples or children, or . . . placing [them] under living conditions calculated to result in their death or disappearance (Ethiopian Penal Code, 1957, p. 87).

The charges against the *Dergue* are contained in eight thousand pages of legal documents. In them, the Ethiopian Court alleges that the *Dergue* jailed, tortured and ordered the killing of members of opposition political groups and caused "bodily harm or serious [physical and mental] injury" to their leaders and supporters (Transitional Government of Ethiopia, 1994, p. 8).

Ethiopian domestic law on genocide and crimes against humanity also holds criminally responsible for genocide several categories of people. First among these are higher government officials who authorize

extra-judicial killings. Second are low-level bureaucrats who implement criminal orders or commit such killing on their own without state authority. Third are ordinary people who support extra-judicial killings even if they did not directly or actively participate in them.

As of June 2004, nearly 6,426 defendants—including Ethiopia's ousted head of state, Mengistu Haile Mariam, now exiled in Zimbabwe, thirty-seven of Mengistu's higher government officials and a large number of ordinary citizens—have been charged with genocide and crimes against humanity.

Mengistu and nearly 3,000 indictees are being tried in absentia. All the defendants are answering charges that they ordered, participated in or supported the *Dergue*'s infamous Red Terror campaign of the mid-1970s against opposition political groups. The Ethiopian genocide trial is a significant test case, in international and domestic Ethiopian law, of the prosecution of extra-judicial killing of political opponents of an ousted regime as a crime of genocide. In Ethiopia, the crime of genocide is punishable by death or imprisonment from five years to life.

Approximately 1,569 decisions have been handed down so far. Nearly 1,017 of them have resulted in convictions to various prison terms. Six death sentences have been passed. However, the trial has stirred up emotions domestically and internationally. In the course of the ten years of the trial, forty-three of the accused persons have died in prison. The trial has also proceeded at an erratic pace. It was suspended from 2002 to November 2003. The prosecutors attributed the suspension and the slower pace of the trial to the arduous task of gathering evidence on crimes committed nearly thirty years ago.

In February, 2004, thirty-three of the surviving members of the *Dergue* in detention and awaiting trial wrote to Ethiopia's Prime Minister Meles Zenawi, a former leader of the TPLF, requesting state funds to prepare their defense. The accused former officials pointed to the thirty-year time lapse of their alleged crimes, the deaths of some of their witnesses and the unjust fact that only "the few surviving . . . supporters of one side" in a power struggle are facing prosecution as reasons for the entire trial to be canceled (IRINnews.org, 2003; Amnesty International, 2004).

Human Rights in Ethiopia, 1998–2004

Since the overthrow of the *Dergue*, and despite the genocide trial, human rights abuses have continued in Ethiopia under the EPRDF. Three consistent patterns of violations of human rights can be discerned. One violation is in the treatment of the Oromo people. Some analysts and human rights groups have gone as far as to suggest that there is an "unfolding genocide" against the Oromo people of Ethiopia, under the EPRDF (Trueman, 2000). Second, since June 1998, the Ethiopian government has implemented a systematic policy of expulsion of Eritreans living in Ethiopia. The government has also committed or overlooked persecution of the Anuak people. Third, journalists in Ethiopia are today the targets of organized and systematic state repression.

Oromos

The Ethiopian government continues to face armed opposition from the Oromo Liberation Front (OLF). Since the 1970s, the OLF has waged an armed struggle for an autonomous state of Orominya, within Ethiopia, for the Oromo people as the Eritreans had achieved. In July 2000, the Oromia Support Group, a human rights organization with its headquarters in England, recorded many instances of grave abuses of people of Oromo ethnicity by the Ethiopian government. These abuses included 2,555 extrajudicial killings, 824 disappearances of Oromo people, banning of Oromo organizations as well as "opposition to the use of the Oromo language." Though the latter may be an exaggeration of state repression by the OLF and its external supporters, it is clear, from other sources, that members and supporters of the OLF have been the main victims of state-sanctioned torture and arbitrary arrests in Ethiopia.

Eritreans

Eritrea, a former northern province of Ethiopia, became an independent state in April 1993. Members of the defunct Tigray Peoples Liberation Front (TPLF), now in power in Ethiopia, assisted the defunct Eritrean Peoples Liberation Front (EPLF), during the period of the *Dergue*, to achieve the EPLF's ultimate objective, which was Eritrea's independence.

But the war that broke out between Ethiopia and Eritrea in May 1999, over unresolved border issues, has damaged relations between the two countries which were former political allies. What is worse, between June 1998 and April 2002, the Ethiopian government expelled about 75,000 people of Eritrean nationality living in Ethiopia in what Natalie S. Klein, Solicitor of the Supreme Court of South Australia, has described as a "deliberate" and "inhumane" state-organized "program of mass expulsion" of an ethnic and national group (Klein, 1998, p. 1).

Anuaks

It is not only Oromo and Eritrean residents in Ethiopia who have borne or continue to bear the brunt of human rights abuses. The latest victims have been the Anywaa

(also known as Anuak) people. They live in the Gambella region, in southwestern Ethiopia, and number about 100,000, in population. On December 13, 2003 eight people, all Ethiopian government and UNHCR officials traveling by car, were ambushed and killed near Gambella. Their bodies were mutilated. The Ethiopian government reportedly blamed the attacks on the Anuak who live in that region. On that day government soldiers and settlers from the Amhara, Oromo and Tigray ethnic groups living in the Gambella region descended on the Anuaks and exacted retribution in a manner characteristic of the Italian atrocities in Ethiopia in the 1930s.

Not only did the soldiers and the accompanying mobs kill 424 unarmed Anuak civilians, they also set Anuak straw-roofed homes on fire in a manner that resembles the atrocities committed by the Italians in February 1937. The perpetrators also stabbed and dismembered their Anuak victims with machetes, knives, spears, axes, clubs, and hoes, and dumped some of the dead in a nearby river in a fashion similar to what extremist Hutus did to Tutsis in Rwanda in 1994. As they sought and killed their victims, they chanted: "Erase the trouble makers!"; "There will be no Anuak land!"; "Let's kill them all"; and "Today is the day of killing Anuaks." Under strong international pressure, the Ethiopian government apologized for not preventing the killings. It remains to be seen if its apology betokens a changed policy on the ground.

Journalists

Journalists join Oromos, Eritreans and Anuaks on the list of victims of the most egregious violations of human rights by government in Ethiopia today. Muzzling of the press is not new in Ethiopia. But the Meles government appears to have taken it to new heights. The Meles government insists on censoring news reporting in Ethiopia. A Press Law which the government passed in October 1992 makes the failure of journalists to report accurately on every issue in the country a criminal offense. Under the law, the government retains the power "to withhold or withdraw registration and publication" of the newspapers of libelous journalists. The government has also reserved the right to censor articles that accuse government officials of abuses and/or any other article that the government regards as endangering "peace," "security," or "patriotism." Ironically, the press laws that the Meles government has instituted are the same oppressive press laws that the *Dergue* used, and are based on the same arguments the military junta made, in its era, to muzzle press freedom and restrict the voices of members of opposition political groups who are now in power.

Conclusion

The use of poison gas in Ethiopia by the Italian Royal Air Force in 1935–1936 and the massacre of Ethiopia's educated elite and monks in February 1937, represent an important benchmark in the history of crimes against humanity and possible genocide in Ethiopian history. In the mid-1970s the human corpses that littered the streets of Addis Ababa constituted incontestable evidence of state and insurgent terror. That terror mirrored the massacre of Ethiopians on the orders of Marshall Graziani in 1937. The difference was that in the 1970s Ethiopians themselves did the killing and the victims were their own kith and kin. The cause was not colonial occupation by an outside power, but rather a power struggle between the Ethiopian government and its armed domestic opponents.

These crimes against humanity, some verging on genocide, have not stopped. Today human rights abuses in Ethiopia go beyond extrajudicial killings and mass expulsions of people on the basis of their ethnic background and nationality. Those abuses also involve suppression of press freedom. Their most visible manifestation is the arbitrary arrests and jailing of journalists. Historically, Ethiopia has been the first to sign international legal treaties on human rights. Ironically, though, the country has often been the last to adhere to them. Crimes against humanity, possibly involving genocide, continue in Ethiopia.

SEE ALSO Eritrea; Gas

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Edward Kissi

Ethnic Cleansing

The term *ethnic cleansing* came into common parlance during the war in Bosnia in the spring of 1992. It was initially used to describe the attacks by Serbs on Bosnian Muslims, which were undertaken for the purposes of driving the Muslims out of targeted Bosnian territory that was claimed by the Serbs. Eventually, the term was also applied to similar attacks by Croats against Bosnian Muslims, as well as, retroactively, the attacks of Serbs and Croats against each other during the fighting of the late summer and fall of 1991. In the winter of 1998–1999, ethnic cleansing was similarly used to describe the assaults of Serbian forces against Kosovar Albanians, which prompted an enormous refugee crisis and, subsequently, NATO military intervention. In 2004, Kosovar Albanians were accused of the ethnic cleansing of Serbs living in Kosovo. Beyond the Balkans, ethnic cleansing has also been used to describe attacks on native populations. In the Sudan, for example, the deadly fate of the people of Darfur at the hands of government-supported Arab militia has been documented as a contemporary case of ethnic cleansing.

From the outset of the war in Bosnia, some analysts challenged the validity of using the term "ethnic cleansing" as a euphemism for genocide. However, the term remains in use precisely to distinguish ethnic cleansing, which is considered both as a crime against humanity and a war crime, from genocide. The definition of genocide, codified in the UN Convention of December 9, 1948, and upheld in the International Courts formed for the purposes of trying criminals from the wars in former Yugoslavia and in Rwanda, focuses on the intentional murder of part or all of a particular ethnic, religious, or national group. The purpose of ethnic cleansing, by contrast, is the forced removal of a population from a designated piece of territory. Although campaigns of ethnic cleansing can lead to genocide or have genocidal effects, they constitute a different kind of criminal action against an ethnic, religious, or national group than genocide. The transcripts of the International Criminal Tribunal for Former Yugoslavia frequently mention ethnic cleansing, but subsume it under the category of forced deportation, a crime against humanity that was widespread particularly in Bosnia. Genocide, on the other hand, has been much more difficult to prove in court, since it involves the intent to murder a part or all of a population. However, the mass murder of roughly 7,300 Bosnian Muslim men and boys in Srebrenica in July 1995 has been designated by the court as genocide.

Genocide and ethnic cleansing occupy adjacent positions on a spectrum of attacks on national, religious, and ethnic groups. At one extreme, ethnic

In 2004 Human Rights Watch issued statements that the government of Sudan was, indisputably, participating in ethnic cleansing in Darfur (in western Sudan), and that it was operating jointly with the Arab Janjaweed militias in their attacks on the villages and people of Darfur. This photo, taken April 29, 2004, shows the remains of huts, destroyed by militia groups, in the Sudanese village of Bandago. [AP/WIDE WORLD PHOTOS]

cleansing is close to forced deportation or what has been called "population transfer;" the idea is to get people to move, and the means are meant to be legal and semi-legal. At the other extreme, ethnic cleansing and genocide are distinguishable only by the ultimate intent. Here, both literally and figuratively, ethnic cleansing bleeds into genocide, as mass murder is committed in order to rid the land of a people. Further complicating the distinctions between ethnic cleansing and genocide is the fact that forced deportation often takes place in the violent context of war, civil war, or aggression. At the same time, people do not leave their homes peacefully. They often have deep roots in the locales; their families are buried in local graveyards. The result is that forced deportation, even in times of peace, quickly turns to violence, as local peoples are forcibly evicted from their native towns and villages and killed when they try to stay.

Ethnic cleansing takes on genocidal overtones not only at the initial point of violence. Victims often die in transit or in refugee camps at their destinations. The history of ethnic cleansing is replete with cases where transportation on foot in long treks, in rail cars, in the holds of ships, or in crowded buses causes severe deprivation, hunger, starvation, and death by disease. Disease-ridden refugee camps similarly contribute to the high mortality of people forced not just from their normal homes, but from their work places, their land, and their traditional sources of food and medicine. When international or state organizations are allowed to step in to help, they are often late and erratic with relief. As a consequence, the victimization of the ethnically cleansed cannot be said to cease once they have been chased from their homes.

Scholars argue about the modernity of ethnic cleansing, whether it is something that can be traced back to the origins of human history or whether it, like genocide, constitutes the kind of attacks of one nation, religious, or ethnic group on another that belong to the twentieth century. There are abundant examples from

the ancient world, documented in Homer, as well as the Bible, where nations attack others for the purposes of expulsion. The medieval and early modern world saw countless examples of such expulsions—of the Incas and Aztecs of South America, of the Jews of Spain, the Albigensians, and the Huguenots. Settler and government attacks on the North American Indians, the Australian aborigines, and the African peoples by their colonial oppressors also could be classified in this way. In this sense, ethnic cleansing can be seen as a constant feature of human history.

Yet the twentieth century brought with it a number of aspects of modernity that made ethnic cleansing more virulent, more complete, and more pervasive. The development of the nation state and the end of empires gave the state unprecedented power, the ostensible mandate, and the means for attacking and transferring large, allegedly alien populations. The drive of the modern state to categorize and homogenize its populations has contributed to this phenomenon, as has its intolerance for economic or political anomalies within its society. Modern ethnic entrepreneurs, politicians ready to exploit ethnic and national distinctions through the media, have also played an important role. The development of integral nationalism at the end of the nineteenth century emphasized the racial essence of national groups, thus serving as a convenient ideological motivation for ethnic cleansing. The origins of industrial murder during World War I serves as the backdrop for a century of ethnic cleansing, as well as for the horrors of genocide.

Prominent cases of ethnic cleansing in the twentieth century underline its modern character. The modernist Young Turk government attacked its Armenian population in 1915, forcing the vast majority on fearsome treks through the Anatolian highlands to Mesopotamia. These death marches were at the heart of the first widely recognized case of genocide in the twentieth century. At the end of the Greco-Turkish war of 1921–1922, Mustafa Kemal (Ataturk), at the head of the infant Turkish Republic, engaged in an ethnic-cleansing campaign against the country's Greeks. The Lausanne Treaty of 1923 completed the process of the forcible transfer of the Greeks by confirming a "population transfer" between the remaining Greeks in Anatolia and the Turks in Greece. Hitler is known to have said on the eve of his murderous attack against Poland, August 22, 1939, "Who, after all, speaks today about the annihilation of the Armenians?" Certainly, the indifference of the world to the fate of the Armenians and Greeks gave Hitler every confidence that his planned attack on the Jews would rouse little opposition. Like the mutation of the Young Turk campaign of ethnic cleansing into genocide, one could argue that what started as a Nazi campaign of ethnic cleansing in the 1930s—the expulsion of Jews from Germany and Europe—ended in the genocidal mass murder of the Jews.

Other prominent cases of ethnic cleansing in the twentieth century underline its murderous character. When Stalin and Beria decided to deport entire nations, such as the Chechen-Ingush and Crimean Tatars, from their homelands to Soviet Central Asia during World War II, there was no discernable intent to kill large numbers of these peoples. Yet the brutal processes of transfer and resettlement to barren and hostile lands served as the source of substantial mortality, perhaps as much as 40 percent of some of the peoples involved. Similarly, when the Polish and Czechoslovak governments decided at the end of World War II to forcibly deport their respective German populations, totaling more than 11.5 million people, as many as 2 million died, mostly from disease, exposure, and hunger. In both sets of cases, the modernity of the operations was evident in the completeness of the transfers, the nationalism that drove them, the state-defined legality that supported them, and the means of moving people from their homes. The transfer of the Germans should be seen as a case of ethnic cleansing, one that was given an international imprimatur by the Potsdam Treaty of July–August 1945.

Many of the characteristics common to ethnic cleansing over the course of the twentieth century are exemplified by the wars in former Yugoslavia in the 1990s. War itself serves as a cover for ethnic cleansing, offering the means and the strategic justification for its perpetrators. Yet the violence of ethnic cleansing goes beyond the rules of war and involves the brutalization, humiliation, and torture of victims. In the campaigns to drive out all Bosnian Muslims (Serbs, Croats, or Kosovar Albanians), the authors of ethnic cleansing in the Balkans also mimic the totalist preoccupations of earlier perpetrators. Attacks on women and mass rape, most notable in the case of the Serbian assault on Bosnian Muslims, similarly is often part of the general process of ethnic cleansing. Instances of robbery, theft, the killing of animals, the burning of homes, and extortion accompany ethnic cleansing, whether in the Balkans or elsewhere. The Yugoslav cases demonstrate, as do the others, that ethnic cleansing involves not just the driving out of a people, but the eradication of their culture, architectural monuments, and artifacts. The idea is to eliminate entire civilizations from targeted territories, along with the peoples who represent them.

SEE ALSO Bosnia and Herzegovina; Cossacks; Ethnicity; Ethnocide; Holocaust; Karadzic,

Radovan; Kosovo; Massacres; Mladic, Ratko; Nationalism; Sri Lanka; Sudan; United States Foreign Policies Toward Genocide and Crimes Against Humanity; Yugoslavia

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Norman M. Naimark

Ethnic Groups

Ethnicity is difficult to define. Its close analog, race, has been discarded by some as a useful subject of scientific research. Common ethnicity as a psychosocial reality constituting a community is now understood as a cultural attribute that links individual human beings, such as a common language, religion, social rituals and routines, and a feeling of togetherness. Donald L. Horowitz attributes this feeling of togetherness to a "strong sense of similarity, with roots in perceived genetic affinity, or early socialization, or both" (Horowitz, 2001, p. 47). The common bond of an ethnic group may have been intensified through a shared history of being victimized by others, as exemplified by the social pathology of anti-Semitism or the persecution suffered by the Roma and the Sinti.

Conflict is an essential part of human existence, be it inter-individual or inter-group. Although a large part of the twentieth century was dominated by the struggle of political ideologies, expressed in both hot and cold wars, the 1990s and the early part of the twenty-first century saw a resurgence of ethnic rationalizations for the outbreak of hostilities. The atrocities in disintegrating Yugoslavia, fuelled by policies of ethnic cleansing and culminating in the slaughter of Srebrenica, as well as the genocide in Rwanda and continuing bloody feuds in Africa, are two examples of major outbreaks of inter-ethnic violence.

Ethnicity as a perceived social bond is a fact of human life, and can be used to good or insidious effects. It is often at the root of a social group's quest for political, economic, and cultural self-determination. Self-assertion of an ethnic group may yield socially positive outcomes, such as its economic flourishing and political integration. It can lead to linguistic as well as cultural diversity and the development of distinctive styles of art and cuisines. It can thus be, and often is, an important reference point for building a nation. Tensions between groups may be seen as natural, even beneficial, to the extent that they promote healthy competition and a quest for common rules limiting the contest itself.

When self-assertion of an ethnic group turns from creative into destructive tension, brooding hostility, and ultimately violence against outsiders, however, ethnic conflict becomes pathological and destructive of the values of human dignity. Still, in many of the conflicts occurring in recent years, the phenomenon of ethnic difference may only partially explain the actions on the ground. In Rwanda, for example, the colonial regime's perceived preferences for the Tutsis, and political power differentials in the post-independence years may have contributed as much to the mass slaughter as the ethnic difference itself. The presence of an economically dominant minority ethnic group (e.g., the Chinese in Malaysia and Indonesia) may also play a role in the emergence of ethnic hostilities, as do religious differences (as seen in the Catholic-Protestant conflict in Northern Ireland or the riots between Hindus and Muslims in India).

Social and political solutions to the issues raised by ethnic self-assertion can be categorized according to effect. If the self-assertion is positive, functioning as the glue of a nation, it can be used to create a common engine in the quest for achievement of all the things that humans value. The group's claim to self-determination, recognized for "peoples" essentially self-defined, would allow for the establishment of confident units of self-government, be they nation-states or autonomous units within a political structure in which power is shared vertically (federalism) or horizontally (with provisions for minority rights) or a mixture of both. An order of human dignity would aspire to ensure that such self-assertion of the group will not infringe on the rights of outsider individuals and groups.

Several international legal prescriptions have been designed to protect ethnic groups as such. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide defined this international crime as any of a number of acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group." This definition is repeated verbatim in the 1998 Rome Statute establishing the International Criminal Court. More generally, the 1948 Universal Declaration of Human Rights, as well as the two United Nations human rights covenants of 1966, mandate equality before the law and specifically prohibit discrimination on account of "race," or "national or social origin." Article 27 of the International Covenant on Civil and Political Rights provides a positive guarantee for "ethnic minorities" "not [to] be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities defines those rights in greater detail, adding a people's right to participate in decisions that affect it, as well as the right to establish and maintain its own institutions, as well as positive and negative obligations of states to foster minorities. The Council of Europe's 1995 Framework Convention for the Protection of National Minorities obligates member states to detailed standards of treatment and requires them to report periodically on their performance to an advisory committee composed of eighteen independent experts in the field. Indigenous peoples have received their own level of international legal protection, as reflected in the 1989 International Labor Organization's Convention No. 169; the 1993 Draft United Nations Declaration on the Rights of Indigenous Peoples; the creation, in 2000, of a Permanent Forum on Indigenous Issues; and customary international law rights to their culture and their traditional lands.

As far as the dark side of ethnic self-assertion is concerned, the international system has often been less than diligent in preventing outbreaks of ethnic violence, or in stopping it, sanctioning it, and preventing it from reoccurring. A model for effective monitoring and prevention could be the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe (OSCE). This office fulfills a dual mandate of "early warning" and "early action": it is duty-bound to alert the OSCE when tensions involving national minorities that have an international character threaten to escalate to a level where they cannot be contained. To arrest inter-ethnic violence once it has broken out, mechanisms such as humanitarian intervention (e.g., in Kosovo) have been developed that would appear to allow the use of force from the outside, at least in the case of genocide and other massive violations of fundamental human rights. Humanitarian law would put limits on the conduct of hostilities and thus would protect civilians, even though the line between civilians and combatants in this type of conflict has often been blurred. Domestic and, increasingly, international criminal sanctions are being put in place to punish conduct such as genocide, crimes against humanity, and violations of the laws of war. The International Military Tribunals of Nuremberg and Tokyo set precedents for sanctioning forums such as the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court, as well as hybrid domestic-international tribunals such as those established for East Timor and Sierra Leone. Also, systems of civil liability, such as the Alien Tort Claims Act in the United States, are designed to redress the wrongs involved. Beyond those immediate reactions and restorations of the social order, societies torn apart by ethnic conflict face the need to be healed over a long period of time. Institutions searching for the truth and society-wide sharing of pertinent information have helped in this quest for ultimate reconciliation.

SEE ALSO Cossacks; Ethnic Cleansing; Ethnicity; Kosovo; Minorities; Racial Groups; Sri Lanka

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Ethnicity

The term *ethnicity* was coined by American sociologists in the 1920s to describe the phenomena and the politicization of the basic concept of an ethnic group. It derives from the Greek word *ethnos*, meaning "peoples." The problem is that ethnic groups are almost always seen as minorities, not as peoples.

Ethnicity has been the dominant motif in most modern genocides and acts of mass violence in the twentieth century, particularly in the deadliest "genocides-in-whole" (according to the UN Convention of 1948), which were all committed by perpetrators from ruling national majorities against members of ethnic and religious minority groups. Examples are the large-scale genocides committed by the regime of the Young Turks against the Armenians (AGHET), Pontian Greeks, and Assyrians in the 1920s; the Holocaust committed by the German Nazis and their allies and vassal regimes between 1939 and 1945 throughout most of Europe against the Jews (SHOA), Roma (PORRAJMOS), Soviet POWs, Slavic peoples, and twenty other groups; and the widespread slaughter committed in 1994 between April 6 and mid-July by the Hutu power regime in Rwanda against the Tutsi. Colonial genocides begun in the fifteenth century but in some cases continued into the twentieth century. One of the most devastating was committed by the Belgian colonizers in the Congo Free State, the later Belgian Congo, from the 1870s to the 1920s against the indigenous African peoples of the Great Congo Basin (taking 12 to 18 million victims), as well as the smaller but almost total genocide by the German colonialists against the Herero and Nama in Namibia (that time German Southwest Africa) from 1904 to 1907.

Ethnic category killing was predominant in genocide as well as in violent conflict. In the 20th century, genocide directed against ethnic and religious groups has been the dominant form of both extermination-in-whole and in-part. Additionally, the ethnic factor has been predominant in two thirds of some 300 intra-state violent conflicts since World War II—more precisely, since the period of decolonization that started in 1948—as well as in a number of inter-state conflicts.

The ethnic factor also plays a leading role in what has been termed *ethnic cleansing,* which is more accurately termed expulsions or deportations. Another euphemistic expression for ethnic cleansing is "population transfer," although atrocities may be included as a part of such activities. Contrary to genocide and violent ethnic conflict, the aim of ethnic cleansing is not to kill all the members of an ethnic group in a territory, but to drive that ethnic group from their ancestral lands and settlement area. Ethnocide or cultural genocide, on the other hand, is an attempt to wipe out the culture of a particular group and replace it with the majority "national" culture by means of repression and assimilation, not by killing the members of a distinct ethnic or cultural group.

The ethnic factor is delimited, but contentiously, within certain boundaries, in the older social science disciplines of ethnology and social/cultural anthropology. There are quite a variety and number of categorizations offered by the different ethnological and anthropological schools, but any combination of the more accessible definitions is not really possible, given the differing approaches and standards used by various scholars. The most frequently mentioned elements of ethnicity are shared origin and similar culture, religion, class, and language. However, two of these (class and religion) are not apposite. Language is seen as the most objective attribute for an ethnically distinct group and, thus, questions have been raised about whether Hutus and Tutsis can be referred to as different ethnic groups, since both groups share the same language and cultural practices as well as religious affiliations.

The ethnic form of socialization must be distinguished from socialization into social classes. The extent and boundaries of the two are often congruent, but they can also merely overlap, as can be seen in more complex societies, or exclude one another entirely, as occurs in egalitarian societies. Religion must be rejected as a criterion for ethnicity, since it is an ideological domain that within the framework of colonialism, was mostly externally imposed and fortuitously selected. Imported, colonially induced religions and syncretistic variants are more common and dominant than indigenous religions.

Whereas there are less than 200 formally constituted states in the world, there are between 2,500 to 6,500 ethnic groups as defined according to linguistic criteria. Lately the figure of 10,000 or more ethnic groups has been mentioned. The variation in figures is due to the

differences in the criteria or attributes used to define an ethnos. One of several possible approaches to identifying distinct ethnicities focuses on attributes other than language, for instance on clusters of "special features" or social specializations, which are both seen as contributing to the defining characteristics of a particular ethnos. Such clusters are called "ethnic markers," and are only relevant within the framework of inter-ethnic relations. Often they only become a major focus of perception when situations of conflict arise.

Understanding ethnicity and the ethnic factor can best be done by considering key attributes of an ethnic community:

1. a historically generated or (in some cases) rediscovered community of people that largely reproduces itself;
2. a distinct name, which often simply signifies 'person' or 'people' in the ethnic community's language;
3. a specific, heterogeneous culture, including, particularly, a distinct language;
4. a collective memory or historical remembrance, including community myths (myths of foundation or emergence relating to shared ancestry); and
5. solidarity between members of the community, generating a feeling of belonging.

Attributes of ethnic community by no means constitute a definitive checklist. They are, rather, an attempt to get closer to an appropriate understanding of ethnicity, the individual elements of which can be examined more closely for each concrete instance. Maintaining ethnic borders—and thus also being able to delimit different ethnic groups—has its problems. Most peoples live closely and intermingled with other groups. (There is no such thing as ethnically homogeneous or pure "areas," if not as a result of violence and ethnic cleansing.) Over-emphasizing certain elements, such as participation in a shared culture or the social dimension (which sees ethnic groups as a particular form of social organization), would also appear to be problematic. Ethnic communities may be imagined, but as imagined entities they are significantly more concrete and more tangible than that of the nation.

Perspective—that is, whether or not one views ethnicity from inside or outside the group in question—seems crucial to understanding ethnicity. The point of view of group insiders is called an *emic* perspective, as opposed to the *etic* view of the outsiders. Emically speaking, most ethnic group members see themselves as a people or as a nation, and the idea of shared origin is crucial. This shared origin does not have to be based on historical fact, and is usually putative, mythical, or fictitious in nature. Emically speaking, however, ethnic affinity is generally not perceived in any way as ideologically generated or as primordial.

In the anthropological literature, theories of ethnicity vary widely depending on the scholarly framework employed, be it primordialism, constructivism, situationism or other orientation. Vastly different statements about group affinity and personal identity can be generated depending on the terms of reference used in the underlying context. In modern societies, for instance, very different conditions of group affinity obtain than in traditional societies. The ethnic and sociocultural identity of an individual also varies according to the location or standpoint of the observer; and the terms by which the Other and the Self (i.e., outgroup and ingroup characteristics) can also vary.

Conflict brings about fundamental changes in frames of reference. In a situation of threat, individual elements of personal and collective identity become enhanced. Alternatively, the political instrumentalization of mechanisms of demarcation is often done for the purposes of exclusion of certain groups. Exclusion marks the crucial step which leads from simple discrimination to more profound instances of ethnic conflict and genocide. Ethnic identity constitutes itself via processes of demarcation that do not occur within a nonauthoritarian space and whose modalities cannot be determined freely and independently. The abstract difference of others poses no problem, but the experience of real threat from others, or a construed feeling of superiority *vis-à-vis* others, are, in contrast, results of processes of exclusion and polarization. Constant injury to central elements of the shared ethnic identity, either from within or from without the group, elicits specific forms of resistance in each particular case, ranging from withdrawal to armed rebellion.

Since World War II, more than 300 wars and instances of mass murder have taken place worldwide—most of them, until the end of the 1980s, in the less-developed nations. Among the possible conflict types, the most deadly are genocides and certain forms of nonwar mass violence. (Genocide is often committed behind a smoke-screen of war and crisis.) Claims by the governments (usually despotic governments) of a number of nation-states in regard to the national groups, which happen to live on the territory of the respective state (often unwanted) and in regard to ethnic minorities and indigenous peoples, seem to become increasingly aggressive in times of change. In empirical and historical terms, this state of affairs has the most dangerous potential, and has been the source of real conflicts and wars both in the underdeveloped world and,

since 1989–90, in Eastern Europe, within the former socialist multinational states.

Almost two-thirds of current violent conflicts are susceptible to ethnic interpretation. It was only when the Janus-like countenance of nationalism reappeared in Europe (after the dissolution of the Soviet Socialist Republics) that the media and broad sections of the public in the West became aware of this global trend towards ethnic nationalism, of which there had been evidence since the period of decolonization. It was a long-established fact that this belated nationalism represented a renegotiation of the situation left behind by the colonial world-order. It involved a fundamental struggle between liberation and oppression, between emancipation and barbarity.

The global trend toward an increase of intra-state conflicts and a decrease—if not near disappearance—of the classic Clausewitzean "war between states" has grown steadily greater over the second half of the twentieth century. The trend reflects the increasing importance of intra-state conditions in the generation of conflict, but the violence that ultimately erupts often spills over borders. There is a multiplication of actors in some complex new conflicts, with the Congo and Sudan being the best examples.

In empirical research, different types of contemporary conflicts can be observed. Their dominant character is either anti-regime or ethno-nationalistic, followed by interethnic wars, often without state actors being involved, and gang wars and warlordism, which have been named "post-modern wars" despite the fact that this type of conflict has a long history. There are some decolonization conflicts, as well. A recent example of this type of conflict occurred in East Timor, which was brought under Indonesian occupation by a genocide that reduced the Timorese population by one-third from 1975 to the 1980s. Terrorist conflicts, which in the form of international gang wars gained much attention since September 11, 2001, are neither a new phenomenon nor a particular deadly form of mass violence. Their death toll is relatively low—in 2001 such conflicts may have caused 0.2 percent of all conflict-related fatalities worldwide.

Conflict types suited to ethnic interpretation—with ethnicity as the mobilizing force—seem to be rapidly increasing in incidence and ferocity, although they have been prominent for quite some time. Increases in violent ethno-nationalist conflicts have been observed in the wake of a number of phases of decolonization. Ethnic conflicts of a violent kind are both products and causes of colonial creation and of the inherent instability of newly formed states. Thus, ethno-nationalism appears to be a response to serious ongoing crises. Its primary cause, the struggle against the neo-colonial state, has strong structural aspects and, therefore, a truly global spread. However, the level of conflict varies considerably in the different regions of the world. As the example of the Community of Independent States (CIS) shows, the structure and dynamics of the process of fragmentation in the recently emerged states of Eastern Europe followed its own rules and differed significantly from the situation in the nations of Africa and other less developed, formerly colonized regions of the world.

Attempts to clarify or resolve sub-national conflicts must be preceded by the realization that existential questions relating to the survival of an ethnic group are not factors that are open to negotiation but essential prerequisites to dialogue. There are a number of highly destructive forms of interaction between states, nations, and nationalities that have resulted in the exclusion and persecution of national groups but that have not yet been subject to systematic investigation and for which the international community has not yet developed any consistent policy. This was demonstrated with devastating clarity in the case of the genocide in Rwanda in 1994.

The crime of genocide not only calls for prevention but for its elimination. Genocide prevention requires different means than the prevention of ethnic violence in general and ethno-nationalism in particular. The political and humanitarian concern to find ways of avoiding violent forms of ethno-nationalism from below and ethnicization from above leads to the questions of (1) how ethnic and cultural difference can be understood and acknowledged; (2) how destructive forms of interaction between states and nations or nationalities can be prevented; and (3) which institutions, legal measures, and policies are most appropriate for that purpose.

Procedures aimed at the "structural prevention" of violence are required. Structural prevention seeks to end repression and injustice, which is ingrained in state policies and underdevelopment, and which is also inherent in the cultural attitudes held by many dominant groups. "Structural" means that new political frameworks and institutions are created to avert the possibility of direct and indirect violence such as discrimination against non-dominant groups. Johan Galtung developed the concept of structural violence in the 1970s, based on his path-breaking distinction between direct personal violence (massacres or war) and structural violence (e.g., impoverishment of a group to the point of lethality). Galtung also reflected on cultural violence, noting, for example, the values that promote and/or justify violence and superiority complexes that result

into aggressive attitudes. Here the contribution of systemic peace research can be crucial.

Preventive activities range from initiatives by popular local and regional movements to the elaboration of norms and legal instruments for the protection of minorities and vulnerable groups within the framework of international and universal organizations. Efforts to change violence-promoting conditions through disarmament, controls and bans on arms production and trade, demobilization, and the strengthening of civil society are often neglected in the debate about how to deal with or prevent violent conflicts. Political and institutional consultancy in peaceful dispute-settlement is often carried out by third party go-betweens in the case of protracted ethnic conflicts. Mediation and facilitation in such conflicts can undoubtedly be successful as an instrument of international politics and should not be left solely to state and interstate actors. Efforts at go-between mediation by civil actors and initiatives for preventing and transforming violent ethnic conflicts are arduous, however, and generally hold little attraction for the media.

SEE ALSO Ethnic Cleansing; Ethnic Groups; Ethnocide; Nationalism

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Christian P. Sherrer

Ethnocide

Ethnocide concerns policies and processes designed to destroy the separate identity of a group, with or without the physical destruction of its members. This concept was developed by Raphael Lemkin as part of the definition of genocide:

> Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings. It is intended rather to signify a coordinated plan of different actions aimed at the destruction of the essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be a disintegration of political and social institutions—of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed at the national group as an entity, and the actions involved are directed at individuals, not in their individual capacity, but as members of the national group (1944, p. 79).

For Lemkin genocide had two phases: "one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor." If these two conditions are met, a genocide has, according to Lemkin's view, occurred, even if every member of the targeted group has survived the process in a physical sense. Such actions may include the destruction or removal of tangible heritage (monuments, sites, artifacts, etc.) or obliteration of intangible heritage by prohibiting cultural manifestations that do not leave physical evidence. It may also include gross abuses of human rights designed to ensure the disappearance of a group as a separate entity, such as the removal of children.

The existence of cultural remnants, such as monuments, writings, or movable objects of a type unique to that culture, may enable it to be identified and, perhaps, revived, even when all its members have apparently been annihilated or so assimilated into another culture that they no longer identify with it. Scholars have developed a spoken language from written texts (modern Hebrew) and unique basket-making techniques from a study of museum objects.

Definition

The original draft of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, prepared by the United Nations (UN) Secretariat and based on the work of Lemkin, included definitions of physical genocide, biological genocide, and cultural genocide. The latter was defined as follows:

The destroyed interior of the Bosnian National Library at Sarajevo, where thousands of rare books and manuscripts burned after Bosnian Serb gunners fired incendiary shells at the building. The ultimate goal of the Bosnian War of 1992–1995: the complete annihilation of the non-Serb population. [TEUN VOETEN]

> Destroying the specific characteristics of the group by:
>
> (a) forcible transfer of children to another human group; or
>
> (b) forced and systematic exile of individuals representing the culture of a group; or
>
> (c) prohibition of the use of the national language even in private intercourse; or
>
> (d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or
>
> (e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship.

The only provisions in the Convention as finally adopted that can be used against ethnocide are Article 2(d) (on the prevention of births) and (e) (the forcible transfer of children). Because the inclusion of cultural genocide in the Convention proved controversial and was finally rejected, some have taken the view that the present text of the Genocide Convention excludes the concept of cultural genocide. However, there is now much more awareness of both the frequent interpenetration of physical and cultural genocide, as well as the need to preserve threatened cultures. Canada and the United Kingdom were the most active in eliminating the stronger references to cultural genocide in the definition, perhaps because of assimilation policies toward Native Americans, since abandoned, still employed by Canada at the time of the Convention's drafting.

Although the courts will, in criminal prosecutions, apply the legal definition of genocide included in the Convention or in one of the other international instruments granting them such jurisdiction, as the undisputed minimum content of that crime, this does not exclude the use of Lemkin's explicit definition of cultural genocide in other contexts. It is nonetheless helpful to have a separate term for this, since popular usage has followed the limited definition in the Genocide Convention as referring only to the physical destruction of persons. Several theorists have suggested the use of eth-

Book-burning in Berlin, the evening of May 10, 1933. German students, inspired by a speech that had just been given by Minister of Propaganda Joseph Goebbels, gather around a bonfire. On that same evening, in towns all over Germany, students marched, burned books, and participated in the "Action against the UnGerman Spirit." Works considered "unGerman" (including the works of many Jewish authors) were burned. [AP/WIDE WORLD PHOTOS]

nocide to describe the intentional destruction of social, racial, religious, ethnic, and linguistic groups. Ethnocide in that sense would include compulsory exogamy, forced pregnancy, prevention of births, removal of children, insistence on mainstream education without education in their own culture, prohibition of the use of a mother tongue, distortion of history, and discrimination in access to cultural resources. Planned compulsory assimilation, often making use of such activities, would fall within that concept. The deleterious effect of all such policies, even if thought at the time to represent enlightened humanitarianism, is the loss of creative diversity.

Historical Examples

The removal of cultural property from a defeated people and destruction of their heritage were practiced from the earliest times (e.g., the Romans' total destruction of Carthage in 146 BCE) especially in conquest and as an action against minorities. Because cultural heritage has been seen as a rallying point for the self-confidence, aggressiveness, and revival of enemy communities, its destruction was used as part of successful warfare and domination (e.g., destruction of Khmer sites by Thai and Burmese forces in the thirteenth century, of the Inca and Aztec cultures by the Spanish invaders, of Korean and Chinese culture by Japan during its colonial and wartime occupations of territory in the Asian arena, of Jewish culture in Nazi Germany, of Tibetan culture by the Chinese authorities since 1951, of Croat, Muslim, and Serbian monuments during the conflicts among the former states of the Federal Republic of Yugoslavia).

Policies of "assimilation" of a minority, often indigenous, people into the majority population were often applied. The methods employed included the

suppression of a mother tongue, the schooling of children in the majority culture, and prohibiting the use of a Native language (e.g., the banning of Welsh, Irish, and Scots Gaelic at various periods, and forced education of Native American children in English-speaking schools in Canada and the United States). Other examples are the removal of children from their own cultural group for rearing in another (e.g., the stolen generations of children taken from their Australian Aboriginal communities for adoption by white families or placement in institutions, a practice that continued until the 1970s) and a ban on the publication and distribution of materials representing a minority culture (e.g., the burning of Armenian manuscripts in Turkey). Policies of suppression of intangible heritage have included rigorous application of the family law of the ruling majority, which has severely changed pre-existing social structures, and suppression of indigenous religious practices.

Legal Restraints

Current international laws (excluding regional agreements) in force against ethnocide include Conventions IV and IX on the laws of war adopted by the Hague peace conference in 1907. These advanced the protection of civilian property generally, but also specifically provided for the protection of buildings with religious, scientific, or charitable purposes, and historic monuments (Regulations 1907 annexed to Convention IV, especially Articles 27 and 56). The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict greatly expanded the provisions of earlier Hague conventions, whereas its Protocol, also adopted in 1954, covered the return of movable cultural property removed from occupied territory. This Convention and Protocol have been supplemented by Protocols added to the Geneva Conventions of August 12, 1949, and related to the Convention for the Protection of Victims of International and Non-international Armed Conflicts of June 8, 1977 (Articles 53 and 85(d), Protocol I; Article 16, Protocol II). They have also been updated by a Second Protocol to the 1954 Hague Convention, adopted at the Hague in 1999.

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) has developed a code of protective international legislation for cultural heritage in general. In addition to the 1954 Hague Convention protecting all tangible heritage in times of conflict, the following conventions have been adopted: the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, concerned with movables in peacetime; the 1972 Convention for the Protection of World Cultural and National Heritage, addressing the protection of sites with cultural and national importance during peacetime; the 2001 Convention on the Protection of Underwater Cultural Heritage, which deals with all underwater heritage over one hundred years old, including warships; and the 2003 Convention for the Safeguarding of Intangible Cultural Heritage. There is also a universal convention concerned with the return of cultural heritage, whether taken during peace or war: the 1995 UNIDROIT Convention on Stolen or Illicitly Exported Cultural Objects. Returns of cultural property, some of which may relate to ethnocide, may be sought under the 1970 and 1995 Conventions, but neither is retrospective. In the Netherlands an unsuccessful claim was made under the 1954 Protocol for the recovery of icons looted from a church in Northern Cyprus (*Greek Autocephalous Orthodox Church of Cyprus v. Lans*). Of the conventions administered by UNESCO, only the Hague Convention and its Second Protocol provide for punitive provisions, which state parties are responsible for implementing.

The International Criminal Tribunal for the Former Yugoslavia (ICTY; its Statute dated May 25, 1993) and the International Criminal Court (ICC; the Rome Statute dated July 17, 1998) have the jurisdiction to prosecute certain acts of ethnocide. The ICTY has filed a suit based on offenses against cultural heritage (Dubrovnik and Mostar Bridge), although the accused have not yet been handed over to the authorities. The case of the International Criminal Tribunal for Rwanda (ICTR; its Statute dated November 8, 1994) is more problematic because Rwanda was in civil, not international, conflict when ethnocide occurrred. Thus, the protection of cultural property remains a difficult task; it is usually only addressed through the law on human rights or the norms and standards of cultural heritage law established by UNESCO.

Importance of Cultural Heritage

The importance of preservation of cultures, of whatever origin, was stressed in the Preamble to the 1954 Hague Convention (paras. 2 and 3), where it is stated that "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world." An egregious example was the Taliban's destruction of important Buddhist art in Afghanistan in March 2001. This religious art was of great importance to Buddhist communities outside that country (no Buddhists had lived in Afghanistan for centuries), and to art lovers and historians everywhere. Destruction of cultural heritage removes from the body of human knowledge unique responses to the environment that are not only culturally enriching but also may be of considerable use to future human groups.

[BANDA]

In 1621 forces of the Dutch East Indies Company (VOC) conquered the small Banda archipelago in present-day eastern Indonesia and largely exterminated its people. The archipelago was the only site for the cultivation of nutmeg, *Myristica fragrans,* that grew in groves on the lower parts of the volcanic slopes of the archipelago's five main islands. Nutmeg was enormously valued in India, the Middle East, and the West. The Banda Islands were thus at the beginning of a trade route extending halfway around the world.

Bandanese society was dominated by a wealthy commercial elite that kept slaves from neighboring islands and maintained tight control of the sale of nutmeg to foreign traders. The population of the islands numbered perhaps fifteen thousand in 1621 and for food depended on rice imported from distant Java. Although the archipelago was tiny, its steep volcanic slopes provided a refuge for the Bandanese when they were attacked from the sea. During the sixteenth century the Portuguese joined other traders at Banda, but they were never able to establish a fort on the islands and many quarrels erupted between Bandanese and Portuguese over the prices and quality of goods supplied by either side and over Portugal's efforts to gain a military foothold in the islands.

So vexatious were the Portuguese that the Bandanese welcomed rival Dutch ships in 1599. VOC troops, however, forced their way ashore, built a fort, and compelled the Bandanese to sign a treaty granting the company a monopoly on nutmeg purchases. Nevertheless, the Bandanese never submitted to the inequitable Dutch monopoly. They traded with English and other merchants and in 1609 massacred forty-six VOC employees. In 1621 the VOC Governor-General Jan Pieterszoon Coen arrived with a fleet to conquer the islands. After an initial Dutch show of force, the Bandanese elite tried to negotiate with Coen, but he ordered forty-eight of them executed and shipped their families into slavery in Batavia (now Jakarta). The Bandanese then fled to the uplands, where Dutch troops undertook a sustained campaign of extermination for several months. Many Bandanese were killed; others starved to death or cast themselves from the cliffs near Selamma rather than surrender. A few managed to escape by boat to the Kai Islands, where a small community still remained as of 2004. Bandanese on the English-occupied island of Run were not slaughtered, but captured and enslaved. The population of the archipelago declined from 15,000 to about 1,000. The VOC directors in Amsterdam later concluded that Coen should have acted with greater moderation, but awarded him 3,000 guilders for his services.

As well as ensuring control of the nutmeg trade, the genocide perpetrated by Coen's troops cleared the way for European settlement, with which Coen hoped to consolidate Dutch power in the archipelago. The nutmeg groves were divided into *perken* (parks), each with about fifty trees, and allocated to European settlers as VOC tenants, while labor was supplied by slaves introduced from other parts of the archipelago. For further reading, see Hanna, Willard A. (1978). *Indonesian Banda: Colonialism and Its Aftermath in the Nutmeg Islands.* Philadelphia: Institute for the Study of Human Issues and Loth, Vincent C. (1995). "Pioneers and Perkeniers: The Banda Islands in the 17th Century." *Cakalele* 6:13–35. **ROBERT CRIBB**

Destruction or suppression of the culture of a group no longer present in a territory, or indeed no longer extant anywhere, should be punished even when the group no longer exists, since it distorts history and limits the access of all of humanity to certain cultural resources. Ethnocide also renders the rehabilitation of traumatized communities especially difficult, since the loss of landmarks that helped the community establish its identity induces alienation and despair.

The need to identify and prevent ethnocide has greatly increased with the international community's recent recognition of the importance of cultural diversity within the context of globalization, especially in the areas of communication and culture (UNESCO's 2001 Universal Declaration on Cultural Diversity; as of 2003, its convention was still being drafted). The development of a parallel new instrument to specifically address ethnocide should now be considered.

Means of Prevention

Because ethnocide often follows centuries of discrimination, the latter should be regarded as an early warning system. Abuse of rights such as the rights to one's religious beliefs, to freedom of association, to control the education of children, and to use one's own language indicates the threat of ethnocide (e.g., discrimination against Albanian pupils and teachers, and the closing of Albanian educational, cultural, and scientific institutions, as well as the virtual elimination of the Albanian language, preceded violence in Kosovo). Societal pressures leading toward ethnocide should be immediately addressed, especially when enmity has historically existed between communities.

The first step is publicizing a breach of human rights and requiring compliance. A program of tolerance, based on UNESCO's 1995 Declaration of Principles on Tolerance, and encouragement of cultural diversity should also be put in place. Appreciation, particularly of traditional cultures under threat, can be engendered by programs encouraging respect for the practitioners of older cultural values and traditions, such as UNESCO's Living Human Treasures program (instituted in 2002). Programs that encourage the survival of threatened languages can also play an important role, as can language-teaching programs. Multilingualism is an important aspect of intercultural appreciation, since it enables better understanding of unfamiliar value systems. In addition, cultural exchanges should be encouraged.

Polices of multiculturalism, similar to those that have been officially adopted in countries such as Australia and Canada, promote the value of cultural diversity within states by various means: the promotion of multicultural and multilinguistic media, the provision of at least some government services in minority languages, the recognition of religious and other important holidays celebrated by all communities in a state, and the provision of education, at least at the primary school level and in the communities most affected, in a mother language. Including the representatives of many cultures in official and other public ceremonies, and representatives of all groups in public committees and other official activities, also raises awareness of these groups and their contribution to the culture of the state as a whole.

The acknowledgment of former ethnocidal policies and the groups responsible for them is also important in preventing their recurrence. The Truth and Reconciliation Commission of South Africa has sought, by admission of the evils perpetrated and a purposeful confrontation with its former opponents, to defuse intercommunal hatreds. Rwanda has taken similar action.

Another reaction to threatened or actual genocide, including ethnocide, has historically been armed intervention (e.g., the UN's intervention in the Belgian Congo from 1960 to 1964 following the violence after that country gained its independence). However, interventions by individual states have very often been associated with other motives, such as the protection of economic interests or the pursuit of political ends. And such interventions have also generally been regarded as perilous; especially after the loss of eighteen U.S. soldiers in Somalia in 1993, states remained reluctant to intervene in Rwanda in 1994, despite the clear threat and later evidence of genocide. Subsequent interventions, such as that in Kosovo, have shown the limited success of such efforts once violence has broken out. Many of these efforts have been made without sufficient force—the example of Srebrenica being the most obvious—and the preservation of culture has been abandoned in favor of rescuing human lives. What peacekeepers can do to save endangered heritage is therefore limited, and in the current international context ethnocide is unlikely to be substantially deterred by the threat of intervention by force.

Finally, the prosecution of offenders comes long after the event of ethnocide and is dependent on states' handing over the perpetrators. It is very important that the international community as a whole not tolerate such behavior and ensure its punishment, but thus far the deterrent effect of this more frequently held approach has proven small.

SEE ALSO Ethnic Cleansing; Ethnic Groups; Genocide; Lemkin, Raphael

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Lyndel V. Prott

Eugenics

The term *eugenics* (from the Greek *eugenes*, meaning well-born) was coined by Englishman Francis Galton in 1883. Galton, a cousin of Charles Darwin, used Darwin's ideas of evolutionary fitness in the animal kingdom to forge a concept of selective breeding for humans. Proposing to produce superior citizenries, eugenics encompasses two interconnected philosophies: (1) restricting the reproduction capabilities of so-called undesirable segments of a population (negative eugenics); and (2) encouraging so-called desirable segments to reproduce (positive eugenics). At the turn of the twentieth century a eugenics movement gained widespread international support, particularly in Great Britain, the United States, and Germany. In 1895 German physician Alfred Ploetz created the related science of *Rassenhygiene* (racial hygiene), and in 1907 he founded the International Society for Racial Hygiene. That same year Indiana passed laws making it the first U.S. state to permit involuntary sterilization of individuals considered criminally insane or genetically inferior. By 1932 similar laws existed in twenty-seven other U.S. states. Other countries issued comparable legislation, including Denmark (1929), Sweden and Norway (1934), Finland (1935), and Estonia (1936).

In Germany eugenics underwent a transformation from scientific theory to state policy when the Nazis (National Socialists) assumed power in 1933. Propaganda Minister Joseph Goebbels declared that all facets of German life were to be informed by a "eugenic way of thinking." Doctors and midwives became "guardians of the nation," responsible for ensuring proper racial health. The Office for Racial Policy disseminated printed materials that strove to indoctrinate the general public on the importance of marrying "correctly." A series of laws aimed at guaranteeing racial purity were introduced. The Law for the Prevention of Genetically Diseased Offspring (July 1933) allowed for the sterilization of individuals suffering from any of a cluster of hereditary disabilities, including feeblemindedness, schizophrenia, insanity, genetic epilepsy, Huntington's chorea, genetic blindness or deafness, and chronic alcoholism. The Nuremberg Laws on Citizenship and Race (1935) were focused on "Aryanizing" German blood, redefining citizenship to exclude Jews, and preventing marriage or any sexual contact between Christians and Jews.

The Nazis did not restrict their eugenic agenda to preventing the birth of undesired offspring, but went a step further to formalize the killing of those deemed "lives unworthy of living," targeting first children and later adults with mental and/or physical disabilities. At the heart of this agenda was Operation T-4 (named after its Berlin headquarters, at Tiergartenstrasse 4), headed by Philip Bouhler and Karl Brandt. From December 1939 to August 1941, under the sponsorship of Operation T-4, some 70,000 psychiatric patients, asylum inmates, and concentration camp internees deemed nonproductive were transported to six killing institutions (Bernburg, Brandenburg, Grafeneck, Hadamar, Hartheim, and Sonnenstein), where they died, primarily by gas asphyxiation. Although offshoots of Operation T-4 continued to operate after August 1941, killing another estimated 130,000 people by 1945, many T-4 doctors had transferred to extermination camps, where they continued to help to actualize the Holocaust.

It was Nazi Germany's shift from an agenda of mass sterilization to one of mass killing and its efforts to annihilate the world's Jewish population (and the eventual reportage of these calamities) that brought an end to widespread social acceptance of eugenics as a means to create a better race. However, the collapse of the Third Reich did not mean the corresponding collapse of eugenic practices elsewhere. For example, it was not until

[THE MODEL EUGENICAL STERILIZATION LAW]

Harry Hamilton Laughlin (1880–1943) served as superintendent in charge of the Eugenics Record Office (ERR) in Cold Spring Harbor, New York, from the office's origin in 1910 until 1921; he later acted as ERO director, from 1921 to 1940. At the time of Laughlin's appointment, at least two states—Indiana and Connecticut—had enacted laws allowing for sterilization on eugenic grounds. In 1914 Laughlin drafted his Model Eugenical Sterilization Law. The statute proposed sterilization of the "socially inadequate," targeting those persons who were institutionalized or "maintained in whole or part at public expense." Factors influencing "social inadequacy" were determined to include alcoholism; epilepsy; blindness; deafness; and "orphans, ne'er-do-wells, tramps, the homeless and paupers."

In 1922 Laughlin's Model Law was published in *Eugenical Sterilization in the United States.* The book presented various documentation, including legal materials, tables, and charts, to support eugenic education and legislation. By 1924, approximately 3,000 people had been involuntarily sterilized in the United States as a result of state sterilization statues, many modeled directly on the Laughlin's model.

1972 that the western Canadian province of Alberta repealed its sterilization act, originally passed in 1928. In 1996 the National Film Board of Canada released a film, *The Sterilization of Leilani Muir*, that documented the history of the province's eugenic practices. The film tells the story of Muir, the first woman to win a wrongful sterilization suit against the province. In the 1990s other countries began recognizing and compensating victims of involuntary or coerced sterilization. In 1997 news stories revealed that, between 1936 and 1976, some 63,000 people in Sweden had undergone sterilization. Although most of these people had signed consent forms, the ten percent who had not were suddenly entitled to compensation. In 2002 the state of Virginia issued a formal apology to the approximately seven thousand victims of its eugenics program, which had operated until 1979, and erected a memorial to commemorate them.

Not all countries, however, have chosen to recognize the victims of or even suspend eugenic practices. In the 1970s and 1980s the government of Czechoslovakia sponsored a policy that strove to reduce the nation's Romani population through involuntary sterilization. The Czech successor state of Slovakia, formed in 1993, has sustained the sterilization practices. Still other countries promote programs that are reminiscent (to varying degrees) of earlier Nazi legislation. For example, in China, couples seeking to marry must undergo medical tests that screen for hereditary diseases and related conditions. Finally, for many countries, eugenics-related issues continue to hover at the periphery of national debate as new scientific and medical discoveries raise related moral and ethical questions: Should governments permit physician-assisted suicide with consent of the patient? Should parents be allowed to select the sex of their unborn child? How far should medical scientists pursue human cloning?

SEE ALSO Euthanasia; Films, Eugenics; Racism

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Lynne Fallwell

European Convention on the Non-Application of Statutory Limitations

Criminal law normally permits the prosecution of accused offenders only for prescribed periods of time, outside of which no legal actions are possible—this kind of restriction known as statutory limitation. In January 1965 the Parliamentary Assembly of the Council of Europe (PACE) recommended that the Committee of Ministers of the Council of Europe (CM) draw up a Convention on the Non-Application of Statutory Limitations to Crimes Against Humanity and War Crimes. It was the position of PACE that member states of the Council of Europe (CoE) should take appropriate measures to disallow that crimes that had been committed with political, racial, and religious motives before and during World War II (and more generally crimes against humanity) could remain unpunished simply by virtue of the application of statutory limitation.

Finding that several CoE member states had already adopted, as part of their domestic laws, measures that tended toward the nullification of statutory limitation with respect to crimes against humanity, and taking into account that United Nations (UN) organs were dealing with the same matter, the CM proposed that the negotiations for an international convention should take place within the wider framework of the UN.

In December 1968 the UN General Assembly adopted a draft Convention on the nonapplicability of statutory limitation to war crimes and crimes against humanity. However, of the member states of the CoE, only one (Cyprus) voted in favor of the Convention.

In January 1969, attentive to the fact that most CoE member states had voted not to accept the UN Convention, PACE adopted a recommendation that reiterated the invitation it had extended to the CM in January 1965. Also in January 1969 the CM decided to include the subject of statutory limitation in its intergovernmental work program for examination by the European Committee on Crime Problems (ECCP). In May 1973 the CM adopted the draft European Convention on the Non-Applicability of Statutory Limitation to Crimes

against Humanity and War Crimes, which was opened for signature in January 1974. It entered into force on June 26, 2003, following its ratification by Belgium. It had previously been ratified by the Netherlands (1981) and Romania (2000). France became a signatory to the Convention in 1974.

The Convention requires that the contracting states undertake to adopt any and all measures as are necessary to secure that statutory limitation shall not apply to the imposition of or enforcement of sentences for: (1) crimes against humanity, as specified in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide; (2) war crimes, as specified in the 1949 Geneva Conventions, or any comparable violations of the laws of war and/or customs of war existing at the time of the Convention's entry into force (in 2003); and (3) any other crimes of a comparable nature that the contracting states believe may be established as such in future international law. The Convention stipulates that crimes for which statutory limitation does not apply should be of a particularly grave character, by virtue of either their factual elements and premeditated nature or the extent of their foreseeable consequences (Article 1). The Convention applies to crimes committed by a state after the document's entry into force in that state, as well as to crimes committed before its entry into force, provided that the statutory periods of limitation from that time are not yet expired (Article 2).

The Convention was not a great success with the CoE member states. The domestic laws of most states already provided for the nonapplication of statutory limitation to the crimes referred to in the Convention.

SEE ALSO Crimes Against Humanity; Genocide; International Law

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Euthanasia

Literally meaning a "good death" (from the Greek *eu* and *thanatos*), and frequently defined as a gentle or easy death, euthanasia ordinarily refers to intentional death in a medical setting or achieved by medical means. The noun is usually modified by adjectives—active, passive, voluntary, nonvoluntary, and involuntary—that identify the moral and legal concerns surrounding death by euthanasia. By definition, euthanasia is distinct from, although often confused with, physician-assisted suicide. The morality and legality of euthanasia are a central subject of health law and medical ethics, where the major arguments involve the individual's right to die and the doctor's ability to hasten the death of ill or suffering patients. Distinguishing the different types of euthanasia is central to understanding the moral and legal debate about its practice and legalization.

During the 1930s, Germany developed state-sponsored euthanasia programs to end lives that the government deemed "unworthy of living," and these programs became the source of the Final Solution and the medicalized killing that was later conducted in the concentration camps. Hence, the specter of genocide haunts more recent discussions about any death by medical means. Analogies to Nazi practice and concerns about unrestricted killing under the German euthanasia programs continue to influence moral and legal arguments about the need for limits to death by euthanasia.

Types of Euthanasia

Euthanasia hastens death. It may do so by active or passive means employed by a doctor or other agent. Active euthanasia occurs by an affirmative act that intentionally causes death, for instance, by a lethal injection by a doctor upon a patient that ends the patient's life. Passive euthanasia occurs when medical treatment is withheld or withdrawn, with awareness that death will result from the omission of care. For example, a doctor or other individual may decide not to place or keep a patient on a respirator or feeding tube. Active refers to "causing death," while passive means "letting die."

"Causing death," namely killing another human person, is usually prohibited by the criminal law of homicide. Hence, active euthanasia is illegal in most Western nations, except the Netherlands and Belgium. In contrast, passive euthanasia has not been subject to the same criminal sanction, although some nations punish it as the crime of not helping someone in danger. Many writers have challenged the moral distinction between active and passive upon which these legal conclusions are based, arguing that intentionally causing a patient's death and intentionally letting an individual die are morally equivalent and should face similar legal bans. Moreover, active and passive may be words too simple to deal with complex clinical situa-

tions that have aspects of both causing death as well as omitting necessary care to sustain life (e.g., by withholding nutrition and hydration in some circumstances). Nonetheless, the difference between causing death and letting die remains the basis for many legal and ethical prohibitions against active but not passive euthanasia.

The adjectives *active* and *passive* focus on the nature of the actions of the medical professional (or family member or friend) who hastens death. By contrast, the words *voluntary, nonvoluntary,* and *involuntary* refer to the level of the patient's consent to euthanasia. Voluntary euthanasia occurs at the patients' request or with their consent. The nonvoluntary patients' consent is absent because these individuals are unable to give consent—they may be unconscious or otherwise incapacitated. Involuntary euthanasia is imposed against the patient's wishes or will.

The patient's level of participation in euthanasia, whether voluntary, nonvoluntary, or involuntary, is significant because a patient's informed consent to medical care became a primary concern after the revelations arising from the Nuremberg trials. Nonvoluntary and involuntary actions are unsatisfactory forms of consent. The level of patient participation also explains the distinction between euthanasia and physician-assisted suicide. In physician-assisted suicide, the medical professional provides the means of death to the patient, who uses them to commit suicide. Euthanasia, however, is done to the patient by another person. Recent legal debates about medicalized death have argued the advantages and disadvantages of physician-assisted suicide over voluntary, active euthanasia. In both cases, the patient consents to death, but only in physician-assisted suicide is the patient the agent of death. One is suicide, whereas the other is killing, or mercy killing, or murder.

Medical ethics codes have disfavored both voluntary, active euthanasia and physician-assisted suicide, both of which are distinguished from the common medical practice of providing pain-relieving medication to patients with the knowledge that it will hasten death. In such cases, deaths are foreseen but not intended, and so, according to the principle of double effect, do not qualify as either physician-assisted suicide or euthanasia. Because death is not intended, such provision of death-hastening therapeutic drugs is not ordinarily grounds for prosecution even in nations that criminalize voluntary, active euthanasia. In practice, some doctors who are prosecuted for euthanasia insist that they were just providing pain relief. Critics have argued that the moral and medical distinction between foreseeing and intending death is too slim a reed to support the legal difference.

Death with Dignity

Debate about euthanasia intensifies when patients and doctors request death with dignity and defend the right to die. Supporters of a right to die argue that hastening the death of suffering or terminally-ill patients who request death is not unjustified killing but instead promotes human dignity and patient autonomy. Advocates of a right to die have challenged traditional legal bans on euthanasia and suicide.

The voluntary aspect of voluntary, active euthanasia raises the question whether the law should permit euthanasia to which patients consent. In 1984, the Dutch Supreme Court recognized a defense against murder for doctors who commit voluntary, active euthanasia. In 2001, the Netherlands promulgated substantive standards to guide the legal practice of euthanasia in cases where certain safeguards are met. The Netherlands has provided the world a laboratory for observing the practice of euthanasia for over twenty years, but its legacy and lessons remain disputed.

In other Western nations, euthanasia remains illegal, while physician-assisted suicide is widely debated. During the 1990s in the United States, the state of Oregon passed legislation allowing physician-assisted suicide, and two federal appeals courts ruled that state laws banning assisted suicide are unconstitutional. In these instances, physician-assisted suicide was viewed as promoting death with dignity. The U.S. Supreme Court, however, upheld state laws against assisted suicide. The Supreme Court recognized a strong state interest in criminalizing physician-assisted suicide because the practice of legally assisted suicide may lead to episodes of nonvoluntary and even involuntary euthanasia. The Supreme Court invoked the popular "slippery-slope" argument that once assisted suicide is legalized, all forms of euthanasia may follow without restraint. Several justices cited the experience of the Netherlands, where some data suggest that euthanasia now occurs without patient consent, that is, involuntarily. The recurrent fear is that human lives, especially the lives of the vulnerable or unwanted, will be ended against their will, that patients will be pressured into requesting a death that they do not desire, and that depressed patients will choose easy death rather than receive appropriate medical care.

Ending the Lives of the Unwanted

The slippery-slope argument resonates with many individuals because of the legacy of Nazi Germany. The roots of the Nazi euthanasia program lay in the eugen-

ics movement that was popular in both Germany and the United States in the late nineteenth and early twentieth centuries. Eugenics, literally "good genes," identified bad genes as the source of disease, mental retardation, and illness, as well as criminality. The medical or scientific solution to the problems of health and crime was to limit the heredity of bad genes. In Germany, the eugenics movement went beyond the sterilization of "defectives" to killing. German authors defended the state's right to end unhealthy or defective lives. State-sponsored sterilization and euthanasia were justified as protecting the state against those individuals it deemed unworthy of life.

With Hitler's commitment to racial purity and anti-Semitism, the Nazi government developed a systematic euthanasia program that culminated in the concentration camps and the Final Solution. Hitler ordered his physician, Karl Brandt, to develop a euthanasia program in 1939. The first to be killed were mentally retarded children, followed by mentally ill adults and the handicapped. Then the war expanded, and, among others, the Gypsies, Jews, and other concentration camp prisoners were subjected to medicalized killing. The medical apparatus was moved from the mental institutions to the concentration camps and, as Robert J. Lifton put it in his 1986 book, *The Nazi Doctors: Medical Killing and the Psychology of Genocide*, the doctors' euthanasia programs provided the "medical bridge to unrestrained genocide" by the Nazis.

At war's end, Brandt and other doctors were prosecuted at Nuremberg in the Medical Trials; Brandt was hanged for his crimes. Among numerous counts involving crimes of medical experimentation on unconsenting victims, Brandt and three others were charged with a war crime and crime against humanity for the euthanasia program. In *The Nazi Doctors and the Nuremberg Code*, edited by George Annas and Michael A. Grodin, these crimes are specified as follows:

> [The] systematic and secret execution of the aged, insane, incurably ill, of deformed children, and other persons, by gas, lethal injections, and diverse other means in nursing homes, hospitals and asylums. . . . German doctors involved in the "euthanasia" program were also sent to the eastern occupied countries to assist in the mass extermination of Jews (1992, p. 101).

As Matthew Lippman notes in a 1998 article appearing in the *Arizona Journal of International and Comparative Law*, the Nuremberg Medical Trials set the precedent that state-sponsored euthanasia against nonnationals is a war crime and a crime against humanity.

In discussions about the morality and legality of euthanasia, analogies are frequently drawn to the Nazi doctors. Today's comatose patient may be the equivalent of yesterday's mentally retarded person, whose life is deemed unworthy of living. On the other hand, advocates of a right to die contrast Nazi state-sponsored killing with an individual's choice to die with dignity. On all sides, the moral and legal arguments about euthanasia are nuanced and contested.

SEE ALSO Eugenics; Germany; Medical Experimentation; Nuremberg Laws; Physicians

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Evidence

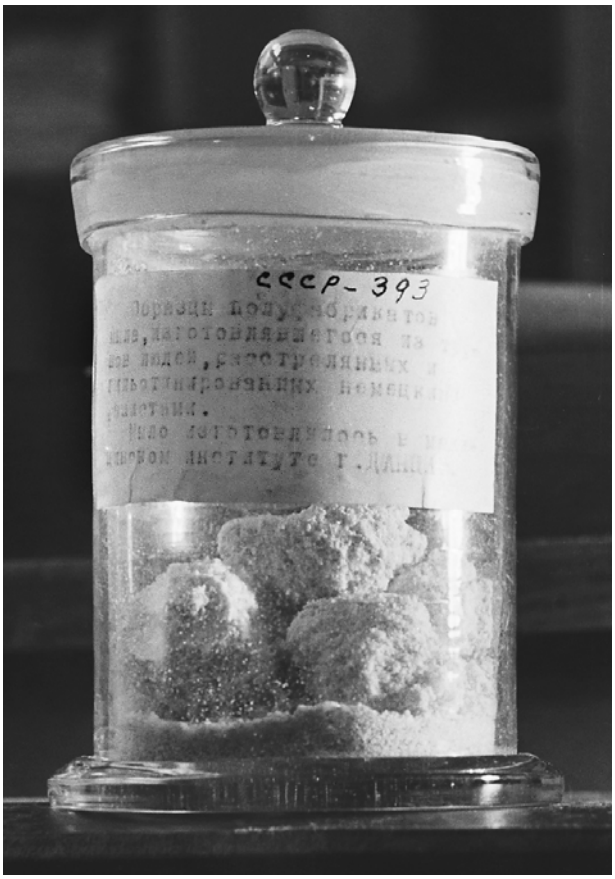
Genocide and crimes against humanity are the same as almost every other crime, in that a conviction requires proof beyond a reasonable doubt (or similar standard in the relevant lexicon of the jurisdiction) that a prohibited act (*actus reus* or "objective element") was carried out by the accused with the appropriate degree of fault (*mens rea* or "subjective element"). The international crime of genocide specifies five prohibited acts committed against a national, racial, ethnic, or religious group that need to be proved. The fault element requires proof that the act was committed with the intention of destroying the particular group in whole or in part. Crimes against humanity require proof that certain acts were carried out in the context of a widespread or systematic attack against the civilian population. The fault element requires proof that the accused participated in the act in the knowledge that it formed part of the context of the attack. No discriminatory intent is required.

Challenges of Evidence Collection and Investigations

Genocide and crimes against humanity can be referred to as "system crimes." These are a type of organized crime that will generally require a significant degree of planning, and a probable division of labor between those planning and those executing the plan. The key challenge is not normally in proving that the facts occurred, but in relation to the nature of the participation and the knowledge and intentions of those "behind the scenes." While it is generally the case that proving the facts is the least of the evidential problems in these crimes, there remain nonetheless significant matters to be considered regarding problems of evidence preservation, timing, scale, security, and appropriate treatment of witnesses. Proving the "crime base" presents its own challenges. Essentially, crime base is the proof that the criminal act has taken place. In general terms, this is done through traditional investigation techniques: the testimony of witnesses who are sufficiently proximate to the facts to be deemed credible and reliable, and the analysis of physical evidence from the crime scene, including ballistic and other forensic investigation.

The Issue of Timing and Preservation

The delay between the commission and investigation of a crime can have two key prejudicial effects on evidence: degradation and contamination. When investigating the crime base of genocide and crimes against humanity, contamination presents the more significant risk. Clandestine graves may be interfered with, either by relatives looking for remains of loved ones, or by those seeking to pervert the course of investigations. Any indications that this might have occurred could create serious difficulties for the admissibility of any evidence from a particular site.



Some of the physical evidence offered at the Nuremberg trials was incendiary, such as this jar of soap manufactured from the body fat of camp inmates. It was the prosecution's hope that a symbol of such horror would prevent atrocities of this magnitude from ever occurring again. [HULTON-DEUTSCH COLLECTION/CORBIS]

The nature and context of the crimes makes it much less likely that witnesses will forget their experiences than might be the case in more mundane crimes. Similarly, the degradation of physical evidence such as human remains, while clearly undesirable, is not usually significantly damaging to its use as evidence. Exhumations are generally not required in order to clearly identify victims of genocide and crimes against humanity, but rather are needed to show with sufficient clarity the immediate circumstances of the victims' deaths and credible indications (in the case of genocide) that they

belonged to a particular group. Several years between the event and the investigation will generally not degrade the remains so much that this kind of evidence cannot be obtained.

Scale

The fact that these are massive and complex crimes means that more evidence regarding the crime base will be required than in common and simple cases. However, evidence pertaining to the dimensions of the crime base has frequently been facilitated by the judicious use of experts and reliable objective observers. In the case of Jean-Paul Akayesu, for instance, the International Criminal Tribunal for Rwanda (ICTR) was satisfied that at least two thousand people had been killed between April and July 1994 primarily, though not exclusively, on the basis of experienced journalists and researchers (*Akayesu*, paras. 115–122, 181). This approach was much more swift and efficient than taking testimony from affected relatives in order to prove the loss of each individual.

In prosecutions arising from the Yugoslav and Rwandan conflicts, significant attention has been paid to the issue of rape and sexual abuse. Such crimes, and evidence of other serious physical or mental injury, do not have to be proved to the same degree of specificity that might be expected in an ordinary case of sexual assault. There is generally no requirement of medical evidence of the specific sexual attack, for instance. Instead, credible testimony from victims and witnesses has proved sufficient, as can be seen in the case of *Stakic* (*Stakic*, para. 229–236), which was prosecuted before the International Criminal Tribunal for the former Yugoslavia in connection with serial sexual assault in various prison camps, including Omarska. Similarly, the psychological impact of certain acts has not been addressed by seeking evidence from each victim as to specific consequences of their treatment, but instead has been sought on a broader level, with various kinds of experts (medical as well as anthropological) explaining the impact that certain treatment will have on individuals as well as on larger numbers of people.

The nature of the evidence presented in such trials is profoundly disturbing, not only for the witnesses, but also for the judges. Prosecutors have to strike the balance between providing sufficient proof and respecting the emotional capability of all concerned to absorb large quantities of distressing information.

Security and Sensitivity to Witness Needs

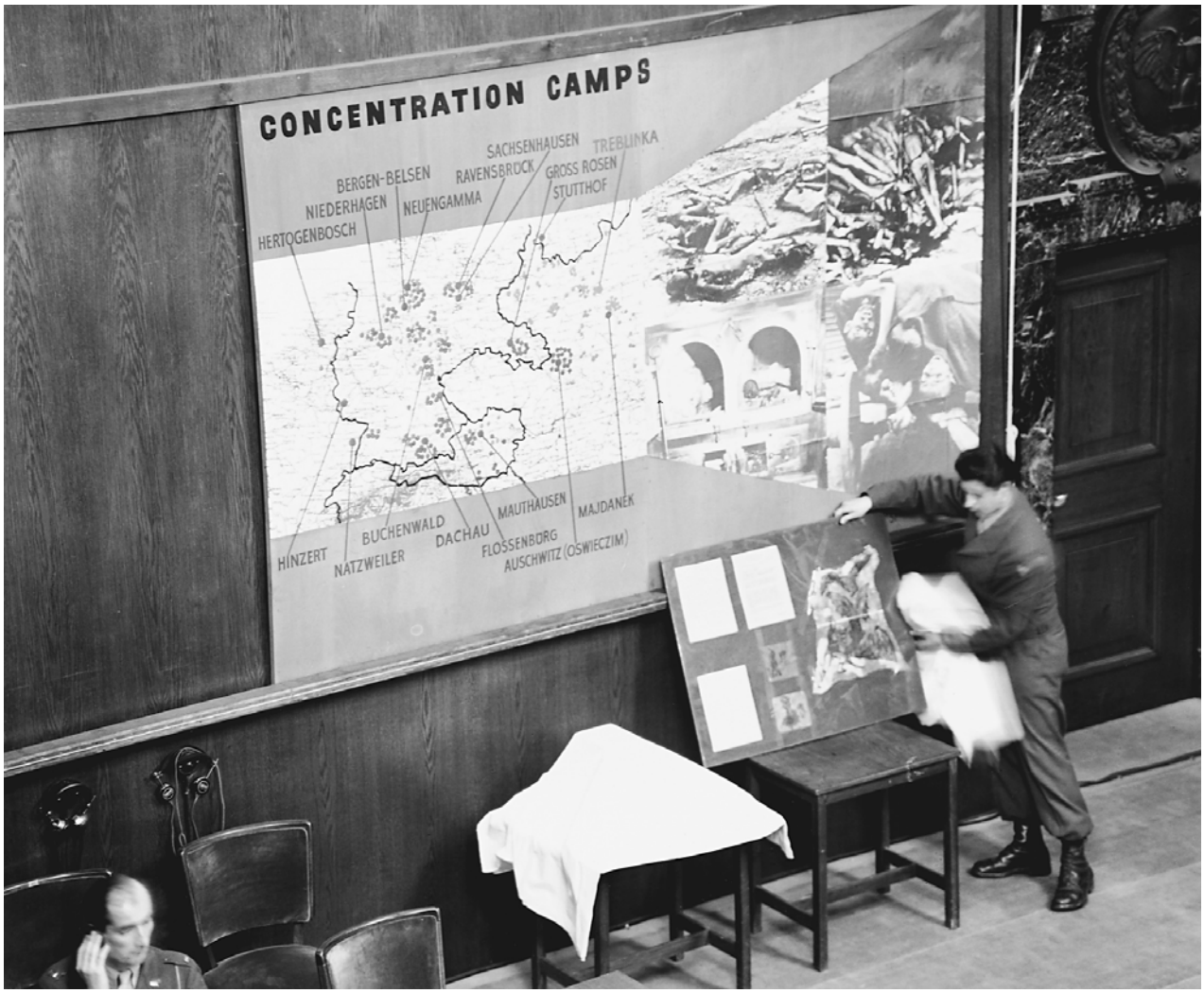
The biggest challenge to securing crime base evidence is encouraging witnesses to testify. The costs of effective witness protection over sustained periods are generally prohibitive except in a very limited number of cases. Even where trials take place far from the homes of such witnesses, they still have to return, and when they do, they may find themselves endangered. Significant strides have been made in understanding that protection is only one of a spectrum of issues that have to be dealt with, if witnesses are to be encouraged to cooperate with investigations. There is both an ethical imperative and strategic advantage in being absolutely honest with witnesses regarding the risk they may face should they agree to testify. No prosecutor should ever try to mislead witnesses in this regard. This is never acceptable, but it is even more reprehensible when the witnesses are survivors of horrendous crimes such as genocide.

Strategically, as well, prosecutors should understand that witnesses will provide more compelling testimony if they feel engaged and valued in the process as a whole. Sensitivity to the needs of such witnesses must be expressed through effective and regular communication, treatment that respects cultural and social influences that may govern the ability and speed with which certain matters can be spoken about, and, generally, the creation of a relationship of trust and respect. Such efforts may often prove sufficient to convince at-risk witnesses to accept danger in the interest of serving the cause of justice.

Proving Participation

In the case of Jelisić, the ICTY has confirmed that genocide does not necessarily require the prior existence of a plan or the participation of more than one person. Nonetheless, it is generally accepted that most cases will normally involve some form of organization and a division of labor. As with any form of organized crime, proving the participation of behind-the-scene actors requires an investigative approach that is quite different from crime base investigations. It requires a multidisciplinary investigation that is capable of understanding policy, strategy, and tactics, emphasizing especially the analysis of command structures, communications, disciplinary practices, logistics, and munitions. It is generally unlikely that those who work behind the scenes will leave unambiguous indications of their involvement, so proving the overall circumstances of the events allows the court to understand the context in which policy and operational decisions were made.

One important element in such investigations is the recovery of documentary evidence. Such evidence has several key advantages. For one thing, it is less susceptible to challenges from the defense and may be more directly incriminating than personal testimony. Human testimony will always carry the potential of being undermined in ways that are much less likely in



Extensive evidence presented at the International Military Tribunal in Nuremberg documented the Third Reich's massive concentration camp system, including its well-organized extermination centers, and innumerable crimes against humanity. On its strength, 21 of the original 24 defendants, all high-ranking Nazis, were convicted and sentenced to death or long prison terms.[CORBIS]

relation to documentary evidence. The recovery of documentary evidence is susceptible to contamination, however. It is true that much documentary evidence may be destroyed, but it is surprising how often even apparently insignificant documents may be useful. The investigations between 1984 and 1987 into the torture and disappearances of thousands during Argentina's "dirty war" benefited considerably from the study of official military plans that explained political and strategic goals, even though they did not specify any treatment of individuals.

Improved technology also makes proving some aspects of participation more feasible. In the ICTY case of *Kordic*, the accused was convicted in relation to some matters (specifically, the attacks on Busovaca) based on the evidence of intercepted radio messages that indicated his direct role in ordering and facilitating the crimes that were committed (see also *Krstic*, paragraphs 105-117). However, an important aspect in proving the involvement of others who worked behind the scenes may be the ability to persuade people with inside knowledge to testify. This is always a difficult exercise, both psychologically and ethically, but it has proved key in some trials where high-ranking officials have been convicted. The conviction of General Krstic before the ICTY on charges of aiding and abetting genocide in Srebrenica depended partially upon the testimony of subordinate sources. The cooperation of Drazen Endemovic has proved important in the investigation of the Srebrenica genocide (*Krstic,* para. 234). His assistance in investigations was also important in the "Rule 61" hearings, which dealt with the culpability of

Radovan Karadzic and Ratko Mladic. Some forms of plea-bargaining may offer a valuable way to secure this type of evidence.

Evidence at Trial

Admissibility of evidence at trial in domestic systems is regulated by the system governing the conduct of the trials, be it common or civil law. In general, common law systems take a more technical approach to admissibility than do civil law systems. On occasion, however, these rules have been relaxed, particularly when dealing with cases of crimes against humanity and genocide. Civil law systems tend to be liberal in their admission of evidence, and are guided mainly by criteria of relevance.

The approach to admissibility before international criminal courts, from the Nuremberg and Tokyo Tribunals to the ad hoc International Criminal Tribunals for the former Yugoslavia and Rwanda, and most recently the Special Court for Sierra Leone, has resembled that of civil law systems, in that the general approach to admissibility is flexible. Thus, probative evidence is admitted regardless of its format, unless the rights of the accused are deemed to be prejudiced by admission. This flexibility is justified by the fact that evidence on these crimes can be difficult to secure. There may be few surviving witnesses, and physical evidence may have been destroyed. Because the international criminal courts are composed of professional judges, they are deemed capable of according a particular piece of evidence its appropriate weight, and of disregarding any evidence that is unreliable. For instance, hearsay evidence—that is, a statement, other than one made by the declarant while testifying at the trail or hearing, offered in evidence to prove the truth of the matter asserted—is readily available in such trials.

To date, the presentation of evidence at trial before international criminal courts has generally been adversarial, where each side presents its own evidence, and where witnesses are subjected to both direct and cross examination. It is not clear yet to what extent this trend will be followed by the International Criminal Court. According to the principle of equality of arms, the prosecution and defense have an equal opportunity before the court both to call witnesses and to submit facts into evidence. International courts have the power to call their own witnesses, but this has usually been used to supplement the witnesses called by the prosecution and the defense.

The ICTY and ICTR have also developed an extensive system of rules of disclosure by which evidence is shown ahead of time to the other side in the trial. Similar rules were not applied at Nuremberg and Tokyo, where rules of disclosure were far more rudimentary. In those earlier tribunals, documents were often disclosed twenty-four hours in advance as a matter of course, and they were sometimes purposely used to surprise witnesses during cross-examination.

Such "trial by ambush" is not permissible before the modern tribunals. The duty to disclose is greater for the prosecution than for the defense. As a general rule, the prosecutor has specified time limits within which he or she must disclose material supporting the indictment, prior statements by the accused, and copies of witness statements. Of particular significance is Rule 68, shared by both the ICTY and ICTR, which establishes the duty to disclose the "existence of material known to the prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence." This rule has given rise to much litigation at the ICTY, including litigation on appeal charging that the prosecutor did not adequately meet this burden during trial.

Depending on the nature of the trial, the prosecution (and defense) may rely more heavily on live testimony or on documentary evidence. Assessing the credibility of witnesses may be particularly challenging when, as occurs with some frequency in international trials, the judge does not speak the same language and has no intimate knowledge of the cultural context. Many witnesses to genocide or other grave crimes may suffer from post-traumatic stress disorder, but judges have held that this does not necessarily affect their credibility. Many witnesses request protection, including measures to conceal their identity before and during trial. Such requests must be balanced against the right of an accused to a public trial.

Victims of sexual offenses benefit from additional rules that seek to protect them, including rules relating to the inadmissibility of their prior sexual conduct. This is the case for the International Criminal Court and both the Rwandan and Former Yugoslavian tribunals, which also recognize the principle that consent may not be inferred in certain coercive circumstances, and gives the courts the latitude to hear evidence in camera—that is, in private, excluding the public. Children are rarely called as witnesses in such trials, but when their testimony is required, they are able to give testimony via closed circuit television from a remote location. Witnesses may also be granted safe conduct, which confers on them a temporary immunity from arrest and prosecution.

Evidence from experts is common in trials of genocide and crimes against humanity. There are a variety of evidentiary categories that call for the testimony of

experts including historical, ballistics, medical, regional, and anthropological evidence. An expert can be challenged on his or her qualifications and methodology, and does not testify directly on the matters which the court is called upon to decide. The court may choose to hear the evidence and simply disregard certain conclusions and not rely on them for conviction. At ICTY, a special regime governs the reception of expert evidence, aimed at expediting the trial. An expert's statement must be disclosed ahead of time and the opposing party must decide whether it wishes to cross-examine.

The ICTY and ICTR can generally compel individuals to testify, unless an individual benefits from a privilege or immunity. One exception to the principle of compellability is the lawyer-client privilege, which prohibits a witness from being compelled to divulge conversations occurring between a lawyer and his or her client. Another recognized exception is the privilege against self-incrimination, which holds that a witness cannot be forced to testify against his or her own interests. Other privileges have been recognized in the jurisprudence, where there is a public interest to keep certain information confidential. This includes, for instance, the official duties of court functionaries. In one case, the ICTY Appeals Chamber decided to extend a privilege to a war correspondent, except for evidence of direct and important value in determining a core issue in the case that cannot reasonably be obtained elsewhere. The ability of the ICC to compel individuals to testify is less clear than it is for the ICTY and the ICTR. The ICC's statute and rules state that requests for witnesses to appear must be directed through state parties.

The ad hoc tribunals have broad enforcement powers by virtue of their establishment by Security Council Resolution under Chapter VII of the UN Charter. They have the power to issue a binding order to a state to produce information, even if the information concerns national security. In such cases, certain measures can be put in place to safeguard the confidentiality of that information. This differs from the ICC, where states are able to deny requests for assistance on national security grounds. It also differs from the Special Court for Sierra Leone, which lacks such powers, as it was created by Agreement between the UN and government for Sierra Leone and not by a Security Council Resolution. International organizations do not have the same obligation as nations do when it comes to providing the ad hoc tribunals with information. For instance, in the case of *Simic et al*, the ICTY has recognized that the International Committee for the Red Cross benefits from a privilege and that its former employees cannot be forced to testify. A similar privilege is recognized in Rule 73 of the ICC.

Documentary evidence is particularly prevalent in cases where the defense is based on a claim of superior responsibility (being ordered to commit an act by a superior officer) or other forms of indirect participation. Documents are admissible depending on their relevance and probative value, but questions may arise as to their authenticity. With this type of evidence, as with others, the chain of custody may have to be demonstrated, to show that the evidence could not have been tampered with after the fact. Diaries and videos have proved a particularly powerful source of evidence in international criminal trials.

Documentary evidence may also be used in the place of live testimony. A particular challenge in trials of genocide and crimes against humanity has been the volume of the evidence, in part resulting from the adversarial nature of the proceedings. This constitutes a threat to the right of the accused to an expeditious trial. Live testimony is time-consuming, and many of the procedural developments in evidence at ICTY have sought to limit its scope. At Nuremberg and Tokyo, affidavit evidence was freely admissible, but rules on affidavits before the modern tribunals have proved difficult in practice. Instead, the ad hoc Tribunals allow for the admission of other forms of written statements in certain circumstances, bearing in mind the right of the accused to cross-examine witnesses against him or her. The jurisprudence on the admissibility of statements from deceased witnesses has been particularly inconsistent. Such statements are currently not admissible before the Sierra Leone Special Court.

An additional way to save time is by submitting a compilation of evidence. Unlike civil law systems, international criminal courts have not ordinarily allowed for the submission of "dossiers" or case-files, but they do allow for the production of compiled materials, as long as these do not contain analysis of the evidence. Transcripts from other trials may also be admitted into evidence as a way to save time, subject to certain rights to cross-examination. Judicial notice may be another way to save time, but before the ad hoc tribunals it has been limited to facts of common knowledge or facts adjudicated by the appeals chamber.

The absence of forensic evidence in killings is not decisive if there is convincing eyewitness testimony of the crimes. The rules of some national systems, requiring the production of a body as proof of death, therefore do not apply. The same holds true for torture or rape, neither of which require forensic or medical evidence. At the same time, forensic evidence often does play an important part in the trials.

According to rule ninety-five of the ICTY, evidence before the ad hoc tribunal may be excluded "if obtained by methods that cast substantial doubt on its reliability or if its admission is antithetical to, and would seriously damage, the integrity of the proceedings." If the rights of the accused are infringed to a certain threshold, so as to cause irreparable damage to the integrity of the proceedings, this may result in a discontinuance of the proceedings against the accused.

An appeal should not amount to a retrial, and the tribunals have strict rules on which new or additional evidence shall be permitted to be heard. For instance, the evidence on which an appeal is based cannot have been available at trial, or it must be in the interests of justice to admit it. Nonetheless, applications for additional evidence are very frequent. Also, the appeals chamber for both the ICTY and the ICTR may be called upon to review a judgment where a new fact has been discovered.

SEE ALSO Forensics; International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Nuremberg Trials; Rape; War Crimes

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Paul Seils
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Evil, Banality of Radical

The evil that German philosopher Hannah Arendt confronted was the phenomenon of totalitarian terror, vividly, but by no means exclusively, exemplified by the mass slaughter of Jews. She saw this phenomenon as marking not only a rupture with civilization that shattered all previously engraved images of Europe as a civilized community, but also an assault on human categories of thought and standards of judgment. She argued that it created particular difficulties of understanding for the social sciences because it contradicted all ways of thinking that presuppose an element of rational choice or a means/ends calculation on the part of social players. The frenzy of destruction that was the hallmark of totalitarian terror seemed to exceed all political, economic, or military utility. Arendt did not suggest that the death camps and other institutions of totalitarian terror were, therefore, beyond human understanding, but rather that if we assume "most of our actions are of a utilitarian nature and that our evil deeds spring from some 'exaggeration' of self-interest" (1994, p. 233), then we would be forced to conclude that such institutions are within human understanding. The difficult path she took was to not accept this conclusion, but on the contrary to try to make sense of the senselessness of genocide. In so doing, she defended the activity of understanding as such, as a sign of humankind's humanity and resistance to totalitarian ideology.

In the section on total domination in *Origins of Totalitarianism*, Arendt wrote that the death camps had "the appearance of some radical evil previously unknown to us" (1951, p. 443). The idea of evil, let alone radical evil, is not commonly used in modern political thought, so implicit in Arendt's use of the term was an opposition to certain modernist presuppositions. Among these the following might be mentioned. First, the tendency to *relativize* moral standards exists, as if conformity to a contingent normative order is all that defines what is moral or not. Second, there is the tendency to *subjectivize* moral standards, as if what is right and wrong are reducible to subjective opinions (individual or collective) of what is right or wrong. Third is humankind's inclination to *dissolve* the very idea of evil, as if neither its concept nor its existence is any longer pertinent to the modern world. Arendt characterized all three of these tendencies as the origins of totalitarianism prevalent within normal bourgeois society. The first allowed Germans to move effortlessly from democracy to Nazism and then back to democracy after World War II, as though moral standards were no more than a set of table manners that could be exchanged without trouble for another. The second allowed the question of what is right and wrong to be reduced to mere subjective feeling, so that any crime could be justified as long as it was committed with conviction or in good conscience. The third allowed the idea of good and evil to be abandoned in favor of some notion of historical or natural necessity. It was within this context that Arendt turned to Immanuel Kant's concept of *radical evil*.

More explicitly stated in Arendt's use of the term radical evil is its reference to the sheer nonutility of the death camps and mass killings. The conventional approach to understanding evil is recognizing it as a product of human self-interest in the form of greed, vanity, lust, prejudice, spitefulness, sadism, and other such vices. Ordinary evil is easily understandable in these terms. The idea of radical evil, however, indicated to Arendt that something else was at stake in the institu-

Hannah Arendt in 1954. While living in Argentina in 1960, Nazi leader Adolf Eichmann was kidnapped and taken to Israel, where he was put on trial for crimes against humanity. Arendt's Eichmann in Jerusalem probes the unsettling fact that Eichmann was a "little man" who was just following orders. In her controversial book, she maintains that he was an average guy, a petty bureaucrat interested in furthering his career—and not that different from all the rest of us. [AP/WIDE WORLD PHOTOS]

tions of totalitarian terror: a form of evil that ordinary people could commit quite easily in a spirit more of selflessness than selfishness, people for whom ordinary human vices were secondary to their sense of duty on behalf of the movement. In this form of evil the sheer *superfluousness* of the victims is mirrored in that of the perpetrators themselves. The radicalism of evil, then, may be found in its surpassing the bounds of what Kant recognized as the normal sources of evil given the freedoms and frailties of the human will.

A further implication of Arendt's use of this term is that the radicalism of evil lies in its hostility to the very idea of humanity. Normally, the idea of evil makes sense against a backdrop of what it is to be human: I am evil when I satisfy my own cravings without regard for what makes me or someone else a human being. However, the peculiarity of radical evil—the peculiarity that makes it radical—is that the crimes committed are in the most literal sense crimes against humanity. As Arendt put it in *Origins*, in the case of totalitarian terror "individual human beings did not kill other individual human beings for human reasons," but rather an organized attempt was made to "eradicate the concept of the human being" (1992, p. 69). If the idea of universal humanity is the achievement of the modern age, at issue here was a politics whose aim was the destruction of all human spontaneity, plurality, and differentiation. This was the extremely radical nature Arendt detected in totalitarian movements whatever pretexts they advanced for their actions (e.g., the achievement of "a thousand year peace"). It also led her to ask why the idea of humanity caused such offense as to incite modern political movements attempting to destroy it? One answer she offered in a chapter titled, ironically, "The Classless Society," takes us back to the growth of European nihilism that emerged when, as Friedrich Nietzsche suggested, the values and beliefs taken as the highest manifestation of the spirit of the West lost their validity and in their place was born a spiritless radicalism, full of hostility to culture and consumed by images of destruction. Arendt located a source of modern nihilism in the rise of imperialism, when violence became the aim of the body politic, power could achieve nothing but more power, moral inhibitions were superseded, and nihilism became the practical spirit of the age.

Arendt may not have known precisely why she used the term *radical evil*. Her precise words were that totalitarian terror had "the appearance of radical evil" (1951, p. 443)—an indicator perhaps of a certain equivocation on the subject. In his correspondence with Arendt about the Nuremberg trials German psychiatrist and philosopher Karl Jaspers highlighted a risk involved in the use of the term: It might endow perpetrators with a "streak of satanic greatness" and mystify their deeds in "myth and legend." Against this danger Jaspers emphasised the "prosaic triviality" of the perpetrators and coined the phrase "the banality of evil" to make his point. In reply Arendt acknowledged that there was truth to his observation and her own use of the term radical evil did come close to "mythologising the horrible" (Arendt and Jaspers, 1992, p. 69).

Writing some fifteen years later on the Eichmann trial, Arendt reintroduced the term banality of evil (seemingly without memory of Jaspers's earlier comments) to address the fact that the perpetrators were "men like ourselves" (1962). It was a rejoinder to conventional images of the so-called Nazi monster, according to which the world was portrayed in terms of the dichotomy between what Alain Finkielkraut has called "our own absolute innocence and the unspeakable Nazi beast" (1992, p. 61). One lesson Arendt took from the

Eichmann case was that the perpetrators of the most radical evil could be pedestrian, bourgeois individuals, mired in an everyday existence that made them incapable of critical reflection or serious moral judgment. They were marked more by "thoughtlessness" and "remoteness from reality" than by any streak of Satanic greatness: "The deeds were monstrous but the doer . . . was quite ordinary, commonplace, and neither demonic nor monstrous" (1962, p. 54). The Eichmann trial was the trigger for Arendt's reaffirmation of a humanist tradition. According to it, only the good is radical; evil is never radical, only extreme. There is no meaning in destruction.

It is well known that Arendt's use of the term banality of evil was challenged, or denounced, by many critics, including her friend Gershom Scholem, on the grounds that she thereby trivialized the Holocaust. Arendt had been a relatively lonely voice in the 1940s and 1950s when calling for social and political thought to recognize the significance of the Jews' massacre during World War II. She celebrated the fact that the Eichmann trial helped to break a long silence, and that the survivors of the camps might now find an audience for their writings and memories. What, then, lay behind the uproar that greeted the use of banality of evil within this context. How can one make sense of it except as an aberration?

Perhaps the charges leveled against Arendt expressed the advent of a new kind of discourse: one that made use of theological terms such as Holocaust and Shoah to name the unnameable event; eschewed generic political terms such as totalitarian terror, crimes against humanity, or genocide; and underscored the singular uniqueness of the Shoah and its inability to be understood in human terms. As Elie Wiesel has put it: "The Holocaust? The ultimate event, the ultimate mystery, never to be comprehended or transmitted" (Roth and Berenbaum, 1989, p. 2). Arendt was the target of criticism because she represented an old humanistic tradition that emphasised a secular analysis of totalitarian terror, even if it required a major rethinking of the premises of existing social and political theory. The revision from radical evil to the banality of evil confirmed her secular stance. Banality of evil was her way of saying that the Final Solution—like all phenomena of totalitarian terror—was "human, all too human" and needed to be understood as such.

In any event, Kant's more original use of the concept of radical evil, to be found in *Religion Within the Bounds of Mere Reason*, conveyed a meaning that throws no clear light on the phenomenon of totalitarian terror, inasmuch as it had to do with the omnipresent ability of human beings to choose self-love and self-interest over and above the moral law. This is not at all what Arendt had in mind or wished to convey in her analysis of evil in the modern age.

SEE ALSO Arendt, Hannah; Eichmann, Adolf

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Robert Fine

Explanation

What causes one human being to kill another, not for anything the victim has done but simply because the victim belongs to a particular religion, ethnic or communal group? Such behavior confounds rationality,

and analysts are forced to focus on either identifying the broad macrophenomena and the structural-cultural factors that correlate with genocide or on specifying the psychological processes that might contribute to genocide.

The most frequently cited precipitating factors or facilitating conditions that correlate with genocide and ethnic violence are political unrest and economic upheavals. The Holocaust—certainly the best known genocide—is usually "explained" by reference to the political dislocations resulting from World War I, especially the ensuing breakup of political empires, the punitive Versailles Treaty, a weak Weimar Republic, and the economic depression that gripped the world but which was particularly acute in Germany. The breakup of the Ottoman Empire (which gave rise to the Armenian genocide) and the disintegration of Yugoslavia and the USSR (which was followed by ethnic cleansing in Bosnia) provide further illustrations of macro-events contributing to genocide.

Beyond this, genocide occurs most frequently in plural societies in which there are diverse racial, ethnic, and/or religious groups that exhibit persistent and pervasive communal cleavages. A strong overlap between such cleavages and political and socio-economic inequities, plus a history of conflict between the diverse groups, also encourages genocide and ethnic violence. Genocide rarely occurs in political regimes that are not totalitarian or authoritarian. This was evident during the Holocaust and in the recent genocides in the Balkans and Africa (Rwanda-Burundi, the Sudan). The isolation and secrecy that accompany totalitarian regimes that lack a free press are major contributors, enabling elites to manipulate internal tensions and turn them toward violence. Such structural-cultural factors form the foundation for another category of explanation.

Psychological Factors

The richest and most varied explanations of genocide are found at a more personal level, all focusing on the psychology of the genocidalist. The psychoanalysis of genocidal leaders such as Hitler has led some scholars, such as Alan Bullock, to focus attention on their tendency toward neurotic-psychopathic personalities. The argument here is that certain people have a deep-seated and psycho-pathological need that leads them toward genocide, either through the elite manipulation of masses or the actual, personal commission of genocide. Other scholars, including Theodor Adorno and Bob Altemeyer, focus on the extent to which an entire society can exhibit patterns of behavior, such as child-rearing or authority relations in school, that result in certain kinds of psychodynamics, such as the authoritarian personality, that encourage genocide.

The work of scholars such as Daniel J. Goldhagen still accept explanations of genocide that are painted in such broad cultural terms, but most social psychologists and historians, including Stanley Milgram and Christopher Browning, find the situation more complex, arguing that situational factors can turn even an ordinary person into a genocidalist. The fundamental assumption for these scholars is a median personality around which a great deal of variance occurs. Analysts in this school focus on external stimuli and understanding how situational or contextual effects can trigger genocide in ordinary people.

Studies of social cognition find all political behavior strongly influenced by how people think about themselves and the social world, especially how people select, remember, interpret, and use social information to make judgments and decisions. Attitudes, schemas and social representations all offer ways in which the definition of social identities of self and others might be conceptualized, and provide the building blocks upon which more detailed theories of socio-political identity and prejudice are built. Such approaches include social role theories focusing on the "internalized role designations corresponding to the social location of persons" (Stryker, 1987, p. 84) and stress the shared behavioral expectations that become salient. Such explanations have been offered to explain the traditional "I was just following orders" excuse for genocide. Robert Jay Lipton's intriguing 1986 study of Nazi doctors turned the concept of social roles upside down by asking: How could doctors and health officials, dedicated to saving lives, utilize their knowledge to perfect killing? The answer—a desire to protect the German body politic from infestation by inferior and diseased *untermenschen*—suggests how traditional social roles can be utilized to lead people to genocide.

Other social psychologists focus more on the cognitive process of drawing boundaries and categorizing individuals in conflict situations. Social-identity theory and self-categorization literature suggest that perceptions of competition for scarce resources reinforce in-group/out-group distinctions but are not necessary conditions for in-group favoritism and inter-group discrimination to occur. The social identity theory employed by Michael A. Hogg and Dominic Abrams and based on Henri Tajfel's "minimal group paradigm" has found that in situations of group decision making, people tend to favor their own membership group over out-groups, even when these groups are artificial laboratory constructs and competition for resources between groups is absent. Previous perspectives in group psychology, exemplified by the work of Muzafer Sherif, explained group differentiation in terms of real or per-

ceived competition between in-group and out-groups, but Tajfel's research suggests that the mere formation of otherwise meaningless groups may produce in-group favoritism. Tajfel argues that groups provide their members with positive self-esteem, and that group-members are therefore motivated to enhance their image of the in-group in relation to relevant out-groups.

The Self-Categorization Theory of Group Formation

A 1987 study by John C. Turner and Michael Hogg suggests that the formation of psychological groups is driven by the cognitive elaboration of one's self-identity in comparison with others and implies mechanisms for the formation of political preferences. The salient level of self-categorization and the determination of which schemas and categories are evoked by a given political object or objects will interact to shape a person's political preferences in relation to that political object. The key assumptions of Turner's self-categorization theory of group formation suggest that self-categorizations are hierarchical. In other words, the category of "human being" functions as the most inclusive and superordinate group level, below which in-group/out-group categories based on social comparisons of gender and ethnicity or other dimensions form an intermediate level categorization, and there are subordinate level categories that distinguish individuals as unique.

Turner's framework assumes that the cognitive representation of the self is a multi-faceted affair, and that different portions of that self become salient in different contexts. The theory hypothesizes that factors enhancing the relevance of in-group/out-group categorizations increase the perceived identity between self and in-group members, thus depersonalizing individual self-perception on the stereotypical dimensions that define the relevant in-group membership. This makes the depersonalization of self-perceptions the critical process underlying group behavior, such as stereotyping, ethnocentrism, cooperation and altruism, emotional contagion, collective action, shared norms, and social influence processes.

Members of groups who are perceived as different from the self will tend to be seen in terms of stereotypes. Self-categorization theory builds upon social identity theory by arguing that the self-categorization with a cognitive representation of the group results in the depersonalization of self and the homogenization of both the in-group and the out-group, based on dimensions that reflect the prototypicality or stereotypicality of members of each group. Thousands of experiments underlying social identity theory—for instance, those conducted by A. Gagnon and R. Y. Bourhis—have consistently shown that individuals will identify with the in-group, support group norms, and derogate out-group members along stereotypical lines, even when there is no individual gain at stake. The introduction of "superordinate goals," which is posited as a solution by some realistic conflict theorists, can be seen instead as the cognitive reclassification of social identity by individuals into another social identity category.

This cognitive reclassification of groups may provide the key to ending genocide, prejudice, and ethnic violence; Serbs and Croats can think of themselves as Yugoslavs. Preliminary empirical work suggests cognitive categorization may affect all participants in genocide, not just genocidalists. Kristen Renwick Monroe's work on rescuers, published in 1996 and 2004, and James Glass's 1997 study of genocidalists have noted the importance of cognitive classifications during the Holocaust. A 1997 study by Lina Haddad Kreidie and Kristen Monroe found similar categorization and dehumanization in communal violence in the Middle East. Historical literature on slaves within United States also points to the process of declassification and recategorization as critical before people feel justified in the mistreating and eventual killing of other human beings. This comparative work suggests that if we can declassify people, we also can reclassify them in an upward manner. The process, in other words, works both ways. Further work to determine how this recategorization process works may provide an answer to the implicit question underlying most analyses of genocide: How can it be stopped?

SEE ALSO Genocide; Philosophy

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Kristen Renwick Monroe

Extermination Centers

Were Belzec, Chelmno, Sobibor, Birkenau (Auschwitz II), and Treblinka concentration camps? Can they be mentioned or studied in the same terms as Dachau or Mauthausen? No. In order to distinguish them from "classic" concentration camps and define their dreadful uniqueness, it is not enough to substitute one simple descriptive word for another—designating them as "extermination camps" or simply "death camps". At Dachau, Buchenwald, or even Ravensbrück, human beings considered dangerous to the larger society, but nevertheless "recyclable," were confined for more or less lengthy periods. At Treblinka, however, the men, women, and children arriving there constituted an ontologically irrecoverable set of "subhumans" that, according to the Nazi perspective, encumbered the world and prevented its proper functioning. They were gassed as soon as they arrived. Not infrequently, nine thousand Jews were deported to Treblinka on a single day, with no provisions made to shelter them, or to feed them for even twenty-four hours. Treblinka performed a single, unique function: the extermination of Jews.

These different functions—on the one hand quarantine, on the other immediate death—require that a clear distinction be made between these two types of places, one that uses two sets of concepts and two vocabularies. Although the practice has been to refer to sites where German inmates were maintained alive, more or less alive (since hope remained to reintegrate them into the national community), as well as to sites where Jews were exterminated as soon as they descended from the cattle cars, as *concentration camps*, this is an abusive catch-all concept. The conception of homogeneous and generic units became disseminated largely as a result of the Nuremberg Trials, whose judges considered the horrendous images of the mass graves of the Bergen-Belsen camp at liberation as proof of the German extermination of the Jews. The discovery of Bergen-Belsen, writes Walter Laqueur in *The Terrible Secret*, "unleashed a violent wave of anger, although paradoxically it wasn't at all a camp of extermination, nor even a concentration camp, but rather a *Krankenlager*, a camp for sick people, where, true enough, the only treatment offered to patients . . . was death" (1981, p. 8).

Some historians, and not minor ones, try to deal with this quandary by distinguishing between extermination camps and concentration camps. They are nevertheless on the wrong track, for in respect to the *Shoah* (Hebrew term for the Holocaust), the very notion of "camp," whatever the word used to qualify it (death camp or extermination camp), should be proscribed. It is historically inaccurate to define Dachau and Treblinka identically through the use of a common expression when the Nazis themselves insisted on making a clear distinction between the two types of establishment. They designated Dachau, and the places modeled after it, by the term *Konzentrationslager* (KL), literally concentration camp. In contrast they referred to places such as Treblinka as *SS Sonderkommando* (SK), or "special commando of the police and the SS." There was no concern in these latter places with quartering or warehousing human beings; what concern there was involved exterminating all who were delivered methodically and systematically, on the very day of arrival and without delay. The SK were only places of transit to immediate death. Jews were led, without detour or loss of time, straight from the ghetto to the slaughterhouse.

The very notion of "camp" must be rejected in consideration of the four centers of immediate death (Bel-

A monument in Sobibor, Poland. Sobibor was not a concentration camp, but an extermination center. During its first two months of operation, from early May until the end of June 1942, approximately 100,000 Jews were murdered there. Even at that, in 1942 the Nazis looked for ways to make the murder factories even more efficient. [IRA NOWINSKI/CORBIS]

zec, Chelmno, Sobibor, and Treblinka) and the two "mixed centers" (having the double function of concentration and extermination) that were Auschwitz-Birkenau and Majdanek. Situated near railroad terminals, these places must be designated as *extermination centers*, or, to use the expression of Raul Hilberg, "immediate death centers," operated with the unique purpose of systematically, immediately implementing the complete destruction of European Jews. Existing apart from the Nazi concentration camp system, these centers escaped its inspection body (IKL) situated in Oranienburg, with the exception of Auschwitz and Majdanek, which had been "simple" concentration camps before they became mixed.

The Execution Centers

Starting in the summer of 1941, four Einsatzgruppen methodically carried out massacres. On September 29 and 30 alone, Group D shot 33,771 Jewish men, women, and children. The executions took place at Babi Yar, on the outskirts of Kiev. This first phase of the genocide, which cost more than 1.3 million Jews their lives, was efficient, but also crude. Even the SS killers had a hard time getting used to what was required of them. Inside the SS the idea of exterminating Jews at fixed locations, following procedures more "humane" (for the killers), took hold.

The first solution proposed to Heinrich Himmler was that of the gas truck. The idea of extermination by gas is not new. From 1939 to 1941, the Nazis gassed about seventy thousand terminally ill, handicapped, or mental patients to death with carbon monoxide, in what was called Operation T-4 since the operation center was situated in Tiergartenstrasse number four Berlin. In November 1941 the Central Office of Reich Security (RSHA) made its first killing trials, and when they were successful, gas trucks were dispatched to the occupied territories of the Soviet Union. The method was then "perfected," first in Serbia, then in the Chelmno (Kulmhoff) camp, near Lodz (in Poland).

The First Execution Center: Chelmno

Chelmno in December 1941 marked the transition between the two types of extermination (firing squad and

death by asphyxiation). Chelmno was not a camp but a former chateau, where Jews were assembled, undressed, and directly gassed. The rudimentary complex killed up to a thousand people a day, with the help of three trucks transformed into mobile gas chambers. Every afternoon the Jews of Lodz and its environs were brought to the site and physically thrust, first into the cellars, then toward the so-called shower rooms, where they would be forced to descend a ramp that would lead them directly inside the gas trucks. Those who delayed or refused to enter the trucks were beaten by the guards. When approximately fifty to seventy people were inside, the doors of the truck were shut, and the chauffeur, often a member of the *schutzpolizei*, drove through the Rzuchow forest toward the Waldlager pits. About ten minutes were required for the deadly gas to take effect. At the Waldlager pits Jewish prisoners, under the surveillance of the SS, prepared pyres and common graves. A team of around forty to fifty prisoners unloaded the cadavers and threw them into the mass graves. It is estimated that at least 150,000 Jews and 2,500 Romani were exterminated at Chelmno. Another team in the "chateau" sorted through the clothes and objects of value, selecting items that would be sent to the Reich. Almost 370 railroad cars of clothing would be filled in this way.

The Belzec, Sobibor, and Treblinka Centers

After Chelmno, three other SK centers were created: Belzec, Sobibor, and Treblinka. The sites were chosen for their isolation as well as their proximity to important railroads. More than 1.5 million human beings were exterminated in these places. Belzec opened its doors in March 1942, Sobibor in April 1942, and Treblinka in July of the same year. Belzec served as a model for Sobibor and Treblinka, both of them constructed, like Belzec, within the framework of the *Einsatz Reinhard (Action Reinhard)*.

Action Reinhard was the code name for the extermination of Polish Jewry. It's possible that this term was coined in remembrance of Reinhard Heydrich of the SS and coordinator of the *Endlösung der Judenfrage* (Final Solution of the Jewish question)—the extermination of the Jews living in the European countries occupied by German troops during World War II. Agents of the Czech government-in-exile fatally shot Heydrich on May 27, 1942.

Those three extermination centers were constructed to "accommodate" the populations of adjacent ghettos and other victims from surrounding areas: first Belzec, then Sobibor, and finally Treblinka.

The Belzec execution center was located in the Lublin district, the heart of a region rich in Jewish cities, villages, and communities. Christian Wirth, an ex-police officer who played a major role in the T-4 killing program was named to head it. Under his command were 20 to 30 SS officers, helped by 120 specially trained Ukrainian guards. Belzec, just like Sobibor and Treblinka, was an establishment of modest dimensions, equipped rather summarily. It was divided into two sections, each one encircled by a barbed wire fence, with control towers along the main perimeter. The first section was also divided into two parts: The smaller contained administrative buildings and barracks for the Ukranian guards; the larger was where the railroad line unloaded the deported prisoners, separated into two groups—men on one side, women and children on the other. In the larger part were also the buildings where prisoners were stripped and shaved, the depots where personal objects were stocked, and finally the barracks for the Jewish prisoners in charge of burning the cadavers and sorting through the baggage.

The gas chambers and pyres were located in the second section of the center, connected to the first by a long passage (which the Germans called "the tube"), flanked by high barbed wire. The extermination site proper was separated from the main camp by trees and greenery. Camouflage was one of the essential elements of the extermination procedure perfected at Belzec.

The process was simple: A convoy of forty to sixty cars, containing around 2,500 persons, entered the station. The convoy was immediately divided in such a manner that the wagons arrived at the quay in groups of ten or fifteen. The prisoners were unloaded and told that they were in a transit camp and that, for reasons of hygiene, they had to shower and have a haircut. Men were separated from women and children. After passing through the places where they undressed and their heads were shaved, the prisoners were pushed into "the tube" leading to the gas chambers. The carbon monoxide necessary to cause asphyxiation was produced by a diesel motor set up outside the chamber. Once the chamber was filled with gas, it took around thirty minutes for death to occur. Various "cleaning" crews of prisoners then entered. More or less three hours elapsed between the moment the convoy stopped in the Belzec station and conclusion of the last sorting operations.

As the second camp constructed according to plans of the Einsatz Reinhard, Sobibor was entrusted to veteran officers of the T-4 program. In less than eighteen months, 250,000 Jewish men, women, and children perished there.

The third center was Treblinka, situated about 80 kilometers northeast of Warsaw. It was reserved for Jews of the Polish capital or of nearby Central Europe.

Around 700 to 1,000 Jews performed various "service functions" for their Nazi masters. A minimum of 750,000 Jews were gassed with carbon monoxide at Treblinka.

The Two Mixed Camps: Lublin-Majdanek and Auschwitz

In 1942 two new extermination centers, both outfitted with gas chambers, were added to the death machinery of the SS. They were not constructed in isolated places, but in close proximity to concentration camps: the first in the area of Lublin-Majdanek, the second nearby in the vast complex of Auschwitz, at Birkenau. The Majdanek center was equipped in September and October 1942 with three gas chambers. The gassing began forthwith and concluded November 3, 1943, with the simultaneous extermination of all Jewish prisoners in the course of an operation "poetically" baptized "harvest festival." Thereby, the last 17,000 Jews of Madjanek died, in a center that had seen between 50,000 and 200,000 victims perish.

A little after the Wannsee Conference, the conference held in January 1942 that coordinated, not decided the extermination of the European Jewry, the Birkenau site was designated as the "principal execution center." The extension of the Final Solution to the whole of Europe made Birkenau the epicenter of the extermination effort. There, on the initiative of Rudolf Hess, its ambitious ruler, a new gas was used, one much more efficient than carbon monoxide: Zyklon B. This gas, which included the rapid-acting gas hydrogen cyanide, was first used (in December 1941 in the basement of Block 11 of Auschwitz I) on two hundred and fifty tubercular detainees and around three hundred Soviet prisoners of war. Following Wirth (the promoter of carbon monoxide gassing), Hess may be regarded as one of the inventors of this method of mass execution. Patched together at first, the method transformed Auschwitz II into a very efficient death factory. During 1943, structures that coordinated and integrated the diverse phases of execution, from undressing to cremation, were put in place. Two thousand bodies could be piled into each of the *Leichenkeller* (cadaver rooms); the daily incineration capacity reached 4,756 bodies. By 1944 the Auschwitz equipment was complete.

The Nazi ideology found here its ultimate realization: an efficient, orderly, and clean extermination via the gas chambers, the Final Solution to the Jewish question, which shielded the Germans from having to get their hands dirty, and avoided the embarrassment of the Einsatzgruppen and their crude methods. This was a triumph of intelligence and method in service of the great plan.

In contrast to the four other extermination centers, Auschwitz-Birkenau, and to a lesser measure Lublin-Majdanek, were not authorized to carry out the asphyxiation of all arriving Jews. The scarcity of labor forced the authorities to "select" varying quantities of them to serve the war economy. The SS divided the arrivals into two categories: the suitable and the unsuitable. The former, after having been registered and given tattoos on their left forearms, were integrated into the camp and channeled into the work force. The Central Office of the Management of the Economy of the SS and its camp inspection section, under the supervision of Himmler, submitted them, like the non-Jewish detainees, to a process of "extermination by work." The others (the unsuitable) were gassed as soon as they arrived. Statistics on the Jewish population of Western Europe show that 150,511 Jews of France, Belgium, and the Lowlands were deported toward the East as part of the Final Solution. Three-quarters of these went to Auschwitz, most of the remainder to the Sobibor extermination center. In all, 93,736 were gassed as soon as they descended from the train; 55,126 were put to work. When the camps were liberated, scarcely 4,000 of these 55,126 were still alive, or less than 3 percent.

At the end of November 1944, after the appearance in English newspapers of accounts of the extermination of Jews at Auschwitz-Birkenau, Himmler ordered the destruction of active crematoria.

Nazi Camps and Extermination Centers

There is little basis for comparison between concentration camps and extermination centers. In the former there was always a slight chance of survival; in the latter such a possibility was statistically nil.

From 540,000 to 720,000 people of all persuasions perished within the framework of the concentration camp system, representing 30 to 45 percent of the 1.65 million who were deported there. In contrast, nearly all of the 2.7 million Jews deported to the six extermination centers died, most as soon as they arrived.

The recent German attempt to compare the Nazi KL system to the Soviet concentration camp system (which predated it) through affirming that "the Gulag precedes Auschwitz" is not false. It is nonetheless purposeless, for two fundamental reasons. First, the Shoah, the process of extermination of the Jews, strictly speaking stands as a thing apart from the Nazi concentration camp system; and, second, the Gulag produced nothing equivalent to the Nazi execution centers.

SEE ALSO Auschwitz; Gas; Genocide

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Joël Kotek

Extradition

Criminal law is particular to each state. What is unlawful in one state may well be lawful in another. Even when the same actions are criminal in two states, the specific elements of the crime may well differ. Jurisdiction to prosecute a crime is principally based on that crime having occurred within the territory of the state seeking to try the alleged offender. In addressing offenses against individuals or property, such restrictions pose few if any problems. Nevertheless, for centuries states have had to respond when an alleged offender has committed a crime in one state and then fled to another. The law of extradition provides the traditional solution. Extradition is the legal method by which one state surrenders an alleged offender to another state so that the latter can prosecute him or her. It is a discreet and specialized area of law that needs to be explored in a general context before looking at the aspects specific to those accused of genocide or crimes against humanity.

Extradition is more than a method for removing undesirable persons from the territory of a state. Such removal for aliens can be accomplished through deportation, which allows the state to remove those deemed inimical to the public interest. The state has no interest in where a person goes after he or she is deported, although sometimes states use deportation as a form of disguised extradition. Extradition, in contrast to deportation, is based on an agreement between at least two states to surrender suspects to face prosecution. The destination of the individual is fundamental to the process. Furthermore, being based on an agreement between at least two states, it is their interests that determine the nature of the process; the individual concerned is simply an element, although not completely powerless, in that interstate agreement. Originally, extradition agreements were bilateral (meaning they existed between two states), so differences in practice can be found within international extradition law. Most common law states, that is, those with an Anglo-American tradition, for example, require a certain degree of evidence against the alleged fugitive offender, while states adopting the continental European model only look for a warrant, proof of identity, statement of the law, and a brief outline of the facts.

There are two matters that are intrinsic to extradition law. First, the agreement may be bilateral, multilateral, formal, informal, or ad hoc, but it is an interstate mechanism. Thus, surrender to some other entity, such as the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) or to the International Criminal Court (ICC), is not based on extradition but some other mechanism for surrendering the accused. Second, the state making a request must have jurisdiction to prosecute the alleged offender for the crimes that form the basis of the request. This second matter is called the requirement of double criminality and is found in nearly all extradition arrangements. Double criminality provides that extradition shall not take place unless the actions of the accused would constitute a crime within the jurisdiction of both the courts of both the requested and requesting states. The premise for the rule is that states should only surrender someone to another state for behavior that both of them have criminalized, recognizing that criminal law reflects the mores and customs of each state. Although the criminalization of genocide and crimes against humanity may be assumed to be universal, such an assumption needs to be examined in slightly closer detail. Genocide was very precisely defined in the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide in terms of *actus reus* (act or omission) and *mens rea* (mental element of the crime). Some states have adopted a broader definition in their domestic legislation, however, and it is only when some convergence exists that one could assume double criminality.

With respect to crimes against humanity, the situation is even less clear because there is, as yet, no universally accepted definition. This is not to suggest that acts commonly described as crimes against humanity would not be criminalized in most states; rather, double criminality is not based on the simple identity of terms. One should look to see if the activities listed in an extradition request are criminalized by the requested state. The difficult cases involve requests made by a state asserting a form of extraterritorial jurisdiction. Not only must the activity be criminalized by both states, but both states must be able to prosecute in regard to the extraterritorial elements of the crime—common law states have a much more restricted capacity to prosecute crimes that did not take place within their territory. Civil law states have jurisdiction over their own citizens for crimes committed anywhere in the world, as well as a much more developed understanding of crimes that threaten the state and universal jurisdiction. Moreover, several have adopted the "passive personality" principle giving a state jurisdiction when the victim is a citizen of the state. The consequence is that the requesting state may well have jurisdiction over acts criminalized in both states, but the requested state would lack jurisdiction because of an extraterritorial element to the crime based on the facts.

Businessman Ricardo Miguel Cavallo behind bars in Mexico City, August 26, 2000. Detained in flight after a local newspaper had exposed his previous identity, Cavallo was formally charged days later by Madrid Judge Baltazar Garzon with genocide, torture, and terrorism for his role in the "enforced disappearances" that occurred in Argentina during the 1976–1983 military junta. On June 28, 2003, in an unprecedented act of international cooperation, Mexico's highest court ruled that Cavallo could be extradited to Spain to stand trial for crimes committed in Argentina. [REUTERS/CORBIS]

Genocide and Crimes Against Humanity

Genocide and crimes against humanity present some particular issues for extradition law. The Genocide Convention states in its 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.

On the basis of Article VI, until the establishment of the ICC, one could argue that only the territorial state had the authority to prosecute. Custom, however, provides that universal jurisdiction exists over genocide—see the International Court of Justice (ICJ) Advisory Opinion in the *Reservations to the Genocide Convention* case (1951) and Randall (1988).

Crimes against humanity are more problematic in a legal sense because no universally accepted definition exists. Even the statutes of the ad hoc international criminal tribunals and the ICC do not have uniform definitions. Article 5 of the statute for the International Tribunal for the former Yugoslavia requires that the crime occurred during an armed conflict, but persecution is simply a freestanding crime within crimes against humanity; Article 3 of the statute of the International Tribunal for Rwanda does not require there to be an armed conflict, but the crime has to be committed as part of a widespread or systematic attack and with a persecutory intent; the most recent definition of the crime in an international instrument, Article 7 of the Statute of the International Criminal Court, does not require an armed conflict, the crime, on the other hand, does have to be part of a widespread or systematic attack, but there is no need for persecutory intent, although persecution is a separate crime as long as it is associated with another crime within Articles 6, 7, or 8 of the Statute. The only element on which all definitions agree is that the crime has to be directed against a civilian population. Given such divergence, the requirement of double criminality in extradition law could be problematic if the requesting and requested states have adopted definitions of crimes against humanity from different statutes.

One might argue that crimes against humanity are subject to universal jurisdiction, rendering part of the double criminality requirement easier to satisfy. It is

clear that some of the crimes listed as crimes against humanity, such as torture and possibly enslavement, if committed in the appropriate context (in an armed conflict or as part of a widespread or systematic attack) would be subject to permissive universal jurisdiction, but it has not been established that all crimes against humanity enumerated in the Rome Statute would provide domestic courts with the jurisdiction to prosecute, regardless of the place where the crime occurred or the nationality of the alleged perpetrator or victim. For instance, Article 7.1(i) lists the enforced disappearance of persons as one crime that could constitute a crime against humanity. Paragraph 2(i) of the same article provides as follows:

> "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Although such actions ought to be criminalized, it is not certain that prior to 1998 enforced disappearance was recognized by states as a crime attracting universal jurisdiction, unless seen as a form of torture (see *Sarma v. Sri Lanka*, 2003, para. 9.5). Its adoption in the Rome Statute does not of itself accord such a status.

Defenses to Extradition

Extradition law includes a series of specific defenses that prohibit surrender and, additionally, international human rights law provides its own safeguards for alleged transnational fugitive offenders. These defenses have been interpreted by various domestic courts in different states, so while they are recognized as part of state practice in the field of extradition law, no uniform definition exists and they may indeed have been omitted from particular treaties and therefore be irrelevant with respect to a particular request.

Military Offenses

Although it might appear to be contrary to the fundamental objective of prosecuting those who commit genocide or other crimes against humanity to exempt from extradition those committing military offenses, extradition law has applied a very specific and limited definition to what constitutes an offense of a military character. It is not every offense committed by a member of the military forces that constitutes a military offense. To result in protection at an extradition hearing, the offense must be purely military in character, such as going absent without leave or refusing to perform military service.

Specialty

"Specialty" is peculiar to extradition law. It provides that the requesting state can only prosecute the transnational fugitive offender after surrender for the crimes stipulated in the request and for no others. Indeed, since extradition law also extends to requesting the return of a convicted fugitive, if a request fails to include previous convictions after the fugitive absconds, he or she cannot be reincarcerated for those convictions on surrender, so strong is the principle of specialty (*R v. Uxbridge Justices, ex parte Davies*, 1981). Although one might initially deduce that specialty has little to do with extradition in cases of genocide or crimes against humanity, the case of John Demjanjuk suggests that it could prove problematic in certain instances.

The Political Offense Exemption

The political offense exemption provides that surrender shall not take place when the offense is of a political character. The nonextradition of persons accused of political offenses might even be accepted as a norm of customary international law when it is not expressed in the international agreement between two states. However, Article VII of the Genocide Convention explicitly states that "genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition." Such clauses rejecting the political offense exemption are extremely rare in international treaties (see the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid, the 1998 International Convention for the Suppression of Terrorist Bombings, and the 2000 International Convention for the Suppression of the Financing of Terrorism).

Although extradition law is part of international law, it is nevertheless implemented in domestic courts and therefore there is no one accepted definition of a political offense. Certain crimes are seen as purely political, such as treason, but ordinarily a political offense is a common crime whose political character predominates, such as murdering a tyrant with the intent of overthrowing the government. It is not sufficient that the crime was committed by a politically motivated offender. The exemption applies to offenses of a political character, not politically motivated offenders—on the other hand, the offender must have a political rather than a personal motive. Four main approaches have developed to the political offense exemption (with three being very similar), and, depending on which one is followed, crimes against humanity could be deemed as political, no matter how appalling that idea may seem.

The first approach is contained in the law of the United Kingdom. For an offense to be of a political

character under this approach, it had to be part of, and in furtherance of, a political disturbance, and not too remote from the ultimate goal of an organization attempting to change the government or its policies. In addition, the request has to be made by the state that was the target of the fugitive offender's crime. Imagining crimes against humanity that would satisfy the remoteness element of that test is difficult: How could a crime against humanity be sufficiently proximate to overthrowing a government or changing its policies when it involves an "attack on a civilian population"? The Swiss approach, now also adopted in the United Kingdom, includes elements of the U.K. approach, but adds proportionality to its predominance test. Even if the crime would have been political under the traditional U.K. approach, if it were determined to be disproportionate, then the Swiss approach would find it to be nonpolitical:

> Homicide, assassination and murder, is one of the most heinous crimes. It can only be justified where no other method exists of protecting the final rights or humanity (*In re Pavan*, 1928).

The Swiss test would deem crimes against humanity to be nonpolitical as they are disproportionate. The third approach may be found in the decisions of the Irish courts. They have followed the Swiss approach since 1982:

> The offenses set forth in the two warrants . . . cannot be regarded as political offenses . . . as they contemplate and involve indiscriminate violence and can be correctly characterized as terrorism (*Ellis v. O'Dea* [No. 2], 1991).

In addition, the Irish courts demand that the crime not threaten the democratic nature of the requested state. If the transnational fugitive offender is as much of a threat to the requested state as he or she was to the requesting state, then the alleged offender forfeits the protection of the political offense exemption.

The final approach derives from U.S. court decisions. The basic test is that an offense will be deemed political if it is part of, or in furtherance of, a political uprising. Although an uprising requires a greater degree of violence and instability than a disturbance, an offense which is part of that uprising is prima facie political—there is no requirement of proximity to the ultimate goal or proportionality. As such, crimes against humanity might be deemed political. In the *Artukovic* case the breadth of the U.S. approach was made apparent. Yugoslavia requested the extradition of Andrija Artukovic in 1956 with respect to war crimes. He had served as Minister of the Interior under the Axis-controlled Croatian government of World War II. In that position he had allegedly ordered the death of 1,293 named individuals and approximately 30,000 unidentified persons. The District Court for the Southern District of California held that these were political offenses because they had been committed in a political uprising, namely the power struggle that occurred in Croatia during World War II. The U.S. Court of Appeals for the Ninth Circuit upheld the district court's refusal to extradite Artukovic to Yugoslavia, rejecting the asserted principle that war crimes were automatically nonpolitical.

Even if one accepts that stance by the U.S. courts, it is difficult to see how the murder of 30,000 people, principally civilians, could be part of, or incidental to, a political uprising. The Supreme Court vacated the Court of Appeals decision and remanded the case to the District Court. The District Court in its second attempt at interpreting existing law again decided to refuse extradition, partly because of lack of evidence. However, it did find that the offenses alleged were of a political character as well. The 1959 decision in the series of *Artukovic* cases would seem to be a most disturbing misinterpretation of the exemption. Not only should war crimes and, by analogy, crimes against humanity be excluded from the ambit of political offenses like genocide, but the offenses charged here were of a type and nature that the scope of the accepted political incidence test might be stretched beyond rational limits. Artukovic was eventually extradited, but only in 1986 after the Court of Appeals for the Ninth Circuit recognized the error of the earlier 1959 decision.

A sounder approach to crimes against humanity and the political offense exemption may be seen in the reasoning of *Kroeger v. The Swiss Federal Prosecutor's Office* (1966):

> The offense must have been committed in the course of a struggle for power in the State and must also be in appropriate proportion to the object pursued, in other words suitable to the attainment of that object. The extinction of human life, one of the most reprehensible crimes, can only appear excusable if it constitutes a last resort in the pursuit of a political objective. On the facts, . . . such a situation does not come into question. The accused was acting at a time when the nationalist socialist regime stood at the pinnacle of its power. He acted against helpless women, children and sick persons who could not possibly have threatened German dominion.

In the words of the Argentinian Supreme Court:

> Extradition will not be denied on grounds of the political or military character of the charges where we are dealing with cruel or immoral acts which clearly shock the conscience of civilized people (*In re Bohne*, 1968).

Although the political offense exemption is fundamental to extradition law, the UN Genocide Convention excludes it in relation to Article III crimes and crimes against humanity are non-political by their very nature.

Death Penalty

When the state requesting extradition retains the death penalty for crimes that the requested state does not apply capital punishment to, then most modern extradition treaties provide that the latter shall seek assurances from the former that it will not impose the death penalty on the transnational fugitive offender if he or she is surrendered. Although such a rule is not customary international law at this time, death penalty clauses are becoming more prevalent in extradition arrangements. States that have ratified the second optional protocol to the International Covenant on Civil and Political Rights (ICCPR), other abolitionist states that are parties to the ICCPR, and states party to Protocol 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) cannot extradite without gaining such assurances from the requesting state (*Judge v. Canada*, 2003; *Soering v. United Kingdom*, 1989). In addition, returning someone to face the death penalty may, in certain cases, amount to torture, inhuman or degrading treatment, or punishment contrary to Article 3 of the United Nations Convention Against Torture 1984 (torture only) or the ECHR's Article 3.

Nationality

Given that most recent examples of genocide and crimes against humanity have occurred in noninternational armed conflicts, the rules in extradition law pertaining to nationals ought to have little impact. Most civil law states will not extradite their nationals. By way of corollary, they assert jurisdiction over crimes committed by their nationals anywhere in the world. Furthermore, their rules of evidence in criminal trials more readily permit the admission of documentary evidence so witnesses to genocide or crimes against humanity do not have to appear at the trial in person. Nevertheless, if a trial for genocide or crimes against humanity is seen as a form of postconflict justice, allowing a previously divided state to face up to gross human rights violations of the past, then a remote trial in a third state may not satisfy that objective.

Immunity

Extradition law does recognize immunity as a defense, as is clear from the *Pinochet* cases. Former heads of state and their equivalents, however, ought not to have immunity for genocide or crimes against humanity committed during their terms of office, although it is not as simple as saying that they cannot have immunity for any criminal acts perpetrated during that time. In *Pinochet No. 3* (1999), the English House of Lords held that former Chilean President Augusto Pinochet's immunity for torture committed while he was head of state ceased on the date that Spain, the United Kingdom, and Chile (respectively, the requesting state, the requested state, and the state where the crimes occurred) became parties to the 1984 UN Torture Convention. By analogy Article IV of the Genocide Convention stipulates no immunity for former heads of state for Article III crimes committed during their tenure in office. No equivalent provision exists for crimes against humanity, but given that they have been accepted as international crimes since the Nuremberg tribunals, the reasoning of *Pinochet 3* is that former heads of state do not enjoy immunity.

Existing heads of state and their equivalents, on the other hand, receive a much broader immunity, even for serious international crimes. In *Congo v. Belgium* (2002), the ICJ held that domestic courts had no jurisdiction to prosecute under principles of universal jurisdiction acting high officials (in this case the Congolese foreign minister). While Article IV of the Genocide Convention holds that even "constitutionally responsible rulers" shall be punished, this directive has to be interpreted in light of Article VI, which gives jurisdiction to the territorial state and an international penal tribunal. The ICJ accepted the notion that an international tribunal could prosecute an acting head of state.

Irregular or de facto Extradition

As can be seen, there are a variety of reasons why an extradition request may fail, if one assumes that the request has been properly made in the first place. Given the desire to bring persons accused of genocide or crimes against humanity to trial, irregular methods have been used to obtain jurisdiction: "collusive" deportation and abduction. When extradition would be impossible because an international agreement does not exist between the requesting and requested states and there is no option of trying a transnational fugitive offender before an international tribunal or a domestic court on the basis of universal jurisdiction, then alternative methods of surrendering the accused, with due regard for his or her human rights, may be justified. However, given the existence of the ICC and the burgeoning acceptance of universal jurisdiction as well as the seriousness of genocide and crimes against humanity, one might hope that such alternative methods will need to be used rarely.

Collusive deportation involves the prosecuting state and the state where the transnational fugitive of-

fender is seeking refuge. The latter uses its power to deport aliens in order to return the transnational fugitive offender to the state seeking to prosecute him or her. As such, a legal process is initiated. Nevertheless, following the decision of the European Court of Human Rights in *Bozano v. France* (1986), Council of Europe (CoE) member states should not deport a transnational fugitive offender, with extradition being the appropriate means of surrendering that individual to the requesting state. The opposite perspective emerged when Bolivia expelled Klaus Barbie (the former Nazi referred to as the "Butcher of Lyon") to France to face trial for crimes against humanity. Barbie's legal team alleged that France violated international law in obtaining jurisdiction through expulsion rather than extradition. The French high court, the Cour de Cassation, held that:

> "All necessary measures" are to be taken by the Member States of the United Nations to ensure that war crimes, crimes against peace and crimes against humanity are punished and that those persons suspected of being responsible for such crimes are sent back "to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of those countries.

The English House of Lords, on the other hand, has divested itself of jurisdiction with respect to the return of a transnational fugitive offender to face charges for financial crimes when extradition would have been possible. Canadian, South African, and Zimbabwean courts have decided similarly. However, the First Section of the European Court of Human Rights was prepared to sanction collusive deportation in *Öcalan v. Turkey* (2003). Abdullah Öcalan was the leader of the Workers Party of Kurdistan (PKK), a Kurdish separatist group. Turkish authorities took him into custody at Nairobi Airport with the collusion of Kenyan authorities. Given that there was no extradition treaty between the two states, the European Court of Human Rights was prepared to hold that the detention was lawful under Article 5.1 of the ECHR. The decision of the First Section raises many questions, the most fundamental of which relates to its function. Domestic courts deciding whether they should divest themselves of jurisdiction to prosecute need to take into account the availability of extradition, but the European Court of Human Rights ought to focus on the rights of the applicant, particularly those relating to the lawful deprivation of liberty—if bundling Lorenzo Bozano across the Swiss border on his way to Italy was contrary to Article 5.1, accepting Ôcalan after he had been whisked onto a waiting plane by Kenyan authorities must also be unlawful. The situation might have been different if Kenyan authorities had used their ordinary laws relating to deportation with a right to judicial review.

If collusive deportation raises questions of legality, abduction from a third state, violating the latter's sovereign status, should never be adopted—it is, in the words of Ivan Shearer, "manifestly extra-legal" (1971, p. 75). The leading authority in this area is *Eichmann* (1960). Former Nazi Adolf Eichmann was abducted from Argentina by agents acting for Israel. He was tried and convicted, but only after the UN Security Council addressed the violation of Argentina's sovereignty. Nevertheless, the ICTY later determined that it would prosecute an individual snatched by Nato troops from Bosnia and Herzegovina (*Prosecutor v. Dragan Nikolic*, 2003, para. 33).

Duty to Prosecute and Universal Jurisdiction

Grave breaches of the Geneva Conventions for the protection of victims of war and the First Additional Protocol relating to international armed conflicts impose a duty on all signatories to investigate and prosecute. Extradition is a secondary response. Mandatory universal jurisdiction, however, is limited to grave breaches. All other crimes, including genocide and crimes against humanity, have, at best, permissive universal jurisdiction, except when the alleged genocide or crimes against humanity also qualify as grave breaches—there is a degree of overlap in the appropriate circumstances. Nevertheless, even though no mandatory universal jurisdiction exists, a duty to prosecute does arise when an alleged offender is found in the territory of the state and is not extradited—*aut dedere, aut judicare*, that is, the state must either surrender the fugitive to another state with jurisdiction or prosecute him or her itself (Bassiouni and Wise, 1995). Article V of the Genocide Convention provides as follows:

> 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.

Although it might be argued that Article V should be read in conjunction with Article VI, only requiring states to enact legislation to prosecute individuals for genocide committed within the territory of that state, customary international law gives states universal jurisdiction over genocide, particularly since Article IV stipulates that persons committing genocide shall be punished.

As for crimes against humanity, one again has to rely on customary international law that, as might be

expected, is not expounded in a single document. Nevertheless, the writings of scholars and the decisions of several international tribunals suggest that if evidence exists that a person has committed crimes against humanity and this person is found within the territory of a state, that state would have a duty to prosecute if it does not extradite the alleged offender to the state where the crimes against humanity occurred.

The ICC and Rendition

The ICC was established by means of an interstate treaty. As such, the rules about surrender are laid down in the 1998 Rome Statute (Part 9, Articles 86–102). Although the Statute provides the framework, individual states party will establish their own mechanisms for surrender (Article 88); states that are not party to the Statute can agree to surrender on an ad hoc basis. Such systems will be similar to the extradition process, but noticeable differences will exist. Extradition is based on a request by a coequal sovereign state, whereas surrender to the ICC will follow a request made by the Office of the Prosecutor. It will, however, be much like an extradition request under the extradition law of the requested state (Article 91): proof of identity and evidence of location; a copy of the arrest warrant; and

> Such documents, statements or information as may be necessary to meet the requirements for the surrender process in the requested State, except that those requirements should not be more burdensome than those applicable to requests for extradition pursuant to treaties or arrangements between the requested State and other States and should, if possible, be less burdensome, taking into account the distinct nature of the Court.

The Rome Statute foresees only three reasons why a requested state that is a state party might refuse surrender: *ne bis in idem* (double jeopardy, Article 20); a competing request from another state (Article 90); and a contrary obligation under international law (Article 98). It is the latter ground that is giving rise to controversy. Article 27 provides that official capacity, even as a head of state, is not a defense to any of the Article 5 crimes. Article 98, however, provides:

> The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

The interplay of the two articles is complex, but one likely interpretation is that Article 98 protects those with immunity, with the immunity stemming from a nonstate party. A person with immunity from a state party to the Rome Statute cannot rely on Article 98—ratification of the statute gives rise to a waiver not only with respect to the ICC, but also in relation to all other states party (Akande, 2003).

SEE ALSO International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Prosecution; Universal Jurisdiction

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Geoff Gilbert

Famine

Human history is replete with occurrences of famine causing death by starvation of hundreds of thousands or even millions. Some famines have had their origin in environmental problems such as long periods of drought or exceptional floods; other were provoked by human action. Whatever the causes of origin, however, in the modern world famine can be prevented, which may not always have been possible in the past. When famine still occurs, it is either a result of deliberate action intended to cause starvation, serious mismanagement, bad or nonresponsive government failing to respond adequately to natural disasters, or lack of sufficient international cooperation in redressing a threatening situation. Some provoked famines may legally be characterized as genocide or crime against humanity, but the problem of famine goes far beyond such cases.

Concept of Famine

The term *famine* is usually reserved to describe a condition that is temporary and extreme. It is temporary in that it constitutes a departure from the normal conditions in the area or for the particular group affected, and it is extreme in the sense that the number of persons affected by starvation is much higher than normal.

Most famines affect mainly the poorer and most vulnerable population, often those who for a variety of reasons are "food insecure" in advance. Some of the provoked famines, particularly those that can be classified as genocide, are targeted at persons belonging to one or more particular national, racial, or ethnic groups.

Famine is therefore distinguished from conditions of chronic hunger. In the past there have always been, and there continue to be, large groups of people who suffer from severe undernutrition due to insufficient access to adequate food. The percentage of the world population suffering from chronic hunger has undoubtedly been significantly reduced over the centuries, but the number is still staggeringly high. The Food and Agriculture Organization of the United Nations (FAO) estimates that in 2003 the number of food insecure (undernourished) was 798 million, and the number of undernourished people continues to steadily increase in South Asia and Central Africa.

Causes of Famine

Even when conditions of famine exist, the problem in the contemporary world is not an overall lack of food. Famine emerges when a significant number of persons are physically or economically barred from access to food. They may be physically barred through deliberate action by some who have the power to do so, such as during the existence of the Warsaw ghetto (1941–1942) or the siege of Leningrad (1941–1944), or because of the unavailability of transport, which makes it impossible to bring the food to those who need it. They may be economically barred because they do not have the means to purchase food that is available on the market, either because they live from subsistence agriculture and have no income to purchase food when their own production fails, or because their other sources of income have failed or the prices have skyrocketed so they are no longer able to purchase what they need. Amartya Sen, awarded the Nobel Prize in

North Korea's famine resulted in high rates of not only infant mortality, but also deformities among children who survived. This young boy, born with only four fingers on each hand as a result of his mother's malnutrition, lies bedridden at an orphanage in Hyesan City. [REUTERS/CORBIS]

economics, has effectively demonstrated that famines, apart from deliberate policies of starvation, affect mainly those who lose their productive assets or entitlements in the market.

In discussions of the causes of famine, it has been common to classify them as either natural or manmade. The famines considered to be caused by natural events are those originating from an extreme or long spell of drought, or excessive floods, or a disease on the staple food plant (i.e., the Irish famine). Manmade famines are, primarily, those that have been deliberately provoked, or caused by war or conflict even if the starvation was not intended, or those resulting from extreme mismanagement, such as the Chinese famine of 1958 through 1962. At closer inspection, however, one recognizes that every famine transpiring in modern times has had a manmade element (or elements). This is important to recognize, because it implies that conditions of famine can be prevented or stopped in their infancy, provided appropriate rules of responsibility and accountability are in place. Neither droughts nor floods nor plant diseases can always be prevented, but their consequences in terms of famine can.

The ability to prevent famines has not always existed in the past. Although many records of preventive and relief measures date far back in history, conditions were not such that widespread starvation could be prevented when there were major spells of drought or floods. In times or areas where subsistence agriculture dominated, general food insecurity was widespread and little surplus was available to help those affected by major natural disasters; nor were there transport possibilities to bring food from afar, if stocks did exist. Provoked famines were also common, including the use of siege to starve the defendants of stronghold in feudal times. Frequent and extensive wars ravaging vast areas, such as the Thirty Years' War, also brought starvation to many as a consequence of both the disruption of production and extensive pillage of cattle or food produced.

Famines in History

Provoked famines were part of the European conquest and settlement of the Americas. The ethnic cleansing of Native Americans to seize land for the colonizers and settlers included wars, the destruction of their sources of livelihood such as the deliberate encouragement of hunting to decimate the bison on the American plains, and death marches such as the Trail of Tears. In South America the use of slave labor under famine conditions led to the massive death and decimation of the indigenous population.

One of the worst famines in modern times in the Western world was the Irish famine of 1846 through 1849. It started as the result of a prolonged potato blight that over several years caused the nation's potatoes to rot. While this occurred not only in Ireland but also in other parts of Europe, it had a devastating impact in Ireland. Four factors caused the disease to become a tragedy of enormous proportions: As a result of the British occupation and Cromwell's wars, most of the Irish were peasants engaged in subsistence agriculture. The potato was their staple food. They had little income beyond whatever minuscule incomes they could make from the sale of the potato and other farm products. Second, they did not own their farmsteads, but were tied to Protestant or British landlords who insisted that they should continue to pay their rent even when no income could be obtained. As they could not

Widespread famine struck North Korea in 1995, but it was some time before a secretive government acknowledged the crisis and permitted relief efforts. In this August 10, 1997, photo, Red Cross workers unload bags of corn from a truck. [CORBIS]

pay, hundreds of thousands were evicted. Third, Ireland was not an independent country with its own government, which might have recognized its responsibility to take remedial action; Ireland was under British rule. The fourth and most serious obstacle to the prevention of the famine was the stubborn belief, in British political circles of the time, in the laissez-faire ideology, the ultraliberalistic theory that government should not interfere in economic activity. In his book on the history of the Irish famine, Cecil Woodham-Smith writes:

> Not only were the rights of property sacred; private enterprise was revered and respected and given almost complete liberty, and on this theory, which incidentally gave the employer and the landlord freedom to exploit his fellow man, the prosperity of nineteenth-century England had been unquestioningly based.
>
> The influence of laissez-faire on the treatment of Ireland during the famine is impossible to exaggerate. Almost without exception the high officials and politicians responsible for Ireland were fervent believers in non-interference by Government, and the behavior of the British authorities only becomes explicable when their fanatic belief in private enterprise and their suspicions of any action which might be considered Government intervention are borne in mind (1961, p. 54).

Subjected to absentee landlords and this fervent ideology espoused by the government controlling them, the Irish were doomed. Governmental inaction in the face of certain economic dynamics, coupled with marginal and misplaced efforts to give some relief, caused one million persons to die from starvation and related illnesses; nearly two million emigrated, a large part of them to the United States. Ireland's population dropped from eight million people before the famine to five million in the years following it.

Severe famines originating in droughts or floods occurred in India under British rule, during the eighteenth and nineteenth century. Although some modest remedial action was taken by the British through measures required under the Famine Codes previously es-

tablished by them, hundreds of thousands starved to death. Once again, one of the main problems was the ruling government's strong faith in the laissez-faire principle. The export of grain from India was fully permitted even when famines raged.

The last major famine during British rule was the Bengal famine in 1943. It was not a result of any environmental or other natural disaster, but of policies and measures adopted due to the ongoing war and the advance of the Japanese armies. A war boom had emerged in Calcutta due to the high military presence and various military preparations, from which a part of the population profited. On the other hand, a scarcity of food emerged as a consequence of several factors, including Japan's occupation of Burma, one of the traditional sources of rice imports. While food existed in other Indian provinces, self-regulating food control powers given to the provinces in 1941 hindered supplies to Bengal at affordable prices. As a consequence of the increased purchasing power in Calcutta at a time of scarcity, the price of rice increased significantly. The losers were the landless rural workers and many of the traditional fishermen population who lost the ability to fish due to restrictions related to wartime conditions. The Famine Codes, which had been adopted by the British in the previous century, were never invoked during the Bengal famine in 1943; they were, in fact, deliberately ignored. It has been estimated that some three to five million people perished during the famine. To a large extent this could have been prevented by appropriate and resolute government action, had a responsive government, democratically accountable to those affected by the threatening famine, been in place.

The Armenian genocide perpetrated by the Young Turk regime in the final years of the Ottoman Empire from 1915 to 1918 included death marches with massive starvation on the way. In a 1999 review of other manmade or provoked famines of the twentieth century, Fiona Watson describes the allied blockade of Germany during World War I, the Soviet (mainly Ukrainian) famine from 1932 to 1934, conditions in the Warsaw ghetto from November 1940 to July 1942, the siege of Leningrad from September 1941 to January 1944, the Chinese famine from 1958 to 1962, and the Sudan famine of 1998. The Soviet famine of 1932 and 1933, which hit Ukraine the hardest, resulted from the enforced collectivization of agricultural production as part of the five-year plan launched by Joseph Stalin. The plan met intense opposition particularly from the self-owning farmers (kulaks) in Ukraine, some of whom engaged in armed resistance in response. The response by Stalin was ruthless; a combination of massive, outright killing and extensive food deprivation ensued. Agricultural production plummeted and fell by 40 percent, and most of the food produced was forcibly seized. The Soviet Union doubled its grain exports to raise currency for equipment for industrialization, while famine ravaged rural Ukraine. Stalin prohibited relief grain to be delivered to Ukraine in order to break the backbone of his opposition. The conditions were horrible and even cannibalism is reported to have occurred. It is estimated that somewhere between five and eight million people died during the famine.

Starvation was also extensively used by both German and Japanese forces during World War II, partly as a deliberate component of the Holocaust, partly by taking the food resources of the civilian population in occupied territories to feed the occupying army.

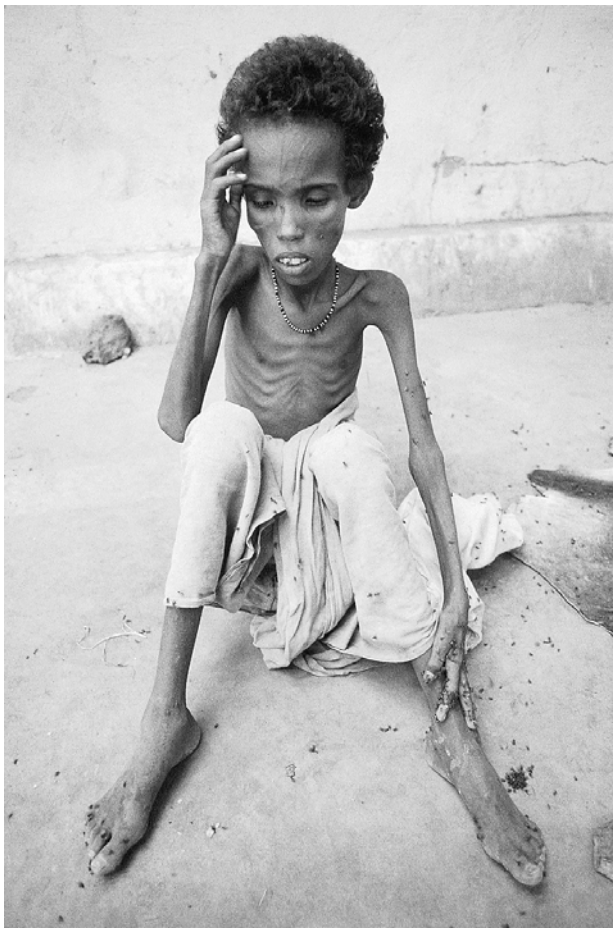
From 1940 to 1942 the Warsaw ghetto was an early measure in the Holocaust conducted by Hitler's Germany against the Jews. Following the invasion of Poland in September 1939, the German occupants confined some 380,000 Jews in a small section of the city of Warsaw. Others were soon relocated there, and the population subsequently increased to 445,000. A wall was then built around the ghetto. The Jews were prohibited from leaving the ghetto at risk of being shot on sight. By 1941 the official Nazi ration allowed 2,613 kilocalories (kcal) per day for Germans in Poland, 699 kcal for Poles, and 184 kcal for Jews in the ghetto. The German intention was to destroy the ghetto's inhabitants through mass starvation and related infectious illnesses. Mortality increased steeply. Nevertheless, the Germans did not succeed in starving all the ghetto's residents, partly because outside groups were able to smuggle in some food. In July 1942 the Germans took the next step in the Holocaust by deporting the Jews to the gas chambers of Treblinka and Auschwitz.

The siege of Leningrad by German forces from September 1941 to January 1944 lasted for nine hundred days. The siege made supplying food extremely difficult. The German Luftwaffe prevented airlifts, and transport over land was highly precarious and severely limited. During the period of the siege the city was incessantly bombarded from the air and by artillery. The bombardment also destroyed many food storehouses. It is estimated that deaths due to starvation numbered somewhere between 630,000 and 1 million people. The prewar population of Leningrad (now St. Petersburg) had been some 2.5 million persons.

The famine causing the greatest number of deaths during the twentieth century was the catastrophic Great Leap Forward of Mao Zedong's China, from 1958 to 1962. It had some similarities with Stalin's provoked famine in Ukraine in 1932, but was not pursued with the same targeted brutality. The number of deaths,

however, was much higher. Like Stalin, Mao wanted to achieve industrialization through a vast increase in steel production, while at the same time "modernizing" agriculture for grain export and feeding the workers of the expanding industrialization. Peoples' communes were established, private plots were abolished, and obligatory state procurement of grain at low prices was institutionalized. In the midst of the enforced transformation of agriculture, several natural disasters occurred. Coupled with the disarray resulting from the enforced transformation, this caused grain output to fall dramatically. The local representatives of the authorities did not dare to report the truth, but falsely insisted that harvests had increased substantially. The state procurement was set at 40 percent of the alleged output, which meant that in some places the whole harvest was seized. As a result, large parts of the rural population had little or no access to food. Famine soared in the countryside, but Mao and other leaders appear to have been misled by their own propaganda and by fabricated reports submitted by local party officials, making the Chinese authorities believe that they had many millions of tons of grain more than what was actually on hand.

During the final decades of the twentieth century and the early years of the twenty-first century, Central and Southern Africa have been the regions of the world most affected by, and most likely to experience, famine. Many of these famines were caused or influenced by armed conflict: Biafra in 1969, Ethiopia in 1984, Angola from 1995 to the present, Democratic Republic of the Congo from 2000 to 2003. Others were the result of droughts or floods combined with severe mismanagement and political manipulation, such as the famine that occurred in Zimbabwe from 2001 to 2003, when food was used as a weapon by preventing the access of food relief to persons who do not support the incumbent government. In Southern Africa the HIV-AIDS epidemic has emerged as a new factor seriously increasing food insecurity and the famine risk in the region.



In 1984 and 1985 sub-Saharan Africa, drought-induced crop failure and armed conflict coalesced, resulting in massive famine, with an estimated one million victims. Here, an emaciated child rests at a Red Cross refugee camp in Ethiopia. [CHRIS RAINIER/CORBIS]

Responsibility and Accountability under International Law

Famines and starvation are often manmade—by intent, mismanagement, or bad governance. Even when the origin is a severe environmental deterioration or other natural phenomena, it is possible to prevent its evolution into a famine. This section examines the issue of responsibility under international law for acts or omissions causing famine.

States have the primary responsibility for compliance with international law. Part of that responsibility is to criminalize acts and omissions where required by international law. Individuals can also to an increasing extent be held responsible directly under international law.

War Crimes

Humanitarian law in armed conflict is primarily based on the four Geneva Conventions adopted in 1949 and the two Additional Protocols adopted in 1977. The main function of this law is to ensure that the parties to international conflicts, and to a somewhat lesser extent in internal conflicts, respect the civilian population, prisoners of war, the sick and wounded, and other military personnel who are no longer taking part in the hostilities.

Additional Protocol I, Article 54, deals with protection of objects indispensable to the survival of the civilian population. Its paragraph 1 prohibits starvation of civilians as a method of warfare, whereas paragraph 2

states that it is a crime to attack, destroy, remove, or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve civilians, to cause them to move away, or for any other motive.

It is quite obvious that many of the measures adopted in past wars would fall under this provision, had it then existed. The German siege of Leningrad, including the shelling and bombardment destroying the food supplies, the extensive confiscation of food resources in the occupied territories, and the scorched earth policies applied by retreating German forces in northern Norway due to the advance of Soviet forces in 1944 and 1945, would all have constituted violations of Article 54.

The rule did not exist during World War II, however. The Additional Protocols were adopted only in 1977, while a first beginning had been made with the Fourth Geneva Convention adopted in 1949, which addressed the protection of the civilian population in occupied territories. Article 23 of that convention provides for assistance to be given to the most vulnerable categories of the civilian population, particularly in the form of foodstuffs. During the Nuremberg Trials, the destruction or removal of foodstuffs on a large scale, leading to starvation of the affected population, was held to be a crime against humanity and was included among the offenses for which several of the Nazi and Japanese leaders were found guilty. Examples may be found in Gabrielle Kirk McDonald and Olivia Swaak-Goldman's *Substantive and Procedural Aspects of International Criminal Law,* Volume II.

Additional Protocol II, regarding noninternational armed conflicts, contains in its Article 14 a similar prohibition of the starvation of civilians as a method of combat and the same type of acts as described above. This can also be considered a specific application of common Article 3 to the four Geneva Conventions of 1949, which imposes on parties to the conflict the obligation to guarantee humane treatment for all persons not participating in hostilities and, in particular, prohibits violence toward life.

Genocide

Among the acts constituting genocide is the deliberate infliction of conditions of life on a national, ethnical, racial, or religious group calculated to bring about the destruction, in whole or in part, of the group. Under this heading fall measures such as denying members of a group food, water, shelter, health care, and other necessities of life. Provoked famine that targeted in a systematic way the members of a group would clearly constitute genocide, as was extensively done during the Third Reich Germany. The creation of, and conditions in, the Warsaw ghetto would be one such obvious case.

The Charter of the International Military Tribunal (IMT), on which the Nuremberg Trials was based, did not include the category of genocide, but used the terms *crimes against peace, war crimes,* and *crimes against humanity*. Many of the actions committed by those defendants convicted under crimes against humanity would now more properly fall under the category of genocide.

There are strong reasons to argue that the lack of access to food resulting from the death marches perpetrated against the Armenian population by the Young Turk regime toward the end of the Ottoman Empire was also an intended genocide, even though this claim is hotly contested by the Turkish government (Charny, 1999). Representatives of indigenous peoples also consider many of the measures of ethnic cleansing perpetrated against Native Americans, including famines, to have constituted genocidal action.

In addition, the severe deprivation of food has a devastating impact on the mental capacity of persons, in particular children. Such acts, directed against a group as defined in the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide, would therefore also be held to cause serious bodily or mental harm to members of a group.

Crimes against Humanity

The term *crimes against humanity* was first used in a codified way as basis for the jurisdiction of the IMT in its prosecution of major Nazi war criminals (the Nuremberg Trials) and has since been elaborated through the statutes of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) and particularly the statute of the International Criminal Court (ICC). Under the ICC Statute, Article 7, crimes against humanity includes any of the acts listed there when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. As distinct from genocide, it is not limited to cases where a particular group is targeted. No discriminatory intent is required. As an example, the extermination policies of the Khmer Rouge in Cambodia were directed at all groups, including the majority Khmer population. Even if the action to that extent could not have been defined as genocide, it is

clearly a case of crimes against humanity. Second, in contrast to the Nuremberg Trials, to bring measures within the ambit of crimes against humanity under the ICC Statute, they do not have to be committed during an armed conflict.

Among the acts listed in ICC Statute, Article 7, constituting a crime against humanity are "extermination," "deportation or forcible transfer of population," and "other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or to physical health." But in order to be held as a crime against humanity, the act must be part of a widespread or systematic attack directed against a civilian population. It must be an active attack, thus not only the neglect of a country's duty to take remedial action when a significant number of people lose their access to food as a result of a natural disaster or economic developments. Although the Soviet famine of 1932 in Ukraine today would be labeled as genocide or a crime against humanity, the Chinese famine from 1958 to 1962 would not be so labeled, because it was clearly not an intended attack on the civilian population. Similarly, neither the Irish famine from 1846 to 1849 nor the Bengal famine from 1943 to 1944 could, even under present international law, be labeled as genocide or crimes against humanity.

Human Rights Law

State obligations under conventional international human rights law exist on three levels: the obligation to respect, protect, and fulfill the rights concerned. All these levels are relevant in regard to the prevention of famine. State parties to the International Covenant on Economic, Social and Cultural Rights have recognized under Article 11 of that covenant the right of everyone to adequate food and the fundamental right of freedom from hunger. This establishes a set of obligations on states that, if fully implemented, would prevent famines from arising. These obligations have been clarified in General Comment No. 12 of the UN Committee on Economic, Social and Cultural Rights. (The General Comment can be found at the website of the UN High Commissioner for Human Rights, under Documents, Charter-based bodies, Committee on Economic, Social and Cultural Rights.)

Amartya Sen, probably the leading expert on the study of famines, argues in his 1999 *Development as Freedom* that "appropriate policies and actions can indeed eradicate the terrible problems of hunger in the modern world. Based on recent economic, political and social analysis, it is, I believe, possible to identify the measures that can bring about the elimination of famines and a radical reduction in chronic undernourishment" (p. 160).

It should be added that this would require a general recognition of the responsibility by governments and the international community to ensure the fundamental right of everyone to be free from hunger. This will not only require responsive governments at the national level, making full use of the economic, political, and social insight referred to by Sen, but also a corollary duty of outside states and international organizations to assist the affected states in meeting their responsibility, in line with their commitment under the UN Charter, Articles 55 and 56. This international responsibility is gradually being recognized, although still imperfectly. The World Food Programme and a host of humanitarian organizations, including the Red Cross and Red Crescent, play a major role, but more commitment and coordination will be required to make famines truly a problem of the past.

SEE ALSO Armenians in Ottoman Turkey and the Armenian Genocide; Armenians in Russia and the USSR; Death March; Kulaks; Ukraine (Famine); Union of Soviet Socialist Republics

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Asbjørn Eide

Female Infanticide and Fetal Murder

Female infanticide is the intentional killing of an infant, and female feticide (or fetal murder) is the intentional destruction of a fetus for the sole reason that it is female. Historically, female infanticide has occurred on a global scale. Various studies have reported its practice among Arabian tribes, among the Yanomani in Brazil, and in ancient Rome. In nineteenth-century India it was common practice to bury a female child alive by placing her in an earthen pitcher, with cane sugar in her mouth and cotton in her hands. Burying the pitcher in the ground, women would chant, "*Gur kaayeen punee kateen, aap na ayeen bhayee nuu khaleen*" (Eat sugar, weave cotton, don't come back, send your brother). There were many other methods used to kill a female baby: starving her to death, suffocating her by wrapping her tightly in a quilt, poisoning her, strangling her, drowning her, or breaking her spinal cord by snapping it. These methods continue to be used.

In the twenty-first century such practices remain predominant in many Asian and Middle Eastern countries, in sub-Saharan Africa, and within the Asian diaspora in Great Britain, the United States, and Canada. Female infanticide is particularly widespread in India, Nepal, Bangladesh, Pakistan, China, South Korea, Singapore, and Taiwan. In China its origins may be traced back to the first millennium.

Incidence of Practice

Female infanticide and feticide are extreme forms of gender discrimination that occur systematically and threaten to eliminate females in the communities where they are practiced. There are unfortunately no specific or reliable data available on female infanticide or feticide. Both practices happen in a clandestine manner, and no specific provision for documenting them exists in most states' usual statistical mechanisms. In general, the sex ratio imbalance worldwide, with a decreasing number of females for every 1,000 males, may be regarded as an indicator of the prevalence and increase of female infanticide and feticide. The missing status of innumerable women (more than 100 million women are reported to be missing worldwide) points toward female feticide, infanticide, and other forms of gender discrimination as resulting in the high mortality of females at most stages of life. On average 105 women exist for every 100 men, but that number is lower in certain countries: 93 in India and Pakistan, 94 in China, 97 in Egypt and Iran, and 95 in Bangladesh.

Feticide

Female feticide is a recent phenomenon made possible by advances in genetic and information technology. Technology without regulation gives society unlimited access to intrauterine life. Three principal methods have been used for the intrauterine sex determination of the fetus—amniocentesis, chorionic villus sampling, and ultrasound scanning. Ultrasound scanning has become the most common method of fetal sex determination because it is quicker, cheaper, easily available, and noninvasive. It results in no recognized side effects or complications for the fetus or mother. It is often misused in countries with a sociocultural preference for male children.

Feticide is fast becoming a socially acceptable means of dispensing with a female child. A significant change in social attitudes developed in the 1980s and 1990s, with determination tests frequently occurring and subsequent abortions in the case of many female fetuses. The request process for these services is more open, with a decreasing sense of moral crisis attached to it. The arguments for seeking testing and female feticide became a matter of choice rather than of circumstantial compulsion. Ironically, more widespread approval of female feticide now exists in many societies due to the acceptance of monetary arguments, the easy availability and willingness of service providers, the pressures most normally small families face, changing standards and ethics, easier methods of abortion, and the relatively simple killing and disposal of the fetus.

At the start of the twenty-first century many remote areas could claim mobile ultrasound clinics (consisting of portable ultrasound machines installed in a van) that visited periodically to offer their services. Since the identification of a fetus's sex is possible with little training and experience, as compared to other methods, both medical and nonmedical personnel may provide ultrasound services. Quacks and untrained midwives perform the often subsequent abortions in most of these rural areas and within low socioeconomic groups, with enormous health hazards to the mothers.

India, South Korea, China, and most European countries have laws banning fetal sex determination. In most Asian countries, however, such laws are flagrantly ignored, and they have become an instrument of corruption, thereby increasing the costs of safe services.

Explanations for Gender Preference

Traditionally, the major causes of discrimination against the female child have been the son preference

rooted in a patriarchal society and the prevalence of dowry. Their lack of education, low financial productivity, and negligible presence in high-profile professions and positions have only added to the devaluation of females. There has been significant improvement in most of these factors except dowry. The escalating pace of globalization in developing countries has coincided with the increase in female feticide and suggests a link that merits critical examination.

In addition to the small family norm, the growing cost of raising a child has contributed to the increased intolerance of female children. Starting from birth, the costs of child rearing are affected by those associated with health care and education, marriage and dowry, and consumerism. When a society with a sociocultural preference for sons finds itself facing conditions that require limiting the family size for various reasons in the absence of preparatory and regulatory mechanisms and policies, then an increase in female infanticide and feticide may be predicted. The female child is increasingly seen as a high input and no output investment, reducing the child to little more than a commodity in the eyes of society.

In India the dowry is one of the major reasons why a female child is often unwanted. The amount and nature of a dowry have changed enormously in the contemporary world. There appears to be a direct link between consumerism, competitive expansion of capitalism, and the increasing economic aspirations brought about by globalization and the escalation in dowry demands and related offenses such as harassment of the bride's family, the acid burning of a bride, and even her murder. The advertisements for sex determination in the 1980s bore slogans like, "Pay five hundred now to save fifty thousand later." The gender-based oppression of women in India starts at birth in the form of infanticide and feticide, and continues to their death in the form of sati (or suttee), a Hindu ritual whereby a wife self-immolates at the funeral pyre of her husband.

The number of female babies killed by feticide is greater than the number killed by infanticide. A debate has emerged as to why an increase in female feticide has occurred despite laws prohibiting it, policies that are supposed to promote the female child and global efforts toward women's empowerment. It gives rise to a discussion of whether the causes thus far identified as making female children unwanted are inclusive of all the factors associated with female infanticide and feticide in the present-day situation. The causes routinely attributed to the increase in female feticide, and the policies adopted by states and civil society, do not address its connection to escalating globalization, thus leaving a large gap between the goals of and actual measures for abolishing female infanticide and feticide.

Consequences

This grave human rights violation of denying birth to a female child or not allowing her to live because she is a female has had a far-reaching impact on society as a whole. It not only affects the communities in which such practices flourish; it also impacts in many ways on the national and international communities where female infanticide and feticide may not occur. Social unrest as a result of the disproportionate female and male gender ratio may manifest itself as crime in these societies, for example, the kidnapping of young women, forced marriages, sex crimes, wife purchasing, frustration-related psychological problems, and an increase in prostitution. Some of these effects have already been reported in China. Increasing female feticide and the continuation of infanticide also pose serious challenges to the international community and its obligation toward women's empowerment and elimination of all forms of discrimination based on sex.

Crime against Humanity

There is emerging debate on addressing female feticide as the murder of female fetuses and acknowledging female feticide and infanticide as crimes against humanity. The pro-choice point of view opposes the consideration of feticide as the murder of a fetus, thus giving rise to the question of fetal "personhood." The condition that differentiates female feticide from abortion is its gender-discriminatory nature. Therefore, female feticide deserves to be treated as a separate category and not viewed in a simplistic way, in terms of the abortion of an unwanted pregnancy.

Female feticide and infanticide are widespread and systematic. Although mothers aborting female fetuses appear to be the perpetrator of the attack, they are actually the victims. Families may seem to choose female feticide and infanticide voluntarily, but it is the onslaught of government policies, sociocultural compulsions, and the effects of globalization directed against the population that often leaves them with no choice and amounts to a systematic attack against the female gender. Government policies that promote female feticide include the small family norm, unregulated genetic technology, an uncontrolled market economy, and unofficial acceptance of female feticide as a means of population control. Knowledge of the fast decreasing numbers of the female population due to feticide and infanticide and corresponding concerns, including threats to the female gender's survival as a result of these practices, continues to grow.

SEE ALSO Children; China; Women, Violence against

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Vineeta Gupta

Fiction

Genocide fiction is written for a reason and with an agenda in mind. Motivations for genocide fiction include the search for meaning of an actuality that is not accessible, and the search for a personal and collective identity of first or later generation survivors as part of an effort of coming to terms with or working through the past. Genocide fiction is informed by an effort to promote remembrance, to give voice, to raise awareness, and to deepen a public's understanding of atrocities. Temporal distance from the historical events has been seen to affect the decision to undertake historical fiction rather than memoirs or autobiographical representation as a medium for communication and reflection about atrocities. Survivor authors may write memoirs and histories before turning to fiction in an effort "to establish the historicity of the subject before admitting it to the imagination" (Dekoven, 1980, p. 59) while the memory is still fresh, and decide on more creative storytelling as atrocities move further into the past. Holocaust survivors Anna Langfus, Piotr Rawicz, and Elie Wiesel opted for fiction because it facilitates detachment from suffering and allows for the creation of a new personal and collective identity. Empowered by an agenda to come to terms with the "unmasterable past," to search for meaning, and to reveal "something truthful—about the fragmented self under siege, about memory, about trauma—that may otherwise elude expression" (Horowitz, 1997, p. 24), genocide fiction bridges history, memory, and imagination.

Ida Fink, recipient of the Anne Frank Prize for Literature in 1985 and the Yad Vashem Prize in 1995, is the author of *A Scrap of Time and Other Stories* (1987), *The Journey* (1992), and *Traces* (1997), among other works. She shows in her fictional rendering "A Spring Morning" that fiction can serve to deliver multiple perspectives: Her work renders, on the one hand, a surviving eyewitness report, and on the other, the perspective of its murdered victim. By providing the latter a voice and enabling it to echo throughout the pages of the narrative, the extensive "imaginative intercession into historical reality—the murdered man's life, fate, and feelings, the tragic indignity and the superfluous cruelty of his suffering" counteracts the victim's "radical muteness" consigned to him by his assassins (Horowitz, 1997, p. 14). Genocide fiction gives voice to mute victims; muteness also emerges as an essential behavioral element aimed at enunciating the use of silence as a method of resistance, and serves to vocalize the speechlessness with which atrocities are remembered. In the case of Philip Roth, representation of the void takes the form of ghosts who embody fantastic revivifications of genocide victims and give the writer an opportunity to return to Bruno Schulz and Anne Frank's thoughts, voice, and vision. The inability to heal the wound increases with time, and second or later generations who inherit trauma without personal memory cannot fill the void with knowledge and experience. Second generation Holocaust writers David Grossman (*See Under: Love,* 1986; English translation, 1989) and Spiegelman (*Maus,* 1986) enunciate in their writings the fragmentation of self-identity, and the acknowledgement that complete answers will be found. Holocaust author Henri Raczymow writes empty spaces into the narrative, reinforcing the idea that, although the lack of memory cannot be reconstituted, forgetting is not an option.

It lies within the power of literature to complement, enhance, and affect the memory and understanding of history. In the words of distinguished Latin American writer Mario Vargas Llosa, author of *Conversación en La Catedral* (1969), and *La fiesta del Chivo* (2000), among other works, "The originality of a narrative lies not in what it portrays of the real world but rather in what it reforms or adds to it. . .a reality that, without being reality, being distinct and alternative, asserts itself, in the case of successful narratives, due to its power of persuasion, as the real reality, the authentic, secret reality, reflected in literature" (Rebasa-Soraluz and Chaddick, 1997). A postgenocide generation can access history only through representation and their and others' imaginations; hence, as those generations then take on the task of further enhancing the representation, the question arises of how their repre-

sentations affect a new memory and enhance or overpower the history closest to the event. As Neil R. Davison emphasizes in 1995, narrative determines history in the present as well as in the past; at the same time, narrative depends on history and literary form.

Each work adds a new perspective, and influences the concept of history as well as the outlook on the future. Julia Alvarez, author of *In the Time of the Butterflies,* found motivation for writing a work of fiction about the Trujillo dictatorship through her interest in understanding the special courage that gave the persecuted the strength to stand up to the terror of the time. Alvarez opted for fictional discourse because neither fact nor legend were within her reach or sufficed to reach her goal of raising consciousness and understanding:

> What you find in these pages are not the Mirabal sisters of fact, or even the Mirabal sisters of legend. The actual sisters I never knew, nor did I have access to enough information. . . . As for the sisters of legend, wrapped in superlatives and ascended into myth, they were finally also inaccessible to me. . . . To Dominicans separated by language from the world I have created, I hope this book deepens North Americans' understanding of the nightmare you endured and the heavy losses you suffered—of which this story tells only a few (1995, p. 324).

With emphasis on the implication of understanding history for the creation of a better future, Jane Yolen in *Devil's Arithmetic* (1988) enables her protagonist to travel back through time to gain an understanding of the experiences of Jewish enslavement and her grandfather's associated peculiar behavior. African American writer Nalo Hopkinson turns to science fiction and fantasy writing about slavery in the hope that African Americans find motivation to fight for a better world. She perceives that African Americans as still straitjacketed by the history of slavery and thus contends: "If black people can imagine our futures, imagine—among other things—cultures in which we aren't alienated; then we can begin to see our way clear to creating them" (Davison, 1995, p. 589). Some critics nevertheless caution against such a positivistic approach, although it is reflected in many writings. As Efraim Sicher states,

> There is thus both awesome responsibility and ironic ambivalence in imagining the past in order to remember the future. There can indeed be no future without the past, but, when remembrance relies on imagination to give it meaning, one must be aware of the risks that are involved (2000, p. 84).

Despite the strong affirmation that genocide is indeed unrepresentable, representing the unrepresentable may be attempted through fiction. The fictional representation of genocide history, according to Sicher, enunciates the "fragmentation of the self, to the relativity of truth, to the fluidity of memory and to the impossibility of ever fully knowing. . . . Narrative recreates different identities and acts out in fantasy form repressed stories which test the freedom or dependence of the individual vis-à-vis the past" suggesting a relationship with the victim or survivor (2000, p. 81). Fictional renderings of genocide have been considered especially successful in eliciting imaginative responses from readers and in serving as a bridge between the Holocaust and the contemporary reader, affirming the event's historical import. Genocide fiction can compel reader response to pain and suffering and summon the imaginative empathy of affinity with the other. In the words of John Hersey, author of the 1950 book *The Wall* (1950), "Imagination would not serve; only memory could serve. To salvage anything that would be worthy of the subject, I had to invent a memory" (Hartman, 1999, p. 66). The combination of emotional and imaginative engagement of the reader coupled with factual consistency, such as that achieved in Charlotte Delbo's *None of Us Will Return,* Susan Schaeffer's *Anya,* and Livia Jackson's *Elli,* capture the experience of victimization through the lyrical use of prose that enhances the presentation of emotions and thereby serves to augment the reader's involvement with the novel. Fictional poetic discourse, sustained by historical facts and data, may facilitate a meaningful and imaginative personal memory that approaches genocide memory and provides the latter an opportunity to endure in spite of time and place.

Techniques in genocide fiction are multifold and often contest previous fictional conventions as these texts "make imagination serve fact rather than the reverse. . .to provide a narrative perspective and to make the facts. . .more accessible to the senses" (Heinemann, 1986, p. 118). Perhaps in direct correlation to the notion that "too much fiction can make a fool of history" (Kearney, 2002, p. 57), genocide fiction is marked by authenticating devices such as imitation of a memoir through first-person narrators, authorial voice attributes in prefaces or introductions, as well as the incorporation of documentation, reportage, and diaries, similar persons, patterns, or incidents to suggest that the information is drawn primarily from survivor and historical evidence. Nevertheless, the recurrence of statements attesting to an essential truthfulness in fiction on atrocities in history, which suggests that the achievement of historical discourse is ultimately a condition aspired to even within the context of genocide fiction, does not necessarily signify apprehension about this choice of discourse by writers of fiction.

Many works of fiction specifically identify themselves as fiction and request to be read as such, regardless of the historical accuracy of events, and circumstances, or the similarity between the experiences of the survivor author and those of the fictional protagonist. Wiesel's novel *Night* is by some referred to as a light fiction due to the apparent connection between Wiesel's own sufferings as a five-year-old boy in Buchenwald and his fictional account of the five-year-old protagonist's struggles in the Nazi death camp. The author negates testimonial validity of the work because, despite the influences of the personal experience on the narrative, it remains a result of his creative imagination. Fictionality provides the author with more control over the representation and message; in genocide fiction, imagination may serve fact in presenting a particular perspective of the event and incorporating testimonial conventions. To give voice to experiences in the Warsaw ghetto, Raczymow incorporates a fictional diary into his narrative that transposes autobiographical information with that of other fictional as well as historical characters, and interweaves actual and fictional events and personal experiences. However, to emphasize the fictionality of the work and to undermine the effect of authenticity rendered through the incorporation of certain devices, Raczymow disrupts the consideration of unmediated testimonial function by signaling the mimetic distance of the diary he incorporates as twice removed from anyone's actual experience (Zeitlin, 1998, p. 9). Because genocide fiction does not pretend to serve as a historical document, Alvarez confirms,

> I sometimes took liberties—by changing dates, by reconstructing events, and by collapsing characters or incidents. For I wanted to immerse my readers in an epoch in the life of the Dominican Republic that I believe can only finally be understood by fiction, only finally be redeemed by the imagination. A novel is not, after all, a historical document; but a way to travel through the human heart (1995, p. 324).

In genocide fiction the protagonist's fate is handcrafted by a writer who integrates elements from history to enhance and shape the plot, yet manipulates circumstances, folds events, merges characters, and manipulates circumstances to reinforce a particular reading of the interrelationship between people, time, place, as well as fate. An author's decision on how to end a novel involves consideration of resolution and closure; generally, it also involves a question of hope. However, in most genocide fiction, hope, like the protagonist, is inexorably tied to a final demise. Echoing an absolute lack of hope, Pierre Gascar's "The Seasons of the Dead" evokes "a haze of fearfulness and disbelief," facing "death without coffins, without reasons, without rituals, without witnesses," and culminates in the realization passed on to the reader that the pain and grief will find no closure (Howe, 1988, pp. 191, 196). Nevertheless, a contrasting image is advanced in some children's and junior literature with the tendency to overwrite the impossibility of hope through an open ending, thereby inviting the thought that a particular protagonist might possibly have escaped the claws of the very event that earned it the name of genocide. Novels with open or optimistic endings have become more frequent with the increased publication of escape, rescue, and survival accounts involving children, such as Antonio Skármeta's *Nothing Happened* (1980), Christa Laird's *But Can the Phoenix Sing*? (1993); Malka Drucker and Michael Halperin's *Jacob's Rescue* (1993), Vivian Vande Velde's *A Coming Evil* (1998), and Julia Alvarez's *Before We Were Free* (2002).

Sidra DeKoven Ezrahi confirms that

> the distorted image of the human form which the artist might present as but a mirror of nature transformed can hardly be contained within the traditional perimeters of mimetic art, because, although Holocaust literature is a reflection of recent history, it cannot draw upon the timeless archetypes of human experience and human behavior which can render unlived events familiar through the medium of the imagination (1980, p. 9).

Schwarz-Bart's *The Last of the Just* echoes this notion that within the context of genocide, legend, myth, and folktale do not suffice to establish an authenticity effect. His novel depends on authenticity devices for the "cohesiveness and historiographical implications of its story-telling" until the novel's timeline approaches the Holocaust and the narrative is overtaken by, initially rather general and later specific, significant Holocaust phenomena and events (Davison, 1995, p. 294). Genocide fiction can extend beyond the traditional concept of fiction and attain the status of a cultural and social document by providing an insight into genocide horrors and dimensions by creating a literary memory "whose meaning will endure" through "a narrating consciousness who makes sense out of the confusion of history and makes the reader imagine being there" (Sicher, 2000, p. 66). In that respect genocide fiction can contribute toward a postmemory that is connected to the atrocities of the past, perhaps primarily through imagination and literary creativity rather than remembrance.

Unlike authoritarian regimes "that attempt to impose a singular 'reading' of the human condition," literature through its "multifarious coherence" is "always

provisional and never final" (Tierney-Tello, 1996, p. 4); at the same time, literature also provides voice to multifaceted interpretations and agendas. Consequently, many scholars, historians, victims, witnesses of atrocities, and others, who seek to remember history as it was and to ensure that certain events will never occur again, caution against free-ranging representation of these horrors, as with each representation one may indeed move further and further away from historical fact. Genocide fiction enables people to represent the past as they visualize it or to "reinvent it as it might have been" (Kearney, 2002, p. 69), to inform others about their interpretation as well as to help others remember. However, the very fact that revisionists and fascists in many instances of genocide have sought to rewrite history in an effort to deny or downplay its significance and horrors keeps critics and readers on the lookout for distorted representation. Argumentation against employing fiction as a means of representing the Holocaust and, in extension, any genocide, includes Lanzmann's affirmation of the impossibility to communicate absolute horror. However, the unrepresentability per se of genocide is not contradicted by genocide fiction and its intent to present what was or might have been and to facilitate remembrance. Genocide fiction requires a delicate balance between "a historical fidelity to truth (respecting the distance of the past as it was in the past) and an aesthetic fidelity to imaginative vivacity and credibility (presenting the past as if it were the present)" in order to serve genocide by "an aesthetic" that matches historical triumph in terms of intensity and impact and that may even require exceeding the latter in an effort to "compete for the attention of the public at large" (Kearney, 2002, p. 60). Due to genocide fiction's particular strength in engaging the reader and eliciting imaginative responses by serving as a bridge between the historical event and experience and the present, genocide fiction may serve to affirm rather than erase the historical import.

SEE ALSO Biographies; Diaries; Memoirs of Survivors; Wiesel, Elie

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Yvonne S. Unnold

Film as Propaganda

Visual media have been exploited to serve genocide and crimes against humanity. They have perpetuated racial and ethnic hatreds, targeted political opponents, aggrandized the national image of regimes, and portrayed the nation as a victim of evil, outside forces. The Nazis

were the penultimate masters in this regard—usurping the German film industry, creating a ministry to assure that films served the Reich, and recruiting film directors to enhance Hitler's power and present frightening images of Germany's perceived enemies. Similarly, other nations have employed visual media to support the political values of genocidal and criminal regimes. They also routinely use censorship to guarantee the absence of countervailing visual images.

Nazi control of the German film industry is the most extreme example of the use of film in the service of a fascist national program. Prior to Hitler's rise to power, Germany had a lively, creative film community in which many Jewish actors, directors, and producers were active participants. However, in 1933 Hitler created the Reich Ministry for People's Enlightenment and Propaganda and appointed the youthful Joseph Goebbels as its head. He had the authority to decide which films could be produced; the ministry reviewed scripts, decided which actors, directors, and screenwriters worked, and controlled the content and imagery of films. Film criticism was banned, and Jews were forbidden to work in the film industry. In the Nazi's media dictatorship film was its most important tool.

Early films promoted the consolidation of the German people in the service of the Nazi state. One of the first productions in 1933, *Hitler Youth Quex,* depicted a young man's transformation from a communist sympathizer to a servant of the Hitler Youth movement and the "new" Germany. In a visceral sense he became the political property of the state, no longer needing to be an autonomous individual.

Triumph of the Will, the 1935 documentary by Leni Riefenstahl, was created in the same vein. The film eschews references to Jews, Romani, homosexuals, or political opponents that the Nazis would be jailing and murdering in the coming years. Instead, the film focuses on visual imagery of a united, joyful German people and the powerful control of public space exerted by the Third Reich. The film, utilizing thirty-six cinematographers, captured the drama and triumph of the 1934 Nazi Party meetings in Nuremberg. In its repetitive images of smiling, young Aryan men, perfectly aligned marching German soldiers, fluttering swastika flags, and Adolf Hitler, alighting from the sky as a godlike figure, *Triumph* conveys a powerful, seductive message on the sacrifice of the individual for the good of the revitalized, collective whole, as represented in the person of Hitler.

In the years that followed Nazi film production shifted its focus to overt propaganda against perceived enemies. Perhaps the most profound exemplar was the 1940 production of *Jud Suss,* a viciously anti-Semitic film, directed by Viet Harlan. It was screened for SS commandos before missions against the Jews and for concentration camp guards; over twenty million people are said to have seen the film. Its story—set in the eighteenth century—was billed as history. The protagonist, Joseph Suss Oppenheimer, is portrayed as a deceitful, treacherous Jew, who lusts after power, money, and sex. At the film's finale Oppenheimer's final defeat and public execution are a prelude to the film's cautionary message, urging its audience to heed the film's lessons in order to spare future generations from exploitation by the Jews. The documentary *The Eternal Jew* mirrored similar themes of Jews as duplicitous and toxic. At the end of World War II Harlan was the only German film director to be charged with crimes against humanity. Although the film was condemned, the director was exonerated, his defense successfully arguing that in making such a film, he was only following Goebbels's orders.

Since the Nazi period other abusive regimes have utilized visual media in the service of criminal ends. In Yugoslavia the 1989 film *The Battle of Kosovo,* commemorating the battle's six hundredth anniversary, portrayed a Serbian hero sacrificing his own life, but simultaneously taking that of the Turkish sultan. Dark, scary images of Muslim invaders are pervasive. The Bulgarian film *Time of Violence* traded on similar violent, cruel images of the Turkish invasion and the suffering of the Slavs. Documentaries, such as the 1994 *The Truth Is a Victim in Croatia,* were thinly disguised propaganda films on Croatian victimization of the Serbs. Television also was utilized to these ends by masters of media manipulation and control, such as Slobodan Milosevic. In regular television appearances Milosevic and other Serbian leaders usurped and inverted the language of genocide—decrying that their kinsfolk in Kosovo were the victims—even as they covertly planned their own genocidal campaign in Bosnia.

In El Salvador, under military control in the 1980s, the lack of a film industry made television the medium of choice for labeling regime opponents. Roberto D'Aubuisson, a former major in the Salvadoran military, procured the dossiers of hundreds of political activists subject to government surveillance. In early 1980 he staged a series of dramatic television appearances in which he denounced these academics, clergymen, trade unionists, and others as guerrilla sympathizers, subversives, and communists. He used these appearances to launch his own political career as the demagogic voice of the extreme right wing. And in the weeks following his appearances, many of those named were assassinated.

Though she later tried to minimize her collaboration with the Nazis, an ebullient Leni Riefenstahl is received by Adolf Hitler and Joseph Goebbels, April 29, 1938. Riefenstahl, who first heard Hitler speak in 1932 and was dazzled, made propaganda films at his behest. [BETTMANN/CORBIS]

Censorship has also assisted such regimes in obscuring truthful histories, objective realities, and the genocidal actions of the government. For example, soon after the 1973 military coup in Chile, a censorship decree led to the banning of hundreds of films. In his documentary *The Battle of Chile,* Patricio Guzman, the Chilean filmmaker, realistically captured the increasing violence of right-wing opposition to Salvador Allende, the military takeover, and the final words of the democratically elected president. But Guzman was forced to smuggle the film out of the country, and it was not shown until after Augusto Pinochet's dictatorship ended.

The precise impact of propagandistic imagery on the popular imagination can never be fully measured. Nevertheless, there is no question that the media play an important role in sustaining criminal regimes and fostering cultures that support the commission of crimes against humanity and genocide.

SEE ALSO Advertising; Art as Propaganda; Deception, Perpetrators; Goebbels, Joseph; Propaganda; Television

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Carolyn Patty Blum

Films, Armenian Documentary

Seventeen films that document the Armenian genocide of 1915—all of them in English—have been made. This paucity of films about the Armenian genocide is owing to a paucity of certain types of documenting materials, which may be ascribed to several factors: the strict censorship in Ottoman Turkey at the time of the genocide, which prohibited the photographing of expulsions and death marches; the general absence of investigative reporters in war zones (which included parts of the Ottoman Turkish Empire) during World War I; and the scarcity of foreign consular agents and officials (who might have served as witnesses).

Nonetheless, a limited number of still photographs (of genocidal events in the making) managed to reach the outside world, owing to the efforts of Christian missionaries living in Turkey—and those of German civilians and soldiers who photographed events clandestinely. Two sources of photographic documentation were Armin T. Wegner, a German Red Cross official, and Leslie A. Davis, a U.S. consular agent in the interior of the Armenian provinces of Turkey. No motion picture footage of the deportations or the slaughters has ever been located.

Despite these handicaps the first documentary film on the genocidal events of 1915 and 1916 was produced in 1965. *Where Are My People?* is a vehicle for the expression of a plaintive voice, a voice of bereavement and sorrow—over the extermination of a people and the loss of nationhood. The film relies heavily on still photographs, lithographs, paintings, and excerpts from books about the genocide. The potency of the film derives from the strength and poetry of its narrative and its use of Armenian musical themes. A Turkish scholar, Sedat Laciner (who denies the genocide), writing in 2003 described *Where Are My People?* as a "classic film."

The Republic of Turkey (established 1923), in keeping with its policy of denial vis-à-vis the Armenian genocide, responded immediately to the release of the film and assigned persona non grata status to the producer of *Where Are My People?* From its inception the Republic of Turkey has maintained that there was no mass murder of Armenians—only incidental suffering and death among both Turks and Armenians, the results of a civil war. Owing to political and economic pressure placed on the United States by the Turkish government, the United States has not yet recognized the Armenian genocide, and until the late 1990s, members of the U.S. media often used the term "alleged" to describe the catastrophic events of 1915 and 1916. As evidence of the pressure that has been placed on the United States by the Turkish government, no Hollywood-type feature film on the subject of the Armenian genocide has ever been produced in the United States. *Ararat* (2003), a film by Atom Egoyan, was a Canadian-sponsored (fictional) dramatic film.

Where Are My People?—coming as it did on the fiftieth anniversary of the Armenian genocide—launched an era of political activism and awareness of the enormous calamity that had befallen Armenian people. The anger felt by descendants of Armenians of the Armenian diaspora—at the Turks, at the world, and even at parents who had remained timid and voiceless for five decades—produced demonstrations at major Turk embassies and assassinations of Turkish diplomats in Southern California. Armenian study programs and endowed chairs and professorships in Armenian studies sprang up at major U.S. universities; Armenian studies research institutes came into being, and by the late 1980s scholarly monographs on the subject of the Armenian genocide began to be published.

The year 1976 ushered in the production of the companion films *The Forgotten Genocide* and *The Armenian Case* (which contains a seventeen-minute epilogue about post–World War I events). *The Forgotten Genocide* is a highly acclaimed film and has won film festival awards and two Emmy nominations. It is perhaps the definitive film on the Armenian genocide. Both films employ the traditional documentary film elements of comments and testimony by scholars and witnesses, still photographs, film footage of events related to the Armenian diaspora following the genocide, and maps. Both films use an expository mode of presentation to lay out the "anatomy" of the Armenian genocide; both films call on the Turkish nation to accept responsibility, and on the wider world to recognize that genocide and crimes against humanity were committed.

The Armenian Genocide, commissioned in 1990 by the California Board of Education, is the first film of its kind intended for use in school curricula. The target audience of the twenty-five-minute film is tenth-grade

students. The film includes dramatic reenactment of historic events; it also uses historical cartoons, diagrams, and segments of filmed student discussions.

Five films that appeared at the turn of the twenty-first century (all of them by non-Armenian filmmakers) are worth noting. *I Will Not Be Sad in This World* (2001) follows the daily life of a ninety-four-year-old survivor of the Armenian genocide; its setting is present-day, but there is some use of old photographs in the film. *A Wall of Silence* (1997) traces out the passionate involvement of two scholars—one Armenian and one Turkish—in historical investigation of the Armenian genocide, and focuses on their quest to attain recognition of the genocide by the Turkish government. *The Armenians: A Story of Survival* (2001) and *The Great War and the Shaping of the Twentieth Century* (1997), documentary films about Armenian history and World War I, respectively, both have short sequences about the Armenian genocide. *The Hidden Holocaust* (1992) is perhaps the most impressive of this cluster of films. It resembles *The Forgotten Genocide* (1976) in respect to methods of research used, content, and tone. An advantage that these films have enjoyed over their forerunners is that they have reached larger audiences.

In 2000 another advance was made in the collective effort to document the Armenian genocide. The film *Voices from the Lake* was innovative in that it focused on a small pocket of the Armenian genocide, and examined this small pocket from a multitude of vantage points—through the eyes and via the reports of several witnesses. *Germany and the Secret Genocide* (2003) was similarly innovative; the film focused on the Berlin-Baghdad Railway and specific historical German documents as it sought to emphasize the closeness of the Armenian genocide to other genocides.

SEE ALSO Films, Armenian Feature; Films, Dramatizations in; Films, Holocaust Documentary

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J. Michael Hagopian

Films, Armenian Feature

Any act of tyranny or terror involves a dehumanizing of the "other"—the individual or group upon which the act is perpetrated. Can a work of art that depicts an act

The novel *Mayrig* and the film of the same name, both by Henri Verneuil, are semifictional and autobiographical. The story is about Armenian refugees struggling to build lives in France in the wake of the genocide of 1915. The Armenian word *mayrig means* "mother." **[RIEN/CORBIS SYGMA]**

of terror ever serve to counter this effect? If an act of genocide is only made possible by the abstraction of other human beings, can a film about genocide serve to rectify this violence? While it is certainly clear that there is a disparity between the horror of man's inhumanity to man and the uneasy alchemy that occurs when one combines elements of cinema and atrocity, it is also obvious that we live in a world where the currency of images is crucial to our understanding of any historic event. Who has the authority—be it moral, spiritual, or artistic—to tell a story of horror? And who decides if this story of horror can even be told?

The best-known novel to deal with the Armenian Genocide was written by an Austrian Jew, Franz Werfel, in 1933. *The Forty Days of the Musa Dagh* was translated into over twenty languages and became an international best-seller. The novel is about the siege of the mountain village of Musa Dagh, where a group of exhausted and poorly armed Armenians were able to resist a Turkish attack for forty days before being rescued by French warships. Its potential as a Hollywood epic was immediately seized upon, yet despite repeated attempts by Metro-Goldwyn-Mayer (MGM) to translate this important story to the screen, Turkish pressure on the U.S. State Department prevented the film from ever being made.

Besides some scenes dealing with the Armenian Genocide in Elia Kazan's 1963 classic *America, America,* the historic event was not really touched upon again until the French-Armenian director Henri Verneuil (born Ashot Malakian, the son of genocide survivors), told his autobiographical version of the event in his 1991 film *Mayrig,* starring Omar Sharif and Claudia Cardinale. Despite the presence of these stars and a substantial production budget, *Mayrig* failed to find international theatrical exposure. Indeed, the only other dramatic feature films that have dealt with the aftereffects of this trauma—Don Askarian's *Komitas* and Henrik Malian's *Nahapet*—have received only limited distribution, despite their artistic merits.

In both these later films, the viewer is engaged by the eponymous survivors as they try to deal with the burning memories of the genocide. *Nahapet* (the very name means the head of a large family group) is seen at the beginning of the film as he crosses the border from historic Western Armenia into the fledgling Cau-

[THE MAKING OF ARARAT]

It is this very denial of the genocide which was to become the central theme of my film, *Ararat*, which was produced in 2002. In this film, an aging French-Armenian film director (a reference to Henri Verneuil, played by the legendary French-Armenian singer Charles Aznavour) arrives in Canada to shoot his old-fashioned interpretation of another heroic event in Armenian genocide history—the siege of the city of Van. Intercut with staged scenes from this film-within-a-film, various contemporary characters interact in relation to their roots, their family problems, and the lingering effects of ancient history on their modern lives.

The structure of the film is multilayered and complex, showing how history is often created from the effort to accommodate differing accounts of the same event. By interweaving the stories of different families and different generations, I wanted to show how the stories of the survivors passed onto children and grandchildren create a collective human linkage of experience. *Ararat* is a film about the transmission of trauma, and is the first film dealing with the Armenian Genocide that has been internationally distributed, having been theatrically released in over thirty countries around the world since its premiere at the Cannes Film Festival.

In making *Ararat* I was aware that any film dealing with this historic event would be accused, from a Turkish point of view of perpetrating stereotypes. Indeed—as of this printing—the film has been prevented from screening in Turkey, despite the efforts of a Turkish distributor who bought the film for release in that country in 2003. While *Ararat* certainly shows scenes of extreme cruelty and torture, these stories—from an Armenian perspective—are part of any upbringing. The barbaric and vicious imagery is very real. In this context, the challenge of telling the story of *Ararat* was threefold: First of all I had to find a way of presenting the strongest and most persistent of cultural beliefs with which I had been raised. Secondly, I needed to examine and question the drives and sources that determined those beliefs. And finally, I had to show the emotional foundations of those beliefs as they persist in our culture today.

Like many in my community, I await a traditional large-budget film that will set the record straight. But it is important to stress that the mere production of this film will not assure its distribution, as evidenced by Verneuil's *Mayrig*. I believe that the success of *Ararat* is based on its ability to find a compelling way of dramatically presenting the most distinct aspect of the Armenian Genocide: its complete denial by the Turkish perpetrator. This, undoubtedly, is the most painful source of continuing confusion and trauma.

casian state. His memories come flooding back throughout the film, most poetically in a flashback where hundreds of red apples fall off a gigantic tree (or family tree) into the banks of a river, where they rot, turning the sky-blue water into blood. Eye-witness accounts tell of thousands of bodies floating down the river Euphrates during the genocide, and Malian's cinematic interpretation of this horror is stunning in its beauty and restraint.

Askarian's *Komitas* is a highly charged and visually impressive piece of filmmaking. Highly influenced by the transcendent style of the Russian master Andrei Tarkovsky, it tells the true story of an Armenian priest and musicologist who survives the genocide, only to spend the later part of his life in an asylum, unable to overcome his deep psychic wounds. It is interesting to note that in both these later films the references to the perpetrators of these crimes, the Ottoman Government of Turkey, are muted and vague. In the case of *Nahapet*, which was produced by the Soviet regime, this may have been a calculated attempt not to offend subsequent Turkish governments, none of which have accepted the guilt of this crime against humanity. At no point in Malian's film is the word "Turkish" ever mentioned, thought the murderers are visually identified.

SEE ALSO Film as Propaganda; Films, Armenian Documentary; Films, Dramatizations in; Films, Holocaust Documentary

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Films, Dramatizations in

Ever since Thomas A. Edison said, "I am experimenting upon an instrument which does for the eye what the phonograph does for the ear which is the recording and reproduction of things in motion," the human race has remained fascinated with its portrayal in film. This

wonderful pairing of sight and sound has allowed the chronicalling of the events of the past century. However, the images a person sees has everything to do with the eye of the beholder. Film is a director's medium and every frame shot overtly or covertly represents his or her personal prejudices, values, and esthetics. Every camera angle, every light and shadow, every word whispered or screamed, every close-up or long shot, every note of music occurs at the discretion of the director.

How then does a director set about making a film based on historic events so horrific that to avert one's eyes is the natural response? It is an enormous challenge, especially because in reproducing these images, there is something inherently false in acting out such brutality. One can only imagine what an actual survivor of the Holocaust must feel to see what looks like blood on disinterested extras waiting to perform the next scene. How does one show the darkest side of humanity and respect its victims? What is the appropriate response? How does one make a film that is palatable to a mass audience yet expose the severity of the crimes of its perpetrators? There is no template, no perfect film. To assume documentary filmmakers make a more authentic film is to forget that they are also peering through the eyepiece of the camera seeking the best shot to tell their story. Here, is an examination of several films on the Holocaust, many of them made by U.S. directors, and other genocides. Each film is an expression of the cinematic artist, the director, who fills a darkened room with images that become his or her signature on celluloid. These films speak for the silent, the dead, and those that lived, to tell their stories in the hope that moviegoers in viewing these images, however disturbing and shocking, will cling more tightly to that which is good and moral and just.

The Great Dictator

Charlie Chaplin and Adolf Hitler were born four days apart, with the "Little Tramp" arriving on April 16 and Hitler on April 20 in 1889. Chaplin, although British by birth, was a pioneer in the American film industry. Hitler admired Chaplin until the director satirized him in his 1940s masterpiece, *The Great Dictator*. It is worthy of note that when this film was made, the United States stood neutral as France and Belgium fell to the Nazis, and Hollywood, in turn, remained neutral too. In the more than five hundred films made during World War II, only *The Great Dictator* specifically addressed events in Europe. Why would Chaplin, best known for his silent films, make such a movie? Why did he choose to invest over $1 million of his own money to make this, his first talking picture? One may speculate that Chaplin's Jewish wife, Paulette Goddard (born Goddard Levy), might have had something to do with his decision. *The Great Dictator* was written and directed by Chaplin; the movie starred Chaplin and his wife.

There is no doubt that Chaplin, ever the genius, saw the potential for satire in the highly influential Nazi propaganda film, *The Triumph of Will* (1934), directed by Leni Rienfenstahl. Shot during the Sixth Party Congress in Nuremberg, with powerful black-and-white images of marching troops foreshadowing the coming war, the film shows all the Nazi archetypes in attendance: Hitler, Hermann Göring, Joseph Goebbels, Heinrich Himmler, and Rudolf Hess, to name but a few.

With their matching mustaches, Chaplin and Hitler become cinematic doppelgängers, and this makes Chaplin's performance as the tyrannical dictator inspired. Chaplin also carries the look-alike further by playing a Jewish barber. In one of the more unforgettable scenes in the film, Chaplin as Hynkel the dictator plays with a globe, tossing it up and down; in a demented and almost balletlike sequence of steps, he bounces the globe from his rear until it bursts. In the film a double cross takes the place of the Nazi swastika, and Hynkel spares no one, including Mussolini who is reborn as Benzini Napaloni of "Bacteria."

Chaplin's film addressed the events of the day, showing the displacement of the Jews, the burning of ghettos, and resistance attempts. Mistaken identity as a vehicle for comedy is as old as the Greeks, and it works once again as Chaplin, as the Jewish barber, is mistaken for Hynkel. At the film's end in a moment of solemnity Chaplin seems to urge brotherhood, triumph over fascism, and world peace. Some critics dismissed the ending as it contrasted so starkly with the film's preceding lunacy, but given the subject matter, Chaplin obviously felt compelled to speak his mind. Chaplin later stated that had he known the extent of the Jews' persecution, he would have never satirized it. As for Hitler, a record of his having seen the film does exist; not surprisingly, he had it banned, as did two other dictators, Mussolini and Francisco Franco.

Life Is Beautiful

Life Is Beautiful (1997, in Italian *La Vita è Bella*) takes its cue from Chaplin. Roberto Benigni plays the clownlike character who tries to protect his son from the horrors of the Nazis. Benigni, like Chaplin, wrote, directed, and costarred with his wife (in Benigni's case, Nicoletta Braschi). Benigni has the same wiry frame as Chaplin and makes comic use of his body. The first half of the film is extremely humorous, depicting the madcap adventures of the loving and lovable Benigni as Guido Orefice, a man with a beautiful wife and adorable son.

Some critics have complained that the film makes light of a serious situation. However, Orefice's zany antics become his method to survive the madness and to keep his young son alive and hopeful when they are sent to a concentration camp.

In the remarkable 2003 *Indelible Shadows, Film and the Holocaust,* Annette Insdorf makes the point that "the extraordinary international popularity of *Life Is Beautiful* means that audiences—which might otherwise not have been aware of the Nazi persecution of Italian Jewry—embraced an appealing Jewish hero who inspires respect rather than merely pity" (Insdorf, 2003, p. 292). Benigni, like Chaplin, was motivated by personal need to make this film. His (non-Jewish) father Luigi Benigni spent two years in the Bergen-Belsen labor camp, from 1943 to 1945, and weighed just seventy-seven pounds when liberated. Roberto grew up listening to his father's stories and, drawing inspiration from Chaplin, created a film that celebrates a man's love and devotion to his family. Although it is understandable that survivors would find little to laugh at in viewing "cartoonlike" behavior of the Nazis, both Chaplin and Benigni use the tradition of the hapless clown, the buffoon of *commedia dell'arte,* to lampoon the absurdities of fascism and render the jester triumphant over his tyrant.

Sophie's Choice and *The Pawnbroker*

Sophie's Choice (1982) and *The Pawnbroker* (1964), both award-winning films produced by major Hollywood studios, deal with a subject that has to some extent created a false stereotype, the guilt-ridden Holocaust survivor. In *Sophie's Choice,* based on the book by William Styron, Meryl Streep plays Sophie Zawistowska, a Polish Catholic who is sent to Auschwitz for her collaboration with the Polish resistance. Having barely survived the Holocaust, she finds herself in postwar Brooklyn, where she becomes friends with Nathan, a New York Jew, and Stingo, a Southern Gentile beguiled by her beauty. It is Stingo who narrates the story and to whom Sophie reveals the impossible choice she was forced to make at Auschwitz.

Alan J. Pakula, the son of Polish immigrants, wrote the adapted screenplay and directed the film. He makes use of color and setting to create a dichotomy between the two worlds of Sophie's experience: The scenes in postwar Coney Island have an energetic and dizzying feel to them, in stark contrast to the listless and lifeless haze of Auschwitz. Coney Island is a perfect visual metaphor for the relationship between Sophie and Nathan, which is an emotional rollercoaster. Sophie is physically and emotionally fragile, and one expects her, like an egg resting on a spoon, to fall and crack at any moment. Her face in close-up resembles an eggshell; there is great authenticity in Streep's performance when she speaks in broken English, Polish, and German. Sophie's love affair with Nathan, a Nazi-obsessed, cocaine-addicted manic depressive (played by Kevin Kline), reinforces the notion that the troubled survivor welcomes terror and chaos because it is familiar and therefore strangely comforting. Such guilt will only permit the most fleeting moments of joy. At the film's end Sophie chooses to commit suicide with Nathan in what feels like an emotional release from a life haunted by memories too difficult to face.

In *The Pawnbroker* Sidney Lumet directs Rod Steiger in a masterful performance as a Holocaust survivor working in a Harlem pawnshop owned by an African American. Lumet, who began his career performing in the Yiddish theater, uses black-and-white cinematography to illustrate the fact that even in daylight, Steiger's character, Sol Nazerman, is a man living in a dark world. The audience becomes privy to Nazerman's interior thoughts as present events trigger recollections that are seen in flashbacks. A ride on a subway car allows us to observe Nazerman as a face in the crowd, but one emotionally alone and isolated from his fellow passengers. It is as if the only feeling he can resurrect is pain, and his wretched memories at least provide him with abundant material for that. As Nazerman rides the subway, he is jolted by the memory of a fateful train ride, as he and other Jews traveled on their way to certain death at the hands of the Nazis.

Lumet effectively uses the cagelike surroundings of the pawnshop, showing the shadow of crisscrossed bars across Nazerman's face and body to convey the image of a man imprisoned. The tragedy of Nazerman's past continues into the present when a young Hispanic coworker named Jesús (played by Jaime Sanchez) attempts to befriend him, only to be rebuffed. When Jesús is killed during an attempted robbery, once again Nazerman is the survivor left to mourn the dead. But his emotions have completely shut down, and his stifled cry at the film's end symbolizes his inability to articulate his loss.

There are numerous other testaments to the fortitude and courage of many Holocaust survivors. Perhaps for some, the Hollywood image of emotionally scarred and haunted characters perpetuates the myth of Jewish victimization or, worse, cowardice. It is hoped that the ongoing efforts to commit to film the many stories of survivors and their achievements will serve as a counterpoint to films they feel may distort the truth.

Night and Fog

It is important to mention the film *Night and Fog* (1955, in French *Nuit et Brouillard*) by director Alain Resnais.

Although not an American film, it is nevertheless the first documentary film made about the Holocaust and it influenced many subsequent films. This film was made only ten years after the end of the war; it uses stills and newsreel to expose the horror and depravity that was Auschwitz. The title *Night and Fog* is the term used by Hitler on December 7, 1941, when he issued his Night and Fog Decree. The intent of this edict was to replace the practice of taking hostages with the total disappearance of those suspected of resistance. They would disappear into the "night and fog." To quote Himmler's memo to the Gestapo, "An effective and lasting deterrent can be achieved only by the death penalty or by taking measures which will leave the family and the population uncertain as to the fate of the offender. Deportation to Germany serves this purpose."

Renais's film is remarkable in its understated tone and almost monotone narration. The images need no heightened emotional soundtrack for they are shocking enough and invite quiet introspection. The film begins in color narrated by survivor Jean Cayrol, and postwar Auschwitz looks like a travel poster, inviting one to spend a day in the country. This sylvan scene cuts away to freight cars and images of human cargo. As the camera enters the camp, the past replaces the present, and scenes of inconceivable atrocities soon fill the now empty spaces of the rooms. The collection of human hair, bones, and skin used as raw materials in the production of German goods are a still-life testament to the lives lost. In its detachment this film is most effective. There is no need for embellishment: *Night and Fog* stands on its own as witness to humankind's capacity for pure evil.

Missing

The 1982 film *Missing,* directed by Constantin Costa-Gavras, deals with the "night and fog" disappearance of Charles Horman (played by John Shea) during the 1973 military coup led by Augusto Pinochet in Chile. It is the true story of businessman Ed Horman (played by Jack Lemmon) who along with Charles's wife (played by Sissy Spacek) attempt to determine what happened to the missing son and husband. The story unfolds in flashbacks, and Costa-Gavras seamlessly draws us into the plight of the anguished father and distraught wife. U.S. involvement in the coup is acknowledged, although a viewer would do well to read the now declassified documents detailing the true extent of this involvement. This film along with *The Official Story* and others provides chilling evidence that Hilter's 1941 decree found favor with the military governments of South America. It is estimated that more than fifty thousand young men were tortured or killed during the Pinochet takeover, and throughout Argentina's dirty war an estimated thirty thousand disappeared. Such numbers are difficult to comprehend, and by following the story of one missing person, the audience is able to put a face on the rest.

Schindler's List

Schindler's List (1993) is considered to be director Stephen Spielberg's greatest achievement. The film, based on Thomas Keneally's book, tells the story of Polish Catholic Oskar Schindler (portrayed by Liam Neeson) who ultimately saved the lives of more than a thousand Polish Jews. The film, shot in black-and-white in Poland, has an air of authenticity as Spielberg's attention to detail—from the characters' distinctly Polish appearance to Hebrew prayers—sets this film apart from the usual Hollywood fare. The audience is introduced to an ensemble of Polish Jews, and as the story unfolds, Schindler's efforts to save them from extermination becomes the focal point.

Spielberg's experiences in creating this film led him to establish the Shoah Foundation, an institution devoted to chronicling on film the testimonies of Holocaust survivors. *Shoah* is the Hebrew word for "destruction"; it has come into prominence as a preferred word to Holocaust, which means "sacrifice consumed by fire" (from the Greek word *holos-kaustos*). According to the Shoah Foundation website, over 52,000 visual testimonies from 56 countries in 32 languages have been recorded. Although Spielberg did not personally experience World War II, he chose to use his recognized filmmaking skills to create a moving pictorial archive of the Holocaust's survivors.

The Pianist

One of the most recent films to dramatize the true story of a Holocaust survivor is *The Pianist* (2002), directed by Roman Polanski. Polanski, born Raimund Liebling, the son of Polish Jews, was initially approached to film *Schindler's List,* but he declined the offer, insisting that making such a movie would be too personally wrenching for him as a survivor of the Kraków ghetto. *The Pianist* is based on Wladyslaw Szpilman's biography written in 1946. Szpilman (played by Adrien Brody) was a classically trained pianist who narrowly escaped deportation to a concentration camp and survived the war through the help of Polish Catholics and the Jewish resistance.

Polanksi drew on his own experiences of survival in making the film. As a ten-year-old, he had escaped the Kraków ghetto when his father took him to a barbed-wire fence near the SS guardhouse and, cutting the wire, pushed his son through the opening, with strict instructions to go to the home of a nearby family.

Oskar Schindler was a real-life German entrepreneur who outmaneuvered the Nazis and saved the lives of over 1,000 Polish Jews during the Holocaust. Here, director Steven Spielberg, on the set of *Schindler's List,* watches two actors. [JAMES DAVID/CORBIS SYGMA]

When the frightened Polanski found no one at home, he returned to the guardhouse area, only to see his father being led away by the SS. The father implores the young Polanski to "get away," a moment frequently mirrored in *The Pianist* as Szpilman repeatedly gets away from the Nazis. After the war Polanksi learned that his pregnant mother had been killed in the Auschwitz gas chamber. He was later reunited with his father, who survived a labor camp. According to Szpilman's son, his father had once claimed, "No other director could make this film." Szpilman died before seeing the finished product.

Conclusion

A motion picture has the power to impose its version of factual events on one's conscience. It is conceivable that the director who has an emotional investment in a film's message will not be as likely swayed by the demands of the box office. However, the film industry is one area of "show business," and often to fund "the show," it is necessary to bend to the demands of "the business." This is a heavy burden for any filmmaker wishing to tell the story of mass murder and human rights violations. Although the majority of filmgoers are unlikely to attend documentaries on this subject, any student of history would be wise to see archival footage of these events. To some extent, the admonition of survivors, that to make these stories "artistic" is to betray those that perished, is reasonable. But human nature being what it is, to look away would be an even greater evil. Thus, the courageous artists who seek to portray genocide and crimes against humanity are to be admired for their attempts to speak the unspeakable, to shed light on the darkness in hope that such atrocities will never be repeated.

SEE ALSO Drama, Holocaust; Films, Armenian Documentary; Films, Armenian Feature; Films, Eugenics; Films, Holocaust Documentary

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Marlene Shelton

Films, Eugenics

Eugenics, "the wellborn science," was a staple of sociologic and intellectual inquiry during the late nineteenth century. Springing from social Darwinism and the social theories of Sir Francis Galton in England, eugenics became first a philosophy and then a movement. One of its foundations was a belief in human perfectablity. As a discipline, eugenics overlapped with many other disciplines. Eugenics-related discourse took in discussion of criminal behavior, anthropology, immigration policy, IQ testing, and racial theory. In approximately thirty countries in which a burgeoning eugenics movement took root, government policy came under the sway of the movement's basic principles of racial superiority, which in turn would provide a philosophic rationale for genocide. Clarence Darrow, Helen Keller, John D. Rockfeller, Andrew Carnegie, and E. H. Harriman were unable to see the implications of eugenics principles and to recognize the slippery slope onto which they had climbed when they espoused some of these principles.

Films that strove to indoctrinate audiences with a eugenics way of thinking would document and reinforce—but eventually expose as pseudoscience—eugenics ideologies and practices. In the United States the films of this kind that were produced during the height of that country's eugenics movement (the first two decades of the twentieth century) brought to the national fore the controversial issues of mandatory sterilization and euthanasia. In Germany the Third Reich, building on the eugenics-related research and new legislation that were happening in the United States, would use the medium of film to propagate the claim of Aryan superiority and biological perfectability and to advocate that the infirm and the disabled were a burden on societies. In the 1980s and 1990s in the United States, a new focus on eugenics history was becoming evident, and eugenics history became popularized; during that period several documentary films that delineated this history were made.

One of the first U.S. films to promote a eugenics philosophy and to advocate "euthanasia" for disabled persons was *The Black Stork* (1917), written by Hearst Corporation reporter Jack Lait. The film was aggressively promoted by Chicago surgeon Dr. Harry Haiselden (who plays a eugenics-oriented doctor much like himself in the film), one of the most ardent advocates of eugenics in the United States at that time. Prior to the making of the film Haiselden had gained notoriety when he refused to operate on a sick child who had been classified as "defective." Although Haiselden was never found guilty of charges of homicide that had been brought against him for his medical "euthanizing" of infants with disabilities, he was expelled from the Chicago Medical Society.

In the film that is based on Lait's "photoplay," Dr. Dickey (Haiselden) counsels Claude and his wife Anne. Claude has "tainted blood" (a sexually transmitted disease). Anne has just given birth to a severely disabled child. Dr. Dickey advises euthanasia for the child. The child's mother has a dream in which the child grows up, becomes a criminal, and kills the doctor who allowed him to live. The couple allows the child to die. The unequivocal message of *The Black Stork* (which ends with the child's soul being welcomed into heaven by Jesus Christ) is stated in the film by Dr. Dickey: "There are times when saving a life is a greater crime than taking one."

The Black Stork was a popular sensation in 1917 and played in movie houses throughout the United States. It is perhaps worth noting that the film was released almost on the heels of the appearance in theaters of D. W. Griffith's racist *Birth of a Nation* (1915). Martin Pernick, in his volume *The Black Stork: Eugenics and the Death of "Defective" Babies in American Medicine and Motion Pictures Since 1915,* expounds on the historical

and moral climates in which this eugenics film (which is both fiction and documentary) was created.

An unusual film made in the United States in the 1930s (a time when the eugenics movement was waning in that country) is producer Brian Foy's *Tomorrow's Children* (1934). In the film the Mason family is composed of mental and physical "misfits"—with its alcoholic, club-footed, and retarded members (as judged by society and the law). Alice, one of the healthier members of the Mason family, wishes to marry Jeff, but a court rules that she must first be sterilized. Advocates for Alice's sterilization cite the infamous phrase, "Three generations of imbeciles are enough"—part of the U.S. Supreme Court decision (delivered by Justice Oliver Wendell Holmes) in *Buck v. Bell* (1927), in which the decision by another judge that "feebleminded" Carrie Buck was required to undergo surgical sterilization was upheld. At the last minute Alice is spared sterilization because Mrs. Mason confesses that Alice is not her biological daughter. The film dealt with the topic of involuntary sterilization at a time when twenty-seven U.S. states had passed laws permitting the involuntary sterilization of individuals deemed "socially unfit." Although Alice is saved from sterilization, the film asserts that sterilization is morally acceptable and legal because of the threats to society that sterilization eliminates.

Selling Murder: The Killing Films of the Third Reich (1991) is a documentary film, written by Michael Burleigh, on the Nazi euthanasia programs of the 1930s; it opens and closes with tributes to the victims of those programs. The film was inspired by the then-recent discovery of a cache of Nazi propaganda films of the 1930s—films that strove to be didactic about the racial and biological rationales that the Nazis had used to justify the elimination of the "unfit," the disabled, and others who had received the classification "life unworthy of life." *Was du Erbst* (What You Inherit), *Erb Krank* (The Hereditarily Ill), *Opfer der Vergangenheit* (Victims of the Past), and *Das Erbe* (The Inheritance) were films that showed actual images of disabled persons and promoted the thesis that the disabled are economic burdens to societies. In the United States Harry Laughlin, a biologist and a powerful figure in the U.S. eugenics movement (and for twenty years the director of the Cold Spring Harbor Eugenics Center) would take these German eugenics films on the road, showing them to the American public (including high school audiences)—among whom he found great support and admiration for the ideas contained therein.

Included in the film *Selling Murder* is a segment on two German films that were commissioned in 1939 as part of the Reich's pursuit of euthanasia practices at six extermination centers. *Dasein ohne Leben* (Existence without Life) and *Geisterkrank* (The Mentally Ill) advocate for euthanasia and attempt to provide justification for euthanasia policy. Also included in *Selling Murder* is a discussion of the sentimentally propagandistic *Ich klage an* (I Accuse). A German feature film, it was made in 1941 by German actor and director Wolfang Liebeneiner. It is about the decision of an established pianist to be euthanized at a time when her physical condition is rapidly deteriorating. The film, however, did not distinguish between voluntary euthanasia and euthanasia mandated by state policy.

With film clips and on-site visits by survivors, *Selling Murder* provides many insights into the pseudoscience and eugenics-related policies of the Third Reich. The leaders of the Reich, having installed their programs of sterilization, forced euthanasia, and genocide (many of which were under the sponsorship of Operation T-4), hoped to create a biocentric state in which the disabled would have no recourse to any kind of protection and no inherent value.

Stephen Trombley's film *The Lynchburg Story* (1994) was in part a product of the aforementioned interest in eugenics history that came into being in the United States in the 1980s and 1990s. The film tells the story of the Lynchburg Colony for the Epileptic and the Feebleminded in Lynchburg, Virginia. From 1927 to 1972 more than 70,000 Americans were sterilized in the 27 U.S. states in which forcible sterilization was permitted. Of these, more than 8,000 persons (deemed "unfit to reproduce") were sterilized at the Lynchburg Colony. The film makes clear that it was the United States (and not Germany) which devised the original blueprint of eugenics-related policy in the Third Reich. In Trombley's film, which includes testimony from survivors, the tragic stories of the victims of the Lynchburg Colony unfold.

A documentary film by the author of this entry, *In the Shadow of the Reich: Nazi Medicine* (1996), describes the many connections between the eugenics movement in the United States and the Third Reich's campaign against "undesirables." As German medical scientists and bureaucrats built on U.S. eugenicist theory and practice, scientists and intellectuals of both nations praised one another for the "advances" each country was making for the betterment of their respective societies.

Peter Cohen's documentary film *Architecture of Doom* (1991) provides a striking account of how subjective standards of physical beauty became a criterion of the selection process that was part of the German agenda of "cleansing" society of those whom German political leaders judged to be alien to their utopian vi-

sion. His *Homo Sapiens 1900* (2000), another documentary film, is an indictment of the Nazi concept of racial purity—and of similar concepts that were once present in the United States, Sweden, and Russia. Cohen's historical and sociological analyses of concepts of racial superiority are most insightful, as is his argument that modern science can sometimes become science in the service of state policy, which is no longer science.

The documentary film *After Darwin: Genetics, Eugenics, and the Human Genome* (1999), produced by Arnie Gelbert of Mundo Vision, exposes the dark side of many scientific and technological advances. The film delves into the history of the collective fascination with eugenics principles, and then brings the viewer up to date as it raises ethical concerns that attach to contemporary advances in science and technology.

These films dealing with eugenics not only provide a window into the all too inglorious past, but also provoke one to raise a cautious eye when technology may advance more rapidly than morality.

SEE ALSO Film as Propaganda; Films, Dramatizations in; Films, Eugenics; Films, Holocaust Documentary

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John J. Michalczyk

Films, Holocaust Documentary

Documentary films about the Holocaust are generally well-researched and precise chronicles of the inordinately tragic events in Europe from 1933 through 1945. They include films of the Ministry of Propaganda of the Third Reich, made at the time these tragic events were taking place, and documentary studies of these events that appeared years afterward. Each film has its own historical context, values, and sociopolitical and moral impact.

Origins of Genocide

One can trace the sources of some of the Third Reich's anti-Semitic and genocidal policies to eugenics, the early twentieth-century pseudo-science and international social movement. That some "races" are superior to others was a doctrinal element of this movement. *Selling Murder: The Killing Films of the Third Reich* (1991), a film written by Michael Burleigh and directed by Joanna Mack, chronicles Nazi propaganda films of the 1930s. It has unsettling clips from *Erb Krank* (The hereditarily ill, 1935), which provide a basis for understanding Germany's efforts to create a biological new world order—an agenda that included the elimination of persons with disabilities. Peter Cohen's documentary films *Architecture of Doom* (1991) and *Homo Sapiens 1990* (2000) both delineate how, in Germany, "aesthetic" cleansing both in art and human form, as well as "racial purity," would become rationales for the mass murder of the weak and marginalized. *In the Shadow of the Reich: Nazi Medicine* (1996), a documentary film by the author of this article, places the origins of eugenics-related medical practices used by the Nazis and experimentation with human subjects in the involuntary sterilization laws that were passed in the United States in the 1920s.

Third Reich Propaganda

Joseph Goebbels became the Reich Minister of Propaganda and Enlightenment in 1933, and subsequently all German-made films were scrupulously censored by his office—as part of the effort to promote a collective vision of an "Aryan" Germany and its great destiny. Leni Riefenstahl's *Triumph of the Will* (1935) and *Olympia* (1938), the most well known of the Nazi propaganda films, are about the Nazi party rally in Nuremberg in 1934 and the 1936 Olympics in Berlin, respectively. Merging propaganda and art, the films—as propaganda pieces—have few rivals. Less well known is Riefenstahl's *Victory of Faith* (1933), about the (more seminal) 1933 Nazi party rally in Nuremberg. Providing direct evidence of the propaganda campaigns of the Third Reich are *Die Deutsche Wochenschau* (weekly newsreels produced in Nazi Germany) and the large number of films about these campaigns that have been made in Great Britain and the United States. Among films that document the Nazi rise to power, two stand out: *Campaign in Poland* (1939), a Nazi-produced propaganda film that strove to justify the German invasion of Po-

land, and *For Us* (1937), a film about the sixteen German demonstrators who died during the failed Munich Beer Hall Putsch of 1923 (Hitler's first attempt to gain power in Germany). More pernicious is the viscerally anti-Semitic film *The Eternal Jew* (1940), which compares Jews to rodents that have infested civilized society. In general, the Nazi documentaries portray Hitler and the Third Reich as saviors of the German people—a superior race destined for eternal glory.

Overview of the Holocaust

Several films provide an overview of the Nazi Holocaust. One of the earliest of these is Alain Resnais's *Night and Fog* (1955), filmed within a decade of the events and two decades before the U.S. production *Holocaust* (1978), the made-for-television miniseries. *Night and Fog,* which shows footage of abandoned concentration camps (such as they were in 1955) mixed with wartime footage of the camps, chronicles the cruelties of the Holocaust. It documents the rise of the Nazi Party and the horrors of the concentration camps—from the round-ups of prisoners to the camp experiences. The film's closing sequence consists of footage from the 1946 Nuremberg Trials.

"Genocide," written by Michael Barlow, was an episode within the British made-for-television series *World at War* (1975), narrated by Laurence Olivier. It furnishes a basic understanding of the forces that produced the Holocaust.

Claude Lanzmann's nine-hour documentary epic *Shoah* (1986) is a provocative study of the Holocaust that includes interviews with eyewitnesses of many nationalities. The film, which does not use archival footage, blends heartrending testimony from interviewees, who represent a wide array of perspectives that divulge the horrors of the camps.

The Cross and the Star: Jews, Christians, and the Holocaust (1992), a film by the author of this article, examines how religious, political, and cultural anti-Semitism can be traced from the Gospels, through the Crusades and Inquisition courts, to Auschwitz.

Resistance

By the time the brutal Nazi war machine was fully in operation, resistance forces in several European nations had come into being. Resistance took many shapes—spiritual, political, and military. Marcel Ophuls's controversial documentary *The Sorrow and the Pity* (1970) tells the story of France under Nazi occupation, at times confronting what some historians considered the "myth" of the resistance. Interviewed in the film are French men and women who found themselves performing heroic acts for the Free French movement, as well as those who collaborated with the Nazis. Aviva Kemner's *Partisans of Vilna* (1986) is an account of the lesser-known Jewish resistance movement in Eastern Europe; it shows Jews in an active role, taking on their enemies, and challenges the more prevalent view of Jewish victimization and passivity during the Holocaust. Haim Gouri's *Flames in the Ashes* (1985), the Israeli educational film *Forests of Valor* (1989), and Chuck Olin's *In Our Own Hands* (1998) poignantly document the generally underrecognized Jewish resistance.

Rescue

The Foundation for Moral Courage (formerly Documentaries International) produces educational films and teachers' guides. It has produced a series of films about rescue efforts during the Holocaust; the films include *The Other Side of Faith* (1990) and *Zegota* (1991), both dealing with rescue efforts that took place in Poland; *Rescue in Scandinavia* (1994); and *It Was Nothing—It Was Everything* (1998), about the rescue of Jews in Greece during the Holocaust.

Two of the better-known films about rescue efforts during the Holocaust are Alexander Ramati's *The Assisi Underground* (1985) and Pierre Suavage's *Weapons of the Spirit* (1988). Both films illustrate how the altruism of private individuals saved lives. *The Assisi Underground* is about rescue efforts by Italian priests. *Weapons of the Spirit* is the story of a small town in France, Le Chambon-sur-Lignon, inhabited mostly by French Protestants (descendants of Huguenots), in which villagers risked their lives to shelter and hide approximately five thousand Jews.

Two films that focus on the rescue of children are Mark Jonathan Harris's *Into the Arms of Strangers* (2001) and Melissa Hacker's *My Knees Were Jumping: Remembering the Kindertransports* (1998).

The Ghetto Experience

Roman Polanski's Oscar-winning feature film *The Pianist* (2003) and Jon Avnet's television miniseries *Uprising* (2001), both fictional accounts of historical events, brought about a renewed interest in the Warsaw Ghetto and its resistance movement. A documentary film entitled *The Warsaw Ghetto* (1969), a BBC production, studies the daily life and the struggle to survive within the Warsaw Ghetto during World War II. David Kaufman's documentary film *From Despair to Defiance: The Warsaw Ghetto Uprising* (2002) tells the story of that uprising via the personal accounts of veterans of the Warsaw Jewish Fighting Organization. A related documentary film is Alan Adelson and Kathryn Taverna's *Lodz Ghetto* (1989), about the Nazi occupation of the Polish city of Lodz.

Concentration Camps

Produced by the Nazi Ministry of Propaganda of the Third Reich, *Theresienstadt* was shot in 1944—a film that (the Nazis presumed) would be used to prove to the International Red Cross and the world that Jews were being well treated in "relocation camps." The film purports to show the wholesome daily life of Jews in Theresienstadt (in Czech, Terezín), a "city" established by the Nazis in the former Czechoslovakia. The film was an elaborate hoax. Every scene in the film is staged. Upon completion of the film, most of its cast of prisoners were shipped to Auschwitz. *The Führer Gives the Jews a City* is a 1991 reconstruction of the film. Malcolm Clarke and Stuart Sender's *Prisoner of Paradise* (2002) tells the tragic story of Kurt Gerron, a German-Jewish cabaret and film star—and the director of *Theresienstadt*.

The Memory of the Camps was filmed by the British Army in 1945 (and stored in London's Imperial War Museum until 1984); it is a compilation of original documentary footage taken inside the concentration camps immediately following Germany's surrender and the liberation of the camps. Alfred Hitchcock served as one of the consultants. The film was never shown until 1985, when it was broadcast by PBS Frontline.

A camera crew accompanying the Russian Army filmed the liberation of Auschwitz in January 1945; the Russians excepted, the armies of the United States and Great Britain (with their camera crews) were the first to document the horrors of the camps. In the wake of liberation, the U.S. government sponsored several films about the camps and the freeing of prisoners, including *Nazi Concentration Camps* (1945), *Death Mills* (1945), and Henri-Cartier Bresson's *The Reunion* (1946). Bresson, a prisoner of war, made the film for the U.S. Information Service.

Among the films that are about the experiences of other (non-Jewish) prisoners in concentration camps, two stand out. The Watch Tower Society's *Jehovah's Witnesses Stand Firm Against Nazi Assault* (1996) deals with the persecution of Witnesses in the camps, and Rob Epstein and Jeffrey Freidman's *Paragraph 175* (1999) recounts the persecution of homosexuals.

Postwar Narratives

In the wake of the Nuremberg Trials, the U.S. government produced *Nuremberg* (1946), an account of the actual trials, which includes the footage of the camps at liberation that was shown at the trials, as evidence of German crimes against humanity. Marcel Ophuls's film diptych about the Nazi crimes examines the phenomenon of sadism. The films that make up this diptych, *The Memory of Justice* (1976) and *Hotel Terminus: The Life and Times of Klaus Barbie* (1988), uncover some aspects of the psychology of human barbarism.

Displaced: Miracle at St. Ottilien (2002), another film by the author of this article, and Mark Jonathan Harris's *Long Road Home* (2002) show evidence that, immediately following the war, the world's populations became rapidly disinterested in the plight of persons displaced by the war. The films illustrate how the survivors of the Nazi genocide were able to begin life anew in the state of Israel, a reluctantly welcoming America, or a postwar Nazi-free Europe.

SEE ALSO Films, Dramatizations in; Films, Eugenics

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Final Solution see Explanation; Historiography, Sources in; Hitler, Adolf; Holocaust.

Forced Labor see France in Tropical Africa; Gulag; King Leopold II and the Congo; Labor Camps, Nazi; Slavery, Historical; Slavery, Legal Aspects of.

Forcible Transfer

The forcible transfer of children of a protected group to another group is the fifth punishable act of genocide. It originally formed part of the definition of cultural

genocide. The definition was contained in a draft by the UN Secretariat, submitted as a first step in creating the Genocide Convention that was adopted in 1948. The definition reads as follows:

> Destroying the specific characteristics of the group by (a) forced transfer of children to another human group; or (b) forced and systematic exile of individuals representing the culture of the group; or (c) prohibition of the use of the national language even in private intercourse; or (d) systematic destruction of books printed in the national language or of religious works or prohibition of new publications; or (e) systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersal of documents and objects of historical, artistic, or religious value and objects used in religious worship.

The UN General Assembly rejected the concept of cultural genocide, holding that it was not consonant with the principal aim of the law of genocide. The aim of that law is to protect the right of national, ethnic, racial, and religious groups to physical existence as such. The acts that are listed in the Genocide Convention as acts of genocide are: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group. The list is exhaustive and, with the exception of the forcible transfer of children, all the acts contained therein are physical. Generally speaking, therefore, the law of genocide is not concerned with cultural, economic, educational, linguistic, and political or social continuity. These concerns are protected elsewhere, by laws pertaining to human rights and minority rights.

The forcible transfer of children was added to the list of acts of genocide at the insistence of Greece after the UN General Assembly had rejected the inclusion of cultural genocide in the Convention. Its inclusion was achieved by a minority vote. Only twenty-five member states voted for its inclusion, whereas thirteen opposed it and thirteen abstained from voting.

The lukewarm support for including the forcible transfer of children among the acts of genocide may be explained by the fact that it is out of harmony with the other listed acts, whose common denominator is the physical destruction of the protected groups. Forcibly transferring children from one group to another results in the dispersal of the original group's members. It weakens their cohesion as a group, but it does not take away their physical characteristics. An African or Chinese remains African or Chinese, wherever he or she may be. The transfer, however, does make the transferred members of the group lose their cultural or linguistic identity by forcibly assimilating them into other groups. If those other groups speak different languages, practice different religions, or possess different cultures, transferred children will be forced to do likewise. Strictly speaking, this would constitute genocide only if the purpose of the transfer were to subject the children to slave labor or other forms of physical or mental harm. Such treatment would weaken them physically and would amount to subjecting them to conditions of life calculated to bring about their physical destruction, in whole or in part.

It must, however, be conceded that the forcible transfer and isolation of children from their original group frequently makes it difficult for them when they become of age to marry people of their original group, for they may no longer share the linguistic, religious, cultural, or social traditions with that group. They are thus unable to reproduce their own kind and to perpetuate their group. As a direct result, the group itself will gradually dwindle in number and ultimately become extinct. The inclusion of the forcible transfer of children as an act of genocide is designed to prevent this eventuality.

Key Concepts

There are several key conceptual elements that underpin the assignment of forcible transfer to the broader category of genocidal acts. These concepts include the definition of "child," the characteristics that define an act as forcible transfer, the definition of "protected groups," and the broader issue of the intent behind the transfer of children from their group of origin to another group.

Definition of Children

Neither the Genocide Convention nor the statutes of ad hoc tribunals or the International Criminal Court defines who a child is. The statute of the International Criminal Court that outlaws the conscription or the enlisting of children into armed forces confined the crime to "children under the age of fifteen years" (Article 8(2), paragraph (e) (viii)). The U.S. proposal to adopt the age of fifteen as the defining criterion of children within the Genocide Convention was rejected, possibly because the UN Convention on the Rights of the Child, to which most states were already party, used the criterion of "every human being *below* the age of 18 years" in defining who qualified as a child. State representatives therefore took the view that the definition of what constituted a child was already settled and did not want to reopen it. In keeping with that understanding states

that were party to the Rome Statute subsequently accepted the age of eighteen as the cut-off point in the definition of "child" and incorporated it as one of the elements defining the crime of genocide (Article 6(e)).

The Genocide Convention and the statutes of ad hoc tribunals and the International Criminal Court specifically refer to the forcible transfer of *children*. Does this mean that more than one child must be transferred for such transfer to qualify as an act of genocide? Not necessarily so. The transfer of even one child qualifies as an act of genocide if it is shown to be manifestly part of a master plan to destroy in whole or in part a protected group. It would be even more so if it were coupled with other acts of genocide. However, before a person who is charged with genocide on account of the forcible transfer of children can be found guilty of the crime, the prosecution must prove that the defendant knew or ought to have known that the persons being transferred were children as defined above. Such proof may not always be easy, particularly when large numbers of children are involved. For that reason it would be sufficient for the prosecution to prove that the accused knew or ought to have known that at least some of the people transferred were under eighteen years of age.

Forcible Transfer

Transfer means removing children from their parents or guardians and placing them in the custody of persons belonging to groups other than the one in which they had been raised up to the time of the transfer. It also includes removing the children from their physical place of residence, such as a neighborhood, village, district, or community inhabited by members of the child's group and sending them to another location that is inhabited by members of different groups. During the meetings of the Preparatory Committee for the International Criminal Court. the United States proposed that forcible transfer be restricted to children in "lawful residence." The Preparatory Committee rejected the proposal, contending that it is immaterial that the place of residence from which the children are transferred is unlawful, for the children are not responsible for their place of residence. Accepting the U.S. proposal would have denied legal protection to children of illegal immigrants, for example. Instead, the committee held that what is material is that the children are uprooted from the custody of their parents or guardians or from their actual place of residence.

Not only must there be a transfer, the transfer must be forcible. "Forcible" transfer means transfer by force or by compulsion, without the consent of the parents or guardians of the affected children. It is no defense to say that the children consented for, in law, children lack the capacity to give such consent. It must also be stressed that the term "forcible" is not restricted to physical force. It also includes the threat of force and coercion caused by fear of harm or oppression to the children or to their parents, guardians, or others. It also includes artifice and trickery, as well as psychological force exerted on the children, parents, guardians, or others connected with them.

Protected Groups

For purposes of the genocide law the children who are forcibly transferred must belong to a particular national, ethnic, racial. or religious group. These are the only groups that are protected under the law of genocide. One reason for restricting protection to these groups is that membership in the groups is involuntary. It is inherited, not opted for by an individual. Another reason is that such groups are relatively stable and easily identifiable. The only group that does not meet these criteria and is therefore out of place is the religious group. Membership in this group, as is the case with respect to cultural, social, or political groups, is voluntary. One may join or abandon the group as his or her conscience dictates. It is true that a child may be born into a religion, but on reaching the age of discretion, he or she may repudiate that religion and embrace another, or give up belief altogether. In the modern era of religious liberty, it can no longer be assumed that children will necessarily cling to their parents' or ancestors' religious beliefs.

The Concept of Intent

It is not enough to show that there was a forcible transfer of children from their group to another. Such transfer, in itself, is only what is known in law as the *actus reus*. To prove a charge of genocide, it must simultaneously be shown that the transfer was done with the specific intent of destroying the group, in whole or in part, and that the transfer was part of that plan. This aspect of intent is known in law as the *dolus specialis*. This point is well illustrated by the Australian case of *Alec Kruger & Ors; George Ernest Bray & Ors v. Commonwealth of Australia*. The plaintiffs in the case were aboriginal Australians, members of the so-called "lost generation." They alleged that, when they were children, they were forcibly removed from their home communities in the Northern Territory and forcibly transferred into the custody of the Chief Protector of Aborigines (or of his successor in function, the Director of Native Affairs). Thereafter they were denied contact with their families and kept in aboriginal reserves. Section 6 of the 1918 Aboriginals Ordinance under which they were so removed provided as follows:

Miskito, forcibly relocated to refugee camps during the U.S.–led Contra War in the 1980s, prepare for the return to their remote homeland along Nicaragua's northern coast. [BILL GENTILE/CORBIS]

1. The Chief Protector shall be entitled at any time to undertake the care, custody, or control of any aboriginal or half-caste, if, in his opinion, it is necessary or desirable in the interests of the aboriginal or half-caste for him to do so, and for that purpose may enter any premises where the aboriginal or half-caste is or is supposed to be, and may take him into his custody.
2. Any person on whose premises any aboriginal or half-caste is, shall, on demand by the Chief Protector, or by any one acting on behalf of the Chief Protector on production of his authority, facilitate by all reasonable means in his power the taking into custody of the aboriginal or half-caste.
3. The powers of the Chief Protector under this section may be exercised whether the aboriginal or half-caste is under a contract of employment or not.

These provisions were supported by further conditions set forth in Section 7 of the same Ordinance, which read:

1. The Chief Protector shall be the legal guardian of every aboriginal and of every half-caste child, notwithstanding that the child has a parent or other relative living, until the child attains the age of eighteen years, except while the child is a State child within the meaning of the Act of the State of South Australia in force in the Northern Territory entitled The State Children Act 1895, or any Act of that State or Ordinance amending or substituted for that Act.
2. Every Protector shall, within his district, be the local guardian of every such child within his district, and as such shall have and may exercise such powers and duties as are prescribed.

Under the Ordinance it was an offense for an aboriginal or half-caste child to refuse to be removed. Only in certain specific circumstances could a child be exempted from compulsory removal to the reserves or other state-run institutions. These circumstances included children who were lawfully employed, who held permits that authorized them to be absent from aboriginal reserves or institutions, or females lawfully married

to and residing with a husband who was *substantially* of European origin or descent.

Alec Kurger & Ors; George Ernest Bra & Ors v. Commonwealth of Australia

In the case of *Alec Kruger & Ors; George Ernest Bray & Ors v. Commonwealth of Australia,* the plaintiffs sought, among other things, a declaration that the provisions of the 1918 Aboriginals Ordinance were invalid. They contended that the ordinance was contrary to an implied constitutional right to freedom from any law or executive act that, among other things, constituted or authorized the crime of genocide. In support of their case they cited several provisions contained within the Genocide Convention, which they argued were violated by the Aboriginals Ordinance. These included:

1. The removal and transfer of children of a racial or ethnic group in a manner which was calculated to bring about the group's physical destruction in whole or in part;
2. Actions which had the effect or likely effect of causing serious mental harm to members of a racial or ethnic group;
3. The deliberate infliction on a racial or ethnic group conditions of life calculated to bring about its physical destruction in whole or in part.

The Australian Parliament had passed the Genocide Convention Act in 1949, which had authorized the government to ratify the UN Convention. However, by as late as 1997 the Australian Parliament had not gotten around to enacting legislation to implement the Convention. In the case of *Alec Kruger & Ors; George Ernest Bray & Ors v. Commonwealth of Australia,* this had significant consequences. The court held that:

> [T]he Convention has not at any time formed part of Australian domestic law. . . .[I]t is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute. Where such provisions have not been incorporated they cannot operate as a direct source of individual rights and obligations.

The court did acknowledge that the rules of legal interpretation allowed preference to be given to legal interpretations that accorded with the country's international obligations. However, the court hastened to say that it would not accord such a preference where the laws to be interpreted had been enacted before the international obligations had been assumed. This was the case of the Aboriginal Ordinance. The Ordinance was passed in 1918, long before Australia became party to the Genocide Convention in 1951.

The court could nonetheless have interpreted the provisions of the Aboriginal Ordinance in light of Australia's international obligations by referring to customary international law rather than by referring specifically to the Genocide Convention. After all, genocide was already forbidden under customary international law at the time that the Aboriginals Ordinance was enacted. The court, however, found difficulty here as well, this time based on problems inherent in the definition of genocide as a crime. According to the court, the transfer that the Aboriginals Ordinance authorized lacked the requisite mental element of "intent to destroy" the children's racial or ethnic group. Rather, the court held that the forcible transfers authorized by the Ordinance were intended "for the good and welfare" of the aboriginal population. The court based this interpretation on the conditions that prevailed at the time of the Ordinance's passage. At that time, the population of the aboriginals in the Northern Territory was rapidly decreasing due to disease and unsanitary conditions. The policies and measures adopted by the government of Australia were supposedly designed to rescue the aboriginal population from extinction.

The court did, however, admit that the measures adopted under the Aboriginals Ordinance were ill advised and mistaken, particularly by contemporary standards. It acknowledged that the measures led to the physical abuse, humiliation, dehumanization, and traumatization of generations of the aboriginal people. They also callously disregarded familial unity and cultural cohesion in the aboriginal community. They ultimately resulted not only in the cultural but also in the physical extinguishment of the group as a race. Nevertheless, according to the court, "a shift in view upon the justice or morality of those measures taken under an Ordinance which was repealed 40 years ago does not of itself point to the constitutional invalidity of that legislation and to the legal basis of the plaintiffs' claim." For all these reasons, the court dismissed the case.

Nevertheless, the case of *Alec Kruger & Ors; George Ernest Bray & Ors v. Commonwealth of Australia,* and others that followed, served to awaken national consciousness over the injustice done to the aborigines in Australia. At the level of the state legislatures, such cases led to the passage of motions acknowledging the inequity and cruelty of Australia's treatment of her aboriginal population and offering apologies for such treatment. For instance, the State Legislative Assembly of New South Wales passed a motion in 1997 that apologized "unreservedly" to the aboriginal people of Australia for the systematic separation of generations of Aboriginal children from their parents, families, and communities. It also acknowledged and regretted the

assembly's role in enacting laws and endorsing policies of successive governments whereby "profound grief and loss have been inflicted upon Aboriginal Australians."

The Native American Experience

Similar to the case of the Australian Aborigines is the experience of Native Americans in the United States during the nineteenth century. The Removal Act of 1834 authorized the forcible removal of American Indians from desirable land to hostile environs. One of the results of the act came to be known as the "Trail of Tears," in the course of which aboriginal peoples were removed from Georgia to Oklahoma. Thousands of them died during the difficult march to their newly assigned territory. At the time, a U.S official asserted that, "[t]he American Indian is to become the Indian American," implying that the motive behind the forced transfer was to facilitate education, "civilization," and assimilation. Again, the charge of genocide is difficult to make in this case, since assimilation is not synonymous with physical destruction. As with the example of Australian Aborigines, the requisite mental element of "intent to destroy" the group as such, in whole or in part, was lacking. Therefore the transfers, though catastrophic in some instances, did not amount to genocide.

However, although the U.S. government's forcible transfers of Native Americans may not have qualified as genocide, they could qualify as crimes against humanity and subsumed under "deportation or forcible transfer of (a) population," according to the standards set forth by the International Criminal Court. This species of crime against humanity is defined as the "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law." The other element that is needed to qualify the transfer as a crime against humanity is that the transfers must be carried out "as part of a widespread or systematic attack" directed against a civilian population. It would appear that this was the case with respect to the transfers forced upon Native Americans.

Forcible Transfer and Forced Labor

In his 1996 Nobel Prize–winning book *Fateless,* Imre Kertesz tells the story of Jewish boys from Hungary who were forcibly taken to Germany to work in labor and concentration camps. For instance, Georg Koves, the main character in the book, was described as a "laborer in training." He was only fourteen years of age when he and many other boys were snatched from buses and taken to Germany. Once there, they were subjected to unspeakably cruel and inhumane treatment. Anyone who did not qualify to work, whether due to age, ill-health, or pregnancy, was killed in the gas chambers. Those who were not killed at the outset faced hunger and privation. Koves was so desperate for food that, in his words:

> [I]f I did not eat wood, iron, or stones, it was only because they were not chewable or digestible. For instance I did try to eat sand, and if I spotted some grass, I didn't hesitate for a moment. Unfortunately grass was difficult to find in the factory and in the camp (p. 120).

In spite of their deplorable state of health, Koves and the boys who shared his fate had to work. If any complained of being tired or hungry, they would have been subjected to beatings, kicks, and other forms of physical and psychological torture. Any who dared to complain of sickness were sent to the gas chambers. According to Koves, "Everyone works; don't get tired, don't get sick" (p. 62).

Kertesz's account of the treatment of the Hungarian boys by the Nazis amounted to genocide in several respects. Those who were to unable to work were actually and deliberately killed. Real physical and mental harm was inflicted on many of them. The deliberate reduction of food rations, leading to the boys' virtual starvation, also amounted to the "infliction of conditions of life calculated to bring about the destruction of their group," as invoked in the Genocide Convention.

Nevertheless, it is debatable whether the forcible transfer of Hungarian boys to Germany in and of itself amounted to genocide. This is so because the purpose of their transfer to Germany was not that they be absorbed into another group. Rather, the principal purpose of their transfer was to facilitate their contribution to Germany's war machine through forced labor. Indeed the inhumane and barbaric treatment that the German authorities subjected them to discounts any idea of any notion of their being absorbed or assimilated into any group in Germany.

Forcible Transfers, Genocide, and the Rights of Children

In condemning the forcible transfer of children as an act of genocide, the law is primarily concerned with protecting the larger group to which they belong. However, by such condemnation the law does indirectly protect children as a particularly vulnerable group. Children as such possess rights that are recognized and protected today under international human rights law. These rights are most concretely embodied in the 1989 UN Convention on the Rights of the Child.

Article 7 of the Convention provides that a child has "the right to know and be cared for by his or her

parents" insofar as this is possible. In Article 9, the Convention further provides that "a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine" that this should be done. The Convention assumes that, by protecting the parent-child custodial relationship, children are naturally guaranteed affection, as well as moral and material security—conditions that are vital to their physical, emotional, intellectual, and social development. Forcible transfer, by contrast, generally traumatizes children and naturally inhibits their normal physical, emotional, intellectual, and social development.

Article 8 of the Convention also provides that "the child is entitled to preserve his or her identity, including nationality, name, and family relations as recognized by law without unlawful interference." It is inhuman and deplorable to forcibly transfer children from their families, communities, and countries to groups, communities, or countries not of their choosing, even when this is done for allegedly altruistic motives, such "civilizing them." The forcible transfer of children violates their right to liberty and security of the person as well as their freedom of movement and residence, and is also an affront to their human dignity.

SEE ALSO Almohads; Australia; Residential Schools; Trail of Tears

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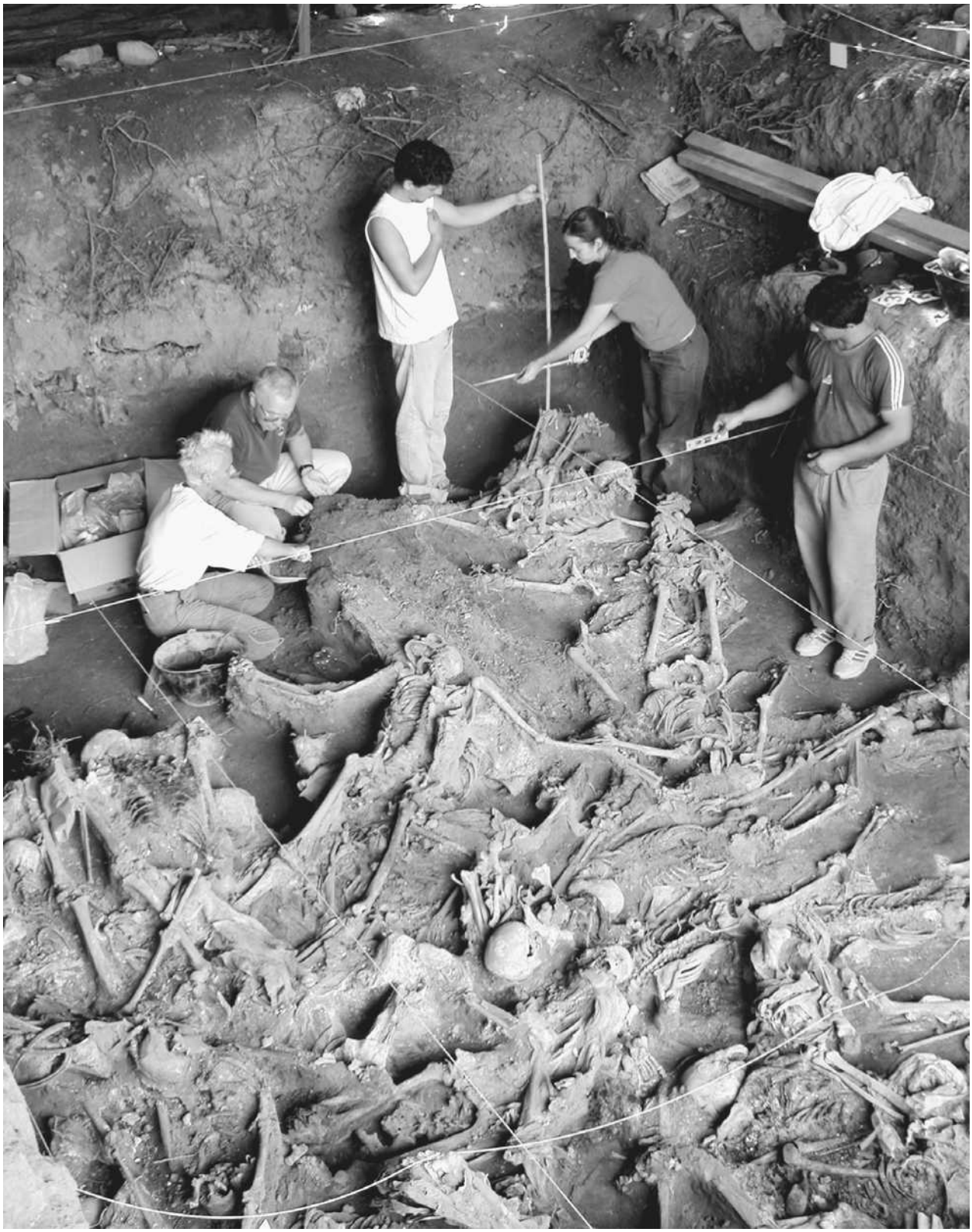
Forensics

Forensics involves a multidisciplinary team of scientists, including medical doctors, anthropologists, physicists, and odontologists (scientists specializing in teeth), who carry out precise analysis of an event and evidence related to it. Their work is geared to providing a legal body with elements that serve to support or refute a testimony or document—a letter left behind by a victim, for example. When a scientific discipline is applied to a legal proceeding, it is called a forensic science. A forensic expert is someone who undertakes a scientific investigation that provides information, which is then used in the legal process. When a scientist provides scientific information on a case, the court considers him or her an expert witness. In most cases, this scientific information comes from the analysis of physical evidence, whether biological (a cadaver, skeletal remains, a bloodstain, saliva on an envelope) or nonbiological (projectiles, synthetic fibers, and other objects relevant to an investigation).

Physical evidence can be very important in the legal process. In contrast to witness testimony, it is difficult to manipulate physical evidence to benefit any party to a dispute, since the conclusions must be measurable, and based in a series of demonstrable steps accepted by a scientific community. In other words, scientific methods are important for the resolution of a case because they provide a degree of certainty greater than that of a testimony. A witness can be submitted to pressure, lie, become confused, or forget. Likewise, the certainty provided by physical evidence is greater than that of the content of a document, which can be true or false information. On the other hand, due to the complexity of forensic evidence, the people in the best position to alter evidence are the expert witnesses themselves. For this reason, the integrity of the expert witnesses is very important, as is the independence of the investigation. In an independent investigation, the scientist works free of any pressure to draw a particular conclusion and does not depend on either party to a dispute.

Although many disciplines contribute to legal problems, some are considered "traditional" and constitute the nucleus of what are called the forensic sciences. Historically, medicine was the scientific discipline par excellence in medical-legal investigations. The forensic disciplines used most frequently are forensic pathology, forensic odontology, toxicology, forensic



Exhumation of a mass grave in the province of Cordoba, Argentina, with bodies of people disappeared in the country between 1976 and 1977, during the last dictatorship in Argentina. [ARGENTINE FORENSIC ANTHROPOLOGY TEAM]

genetics, criminalistics, and forensic psychology. Disciplines relatively new to the legal context include archaeology and anthropology, involved in the recovery and analysis of skeletal remains and associated evidence; forensic taphonomy, or the study of changes in the body following death, and its interactions with the environment, including flora and fauna (entomology), which can indicate how long a person has been buried in a location; and forensic engineering, the analysis of buildings, which can establish the causes of a fire or an explosion.

"Criminalistics," or criminalistic sciences, are dedicated to the analysis of objects, fluids, or documents found in association with a crime scene, such as cadavers, blood, semen, fingerprints, documents, bullets, and firearms. This list can be much longer depending on the circumstances of a case. One could add forensic psychiatry, which plays an important role in determining the mental health of the accused, witnesses, and accusers, or the damage inflicted on the victim of a crime.

Physical evidence is usually studied in order to answer several key questions about a crime. A forensic doctor might study a cadaver to try to establish cause of death of an individual, while a forensic anthropologist would examine the skeletal remains. An odontologist studies dentition, the unique characteristics of an individual's teeth, to identify a body or to gain information from bite marks, for example. A chemist or a biologist might analyze a blood or semen sample to establish a person's genetic profile. This combination of disciplines contributes to a more complete analysis of the available evidence. Together, they can give a prosecutor objective information about identities and about both the cause and manner of a person's death. While the cause of a death might be "gunshot wound to the head," the manner of death, or how the person died, is a separate question. Was it the result of the action of another person (homicide), self-inflicted (suicide), or accidental? Another conclusion regarding manner of death includes "natural causes," for example, an illness. When there is simply not enough information to establish circumstances, the manner of death must be declared "undetermined."

In summary, a forensic investigation is always an interdisciplinary effort, to which specialists from many fields bring methods and techniques approved by their disciplinary communities to solve a legal case.

The Forensic Sciences and Political, Ethnic, or Religious Violence

During the twentieth century legal and political concepts such as genocide, war crimes, human rights violations, crimes against humanity, and violations of international law have become everyday terms for making sense of the use of violence, such as kidnapping, torture, extrajudicial execution, displacement of populations, concentration camps, and famines generated for political reasons.

Frequently, as violent processes come to their conclusions, and sometimes while they are still in progress, victims, affected communities, other parts of society, and/or the international community demand an investigation based on the rights to truth and justice. These investigations usually include a series of objectives:

1. To know what happened to the victims
2. To establish responsibilities: Who did what to whom?
3. To assign responsibilities and to bring those responsible to court
4. To establish measures, based on knowledge of the truth, to ensure that the events do not recur, and that they are not forgotten, and to make reparations to the people affected, so that society can begin the long process of reconstruction and eventual reconciliation with its recent past

Over the course of the twentieth century the objectives of different movements in search of truth and justice have varied from one country to the next, according to their unique histories, political circumstances, the balance of forces among parties to the conflicts, and the degree of cohesion of each society. Based on the aftermath of World War II, it is possible to elaborate a kind of typology of responses to periods of political violence: special investigative commissions, such as truth commissions, national and international tribunals, and total or partial amnesty laws, among others. In general, these processes have drawn increasingly on the forensic sciences to obtain objective, impartial, and concrete information about events under investigation.

Argentina

Argentina was governed by a military junta from 1976 until 1983. In 1984 a new, democratically elected president, Raúl Alfonsín, established Argentina's Truth Commission. After nine months of work, the Commission concluded that the country's armed and security forces had "disappeared" approximately nine thousand people—illegally detained them without providing their families with any information regarding their fates.

In 1988, at the request of the families and with the permission of the judge in charge of investigations, the Argentine Forensic Anthropology Team (*Equipo Argentino de Antropologia Forense* or EAAF) began work in Sector 134. Sector 134 is a rectangular area 12 by 24

meters situated at the rear of Avellaneda Cemetery, between the main graveyard and a city street. When the military took power in 1976, Sector 134 was placed under police guard. The high walls and a single metal gate concealed it from the eyes of curious passersby.

During the first three years of the military government, when thousands of people disappeared, people living across the back street observed military trucks and police vehicles entering and leaving Sector 134 through the gate, day and night. Isolated and abandoned for several years, it eventually became overgrown with weeds. Although many people suspected it contained the remains of *desaparecidos* (disappeared persons), Sector 134, like other places across the country, could not be investigated until 1984.

As in most of EAAF's investigations, work on the case followed four basic steps, described in greater detail below. In general, these steps are:

1. Historical research
2. Collection of antemortem data
3. Archaeological recovery of evidence
4. Laboratory analysis

The exact sequence of these steps can vary depending on each case. The historical research phase in particular tends to be ongoing, as additional sources of information become available. For example, the collection of antemortem data (information about the physical characteristics of individual victims) continues into the present.

Historical Research

The objective of this phase is to collect all information that can shed light on the case. It is compiled from surviving written records and by interviewing witnesses. The answers to an exhaustive set of questions help to develop strategies and hypotheses, which in turn structure the archaeological and analytic approaches to the case.

Despite official secrecy surrounding the repression, routine documents such as cemetery registers and death certificates related to Sector 134 showed that at least 220 people had been buried there during the junta years. Of these, 160 were described as unidentified young people, exhibiting gunshot wounds, whose bodies had been brought to the cemetery by police or military personnel. Most were buried between 1976 and 1978, at the peak of the repression. After 1978 burials continued, though at a slower rate, until 1982.

The repression in Argentina was organized in complex ways. Typically, a disappeared person was kidnapped by the military or security forces and taken to a clandestine detention center. At these centers, or "CDCs," most detainees were severely tortured. After days, weeks, or months, they were released, transferred to a legal prison, or extrajudicially executed. The bodies of persons permanently disappeared were either buried as *ningún nombre* (NN or anonymous persons) in municipal cemeteries, or were dumped from airplanes into the Argentine Sea. Often, a single prisoner would pass through several of the more than 350 CDCs that existed at the time. This fact makes tracing the painful journey of an individual desaparecido from the place of abduction to his or her grave a formidable problem. Still, through painstaking study of the documentary records and interviews with the few survivors, patterns began to emerge. Each death squad—much like an ordinary criminal organization—develops its own modus operandi. These journeys can be partially reconstructed to help fill in the gaps of information about individuals, and to help EAAF form hypotheses about the connection between particular CDCs and the cemeteries they may have used to dispose of bodies.

EAAF also collects information about members of unions and political, student, and guerrilla organizations, who were the regime's primary targets during those years. When the kidnappers made "sweeps" targeting a particular group, their members were likely to wind up in the same CDCs and, eventually, the same graves. Unfortunately, the same is often true of family members. In 1998 the work of analyzing the historical record was tremendously advanced when EAAF was finally given access to police records that had been previously unavailable to the public.

Collection of Antemortem Data

Historical investigation helps EAAF to decide which families to contact. With the help of presumed victims' relatives, EAAF can collect antemortem data—physical descriptions of the victim while still alive—through interviews with them and with family doctors and dentists. Antemortem data includes variable that can also be observed in the skeletal remains, such as age at death, sex, stature, and laterality (right- or left-handedness), as well as dental information, and any diseases or old injuries, particularly fractures. Today, genealogical information is especially important, since family members may eventually be asked for samples for DNA identification.

Archaeology

EAAF completed excavation of Sector 134 in March 1992, after exploring the entire area (432 square meters). They found a series of nineteen mass graves and eleven single burials. The mass graves were roughly oval-shaped, around 3 meters in diameter, and 2 to 3

meters in depth. The number of skeletons per grave ranged from ten to twenty-eight. Nearly all were buried without clothing. Personal effects were few: EAAF found wedding rings among the hand bones of two individuals and metal crosses associated with two others. EAAF also recovered two coins, one dated 1958 and the other 1976. The ballistic evidence consisted of more than three hundred projectiles, many of which were fragmented or deformed. No cartridge cases were found.

Laboratory Analysis

The exhumation of Sector 134 yielded a total of 324 skeletons—that is, 104 more than were indicated by the cemetery records. Approximately 77.8 percent of the skeletons were males. Most of the females belonged to younger age groups, comprising about one-third of the 21- through 45-year-old group, but only about one-tenth of the individuals over 60. This overall pattern reflects the fact that during the six-year period that Sector 134 was used as a burial ground, "ordinary" unidentified bodies (belonging mainly to elderly male indigents) were buried in the same mass graves as the desaparecidos, who were predominately young and often female.

EAAF found evidence of gunshot wounds to the head and/or chest in 178 (55%) of the skeletons, nearly all of which belonged to individuals who were under 50 years of age at the time of death. In contrast, such wounds were rare in the over-50 age group. Others who showed no signs of gunshot wounds could have also died violently, since it is known that a number of desaparecidos succumbed to the effects of physical torture (usually electrical) to which nearly all were subjected.

The skeletons exhumed from Sector 134 fell into two main groups. The first, smaller contingent consisted of elderly individuals, mostly male, who had died, as far as could be determined, of natural causes. They represented the ordinary NN population. The second, larger, and much younger group, almost one-fourth of whom were female, had died of gunshot wounds.

El Salvador

The El Mozote massacre was the largest killing of civilians reported during El Salvador's twelve-year Civil War (1980–1992). From December 6 to December 16, 1981, the Salvadoran Army conducted what it called Operation Rescue in the northeastern province of Morazán. It had two objectives: first, to force FMLN (*Frente Farabundo Martí para la Liberación Nacional*) guerrillas from the area and destroy their clandestine radio station, and second, to eliminate FMLN supporters among the civilian population. Spearheading the operation was the elite Atlacatl Battalion, a U.S.–trained and equipped counterinsurgency unit.

Reportedly, after a few encounters with the army, the guerrilla forces left the area. On December 9, as part of a "scorched earth" strategy, the army arrived in the hamlet of El Mozote, killed the villagers, destroyed their houses, burned their fields, and slaughtered their livestock. Over the next few days they repeated the same procedure in five other nearby hamlets. Some of the inhabitants of the outlying villages, alerted by the El Mozote massacre, managed to escape. Each night survivors returned to their villages under the cover of darkness to bury as many victims as possible in common graves where they were found. Of the survivors, most escaped across the Honduran border to United Nations (UN) refugee camps; others joined the FMLN or took refuge in other regions of El Salvador.

The outlying villages remained largely abandoned until 1989, when survivors began to return from Honduras. El Mozote itself remained almost deserted until several years later. The events, known as the Massacre of El Mozote, became the topic of intense debate in both El Salvador and the United States. At the time little information was available to the Salvadoran public regarding the nature of military operations in the countryside. There was no opposition press in the early 1980s, and such information as did exist was controlled by the armed forces. Only one local newspaper, *La Prensa Gráfica,* reported on Operation Rescue. In a story published on December 9, 1981, shortly after the operation began, the paper noted that, according to military sources, the area was ". . . under strict control of the army to avoid any regrettable or unpleasant act" and that access was denied to journalists and the International Committee of the Red Cross (ICRC). The FMLN's *Radio Venceremos* reported the massacre toward the end of December 1981.

The massacre became known to the international community on January 27, 1982, when three journalists from the *Washington Post* and the *New York Times* and a photojournalist walked into the area from Honduras. They interviewed survivors and took photographs, all of which were printed in their newspapers.

Reports of the El Mozote incident sparked conflict in the U.S. Congress, where the renewal of military aid to El Salvador was already the subject of controversy. Both the Salvadoran government and the U.S. State Department acknowledged that a military operation had occurred in the area, but insisted that what transpired in El Mozote had been a battle between the Salvadoran Army and the FMLN and no evidence of a "massacre"

existed. Reports to the contrary were discounted as FMLN propaganda, and military aid was renewed.

Investigation of the Massacre

The refusal of both governments to support further investigations removed it from public attention in El Salvador and the United States for several years. Human rights groups, however, continued to press for investigation. In 1989, at the request of organizations from Morazán, the Human Rights Legal Office of the Archbishop of San Salvador, *Tutela Legal,* launched an investigation of the massacre. It found that about eight hundred villagers had been killed and over 40 percent of the victims were children under ten years of age. In October 1990 *Tutela Legal* helped several survivors of the massacre initiate a lawsuit against the army. To help build their case, *Tutela Legal* planned to conduct exhumations in El Mozote and requested forensic assistance from EAAF. In 1991 EAAF members made a preliminary trip to El Salvador, but the investigation was blocked by judicial officials who refused to grant permission for exhumations.

In early 1992, shortly after the Salvadoran government and the guerrilla army signed a peace agreement, *Tutela Legal* again invited EAAF to assist with its investigation. An EAAF member spent three months preparing and conducting a preliminary historical investigation. With the help of survivors, EAAF was able to locate some of the graves, gain an idea of the number of bodies in each, and compile lists of possible victims. EAAF members were named as expert witnesses in the El Mozote case. However, the Supreme Court and the local judge overseeing the case again denied permission for exhumations. Finally, in the fall of 1992, the UN Truth Commission for El Salvador paved the way for exhumations and appointed EAAF as technical consultants.

The forensic team was directed to conduct the excavation of Site 1 in the hamlet of El Mozote. The site consisted of the ruins of a small, one-room adobe building (4.3 x 6.4 meters) called *el convento,* which had stood next to the village church. Its walls had collapsed inward, leaving a meter-high mound of debris that included its charred roof beams. Removal of this debris revealed, lying on the floor, the commingled skeletons of 141 individuals, 134 of whom were under the age of 12. The adults consisted of six women and one elderly man. Fetal bones were found within the pelvic basin of one of the women. Along with remnants of clothing were dolls, marbles, toy cars, religious medals, crosses, and a few coins.

A total of 245 spent cartridge cases were recovered. Most were found in the southwest corner of the room, indicating that the shooters were most likely standing close to this area. They were submitted to a U.S.–based archaeologist and ballistics expert. All the cartridges, with exception of one, were from 5.56-caliber bullets issued years before by the North Atlantic Treaty Organization (NATO). The ballistics expert determined that they had been fired from U.S.–manufactured M-16 automatic rifles. All of the cartridge cases bore the head stamps of the Lake City Arms Plant, located near Independence, Missouri, a U.S. Army provider. The firing pin impressions and ejection marks also indicated that at least twenty-four individual firearms were represented among the recovered cartridge cases. Various sources claimed that the Atlacatl Batallion was the only Salvadoran Army unit that possessed this type of rifle at the time of the massacre.

From within the building 263 bullet fragments were recovered. Most were concentrated in the northeast side of the room, opposite the corner where the cartridges were found. Most were embedded in the bones of the victims or in close relationship to them. In nine cases, bullets had penetrated the floor directly under gunshot wounds of the skull or thorax, showing that these victims were lying on the floor and the shooter was standing more or less directly over them. Although some of the children may have been shot outside and their bodies later dumped in the building, the recovered ballistic evidence demonstrated that the number of rounds fired was sufficient to account for all deaths.

After exhumation the skeletons were removed to a morgue in San Salvador for more detailed examination. At this stage additional forensic anthropologists, one forensic pathologist, and one forensic radiologist from the United States led the laboratory analysis of the remains. Osteological and dental age determination showed that the children ranged in age from birth to about 12 years, with a mean of 6.8 years. All the victims, including the seven adults, exhibited perimortem trauma typical of high-velocity gunshot wounds, postmortem crushing injuries, and exposure to fire.

The findings from Site 1 were among the principal bases for the UN Truth Commission's conclusion that the Salvadoran Army had committed a massacre in El Mozote and five nearby villages, which resulted in the deaths of at least five hundred persons and probably many more. The report also included the names of high-ranking officers in the armed forces of El Salvador who were responsible for the operation. The Commission's findings prompted the U.S. administration of president Bill Clinton to publicly rectify the U.S. State Department's previous position that the massacre had never occurred. In El Salvador the Atlacatl Battalion

was officially disbanded, although many of its members were simply transferred to other army units.

During the 1992 mission the EAAF exhumed only one site in El Mozote, yet many other clandestine graves remained there and in the other five villages. Upon concluding its work in March 1993, the UN Truth Commission strongly urged that investigations be continued into wartime human rights violations, including the El Mozote massacre. However, a few days after the UN report was released, the Salvadoran legislature passed an amnesty law that not only barred prosecution of persons who committed human rights violations during the war, but which was interpreted at the time as preempting any further investigations (including exhumation) at El Mozote or of other similar cases.

Despite the amnesty, relatives of the victims of the El Mozote massacre and other incidents of human rights violations across El Salvador continued to demand further exhumations. Finally, in 2000, in a changed political climate, the judiciary approved the petition to resume exhumations on humanitarian grounds, though it ruled out any prosecution. EAAF committed itself to continuing to exhumations through 2004, in El Mozote and surrounding villages. The renewed project included training for local doctors and dentists from the Medical Legal Institute, so that they might eventually carry out similar work in other civil war cases. As in all of EAAF's investigations, the most immediate priority is to assist families in their long search for the truth about the fates of their loved ones. But in a broader context, the investigation's findings help clarify the historical record of one of the most contested events in Salvadoran history. Moreover, by gaining acceptance in the Salvadoran courts, forensic anthropological evidence may also contribute to strengthening democratic and judicial institutions by providing new tools to uphold the rule of law.

SEE ALSO Archaelogy; Evidence; Investigation; Mass Graves

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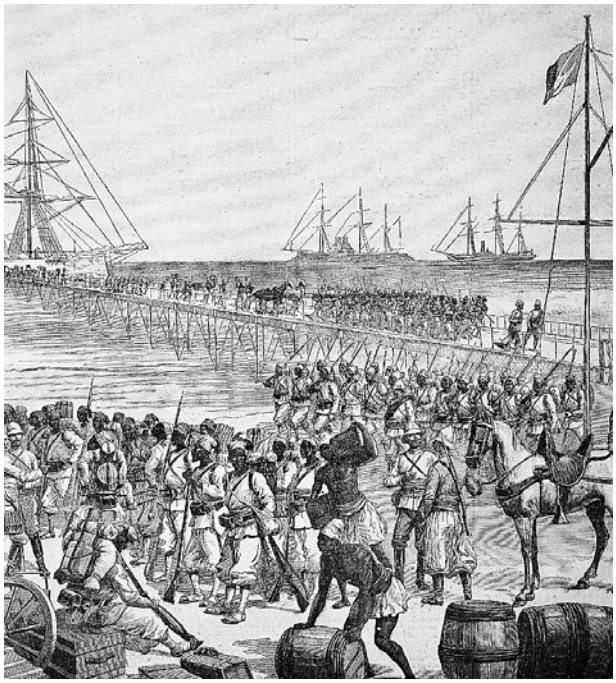
France in Tropical Africa

France has been actively involved in the exploitation of goods, services, and labor in tropical Africa since the seventeenth century. Despite the public avowal of universal human rights within its national borders since the establishment of the First Republic in 1792, France's commitment to collective and individual rights in its African territories waxed and waned over the period of formal colonialism and varied by colony. The reestablishment of slavery by Emperor Napoleon I in 1804 was characteristic of this wayward policy and practice. French cultural, political, and development policies in colonial Africa were informed by the French Republican tradition, but shaped by administrative and economic exigencies that contradicted Republican values.

France regained its tiny colonial outposts in Senegal in 1817, following the Napoleonic Wars. This was part of an international agreement that included active participation in efforts to end the transatlantic slave trade and promote the production of "legitimate" commerce. Nevertheless, France returned to an African world that had been subject to the predations and insecurities of the slave trade for four centuries. France had been engaged in the transatlantic slave trade since 1644. French demand for slaves in the Caribbean colonies, particularly in Saint Domingue (later Haiti), contributed to the institutionalization of predation in precolonial Africa. Slaves of varying status were widespread in France's African colonies until 1848 when, under the Second Republic, France abolished slavery by reasserting the principle of the rights of man. Slaves, slavery, and servants remained central social and economic features of French colonies, however, well into the twentieth century.

With the beginning of aggressive colonial conquest in 1879, French administration extended over extensive areas of West and Central Africa, where domestic slavery and slave trading were widely practiced. The National Assembly, however, was reluctant to support the costs of expensive military campaigns in the African interior. Consequently, military leaders recruited African soldiers and auxiliaries, only some of whom received regular pay. While all military action entails human rights abuses, French colonial conquests involved some distinctive characteristics. France rewarded African soldiers and auxiliaries with a share of captured booty. French officers often distributed slaves, and thus participated in the persistence of slavery. Conquest also involved requisition of food stores, cattle, and labor. Even "peaceful" colonial missions of exploration, such as that of Paul Beloni de Challu in the Congo, involved the recruitment or impressment of an army of porters. For example, between 1896 and 1897, the Marchand expedition from Ubangi-Shari to the Upper Nile recruited some 3,000 porters.



Nineteenth-century artist's rendering of the arrival of the French army at Cotonou, on the West African coast, in 1851. As the French colonial thrust into the interior intensified, with African collaborators (such as the Senegalese soldiers shown here) and the threat of coercion, its abuses became rife, notably the taking of slaves. [ARCHIVO ICONOGRAFICO, S.A./CORBIS]

The active military phase of colonialism in French West Africa (consisting of Senegal, Soudan [now Mali], Ivory Coast, Dahomey, Upper Volta [now Burkina Faso], Mauritania, and Niger) persisted into 1898. Military officers also found themselves charged with administering newly conquered territories, and many imposed forms of discipline that led to human rights abuses. In 1893, the civilian governor of the Sudan, Louis Alphonse Grodet, sought unsuccessfully to impose Republican values on his military administrators by prohibiting corporal punishment. Violence was an endemic part of this early phase in the establishment of colonial order. The capital of the Kingdom of Dahomey, Abomey, was burned to the ground and the king exiled in 1898. Because colonial administrators were so few in number relative to the size of the African population and the territories that they administered, officials had relatively little power outside their headquarters and could accomplish little without African collaborators and the threat of coercion.

Administrative coercion was enshrined in the establishment of *indigénat,* the decree empowering ad-

ministrators with police powers, in 1887. Administrators could impose fines and prison sentences for a set of defined offenses dealing mostly with acts of disrespect or disorder toward colonial officials and official regulations without recourse to the courts or approval from superiors. Any French citizen or government official could summarily punish any African subject for a vast array of minor infractions, ranging from failing to pay taxes to neglecting to show administrators respect. Originally limited to sixteen identified offenses, the scope of these police functions increased over time. Each colony revised its own list of scheduled offenses. By 1907, the French Sudan listed twenty-four acts that were subject to the *indigénat,* and by 1918 the Ivory Coast had fifty-four. The fact that the *indigénat* was an arbitrary system of summary punishments that were only applied to African subjects (French citizens and assimilated Africans were excluded) and against which there was no appeal increased African resentment toward this aspect of the colonial legal system.

The establishment in 1895 of a federation of French West Africa with a governor-general based in Dakar was, in part, an effort to curtail the powers of the French military and to promote a civilian Republican agenda. In 1903 the rule of law was strengthened with the enactment of a new colonial legal code that provided an organized and hierarchical system of courts for both French citizens and African subjects. Although the West African federation was designed to tame the military, abuses persisted. In Fort Crampel in the military district of Chad in 1903, the French commander, nicknamed "the wild beast," celebrated Bastille Day by dynamiting an African accused of disobedience. Periodic revolts and resistance movements were harshly suppressed. Violent insurrections were crushed in northern Ivory Coast and Upper Volta, resulting in thousands of deaths.

In Madagascar and French Equatorial Africa—a federation of territories that included the former slave port of Libreville and the hinterlands annexed by the expeditions of Lieutenant Brazza (Gabon, Congo-Brazzaville, Central Africa, Chad)—the French presence was even fainter than in West Africa, and Republican traditions were more attenuated. In 1885 there were only thirty-six French officials in the Congo region, and perhaps one thousand African auxiliaries recruited locally and from West Africa. By 1904 the number of officials fell to thirty. Despite the paucity of administrators, military tactics were brutal. The suppression of the Madagascar revolt from 1896 to 1898, for instance, left as many as ninety thousand dead.

In the absence of a strong French administrative presence, the subdivisions of the colony adapted the neighboring Congo Free State's *regime domanial* model for economic development. Thus, monopolies over the "products of the soil," in particular rubber and ivory, were ceded to concession companies. The Société du Haut Ogooué acquired eleven million hectares, and the largest publicly traded company, the Compagnie des Sultanats du Haut-Oubangu, operated monopoly rights over 140,000 square kilometers. To make concessions profitable, concessionaires demanded forced labor. Although the French prohibited forced labor in principle, a poll tax was introduced in 1897 that effectively forced Africans to work by extracting resources and selling them to the company. During the early colonial period, sleeping sickness and other diseases preyed heavily on tired workers' immune systems, leading to a dramatic population decline. Concessionaires responded to this by increasing and elaborating new methods of coercion. On the Mpoko Concession, one of the few to declare a profit, forty European managers and 400 armed African guards shot on sight any African not collecting rubber. Between 1903 and 1905, the administration reported 1,500 murders. Most concession companies disappeared with the decline in easily accessible wild rubber during World War I, but a few persisted until 1935. The novelist André Gide brought international attention to the human rights abuses of French Equatorial Africa in his 1927 exposé, *Voyage au Congo* (Travel in the Congo). Major administrative reforms in 1906 and 1907 brought French Equatorial Africa into line with French West Africa, but the demand for tropical commodities led to new forms of human rights abuses in the region.

France's mobilization for World War I led to increased demands for military and domestic materials and African troops and porters. Aggressive recruitment of African *tirailleurs* (African riflemen) began in 1915 resulting in localized revolts. In addition to demanding troops, the French imposed a requirement that Africans produce maize, millet, rice, groundnuts, palm products, cotton, and rubber for the war effort. Already introduced in 1912, forced labor for public works was expanded dramatically during wartime mobilization. All French West Africans were subject to eight to twelve days of forced labor per year. In Equatorial Africa, Africans were subject to seven days per year in 1918, which was raised to fifteen days in 1925.

Following the war, the French introduced obligatory peacetime recruitment. The French drafted 14,000 men annually into *tirailleurs* regiments. In the process, they discovered that the majority of young men were not physically fit to serve. Many of the unfit were conscripted into a second tier of recruits for the purposes of public works, a poorly disguised form of *corvée*

(forced) labor. Some 127,250 Africans were recruited in this way to work on the Congo-Océan railway in Equatorial Africa, and an annual average of 2,719 Africans were impressed into labor in French West Africa between 1928 and 1946. In the new French-mandated former German colonies of Togo and Cameroon, however, League of Nations treaties banned forced labor. The Permanent Mandates Commission stringently monitored the terms of labor in these two territories, but direct taxation that permitted payment in kind or in labor was permitted.

As France rebuilt its economy during the interwar period, it sought inexpensive raw materials. Africans were forced to cultivate commodities, especially cotton. Even before the war, Gabriel Angoulvant, who served as lieutenant governor of Ivory Coast, had raised cotton exports from zero in 1912 to 350 tons in 1916 by forcing every African subject to produce a certain amount of cotton for export. In 1924, when serving as West Africa's governor-general, Angoulvant proposed solving France's cotton deficit through what he called "the obligation to produce." Forced commodity production led to a food crisis in Ivory Coast, and to various forms of resistance, as well.

Conversely, the interwar period also saw the proliferation of African groups campaigning for human rights and the right to form labor unions. Some movements were inspired by trends back in France, such as the *Ligue pour la défense des droits de l'homme et du citoyen,* which founded branches in Dahomey and Togo, and Socialist Party committees. Others were mobilized by a new sense of rights and entitlements enshrined in the League of Nations charter and the Treaty of Versailles, and by the creation of an internationalized anticolonial movement led by the Geneva-based International Labor Organization and the Moscow-based Communist International. Yet others were motivated by pan-African sentiments, expressed in such forums as the Pan-African Congresses organized by W. E. B du Bois (first held in Paris 1919); *The Crisis,* published by the NAACP, and *The Black Man,* published by the United Negro Improvement Association (both books were available throughout Africa). Also influential were the early Négritude writers such as Aimé Cesaire, Léopold Sedar Senghor, and Alioune Diop, who later established the journal *Présence Africaine*.

In France, the short-lived Popular Front government of Léon Blum between 1936 and 1938 led to the general reappraisal of colonial policy and to debate about "African human rights." Colonial Minister Maurius Moutet expressed his commitment to the extension of maximum social justice to the colonies and called for a review of colonial polices, including forced labor and commodity production. He also introduced major reforms, such as offering African women the right to choice in their marriages. With the approach of war in Europe, however, the Popular Front collapsed. Even after Germany conquered France, the Vichy government retained control over Algeria, French West Africa, Madagascar, and Togo, and reasserted that the role of colonies was to support the mother country through materiel and labor. Under the governorship of Félix Ebouey, Equatorial Africa and Cameroun sided with the Free French in opposition to Vichy collaborationists. In the territories it controlled, Vichy reestablished forced labor and obligatory commodity production, thus leading to a new phase of rights abuses. In Togo, villagers still narrate the tales of the excessive brutality that was deployed in the collection of oil palm kernels during World War II. A coup in Dakar in 1943, however, brought French West Africa into line with de Gaulle and the Free French.

As the tide of war changed, senior Free French officials met with political and trade union leaders at the Brazzaville Conference in 1944 to discuss postwar colonial policy. Delegates urged that both forced labor and the *indigénat* be replaced with guarantees of free labor and a unified penal code. In 1946, forced labor and the *indigénat* were abolished as part of a wider set of colonial reforms, including new development funds and rights for African political representation. Between 1958 and 1960, French tropical Africa became independent.

The legacy of the French colonial experience for postcolonial human rights regime is ambiguous. Despite the French government's commitment to human rights, its practices in Africa remained contradictory. Most states enshrined human rights in their constitutions during the immediate postcolonial period, but few respected them in practice. Regulation of labor also remains a chimera; Mauritania, for example, has abolished slavery by statute five times since independence in 1960. The post-1990 third wave of democratization in Africa has brought a reflourishing of African civil society and demands for constitutional protections of human rights.

SEE ALSO Algeria; King Leopold II and the Congo; Slavery, Historical; Sudan

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Gas

Since ancient times, use of poison has been considered treacherous and, therefore, incompatible with honorable conduct in war. Yet, the history of mankind is blemished with numerous examples of combatants and civilians falling victim to various kinds of poisonous gases, which not only kill, but burn or paralyze the human body; singe lungs; cause blindness, malformations, cancer, and neuropsychiatric damage; or produce permanent genetic mutations, persistently affecting the health of the survivors' succeeding generations.

Use of Gas as a Method of Warfare

The history of the use of gas in the theater of war goes back to the fourth century BCE, when the belligerents in the Peloponnesian War created toxic fumes by igniting pitch and sulfur. However, it was not until the first large-scale use of poison gas by the German army in World War I (1914–1918) that the horrors of gassing were utterly unveiled. The gas attack was launched in April 1915 on the battlefields near Ypres, Belgium, and claimed as many as 5,000 lives and 10,000 casualties. By the end of the war, toxic chemicals, such as chlorine, mustard, and phosgene gases, had wounded more than one million soldiers and civilians and had resulted in nearly 100,000 ghastly deaths.

Use of Gas as a Means of Extermination

At the dawn of World War II (1939–1945), gassing ceased to serve only as a method of warfare. Instead, it developed into the means of extermination in the hands of the German Reich.

The Nazis began utilizing gas in September 1939, initially for the purposes of medical experiments, and later for a calculated slaughter of incurable and mentally ill patients, euphemistically referred to as euthanasia ("good death") program. The method of gassing then in use was the canalization of the exhaust of internal-combustion engines into rooms disguised as showers.

In August 1941 the killing of the sick with carbon monoxide gas was brought to an end. This did not, however, end the Reich's gassing scheme. In contrast, this was precisely the time when the Nazis began to use gas in the pursuit of Adolf Hitler's gruesome plan to exterminate Jews. In its initial stages, the gassing was performed by mobile killing units (*Einsatzgruppen*), which operated hermetically sealed trucks with engine exhaust channeled into the interior compartments. Although the gas vans took a heavy toll (nearly 700,000 victims), they were eventually deemed inefficient for the success of Hitler's Final Solution to what he termed the "Jewish problem." Consequently, in 1942 the Nazis replaced the mobile killing units and their vans with permanent gas chambers, each capable of holding hundreds of people at a time.

The chambers still employed engine exhaust as the killing gas, at first. Due to the frequent mechanical breakdowns of engines, however, in 1943 Commandant Rudolf Hess of the Auschwitz-Birkenau death camp ordered the replacement of carbon monoxide gas with hydrogen cyanide crystals (Zyklon B), which turn into lethal gas immediately upon contact with oxygen. The first experiment with Zyklon B, typically used as

Zyklon B consisted of wood pellets impregnated with liquid hydrocyanic acid. Upon contact with air, the pellets would release deadly hydrogen cyanide gas. In this 1979 photo, the walls of a gas chamber at the Majdanek concentration camp (near Lublin, Poland) are still stained by hydrogen cyanide. [NATHAN BENN/CORBIS]

a disinfectant, was conducted in September 1941 on Russian prisoners of war and inmates of the infirmary. Ultimately, Zyklon B proved the most effective technique of extermination. At the peak of its use, more than 12,000 Jews were being gassed each day at Auschwitz alone.

Use of Gas after World War II

Apart from the use of gas by Egypt against Yemen in the 1960s, the world was free of extensive gassing operations until 1983, when the Iraqi dictator Saddam Hussein launched a chemical campaign in the war against Iran (1980–1988). According to estimates, gases were deployed 195 times, killing or wounding 50,000 Iranians. In April 1987 Hussein turned the poison against his hated internal opponents, the Iraqi Kurds, as well. He launched at least forty gas assaults against the Kurdish population, the most dreadful of which occurred in 1988, between March 16 and March 19, in the town of Halabja. There, mustard gas and the nerve gases sarin and tabun killed 5,000 civilians.

Prohibition of Gas by International Law

The prohibition of poison is one of the oldest rules of the law of the armed conflict. Correspondingly, the use of poison gas, which causes unnecessary suffering and superfluous injury to combatants, and—as a weapon of mass destruction—indiscriminately affects civilian populations, stands in blatant violation of the most vital rules of international customary law applicable to the conduct of armed hostilities: the principles of distinction, military necessity, humanity, and dictates of public conscience.

Gassing has been prohibited since the nineteenth century by more than just customary law. Written agreements, the first being the 1874 Brussels Convention on the Law and Customs of War, and the 1899 Hague Declaration, ban the use of projectiles filled with gases. The landmark twentieth-century treaties include the 1907 Hague Convention IV Respecting the Law and Customs of War on Land (which reaffirmed the ban on poison); the 1925 Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (which con-

stituted a desired response to the atrocities of World War I, but did not provide for any compliance mechanisms); the 1972 Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological and Toxin Weapons; and, most important, the 1993 Convention on the Prohibition of Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction.

Bringing Those Responsible to Justice

Under contemporary international criminal law, reflected in the 1998 Rome Statute of the International Criminal Court, the employment of asphyxiating, poisonous, or other gases during armed conflicts is deemed a war crime. The utilization of gases as a method of murder or extermination can be qualified as either a crime against humanity or a crime of genocide.

The first international judgment on the gassing of civilians was issued in the aftermath of World War II by the International Military Tribunal at Nuremberg, which convicted a number of major German war criminals for war crimes and crimes against humanity, committed, inter alia, through the use of gas. In the subsequent Nuremberg Proceedings, between 1946 and 1949, similar convictions were imposed upon the physicians who participated in the Nazi euthanasia program or mustard gas experiments (the Doctors Trial), and against SS administrators involved in the construction of gas chambers (*In Re Pohl and Others*). Finally, in a momentous trial known as the Zyklon B case, two German industrialists—Bruno Tesch and Karl Weinbacher of the Tesch and Stabenow company—were sentenced to death for supplying Zyklon B to the concentration camps. Significantly, the court rejected the defendants' contention that they lacked awareness that the toxic pellets were used for extermination, rather than for decontamination. In contrast, an analogous argument was accepted in the trial of executives from the I. G. Farben company, whose subsidiary firm—Degesch—was shipping Zyklon B to death camps along with Tesch and Stabenow. One of the most recent prosecutions occurred in 1963, when the national court of the Federal Republic of Germany convicted Robert Mulka, an adjutant to Hess and a supplier of Zyklon B to the Auschwitz gas chambers.

SEE ALSO Auschwitz; Einsatzgruppen; Ethiopia; Iraq; Kurds; War Crimes

During the investigations that preceded the Nuremberg Tribunal, U.S. and British prosecutors uncovered literally thousands of German documents and artifacts that proved the charges against the defendants. Here, a canister of Zyklon B, seized at the Mauthausen, Austria, concentration camp and later submitted as evidence. [CORBIS]

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Paulina Rudnicka

Geneva Conventions on the Protection of Victims of War

The Geneva Conventions are the essential basis of international humanitarian law applicable in armed conflicts. They evolved from rules of customary international law binding on the entire international community. In the second part of the nineteenth century, when the codification of international law started, most of these rules were included in international treaties, beginning with the 1864 Geneva Convention and the 1899 and 1907 Hague Conventions.

With contemporary wars continuing to produce disastrous effects, the Geneva Conventions signed on August 12, 1949, and two additional protocols adopted on June 8, 1977, are the most important treaties for the protection of victims of war. The treaties adopted include:

- The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I)
- The Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II)
- The Geneva Convention Related to the Treatment of Prisoners of War (Convention III)
- The Geneva Convention Related to the Protection of Civilian Persons in Time of War (Convention IV)
- Protocol I Relating to the Protection of Victims of International Armed Conflicts
- Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts

The 1949 Geneva Conventions are a rare example of quasi-universal treaties; by the end of April 2004 some 191 states were signatories to them. The states party to Protocols I and II number 161 and 156, respectively.

Historical Evolution

The effort to protect war victims is as old as conflicts themselves. Such efforts materialized in antiquity and the Middle Ages in all regions, civilizations, and religions. The first international treaty that was adopted aimed to protect soldiers wounded on the battlefield. It came at the initiative of Henry Dunant, a young Swiss, who after the battle of Solferino, in 1859, witnessed firsthand the misery of forty thousand wounded and the inadequacy of the army health services. On his return to Geneva, Dunant published *A Memory of Solferino,* in which he proposed that warring parties conclude agreements in order to ensure assistance to the wounded and sick. He also proposed the creation of voluntary associations for the same purpose in each country, which later became the Red Cross societies. With the cooperation of four of his compatriots, in particular General Alfred Dufour, Dunant organized the first nongovernmental conference in 1863 to promote some of his ideas.

A year later the Swiss Federal Council invited twenty-five states to participate at a diplomatic conference; it adopted on August 22, 1864, the first Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. After an unsuccessful attempt in 1868 to adapt the convention to maritime warfare, the International Peace Conference of 1899 in The Hague adopted the Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention, as did the later conference in 1907. The first 1864 Geneva Convention was revised in 1906 and again in 1929, when a new convention, related to the treatment of prisoners of war, was also adopted.

Important work, however, remained: a convention to ensure the protection of civilian populations. The International Committee of the Red Cross (ICRC) presented the draft of such a convention to the XVth International Red Cross Conference held in Tokyo in 1934, with the hope that the new convention would be adopted in 1940. The advent of World War II in September 1939 altered these plans. The ICRC's appeal to warring nations to apply the Tokyo draft on the basis of reciprocity met with no success. Civilians thus remained without appropriate legal protection during World War II.

Development of the Geneva Conventions was the main task of the postwar ICRC. The draft of these instruments was presented to the XVII International Red Cross Conference in Stockholm in 1948, and the ICRC's subsequent Diplomatic Conference, meeting in Geneva from April 21 to August 12, 1949, adopted the four Conventions.

If World War I provided the impetus for the revision and codification of the 1929 Conventions, and World War II that for the revision and new codification of rules in 1949, the nature of conflicts after 1945 required the development of new legal provisions. The rules elaborated in 1949 were not sufficient to ensure

the protection of the victims in a growing number of civil wars and wars of national liberation. Technological developments in the means and methods of warfare also required new legislation.

After discussion at several Red Cross conferences—in Vienna (1965), Istanbul (1969), and Tehran (1973)—and the International Human Rights Conference in 1968, the Swiss Federal Council convened a diplomatic conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts. After four sessions this conference adopted the two protocols of 1977.

Provisions Common to the Four Conventions and Protocol I

The Conventions and Protocols are applicable in the case of declared war or any other armed conflict arising between two or more parties from the beginning of such a situation, even if one of them does not recognize the state of war. They also apply to all cases of partial or total occupation, even if such occupation meets with no armed resistance. The application ceases at the general close of military operations. Protected persons benefit from the provisions until final release, repatriation, or settlement. The addition of Protocol I extended the provisions' application to wars of national liberation, that is, to the armed conflicts in which peoples are fighting against colonial domination and alien occupation, and against racist regimes in the exercise of their right of self-determination, as enshrined in the United Nations (UN) Charter and the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations.

The so-called Martens clause, which dates back to the 1899 and 1907 Hague Conventions, specifies that in cases not covered by the Conventions, Protocols, or other agreements, or in the case where these agreements have been denounced, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, the principles of humanity, and the dictates of public conscience.

The Conventions and Protocols are applied under the scrutiny of a protecting power, that is, one or more neutral states appointed to safeguard the interests of the parties to the conflict. The ICRC assists the parties in designating a protecting power. An organization that offers all guarantees of impartiality and efficacy may be designated to fulfill the duties incumbent on protecting powers.

The Conventions and Protocols include important provisions to sanction violations of the humanitarian rules. They include administrative and disciplinary sanctions as well as sanctions against "grave breaches" (i.e., war crimes) enumerated in the corresponding articles of each Convention and in the Protocols. Governments are required to enact legislation to provide effective penal sanctions for individuals committing or ordering any grave breaches. They must search for those persons alleged to have committed such acts or who have ordered their commission. Military commanders must prevent breaches, suppress them, and if necessary report them to the authorities. The principle of universality obliges a state either to summon the accused to its own courts or to extradite him or her to the state requesting extradition.

Protection of the Wounded, Sick, and Shipwrecked

The first and second Geneva Conventions include almost identical provisions on the protection of persons and property: the first applying to the armed forces on land, the second to armed forces at sea. Persons needing medical care and refraining from any act of hostility shall be respected and protected. Wounded, sick, and shipwrecked combatants who are captured become prisoners of war.

The Conventions and Protocols also ensure respect and protection for the medical and religious personnel of the parties to a conflict, whether military or civilian. Protocol I also provides that no one may be punished for performing medical procedures compatible with medical ethics, regardless of the beneficiaries of this activity. Conversely, no one may be compelled to carry out acts contrary to the rules of medical ethics.

Military or civilian medical establishments, units, and vehicles may not be attacked or damaged, or hindered in the exercise of their functions. They are protected, but such protection ceases if they commit acts harmful to the enemy after a warning setting a reasonable time limit has expired and after such a warning has gone unheeded. The Conventions and Protocol I also protect medical transportation.

A distinctive emblem, that is, a red cross or red crescent on a white background, must be displayed on the installations and mobile equipment of medical units, on medical transportation vehicles, on hospital ships, in hospital zones and localities, and on the person, clothing, and headgear of all medical and religious personnel. ICRC and their duly authorized personnel are permitted to use the emblem of the red cross on a white background at all times. Reprisals against protected persons and objects are strictly prohibited.

Protection of Prisoners of War

Any combatant who falls into enemy hands is a prisoner of war. The status of prisoners of war is governed jointly by Article 4 of the Third Convention, and Articles 43 and 44 of Protocol I. Article 43 provides the definition of armed forces as follows: forces, groups, and units under a command responsible to their Party to the conflict for the conduct of its subordinates, subject to an internal disciplinary system that, among other things, shall enforce compliance with the rules of international law applicable in armed conflicts.

A further obligation is for a combatant to distinguish him or herself from the civilian population by wearing a uniform or distinctive sign recognizable at a distance during military operations. Nevertheless, according to Article 44, paragraph 3, of Protocol I, in exceptional cases of a specific nature, a combatant may be released from this duty. However, in such situations, these combatants must distinguish themselves by carrying arms openly during the engagement and during any period when they are visible to the adversary while engaged in a military deployment preceding the launching of an attack in which they are to participate. This 1977 amendment arose in response to guerilla wars, where uniforms are often lacking. Spies and mercenaries are not entitled to the status of prisoner of war.

Prisoners of war fall into the hands of the enemy power and not the actual individuals who captured them. They must be treated humanely and they are protected by the rules of the Third Convention. As for potential sources of information, the prisoners are obliged to give only "surname, first name and rank, date of birth, and army regimental, personal or serial number, or failing this, equivalent information."

If captured in a combat zone, prisoners must be evacuated to camps situated outside the area of danger. The Convention regulates prisoners' living conditions, food, clothing, medical treatment, the type of work they may be required to do, relations with the outside world (in particular, correspondence with their families), and the right to receive individual parcels or shipments. The prisoners are "subject to the laws, regulations and orders in force in the armed forces of the detaining power." They may be submitted to penal and disciplinary sanctions. They may be put on trial for an offense committed prior to capture, notably for war crimes.

Seriously wounded or sick prisoners may be transported back home during a conflict, or released on parole, but they may not serve in the armed forces of their homeland subsequently. The detention of prisoners of war lasts in principle until the cessation of active hostilities, after which they "shall be released and repatriated without delay."

Protection of Civilian Populations and Civilian Objects

Few provisions of the Geneva Conventions deal with the general protection of the civilian population against the effect of hostilities. Before Protocol I most of the rules were included in the Hague Convention and customary rules of international law. Part IV of Protocol I addresses this issue in defining a civilian as "any person not belonging to the armed forces." In case of doubt, an individual is considered to be a civilian. The civilian population and individual civilians are protected against dangers arising from military operations. They shall not be the object of attack. The prohibition includes attacks launched indiscriminantly. Reprisals against civilians are also prohibited.

Similarly, a civilian object is anything that is not a "military objective" (i.e., objects that by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances existing at the time, offers a definite military advantage). Civilian objects shall not be the object of attack or reprisals. Special protection is provided to certain categories of civilian property:

- Cultural property, historical monuments, works of art, or places of worship that constitute the cultural and spiritual heritage of peoples
- Objects indispensable to the survival of the civilian population
- Natural environment, protected against widespread, long-term, and severe damage
- Works and installations containing dangerous forces, the release of which could cause severe losses among civilians

A special treaty—the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and two additional protocols to it—supplement the protection outlined in the first item above. The Convention and Protocol also established protective zones: hospital and safety zones, neutralized zones, nondefended localities, and demilitarized zones.

General Protection Afforded by the Fourth Geneva Convention

Several provisions of the 1907 Hague Convention and the Fourth Geneva Convention concern the general protection of the civilian population against the effects of hostilities. As indicated in Article 4, the Fourth Convention concentrates on those who, at a given moment

and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying power of which they are not nationals. Part II of the Geneva Convention addresses the general protection of populations against certain consequences of war and covers "the whole of the population of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and [is] intended to alleviate the sufferings caused by war."

The 1977 Protocol significantly extends protection to specific categories: the wounded and sick; hospitals and hospital staff; land, sea, and air transportation; consignments of medical supplies, food, and clothing; protection of children, women, and families; provision of family news; and protection of refugees and stateless persons, including journalists.

Part III of the Fourth Geneva Convention deals with the two major categories of the civilian population: those who are in the territory of the enemy and those who are in occupied territory.

Section I includes common provisions for these two categories: Article 27 declares that

> Persons protected are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanly treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Protection is granted without any adverse distinction. Special protection is granted to women. Protected persons will have the ability to make applications to the protecting powers, the ICRC, the National Red Cross or Red Crescent societies of the country where they reside, and any other organization that might assist them. Physical or moral coercion, pillage, and the taking of hostages are strictly prohibited.

Two additional sections of the Convention address the issues of aliens in the territory of a party to the conflict and the treatment of civilians in occupied territories. The rules concerning treatment of internees—outlined in Section IV—are very similar to those concerning the internment of prisoners of war.

Additional Protocol I, Article 75, was an important later provision. It specifies that persons who fall under the power of a party to a conflict and who do not benefit from more favorable treatment under the Convention and the Protocol shall be treated humanely in all circumstances and shall benefit from fundamental guarantees without discrimination of any kind.

Noninternational Armed Conflicts

The Geneva Conventions were designed for application during international armed conflict, as defined in Common Article 2. For the first time in 1949 the efforts of the ICRC and some states led to the adoption of the first provision of international law dealing with noninternational armed conflicts. This provision, Common Article 3, applies to all internal conflicts occurring in the territory of one of the parties to the Convention. Its scope of application is large, but the substantive, material protection it affords is limited to the minimum. The article specifies only the minimum humanitarian treatment to be provided to the victims of conflicts. It distinguishes two categories of protected persons: those taking no active part in the hostilities, including members of the armed forces who have laid down their arms, and those felled by sickness, wounds, detention, or any other cause. They shall in all circumstances be treated humanely, without any adverse distinction made on the basis of race, color, religion, sex, birth, wealth, or any other similar criteria.

The following acts with respect to protected persons are, and shall remain, prohibited at all times and in all places:

(a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture.

(b) Taking of hostages.

(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment.

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

The second category includes the wounded and sick who have to be collected and cared for.

Common Article 3 also provides that a humanitarian organization, such as the ICRC, may offer its services to the parties to a conflict and that these parties should further endeavor to bring into force, by special agreements, all or part of the Conventions' other provisions. In terms of the application of this article, it provides that such shall not affect the legal status of the parties to a conflict.

Common Article 3 was for several decades the only provision addressing internal conflicts and civil wars, including the wars of national liberation that took place in the 1960s. During the period following World War II the majority of the conflicts were noninternational. It was therefore quite obvious that improving the pro-

tection of the victims of these conflicts had to be the major objective of the new codification efforts occurring in the mid-1970s. It was only owing to the ICRC and a few delegations that Additional Protocol II was adopted during the very last session of the 1974 to 1977 Diplomatic Conference, albeit in reduced form.

Protocol II's purpose was to develop and supplement Article 3 without modifying its existing conditions of application. It was imperative to maintain the humanitarian minimum guaranteed by this article in all circumstances. Although Article 3's scope of application is very large, not providing a precise definition of conflict and leaving its determination to states or humanitarian organizations, the threshold of Protocol II is much higher. It applies only when a conflict takes "place on the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol," internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar violent nature being excluded.

Because the protection Protocol II affords is limited to conflicts of high intensity, the state parties at the 1974 to 1977 Diplomatic Conference were more generous with substantive provisions. If Article 3 contains the strict humanitarian minimum, Protocol II includes important articles on humane treatment: fundamental guarantees, and the special protection of children and individuals whose liberty has been restricted or who are being prosecuted. Basic protection based on the rules of Protocol I is provided to the wounded, sick, and shipwrecked and to the civilian population. There are, however, no provisions concerning the combatants or means and methods of combat. As of the end of April 2004, 156 states are parties to this second protocol, and it represents a great accomplishment of international humanitarian law.

SEE ALSO Hague Conventions of 1907; Humanitarian Law; International Law; War Crimes

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Jiri Toman

Genghis Khan

[c. 1167–1227]
Mongol conqueror

The name of Genghis Khan (born Temüjin, son of Yisugei) is synonymous with bloodletting, barbarity, and wanton massacres in much of the Arab world, Europe, and the Americas. In Turkey and Central Asia, however, Genghis is not an uncommon name, and the

legacy of his Turco-Mongol empire is viewed in a positive light. The globalization imposed by his Eurasian hordes in the thirteenth and fourteenth centuries roused strong reactions. Those biases remain present in the early twenty-first century.

Temüjin's harsh rise to power was the catalyst that resulted in the formation of the largest-ever contiguous land empire. He was born around 1167 on the banks of the Onan River, Mongolia, reputedly clutching a clot of blood in his right hand. He emerged first as the young son who fought for the survival of his destitute family, abandoned by their clan after the murder of his father, a minor chieftain. Then through ruthless determination, he was eventually accepted as tribal leader and thereafter as the supra-tribal ruler who unified the peoples of the Eurasian steppes. Finally in 1206 he was elected Genghis Khan, the supreme leader of the Turco-Mongol nomadic tribes and the world conqueror whose offspring accomplished spectacular feats, the outcome and influence of which are felt to this day. The relationship between Tibet and China was first defined by a Mongol ruler; the Sufi songs of Rūmī that resound around the world from California to Tokyo were nurtured under Mongol rule; the cultural and spiritual links between western Asia and the East were cemented under Mongol auspices. From Temüjin whose name once evoked derision, to Genghis Khan who cowed and riled the princes of Russia and Eastern Europe, and would awe emissaries from a fearful outside world, this Mongol emperor is more deserving of fame than of infamy. He was not only a world conqueror but also a world unifier.

The legacy of Genghis Khan and the Mongol hordes has been shrouded and obscured by the mythmakers of history and indeed by the propaganda of the Mongols themselves. Genghis Khan remains the epitome of evil and the Mongols are associated with barbarian rule and destruction. Their defenders are few and until recently their apologists rare.

Genghis Khan was a steppe ruler who transferred the cruel realities of steppe life to a sedentary urban environment. His initial raids into China c.1211 were in search of plunder and were intended to inspire awe, shock, and terror. His ferocious forage against the Islamic world c.1220 sought to avenge the wanton killing of his envoys by the Khwarazmshah. But even at this early stage, Genghis Khan was selective in his destruction and massacres. Craftsmen and artisans, poets and painters, and clerics and holy men of all faiths were spared the fate of their countrymen and taken to the increasingly cosmopolitan and luxurious Mongol camps. Genghis Khan, unlike steppe rulers before him, realized that the world outside the steppe would offer far greater wealth tamed and harnessed rather than cowed and defeated. After the notoriety and horror of his initial attacks, there were few who would oppose him, and in the emerging *Pax Mongolica* he established the foundations of a great and prosperous empire. Unfortunately, it is the legacy of those early years that has endured and inspired many in more recent times, including such twentieth-century leaders as Joseph Stalin. They remember the blood and the fury and disregard the religious tolerance and nurturing of trade and cultural exchange. Genghis Khan was a harsh and mercilessly determined ruler. The empire he established through bloodshed and awe survived until his death in 1227, which strongly suggests that he gave his descendants more than just a taste for violence, rapine, and destruction.

SEE ALSO Mongol Conquests

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George Lane

Genocide

Few concepts carry the weight and power of the term *genocide*. The word's profound significance is bound to its unique role as a moral and legal marker of the very worst type of human behavior. Morally, genocide refers to acts of horrific violence such as mass murder, state terror, and other strategies of brutal repression. The term names an ethical boundary beyond which a government forfeits its legitimacy and society descends into barbarism. Legally, genocide refers to the intentional destruction of a group as such, a crime so severe that it demands immediate and total condemnation. As the United Nations Special Rapporteur on the subject stated, "Genocide is the ultimate crime and the gravest violation of human rights it is possible to commit."

The term *genocide* has a highly specific origin, rooted in two related sources: the invention of the word in 1943 by Polish jurist Raphael Lemkin; and its definition, several years later, as an international crime through the Convention for the Prevention and Pun-

ishment of the Crime of Genocide. The concept of genocide was a direct response to the Holocaust and the extraordinary destruction and brutality of World War II.

Lemkin created the term *genocide,* out of the Greek word *genos,* referring to race or tribe, and the Latin term *cide,* meaning murder. He defined genocide as a coordinated strategy to destroy a group of people, a process that could be accomplished through total annihilation as well as strategies that eliminate key elements of the group's basic existence, including language, culture, and economic infrastructure. Lemkin believed the Nazis' systematic eradication of various peoples represented an irreparable harm to global society and a special challenge to existing conceptions of criminal law. He created the concept as a means of mobilizing the international community to take strong, coordinated action to prevent the recurrence of such vicious, destructive violence.

The text of the Genocide Convention was approved by the General Assembly of the United Nations on December 9, 1948, and entered into force on January 12, 1951. The Convention defines genocide and obligates those states that accept the treaty to take serious actions to prevent its occurrence and punish those responsible. Article II of the Convention defines the crime as follows:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, 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.

The Genocide Convention was the first of a series of international treaties that, taken together, form the modern system of fundamental rights and freedoms. While the brutal acts that define genocide were not new, the Convention's formal evocation of the crime as a foundational concept within the human rights system represented an act of great historic significance. The Convention remains the premier document for defining genocide and, by 2003, 135 nations had accepted its legal obligations. The Convention's definition has been reinforced through its repetition in relevant domestic legislation and in the statutes of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC).

The crime of genocide is widely accepted as a norm of *jus cogens* ("compelling" or "higher" law that transcends the limitations of individual national laws and which no country can violate with impunity). For this reason, genocide is prohibited even in those states that have not adopted the Convention, is not bound by statutes of limitations, and is subject to universal jurisdiction. In 1996 the International Court of Justice (ICJ) issued provisional measures in a case in which Bosnia and Herzegovina claimed that Yugoslavia was committing genocide. The ICJ also accepted jurisdiction over the merits of the case and stated clearly that the two countries were obligated to prevent and punish genocide, regardless of the nature of the conflict, the status of the new states, and key issues of territorial integrity.

The crime of genocide is composed of three essential elements: acts, intent, and victim group. There are five enumerated acts that are distinct in nature, yet unified as strategies. Three of these are aimed at destroying an existing group: killing, causing serious harm, and/or creating destructive conditions. The other two specified acts are aimed at ruining the possibility of the group's continued existence: preventing reproduction and the forcible removal of children. The issue of intent is complex, but is generally understood to limit claims of genocide to those cases where political violence is purposefully directed toward the destruction of a group. This political objective may be presented as official policy, or it may be expressed through the coordinated and systematic nature of state-sponsored terror. The issue of intent is one of the more contentious elements of the crime and is often discussed as a key limitation to successful prosecutions. The group victim requirement defines genocide as a unique crime that is directed not against individuals per se, but instead targets victims because of their membership in a national, ethnic, racial, or religious group. The definition is often criticized for its exclusion of political and social groups, for these, too, are often the targets of severe political violence.

Each element of the legal definition of genocide raises an array of troubling questions, many of which run counter to general moral understandings of the term. For example, one might have a case of genocide involving few casualties (as with the forced transfer of children) or a situation of extraordinary brutality that does not meet the definition (as with the mass murder of political opponents or others who are not targeted

for their membership in one of the four protected groups). To address these issues, scholars have interpreted the crime to cover most forms of state-sponsored mass killing. Helen Fein, for instance, has suggested a "sociological definition," whereas Israel W. Charny calls for a "humanistic definition," and Leo Kuper suggests a broader understanding of the crime be developed, in order to address problems arising from the technical nature of the Convention's language. Others have suggested the need to create new terms. For instance, R. J. Rummel has coined the word *democide* to refer to all forms of mass state murder, and others have offered *auto-genocide* to deal with mass murder where both the perpetrators and victims are members of the same group.

Despite the existence of a global promise to prevent and punish genocide, the second half of the twentieth century presented many cases of extreme violence that could be termed genocide alongside limited international action. It was not until 1998 that the world witnessed the first international prosecution and conviction for genocide, in the *Akayesu case* at the International Criminal Tribunal for Rwanda. This historic decision was followed by a number of additional cases in the same court and at the International Criminal Tribunal for the Former Yugoslavia, allowing for the evolution of a new jurisprudence of genocide. These shifts have heightened an international commitment to understanding genocide as a crime of such severity that it can be prosecuted anywhere, regardless of ordinary jurisdictional limitations. Similarly, there is a growing concern for developing strategies and policy interventions that recognize the special status of victims of genocide and seek to address their social, economic, and political needs.

Genocide is iconic in its representation of the complex nature of modernity. The concept of genocide—from its genesis in the aftermath of the Holocaust to the present day—binds acts of unforgivable brutality to a global promise that extreme political violence will no longer be tolerated within an emerging international order premised on the protection of fundamental human rights.

SEE ALSO Convention on the Prevention and Punishment of Genocide; Explanation; Holocaust; International Court of Justice; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Lemkin, Raphael; Political Theory; Psychology of Perpetrators; Psychology of Survivors; Psychology of Victims; Sociology of Perpetrators; Sociology of Victims

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Daniel Rothenberg

Germany

Nazism established itself in an extraordinarily short time as a major force in German politics and thereafter seized and consolidated its grip on power against all expectations. Humanity was to suffer appallingly as a consequence of the Nazis' success.

The Impact of World War I

Despite palpable tensions over the country's semi-absolutist constitution, early twentieth-century imperial Germany was among the more prosperous and dynamic of European societies. A vibrant literary and arts scene, a strengthening economy, and a relatively advanced welfare system gave grounds for influential citizens, such as the Jewish banker Max Warburg, to look to the future with optimism. States such as Prussia had sheltered and absorbed victims of foreign religious persecution for many generations and during its industrial revolution Germany attracted and successfully absorbed minorities from other parts of Europe. Jewish citizens had risen to prominence in the economy, among them Emil and Walther Rathenau of the electri-

The principal conspirators of the failed Munich Beer Hall uprising pose after their trial. They are, from left to right, Pernet, Weber, Frick, Kriebel, General Ludendorff, Adolf Hitler, Bruckner, Rohm, and Wagner.[HULTON-DEUTSCH COLLECTION/CORBIS]

cal engineering giant AEG; Paul Silverberg, the coal mining magnate; and, not without controversy, the banker Gerson von Bleichröder, who had worked closely with Chancellor Otto von Bismarck during the 1870s and 1880s.

However, imperial Germany had its darker side. Pressure groups, such as the Pan-German League, demanded an adventurous, imperialistic foreign policy and laced their message with anti-Semitic and anti-Slavonic racism. Demands for an overseas empire were expressed more widely in German society as business circles sought assured markets and public opinion looked to the prestige that overseas territories would bring. In order to deflect attention from demands for constitutional reform at home, the German government played to this imperialist gallery and pursued an aggressive foreign policy. This fateful strategy contributed to the outbreak of what became World War I in July and August 1914 and then, ultimately, to Germany's defeat in the fall of 1918.

The war itself saw Germany suffer millions of casualties, in common with all the main belligerents, but it also triggered misery on the home front. The demands of total war against an expanding and increasingly powerful enemy coalition stretched the economy to breaking point. Juveniles, the elderly, and women labored under grueling conditions to maximize war production, yet at the same time an Allied blockade and official ineptitude at home combined to create near famine conditions in the towns and cities. Malnutrition-related deaths soared; townspeople took to scavenging the countryside for food, with official connivance: Occasionally, trains were run for this very purpose, for want of any better policy. After the guns finally fell silent, in November 1918, a global influenza pandemic reaped as grim a harvest of souls in Germany as had many a great battle. Life, it appeared, had become very cheap.

The Inter-War Period

Defeat brought a curious, even contradictory, combination of hope, demoralization, and anger in equal mea-

sure. There was a near consensus that the old empire had failed and that the kaiser, William II, should abdicate, but it was less clear what should follow. After a brief attempt during October 1918 to establish a constitutional monarchy, comparable perhaps to Britain's, open revolution broke out and led to the proclamation of a provisional republic on November 9 of that year. Friedrich Ebert of the SPD (Social Democratic Party of Germany) formed a caretaker administration during the worst crisis to sweep Germany since the days of Napoleon. Most of the revolutionaries looked to the Marxist but staunchly parliamentarian SPD to establish a new social and political order. They also hoped to reach a tolerable peace with the victorious Allies. Public opinion generally anticipated a settlement on these lines. However, in the turmoil of defeat and revolution, the government had effectively lost control of day-to-day affairs, which made the fulfillment of these expectations unlikely.

Certainly, there were signs of hope. Industrialists and labor leaders reached a settlement of differences and, along with the civil service, collaborated in the successful demobilization of the war economy. Meanwhile, the army was extricated successfully from the former battle zones in France and Belgium, and, by January 1919, the process of constitutional reform was well on track. The resulting Weimar Republic saw the wholesale enfranchisement of women, a thoroughgoing commitment to social justice and welfare reform, and a significant democratization of the political process. As for the peace negotiations, an armistice came into effect on November 11, 1918, and the eventual Treaty of Versailles in June 1919 left the young German national state largely intact.

However, many did not see the situation as hopeful. Radicals on the political left and right bitterly resented the outcome of the revolution, which amounted to a compromise between the old imperial order and supporters of reform. Compromise could not satisfy extremists of any sort, and a series of armed uprisings, industrial strikes, and terrorist outrages followed. Some of Germany's brightest prospects, including the Catholic politician Matthias Erzberger and the Jewish industrialist-turned-statesman Walther Rathenau, were murdered, to the horror of mainstream public opinion. This unrest never threatened to topple the Republic, but it did have a significant, destructive impact on domestic and foreign perceptions of the new Germany. Furthermore, the country remained impoverished by the recent war. The currency began to devalue alarmingly, to the consternation of monied society, and devastating food shortages left many poorer Germans malnourished and prey to chronic disease or even premature death. The government lacked the necessary foreign currency reserves to meet its obligations, and agonized debates ensued over whether to pay a particular installment of reparations or to use the money to import wheat and keep the bakeries busy. Under these circumstances, the postwar reparations burden imposed on Germany turned public opinion against the Versailles Treaty.

At the January 1919 elections to establish a constituent assembly, voters had turned overwhelmingly to the republican parties. However, in subsequent parliamentary elections they began to shift toward parties that lamented the fall of the old empire, a time when Germany had stood proud among the world's nations, when there had been food on the table, and when money was worth what it seemed. More worrying, however, was the emergence on the right of a new breed of political extremism that advocated a witches, brew of social reform, national solidarity, and a racist program of retribution against Germany's alleged foreign and domestic enemies. These far-right demagogues claimed that the Treaty of Versailles (which they termed a "dictated" peace because there had been no open negotiations in 1919) had enslaved Germany to foreign Jewish capitalists who were growing rich on the toil of its ordinary, decent citizens.

Anti-Semitism was present in most European societies at the time, and not surprisingly these German extremists also vilified their country's own small, indigenous Jewish minority. Germany's Jews, it was argued, were treasonous and, working hand-in-glove with their co-religionists abroad, had undermined the war effort. Thereafter, the extremists claimed, Germany's Jews had sought to exploit the peace terms to deliver the country into foreign hands, caring little for the well-being of their homeland. Indeed, the accusation ran, Jews did not really have a homeland at all. These radicals named themselves National Socialists (*Nationalsozialisten,* abbreviated as Nazis) and called their party the National Socialist German Workers' Party (Nationalsozialistische Deutsch Arbeiterpartei, or NDAP). They advocated the solidarity and common good of the ethnic nation above class or other sectional interests. National Socialist ideologues, such as Dietrich Eckart, claimed that the Jews' allegedly treasonous behavior derived from inbred, racial characteristics that made their presence in Germany, let alone in any position of power, highly undesirable.

Up to this point, Nazism was only a fringe affair, its influence largely confined to Bavaria and, more particularly, its capital city, Munich. More significant criticism of the Republic and its institutions initially came from monarchist circles, but during 1923 a devastating

series of crises brought the Weimar order and even the German state close to breaking point. The year began with a collapse in Franco-German relations. The French premier, Raymond Poincaré, accused Germany of deliberately defaulting on reparations. French troops invaded the industrial Ruhr District to extract payments in kind, by force if necessary. German opinion had always believed the reparations to be unpayable and regarded the French invasion of 1923 as a thinly-veiled imperialist adventure, for which the defaulted payments merely served as a pretext.

The people of the occupied territories of western Germany refused to cooperate with the invaders in any way. Instead, they effectively shut down economic activity in Germany's industrial heartland. The government supported this campaign of resistance with massive subsidies, but this only served to bankrupt public finances and, finally, destroy the ailing currency. The mark effectively became worthless, stripping middle-class Germans of all their savings. Soon enough the wider economic crisis precipitated mass unemployment in the towns and cities of the Ruhr. The district was ravaged by starvation for the second time in a generation, and hundreds of thousands of severely malnourished children had to be evacuated by train to farms in the east where, at least, there was food to be had.

Not surprisingly, political tensions exploded, destroying many of the compromises that had informed the German revolutionary settlement, fostering separatism in Bavaria and the Rhineland, and giving enormous encouragement to extremist groups of every kind. Communist-led strikes and uprisings broke out in central and northern Germany, whereas, in the conservative state of Bavaria, the far right gathered its forces. In November, Adolf Hitler's Nazis tried to launch a military coup from their stronghold in Munich and, although this putsch failed utterly, the Bavarian authorities were lenient: They only imposed a modest prison sentence on the Nazi leader. Hitler learned from his own mistakes. He resolved to exploit the Weimar constitution to seize power rather than attack the Republic head-on. This meant, from here on, that he would concentrate on fighting and winning elections.

In the fall of 1923, the liberal statesman Gustav Stresemann had dared to hope that these terrible events marked nothing worse than the growing pains of the young Republic. Weimar survived 1923, reached a revised settlement with the Allies over reparations in 1924 (the Dawes Plan), and finally became part of a European system of mutual security guarantees in 1925 (the Locarno Agreement). The economy recovered after a fashion, a stable currency was established, and important new social legislation was approved by parliament. However, the crisis of German democracy was only in remission, it was by no means cured. Simmering tensions persisted just below the surface. German democracy was in no condition to confront, let alone survive, another great crisis.

Even during the so-called golden years of 1925 to 1929, there were ominous danger signs. In 1925, the Social Democratic president, Friedrich Ebert, died. Presidential elections followed. The eventual victor was Field Marshal Paul von Hindenburg, who had served as commander in chief of the German armed forces during the latter part of the Great War. Despite his association with the former empire and with Germany's defeat in 1918, many voters saw in him a symbol of national unity, a man above the bickering of party politics, and a reminder of the country's former greatness. The Weimar constitution granted the president substantial powers, including the capacity under Article 48 to suspend parliament and sanction rule by decree. These powers were originally intended to permit a democratically minded president to ride out any future crisis, and they had been invoked during 1923 precisely for this reason, with the consent of the republican parties. Now, however, they were vested in a man who was prepared to uphold the law, but made no secret of his monarchist sympathies.

In addition, the 1924 parliamentary elections saw a remarkable growth in fringe parties that represented particular regions or particular interest groups, whether it be farming, small business, or people who had been cheated out of their savings. (This was even more marked during the 1928 elections.) Voters, it seemed, were losing faith in the larger parties, which invariably had to trade off one set of promises or commitments against another. Now, voters threw their support behind particular special-interest parties that would henceforward speak up directly and only for them. The Weimar constitution unintentionally encouraged such behavior, because the constitutional assembly had resolved in 1919 to let every vote count equally in elections. The objective had been fair representation for parties such as the Social Democrats, who had lost out in national elections during the imperial era through rigged constituency boundaries, and in many state elections through a property-based voter franchise.

Alongside the unanticipated plethora of fringe interests encamped in the Weimar parliament, deep political divisions now formed which ensured that no larger party had any hope of obtaining a majority on its own. A series of coalitions governed the country, not entirely without success, but the inevitable horse-trading and compromise that accompanies coalition government

left the electorate cynical and dissatisfied. Industrial relations also became increasingly polarized, and in 1928 this situation culminated in a major crisis in the Ruhr District. Steel bosses refused to arbitrate during a fierce wages dispute and instead locked out their employees. It was clear that the Weimar Republic was no longer able to reconcile opposing social interests. As a result, powerful supporters of the old empire, who had been prepared in 1919 to tolerate the Republic, began to look toward a more authoritarian constitutional system, including, perhaps, a restoration of the monarchy.

In 1929 the German economy was already in decline, but in October the U.S. stock-market crash dealt it a hammer blow. Since 1924, Germany had been dependent on a generous flow of foreign credit, particularly from the United States, to pay reparations and even to fund domestic spending. Now, American loans dried up, and nervous overseas investors began to repatriate their capital. By 1931 the entire European banking and financial system had been compromised by the wider economic crisis. International trade had collapsed and domestic economies were sliding ever deeper into recession. Germany was particularly badly hit and by 1932 a third of the labor force had registered as unemployed; a further sixth had simply given up working. The dire poverty, hunger, and disease that had scourged Germany between 1915 and 1924 returned with a vengeance. Poverty-related crime soared, and in the towns and the countryside alike, there were noisy political demonstrations and even riots. Few had any real confidence that the Republic would, or could, address the crisis.

The Nazi Rise to Power

In early 1930, the last democratic coalition government collapsed, prompting the old elite to make its move. Military and business interests close to the president resorted to rule by decree (under Article 48) and resolved to hold early elections, in the expectation that voters were tiring of Weimar and would give the old guard another chance. Thereafter, they believed, the constitution could be looked at again, but the plotters got more than they bargained for. Hitler had been released from prison in 1924 and had reestablished the Nazi Party in the following spring. He made it plain to the paramilitary adventurers who had helped plan the November 1923 putsch that their violent days were over. Instead, he insisted that elections marked the surest way to power. The NSDAP had fared relatively poorly in the 1928 parliamentary elections, but in 1930 it achieved a breakthrough by winning almost a fifth of the votes cast. State and local elections across Germany gave similar results, confirming that the Nazis had become a major political force that no one could afford to ignore. During the spring of 1932, Hitler ran a close second to von Hindenburg in fresh presidential elections, and his party triumphed in a new round of state polls. Finally, the NSDAP saw its vote double in July to over 37 percent in the national Reichstag elections.

How had this breakthrough been achieved, and which groups in German society responded most strongly to the appeal of Nazism? Historians once believed that the Nazis appealed to the marginalized, dispossessed middle classes of Protestant, small-town, and rural Germany. These were precisely the people who had abandoned mainstream politics in droves during the 1920s, turning instead to the special-interest splinter parties. These parties, however, had been unable to operate effectively during the Great Depression, leaving the middle classes open to the Nazis' xenophobic nationalism and promises of justice at home for the farmers and small businessmen of Germany.

More recent research does not deny the Nazis' appeal to these middle-class groups, but scholars now suggest that Hitler's party cast its net much more widely than had originally been assumed. Instead, these scholars argue, Hitler and the NSDAP appealed to almost all elements of German society with a message that promised national solidarity, economic reconstruction, and a just reward for hard work. The Nazis claimed to be the party for everyone: the professionals, the people of countryside, the industrial workers. Their racialism and aggressive foreign policy platform were no secret, but leading propagandists, such as Joseph Goebbels, played down these core Nazi beliefs, knowing them to be vote-losers. Nazi parliamentarians, such as Gregor Strasser, instead addressed the issues of the day, proposed daring solutions to the great economic crisis, and did their utmost to keep the appeal of Nazism general. Theorists have postulated that the Nazis pioneered many of the propaganda techniques of the modern political party, with parades, pageantry, and music all playing a crucial role. The Nazis adopted a militarist flavor that played well to German public opinion, selected and trained their public speakers with great care, and used emerging media such as film with devastating effect. No other party in Germany displayed comparable energy or had such a broad reach.

Above all, the success of the Nazi movement lay in its ability to recruit and mobilize an extensive army of activists who were willing to knock on doors, raise funds, convert friends and neighbors, and operate rudimentary welfare schemes for the party faithful. Meanwhile, the party recruited a cadre of young paramilitary volunteers, largely from the swollen ranks of unemployed workers. These were called Stormtroopers (*Sturmabteilung,* or SA), and they both attacked and in-

timidated political rivals on the left, while providing a highly visible public manifestation of militant Nazism. The uniformed SA was the mainstay of many a Nazi rally and parade and provided a constant reminder that the NSDAP was not simply another parliamentary party.

This almost unique ability to reunite the fractured elements of German society by creating a non-Marxist and strongly nationalist mass movement was quickly noticed by the conservative elite. It was struggling to rule the crisis-wracked country by decree, but General Kurt von Schleicher, who stood close to the president, was convinced that the monarchist right could harness and exploit the Nazis' huge and growing constituency to underpin a more authoritarian order with popular support. Accordingly, complex and initially fruitless negotiations opened between the monarchists and the Nazis. These talks dragged on through 1932, but Hitler's insistence that he head any such government as chancellor was unacceptable to the monarchists. At the turn of the year, however, President von Hindenburg was persuaded by his advisers, against his own better judgement, that Germany's only hope for a stable government would be a coalition government with Nazi participation, and thus a government with Hitler in charge. The Nazi leader was granted his wish on January 30, 1933.

Leading conservative politicians secured the majority of posts in Hitler's first cabinet and dared to hope that his inexperience in high office would render him their puppet. However, the new chancellor exploited the possibilities offered by Weimar's constitution up to and beyond the legal limits, and rapidly outflanked his coalition partners. He persuaded President von Hindenburg that extraordinary emergency powers under Article 48 were indispensable in dealing with an alleged communist threat to stability. When a Dutch communist, acting alone, committed an entirely fortuitous arson attack on the Reichstag, Hitler suddenly had a pretext for suspending civil liberties. He declared that Germany was under threat from Jewish-inspired global terrorism, against which the authorities had to act with all the means at their disposal.

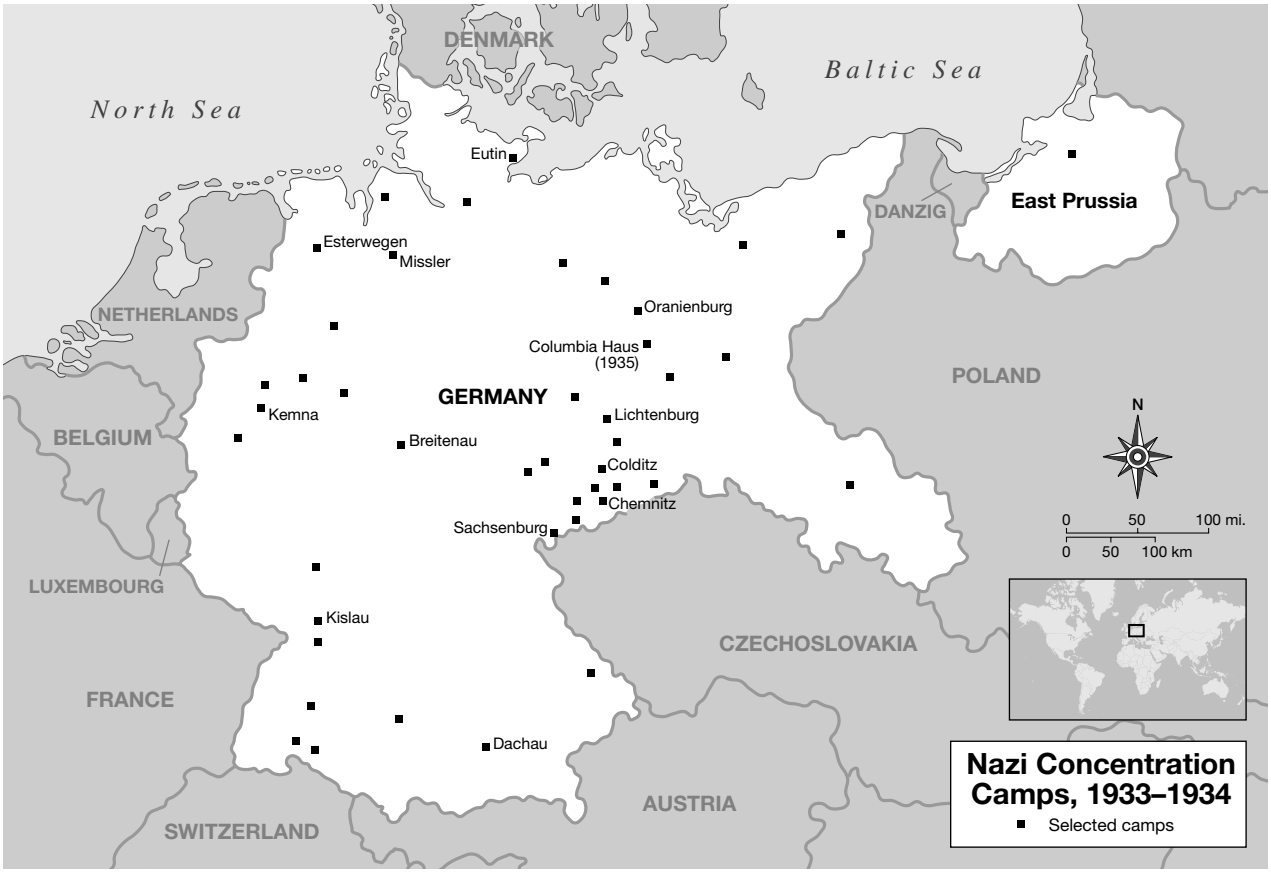
New parliamentary elections were held in early March 1933 under anything but ideal circumstances, with Nazi stormtroopers prowling the streets. Political rivals were arrested and detained without charge in makeshift concentration camps, with no prospect of a fair trial. The media were increasingly subject to interference and censorship. Unsurprisingly, all of this resulted in Nazi gains at the polls. The NSDAP and its conservative allies won an overall majority in parliament, which effectively surrendered political power to Hitler and his ministers through the Enabling Act of March 23, 1933. On August 2, 1934, President von Hindenburg died and Hitler swiftly proclaimed himself Head of State and Government, taking the title of Leader (Führer) and National Chancellor (*Reichskanzler*). Fragile reassurances were granted to the army chiefs that they would remain an independent pillar of the nation. In gratitude, they squandered this concession by swearing, along with their troops, a personal oath of loyalty to Hitler.

Hitler's Third Reich

Hitler's regime quickly tightened its grip on the country. A series of decrees were enacted, increasingly placing the Nazi regime above the law as it moved to persecute minorities, in particular the Jews, and to institutionalize the concentration camp system of which Dachau was the most notorious peacetime example. The regime incarcerated tens of thousands of individuals it deemed to be political, racial, or social enemies and, although most were eventually released, a significant minority were severely mistreated; some were even murdered. Soon enough, the courts were instructed to turn a blind eye to such outrages, and the way was opened potentially for a murderous eugenics program and, during the 1940s, genocide of an unprecedented ferocity.

The Nazis' racist ideals were now expounded overtly, and every means was mobilized to promote them throughout society. The educational system was nazified, and youth movements and organizations were dragooned or lured into the Hitler Youth and German Girls' League. The press quickly came to understand that self-censorship and the promotion of news and features friendly to the regime were the only practical way to ensure survival. Propaganda minister Goebbels masterfully exploited the radio and film industries, ensuring that the Nazi message was promoted through entertainment rather than blatant propaganda. Even news coverage of the early concentration camps was superficially reassuring. Newspaper features stressed that the dregs of humanity, hardened criminals, vagrants, and dangerous political radicals were being given a chance to redeem themselves through hard work in the outdoors and through firm but fair discipline. The most dangerous, irredeemable convicts, the public was reassured, were shot if they tried to escape.

Further aspects of the Nazis' early record proved relatively reassuring to the typical citizen. The blatant thuggery of the SA antagonized most Germans, but during June and July 1934, the stormtroopers were restrained and their leaders executed without trial on charges of homosexuality and corruption. Although il-



Positions of concentration camps in Germany. [XNR PRODUCTIONS/GALE GROUP]

legal, these executions met with public approval, and even the establishment refrained from protest. The Nazis, it reasoned, were cleaning out their own stables. Meanwhile, the government moved boldly and decisively to revive the economy, launching a series of job creation and vocational training programs.

By 1936 unemployment was virtually a thing of the past. The increasing availability of overtime and expanding employment opportunities for women, despite the Nazis' avowedly pro-natalist and antifeminist policies, meant that household incomes rose appreciably. Bitter years of abject poverty and political chaos were set aside. In simple but very important ways, the profoundly abnormal and immoral Nazi regime had reinstated a normal day-to-day existence for most of its subjects. Indeed, popular support proved sufficiently strong to enable even the most repressive dimensions of the Third Reich to operate relatively smoothly during peacetime. The SA rowdies were replaced by the more bureaucratic and infinitely more deadly *Schutzstaffel* (SS), under the command of Heinrich Himmler, which soon enough established control of all German police forces. However, Himmler's much-feared Secret State Police, the Gestapo, was a relatively small organization that functioned largely through a flood of information, tip-offs, and outright denunciations that flowed in from the general public. The Nazi police state was a state in which the people policed themselves to a very significant degree.

Against this backdrop, anti-Jewish measures intensified only sporadically, and left even the Jews uncertain as to their future. Some hoped that the persecution would have its limits, even be quietly dropped once the government had finished playing to its anti-Semitic followers. However, careers in the public service were largely closed to Jews in 1933, and Jewish businesses were subjected to a boycott on April 1. In 1935, the Nuremberg Laws banned future intermarriage between Jews and Christians, although current marriages were grudgingly tolerated and the resulting offspring granted a tenuous security in an effort to avoid inflaming public opinion. The authorities began confiscating Jewish-owned businesses in 1937, under the so-called Aryanization program. Matters subsequently came to a head on November 9 and 10, 1938, when Goebbels staged a violent anti-Jewish pogrom. Kristallnacht

("Crystal Night"), was unleashed across Germany in response to the assassination of a German diplomat in Paris by a Polish Jew. A growing number of Jews chose to emigrate and, by the time that war approached, in 1939, some 280,000 of the 500,000 Jews in inter-war Germany had left the country. By the time the notorious Wannsee Conference in January 1942 confirmed the primacy of the SS in administering the Jews' ultimate fate, 360,000 had managed to emigrate from the country.

Anti-Jewish measures assumed their truly murderous, genocidal dimension with the coming of war in 1939. Germany had begun covertly rearming shortly after the Nazi takeover, and in 1935 Hitler publicly renounced the Versailles Treaty by reintroducing general conscription. In 1936, Germany remilitarized the Rhineland in further defiance of the Versailles and Locarno treaties, before seizing the foreign German-speaking territories of Austria and the Sudetenland in 1938. In early 1939 the Czech capital, Prague, was occupied and, finally, in September, demands on Poland for the return of former German territory escalated into a general European war.

Early on, Hitler had envisaged waging a war of conquest. Although some historians doubt the existence of any particular master plan or blueprint, it is widely recognized that the east, and particularly the Soviet Union, was perceived by the Nazis as ripe for conquest and colonization. Eastward expansion had informed German objectives even during World War I, but the Nazis linked it directly to their racialist agenda and vision of the world (*Weltanschauung*). The Bolshevik regime of the Soviet Union was regarded as a degenerate but deadly manifestation of the global Jewish conspiracy, and its destruction was considered vital for Germany's future security. Soviet functionaries and the Jews of Eastern Europe alike were therefore doomed to destruction as the Nazis sought both to conquer this alleged enemy and, simultaneously, to clear the territory for colonization. The destruction of Europe's Jews and the destruction of the Soviet Union came to be regarded by the Nazis as one and the same thing.

Poland's Jews had been subjected to a wave of atrocities beginning in September 1939. Now, in June 1941, persecution on a much greater scale ensued. East European Jews and other victims were rounded up and shot by special task forces (*Einsatzgruppen*) or by regular army units. The Babi Yar massacre outside Kiev saw the execution of almost 34,000 Jews and communist functionaries in just two days. Ghettos were established in Poland for the bulk of the remaining Jewish population, but scant rations were provided, and starvation and disease took their toll of the population. During late 1941, however, preparations began for the industrialized slaughter of Jews and other victims in newly built extermination camps, of which Auschwitz became the most notorious. Here alone, hundreds of thousands of Jews died in the gas chambers, on work details, or in a multitude of arbitrary, inhumane ways.

Germany's defeat in May 1945 came too late to prevent the slaughter. The survivors and their descendents have struggled ever since to come to terms with the enormity of these crimes, for which some of the surviving Nazi leaders were brought to account at the Nuremberg Trials. Germany, an erstwhile pillar and bedrock of occidental civilization, was devastated physically, emasculated politically, and so compromised morally that even during the later twentieth century, many of its citizens balked at taking any pride in German nationhood.

Germany's intellectuals have struggled to reconstruct a German identity and ethos that is not haunted and dominated by Hitler and the gas ovens of Auschwitz. Many have found their integration in the western Atlantic alliance and participation in the construction of a European Union in close partnership with their former enemy, France, a more ethically plausible way forward. This new Germany remains deeply allergic to war and foreign adventures, an attitude for which, ironically, it has recently been roundly criticized by its major postwar ally, the United States.

SEE ALSO Anti-Semitism; Auschwitz; Babi Yar; Concentration Camps; Einsatzgruppen; Extermination Centers; Gestapo; Ghetto; Goebbels, Joseph; Göring, Hermann; Heydrich, Reinhard; Himmler, Heinrich; Hitler, Adolf; Holocaust; Intent; Kristallnacht; Labor Camps, Nazi; Namibia (German South West Africa and South West Africa); Nuremberg Laws; Nuremberg Trials; SS; Streicher, Julius; Wannsee Conference

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Conan Fischer

Gestapo

Although the Gestapo certainly played a central role in Nazi genocide, its name is often misapplied to other SS and police organizations involved. To understand its actual role, one must understand its place in that larger complex, but especially the branch to which it belonged, the Security Police and SS Security Service (Sipo and SD).

The Gestapo routinely rounded up "undesirables." Here, Warsaw Jews are force-marched from the city for transport to concentration camps in the east, March 27, 1940. [BETTMANN/CORBIS]

As the Nazis took over Germany in 1933, they created separate security agencies of police detectives to fight political crime, that is, to prosecute their enemies. To build agencies that could infringe on civil liberties, they took advantage of fears about threats to national security, especially after the hysteria unleashed by the Reichstag fire, allegedly set by a communist terrorist.

Geheime Staatspolizei (Privy [Secret] State Police) was a traditional title for political police. The abbreviation GeStapo emerged innocently enough, only to become a symbol of police terror and genocide.

By 1936 Heinrich Himmler, head of the SS, had consolidated all such police into a unified national Gestapo. They had become veritably independent of all judicial and most normal governmental mechanisms of control. At the same time, he acquired command of all German state police to become Reichsführer SS and Chief of German Police. Himmler hoped to revolutionize them by fusion with his SS.

As part of this process, under Reinhard Heydrich he united three complementary agencies. While maintaining their separateness, they teamed the regular detectives, the *Kriminalpolizei* (Kripo), with the Gestapo, collectively called the Security Police (Sipo). To provide union with the SS, they added the SS Security Service (*Sicherheitsdienst,* SD) that had been created by Heydrich. Sipo and SD were to be the nerve center for identifying and eliminating any so-called threats to the national community.

The SD was an amorphous combination of academics, professionals, and young Nazis who wanted to shape future society, to provide ideological guidance for police work against alleged enemies of the people, to monitor and shape the public mood and advise the national leadership, and to monopolize domestic and foreign intelligence and counterespionage operations. Himmler and Heydrich planned to infuse Sipo with leaders and members of the SD; they also began to successfully recruit qualified detectives as SS/SD members. Although this two-way process never involved a majority of the detectives, it contributed significantly to mobilizing all involved for their future roles in genocide.

To enhance control, in 1939 Himmler and Heydrich created a special headquarters for Sipo and the SD—the Reich Security Main Office (*Reichssicherheitshauptamt,* or RSHA). Not only did RSHA become the command center for national security, it also extended its tentacles into all occupied territories where enemies and other peoples deemed unsuitable might undermine development of the "Thousand Year Reich." RSHA ac-

quired authority for coordinating security efforts behind the lines.

Thus, although the Gestapo played a key role in Nazi genocide, it worked inseparably from its teammates in Sipo and SD. The RSHA coordinated with the Wehrmacht the operations of the Einsatzgruppen of Sipo and SD. Once areas were secured, RSHA morphed these forces into regional headquarters for its operations and the ongoing programs of "population management." Sipo and SD were the executive agencies for identification and extermination, organization of shooting teams, ghettoization, and assignment to labor and death camps. This involved them in the coordination of the uniformed German police and locally recruited police auxiliaries, both of whom played major roles in mass extermination. In the occupied west the Gestapo's Jewish experts worked under Sipo and SD commanders to locate, round up, and transport Jews and other victims to ghettos or concentration camps. In Allied countries they encouraged maximum collaboration.

Their Kripo colleagues had responsibility for rounding up and committing to the camps homosexuals, three-time criminal offenders, Romani, and anyone else who fell under the ever-broadening category of asocials. This authority resulted from the Nazi program of proactive crime prevention as opposed to reactive enforcement. Such logic involved them in the euthanasia program for exterminating the genetically unfit. Thus, Kripo acquired expertise in operating gas chambers. That, in turn, led to their involvement in developing some of the first death camps in Poland.

Neither branch of Sipo commanded either the early concentration camps or the slave labor and extermination camps that emerged with the Holocaust. They did, however, share primary responsibility for rounding up and determining the commitment and release of inmates. The much larger uniformed police force under Himmler, but outside Sipo and SD, supported them in all these operations, while another branch of the SS ran the camps.

Specifically in the evolution and execution of the Shoah, the Gestapo and SD played symbiotic roles from the beginning. Ostensibly, as police executive for domestic security, the Gestapo targeted legally defined enemies of the state. Of course, it also monitored and harassed all suspected enemies, and shut down their organizations. Its first targets were communists and socialists, but quickly liberal, conservative, and rival right-wing radical groups became suspect. Then any remaining non-Nazi professional or labor organizations came under scrutiny and attack. Among the vanguard of suspected enemies were Christian leaders whose sense of morality led them to publicly criticize the regime's programs. Catholic priests and organizations especially drew fire, but Jehovah's Witnesses were the first sect targeted for immediate elimination.

Freemasons and Jews had always ranked high on the Nazi lists of enemies. The Gestapo could break up lodges and Jewish organizations, but individuals had to be charged with specific crimes. Thus, the Gestapo originally devoted relatively limited energy to Jews. But the Nuremberg Laws of 1936, combined with an expanding body of legislation curbing Jewish economic and occupational activities, defined many otherwise normal human activities as crimes when performed by Jews. Thereafter, the police generated "statistical evidence of criminality" that allegedly proved the Jewish threat to public security. Policemen felt increasing pressure to prosecute/persecute this outgroup, whose very existence was perceived as a threat to law and order. Still, law enforcement could usually act only when a Jew broke the law.

By 1936 two other developments led the SD to acquire a growing interest in the "solution" of the "Jewish problem." Among its leading, highly educated officers, some with an ideological fixation on "scientific racism" had risen to prominence, and for them Jews ranked preeminently as the problem in achieving racial purity. Meanwhile, rivalry among Nazis made it clear to Himmler, Heydrich, and SD leaders that acquiring responsibility for solving the Jewish problem would win favor with Hitler. Consequently, the SD created a cadre of "experts on Jewry" who would apply so-called scientific methods of research to understand and solve the problem rationally. They claimed the right to a monopoly over such problem solving because of their superiority over conventional anti-Semites who in their counterproductive excesses were misguided by "mere superstition."

As a result, Heydrich created in 1937 a division of labor between the Gestapo and SD. The Gestapo prosecuted Jewish criminality, while the SD researched and monitored the problem, ensuring that its detectives had proper ideological-scientific insight. This lasted until the pogrom of Kristallnacht in November 1938. After the annexation of Austria in March 1938 greatly expanded the numbers of Jews in the Reich, Hitler's Jewish expert, Adolf Eichmann, developed a highly efficient office in Vienna to speed up the process of emigration, while thoroughly fleecing the victims. SD recommendations for also expelling Jews with Polish citizenship inadvertently precipitated the November pogrom, because it was the assassination of a German official by the son of such expelled immigrants that provided the pretext for the pogrom. The actions of

radicals wreaked extensive economic damage with embarrassing international consequences. In response, to defuse radical dissatisfaction with the slowness of emigration and to solve the "Jewish problem." Heydrich was allowed to establish offices based on Eichmann's model throughout the entire Reich.

As the agency with police power, the Gestapo was better suited for such a responsibility, so Eichmann and his SD Jewish experts were transferred to the Gestapo. The SD retained only the mission of studying the Jewish problem. In this think-tank capacity, however, they sought to guide Nazi leadership and all police increasingly caught up in the evolution of the Final Solution. To maintain their position, they had to offer ever more radical and thorough solutions. Meanwhile, the joint involvement of Sipo and SD officers and personnel in the Einsatzgruppen, first in Poland and then on the Eastern Front, produced increasingly murderous responses. At every level, from Hitler down to the shooting teams, Sipo and SD helped initiate and further the decision to exterminate all Jews and eventually all other persons deemed unsuitable in the European population.

The most important question is not by whom and how all this was done, but the motivations of the perpetrators. Below the level of some ideologically motivated leaders and aside from a minority of rabid anti-Semites, the majority of the hundreds of thousands of perpetrators were "ordinary men" in most senses of that phrase. This applied to the professional police detectives in Kripo and the Gestapo. The availability and mobilization of such people for genocidal behavior remain key issues for research and debate.

SEE ALSO Barbie, Klaus; Germany; Göring, Hermann; Himmler, Heinrich; Holocaust

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George C. Browder

Ghetto

In the second half of the twentieth century the word *ghetto* in American culture was used to describe overpopulation and poverty in urban settings. Sections of cities, usually housing recent immigrants of African American or Latino origin, came to be referred to by this term. It communicated a kind of substandard living that could usually be ascribed to persistent discrimination against such communities, but also toward immigrants in general. In some instances, a sense of belonging and self-identification emerged from these negative connotations.

A sense of belonging evolved from the racial homogeneity and experience of shared persecution within the confines of the ghetto. African American or Latino ghettos do not always contain dilapidated buildings or deteriorating housing projects, but may signify home, places with an authentic racial identity or "soul" that yields a desire and yearning for life and the overpowering drive to rise above the immediate physical surroundings. This powerful image has been aptly captured in popular culture, especially literature. In the early twentieth century there were descriptions of a "negro ghetto" in Langston Hughes' plays and in his poem "The Heart of Harlem" (1945). In the latter Hughes captures the essence of this term:

The buildings in Harlem are brick and stone
And the streets are long and wide
But Harlem's much more than these alone
Harlem is what's inside.

This theme was echoed in the later work of other African American authors such as Countee Cullen, Claude McKay, Ralph Ellison, and Lorraine Hansberry. What links these writers is their reference to the mean streets of the ghetto, where life was hard but, despite poverty, crime, and rampant drug activity, dreams could be born that would transport people to a better way of life.

The derivation of the word *ghetto* is important. *The Oxford English Dictionary,* in seeking to trace its etymology, admits to a lack of clarity. There is tacit acceptance among scholars, however, that the word derives from the Italian verb *gettare* (to pour or to cast), a refer-

ence to the foundry existing in the city-state of Venice in the early 1500s. Nearly a hundred years later in Thomas Coryat's *Coryat's Crudities* (1611), the word first appeared in written form in the English language: "a place where the whole fraternity of the Jews dwelleth together, which is called the Ghetto."

From this passage it can be extrapolated that the early history of the word refers to a distinct section of a city, usually separated from the rest of the city by walls or gates. The people who lived within that walled section of the city were Jews. The connotation of negativity and discrimination followed the word from that point onward.

Origin of the Concept

The Jews who lived in Venice were mostly traders and moneylenders by profession. The presence of Jewish moneylenders played an important role in overcoming the religious prohibition, among both Christians and Jews, on collecting interest for loans made to members of one's own faith. As pointed out by Benjamin Ravid in 1992,

> The Jewish moneylenders not only helped to solve the socioeconomic problems of an increasingly urbanized society, but also made it less necessary for Christians to violate church law by lending money at interest to fellow Christians. Consequently the Venetian government periodically renewed charters allowing Jews to engage in money lending down to the end of the Republic in 1797.

The beliefs of the Jewish minorities in Venice across Italy and throughout Europe stood in stark opposition to the growing Christian Renaissance of the time. As a result, the incumbent powers in Venice and the city's population targeted the Jewish community. Laws were passed, notably *Calimani 1,* that required Jews to be grouped together to prevent free movement, especially at night. Another regulation, *Calimani 2,* required the Jewish population to wear a star-shaped yellow badge and yellow beret to differentiate them from the Christian majority. This public identification not only enabled the authorities to easily identify Jews, but it also attracted taunts and social cruelties. This discrimination was compounded by strict migration laws that prevented the Jewish population from growing through immigration.

The combination of social factors at play during that historical period and the creation of specific laws aimed at the Jewish community introduced the word *ghetto* into the lexicon. Discriminated against in mainstream society, Jewish traders and moneylenders were forced to remain together. The strict regulations requiring them to live in a specific area of the city implied that they had to live within a section that could be easily monitored. The area near the foundry in Venice was ideal for such purposes. Persistent discrimination coupled with the passage of further laws identified this group to the authorities and the rest of the city's residents, making them subject to abuse. This provided additional motivation for Jews to live inside their own territory, where they were less likely to be subjected to derision.

In response to the 1943 uprising in the Warsaw ghetto, Nazi troops burned entire blocks of buildings. This was their principal line of attack against unexpected Jewish resistance.

Accounts of the time suggest that the ghetto itself did not necessarily signify a deterioration in living standards and status. Rather, for many Jews it represented the middle ground between unconditional acceptance and complete expulsion and exclusion. Residing within the ghetto allowed them to pursue their way of life and trade without interference. The ghetto appears to have been a place where Jewish culture and identify thrived.

Shades of Meaning

The word *ghetto* encompasses several strands of meaning that need to be identified and differentiated. At least three different connotations exist: (1) voluntary Jewish quarters; (2) quarters assigned to the Jews, either for their convenience or protection, or as an inducement for them to settle in a particular area; and (3) an area that was compulsorily Jewish and where no Christians were allowed to live.

These distinctions largely resulted from clerical pressures, social circumstances, and especially the edicts of the Nazi regime. Also important to understanding the meaning of the term is an examination of the environs in which the ghetto typically existed and the reaction of Jews when confronted with compulsory or optional living quarters.

There is little doubt that in the late medieval period many Jews, like modern immigrant groups of the twenty-first century, chose freely to live in close proximity to each other. This desire was often driven by the very practical needs of living a shared religious and social life that was significantly different from that of the rest of the population. This tendency was apparently reinforced in the eleventh and twelfth centuries when secular authorities in Germanic lands as well as *reconquista* Spain offered their Jewish populations specific quarters. It is important to note that the Jewish quarters at this stage were not compulsory nor were they used as a means of segregation. Rather, they were provided as an incentive for Jewish traders to conduct their trades within cities.

During this era there was regular contact between Jews and their Christian neighbors, despite the occasional recalcitrance of the Catholic Church, which frowned on such relations. This was captured in the stipulation adopted by the Third Lateran Council in 1179 discouraging Catholics from living among Jews. It was primarily this decree that led many European cities, including Venice, to pass legislation segregating Jews. As a result, Jewish quarters commonly were populated exclusively by Jews, with non-Jews, mainly Catholics, often prevented by law and emerging custom from living in these areas.

Developments in Venice

In Venice itself, Jews were allowed to settle anywhere within the city, with no concerted group settlement except for a brief period between 1382 and 1397. It was also common for Jews to settle on the mainland across the lagoon from Venice in Padua and Mestre, with the city of Venice allowing them to seek refuge there in the event of war. Within this context Jews fled to Venice from neighboring regions during the War of the League of Cambrai in 1509. When Venice successfully defended itself, acquiring the surrounding mainland territories, the refugees were ordered to return home. However, exceptions were made for Jews when city authorities realized the benefits of permitting this population to remain in Venice.

The principal reason for this decision was the potential revenue that might be collected from wealthy Jewish traders in a time of state penury caused by the expense of the recent war. The Jewish community's continued presence in the city would also assure the close proximity of moneylenders for the poor, whose numbers had risen sharply after the war. It was these circumstances that are reflected in the city charter of 1513, allowing Jews to live in the city and guaranteeing their freedom to continue moneylending activities there.

Role of the Church

The enlightened attitude of the Venetian government stood in sharp contrast to the views of civil society and the Church. The clergy regularly preached and incited hatred against the Jews, notably at Easter time when there were often calls for their expulsion from the city. The delicate balance between polity and the Church was overcome by a move on the part of the Venetian government in 1516 that sought to placate such sentiments and can be directly attributed to the growing use of the term ghetto. In a document passed by the Venetian Senate on March 29, the city government agreed to the Jews' continued presence in the city as moneylenders, but indicated that they could not dwell anywhere in the city and have freedom of movement day and night. Instead, the legislation stipulated that all Jews would be required to live on an island referred to as *ghetto nuovo* (the new ghetto). To guarantee that Jews lived within this area and remained confined within it at night, gates were erected at two locations. These gates were to be locked at sunset and only reopened the next morning at sunrise. Jews caught outside the gates during the hours between sunset and sunrise could be fined prohibitive amounts.

For the legislation to take effect, the Christians who lived within the area designated as the *ghetto nuovo* were required to vacate their homes. Landlords of properties within the newly formed ghetto were also allowed to charge their new Jewish tenants rents that were one-third higher than those paid by their former Christian tenants, with the increments exempt from any form of taxation.

Evolution of the Venetian Ghetto

The concept of ghetto that is understood in the contemporary world, although it reflects many aspects of

current reality, may be traced back to the actions of the Venetian Senate in 1516. Many Jews initially resisted the stipulation that required them to leave their abodes and move to the newly gated area. In addition, while many of the Jews lived in close proximity to each other, they strongly objected to the idea of being segregated in the manner proposed by the Senate. However, because the Venetian government was adamant about its policy but did make some concessions in terms of the area's administration, the community gradually accepted the stricture. It was clearly preferable to being cast out of the city altogether and forced to trade from the mainland.

Records also reveal 1541 to be a significant date in distinguishing the Venetian ghetto from the radical concept of ghetto that the Nazis advanced nearly four hundred years later. That year a group of Levantine Jewish merchants visited the city and then approached the authorities, complaining that the existing ghetto was not large enough for them to both reside in and use for the storage of their merchandise. The Venetian government investigated the complaint and found it to be valid. Recognizing the value of the Jewish community in attracting trade to the city, it ordered that the ghetto be extended by appropriating a neighboring area that contained twenty dwellings. This amalgamation was accomplished by building a wall and a footbridge between the *ghetto vecchio* (old ghetto) and the *ghetto nuovo*. Thus unlike the Nazis, Venetian authorities did engage in a dialogue with the Jewish community and instigated measures to increase their comfort.

The Concept Spreads

The ghetto and the phenomenon of segregating Jewish populations were not confined to Venice alone. With the driving force being the pressure exerted by the Church on the regulation of the Jewish community and its interactions with Christians, the practice of restricting Jews to specific areas within cities became widespread. This trend was consolidated by the papal bull that Pope Paul IV issued shortly after his selection as pontiff in 1555. *Cum Nimis Absurdum* required all Jews, in papal states, to live on a single street and, if necessary, adjacent streets, with the area clearly separated from the living space of Christians and with a single entrance and exit. Thus, Jews in Rome were required to move into a designated quarter as a result of this edict, and subsequent reference to the area as a ghetto is contained in Pope Pius IV's papal bull of 1562, entitled *Dudum a Felicis.*

This trend was repeated across Italy, with similar activities reported in Tuscany and Florence (1571) and Sienna (1572). In each case the area that the Jews were required to live in was referred to as a ghetto. The word also entered the lexicon of the Jewish community; it appears in Hebrew documents of the Jews of Padua. From 1582 onward this community engaged in similar discussions with the authorities, which resulted in the creation of a ghetto there in 1601 after Padua had gained its independence from Venice.

In Venice the use of the term rose steadily after the extension of the Jewish quarter in 1541. A second negotiation for additional space occurred in 1633 and it resulted in the designation of a third ghetto area called *ghetto nuovissimo,* also physically linked to the two earlier ghettos. However, this third ghetto area was not located on the site of the previous foundry. Thus, while the former two ghettos owed their names to the existence of foundries on the land prior to their redesignation as segregated places for Jews, the new ghetto had never been a foundry. It was simply referred to as a "ghetto" since it was the newest enclosed quarter for Jews. Thus, as pointed out by Ravid in 1992, "the term ghetto had come full circle in its city of origin: from an original specific usage as a foundry in Venice, to a generic usage in other cities designating a compulsory segregated, walled-in Jewish quarter with no relation to a foundry, and then to that generic usage also in Venice."

Although the first official ghetto evolved in Venice and can be directly linked to the Senate ruling of 1516, it would be incorrect to suggest that it represented the first segregation of Jews. Prior to that date, there had been quarters in cities that were populated primarily by Jews. An example is the Jewish quarter in Frankfurt established in 1462, predating the Venetian ghetto by more than fifty years. Thus, although the first ghetto was established in Venice in 1516, it was such only in a purely technical, linguistic sense. In a wider context, one that recognizes what a ghetto signifies, the concept of a compulsory, exclusive, enclosed Jewish quarter is arguably older than 1516 and may be traced to the Church's Third Lateran Council.

References in Literature

In terms of English literature, although William Shakespeare's *The Merchant of Venice* (1596) specifically refers to a Jewish moneylender who almost certainly would have lived in the ghetto, no mention is made of the word. The play does, however, portray the prejudice that existed toward Jews in the sentiments expressed against Shylock, the moneylender, but it is inaccurate in that no reference is made to the fact that Jews were required at that time to wear yellow stars and berets.

The first reference in the English language to ghetto, as mentioned earlier, appeared in the travelogue

written by Thomas Coryat in 1611, *Coryat's Crudities.* The book details the author's travels, including a visit to Venice, and the word *ghetto* is used to describe the dwelling place for the "whole fraternity of the Jews."

While ghettos persisted for the next two centuries, the phenomenon was only sporadically represented in popular culture and writing. In 1870 some scholarship suggested that Western Europe's last ghetto, in Rome, had been abolished. Despite such a claim, it is clear that the practice remained widespread, in Russia and elsewhere around the world. The term *ghetto* also began to appear with greater frequency in the literature. It appeared in the work of literary critic Edward Dowden in his analysis of Percy Bysshe Shelley's poetry in the late nineteenth century. In two biographical studies of the same period, *Children of the Ghetto* and *Dreamers of the Ghetto* (1898), Israel Zangwill explores the idea of life in the ghetto.

With the steady rise in discrimination against Jews all over Europe as well as in the Ottoman Empire during the nineteenth century, it became common for many cities to designate Jewish quarters that were often referred to as ghettos. The word came to refer to any area that was densely populated with Jews, even when those places had no strictures that barred Jews from living in the rest of the city among the rest of the population. Eventually, the word lost its Jewish emphasis and simply referred to any densely populated area where a minority group lived. Most often, as in modern-day usage of the word, the rationale for the homogeneity was socioeconomic and cultural rather than legal, thus marking a significant departure from the term's original use in Venice when the law required that Jews be segregated into a ghetto.

The development of the word has resulted in a number of related phrases such as "out of the ghetto" and "ghetto mentality." These suggest that the ghetto is a place from which emancipation is necessary. Although it could be argued that the Jews confined to ghettos sought emancipation of this kind, the factors from which individuals living in modern-day ghettos seek a release are primarily socioeconomic rather than legal. Thus, getting out of the ghetto is a reference to acquiring enough wealth and influence not to have to live within its crowded confines. Similarly, ghetto mentality refers to the feeling of being under pressure or in a state of siege and reacting in a manner that is not otherwise considered rational.

Nonetheless, in the literature and other contexts the word *ghetto* has been mostly used in its classical Counter-Reformation sense, to refer to compulsory segregation in urban settings.

World War II

The crucial step in the evolution of the concept of ghetto to its modern-day meaning occurred during World War II, when the Nazis forced Jews into overcrowded and squalid quarters. Unlike earlier ghettos, Jews were simply grouped together in one specific place as a temporary haven on the planned road to total annihilation. With Adolf Hitler's rise to power in the 1930s, the idea of the ghetto reignited with a fury, exhibiting the worst manifestations of forcing a population to live within strict confines. The substandard living conditions introduced in the Nazi ghettos established and reinforced the concept of an archetypical ghetto as a place of severe hardship and misery. Nazi ideology with its theory of a superior Aryan race placed the minority Jewish population under direct threat, and ghettos became the means by which this population was segregated and then targeted for the fullest expression of Nazi aggression. German expansion eastward reestablished ghettos all over Europe. It is estimated that the Third Reich's conquests resulted in the creation of over three hundred ghettos in Poland, the Soviet Union, the Baltic States, Czechoslovakia, Romania, and Hungary.

The ghettos of World War II were extremely different from those of the Renaissance period. Although motivated by the same idea of segregation, the Nazi ghettos had a much more sinister purpose: the containment of a population that was soon to be exterminated. Nazi ghettos were demarcated from the rest of the urban landscape by the use of crude wooden fences, high brick walls, and, often, barbed wire.

Life in the Ghetto

Life inside the ghetto has varied tremendously at different points in history and in reaction to the pressures exerted on the community within its confines. In early Venetian times and in the aftermath of the papal bulls, ghettos became a place where Jews could maintain their own affairs and escape the discrimination they suffered in mainstream society. It was also a place where Jewish sociocultural and religious activity thrived, and a feeling of relative security might be experienced. In this era the ghetto had not yet become synonymous with overcrowding and dense overpopulation. As discussed above, when space was at a premium in the Venetian ghetto, Jewish leaders simply renegotiated with the Senate and secured additional areas to enlarge the original ghetto. There are also several accounts by authors and artists of the time, notably Leon Modena, Simone Luzzatto, and Sara Copia Sullam, that depict a society rich in culture and art within the Venetian ghetto.

What is clear is that life inside the ghetto in Venice was in sharp contrast to life in the Nazi ghettos

throughout Europe, where existence was directly influenced by outside pressures. A significant factor in the level of Jewish self-expression and creativity during this period was not so much the circumstance that required Jews to live in the ghetto, but rather, "the nature of the outside environment and whether it offered an attractive supplement to traditional Jewish genres of intellectual activity" (Ravid, 1992). Thus, the conditions the Nazi regime imposed on Jews were reflected in the immense overcrowding and suffering of a people forced to live within the confines of a ghetto. In these circumstances daily life was extremely hard, often resulting in despair, as it was compounded by the knowledge that the ghetto was merely an interim stop on the road to annihilation by a regime that was intent on eradicating Jewish identity.

Thus, the meaning of the term *ghetto* has changed considerably over time. Although its connotations have always been negative, because of the underlying rationale of segregation, these were not necessarily present to the same degree when the word was first coined in Venice of the sixteenth century. The most negative connotation of the word clearly derives from the actions of the Nazis during World War II.

The Ghetto Uprising in Warsaw

Another aspect of the use of the word *ghetto* can be attributed to a specific incident that occurred during World War II, the ghetto uprising in Warsaw. It captured the public imagination worldwide as a struggle against immense odds. At the outbreak of World War II there were three million Jews in Poland, with as many as four hundred thousand living in Warsaw. The Nazis invaded Poland in September 1939, and by November of the following year they had established the Warsaw ghetto. It was surrounded by an eleven-mile wall, roughly ten to twenty feet high, topped with broken glass and barbed wire. With its original residents displaced elsewhere, some 140,000 Polish Jews were forced into this concentrated area. German soldiers were posted at the ghetto's exits; only those Jews working in war-related industries were allowed to leave and return. Jews from other parts of Poland were gradually moved in, and some estimate that at one time there were as many as half a million people living in the Warsaw ghetto. Nearly 63,000 Jews are estimated to have died from starvation, the cold, and disease during the life of this ghetto.

Conditions within the ghetto regularly resulted in death, and this, coupled with the news in July 1942 that a death camp existed in Treblinka some forty miles away, fueled actions of resistance. By early 1943 the residents of the ghetto began to fight back against their captors. Using a handful of pistols, grenades, and captured weapons, the fighters took on the might of their tormentors, perhaps strengthened by the fatalistic attitude that death in combat was preferable to their meek acceptance of the fate that awaited them at Treblinka and other concentration camps. Drawing the Nazis into a guerilla-style battle, the Jewish fighters achieved some success in skirmishes that mostly took place in narrow alleys and dark apartment passages. The period of resistance lasted a total of eighty-seven days.

Established by the Nazis in November 1940, the Warsaw ghetto is believed to have housed as many as a half-million Jews before the Third Reich began to implement its Final Solution. Behind the 11-mile wall shown in this wartime photo, squalid conditions prevailed, with disease and starvation rampant, and approximately 63,000 people died. [HULTON-DEUTSCH COLLECTION/CORBIS]

The fighting reached a climax on April 19 when columns of approaching German troops, with tanks and armored vehicles, met with fierce resistance. They lost two hundred soldiers—either killed or wounded—and were forced to retreat. By April 23 the fighters issued a public appeal:

> Poles, citizens, soldiers of freedom. . .we the slaves of the ghetto convey our heartfelt greetings to you. Every doorstep in the ghetto has become a stronghold and shall remain a fortress

> until the end. It is our fight for freedom, as well as yours; for our human dignity and national honor as well as yours. . . .

However, the resistance began to crumble as food and ammunition ran out. The Nazis squeezed the ghetto, setting fire to buildings and reducing most of it to rubble as they sought out every last perpetrator of resistance against their occupying forces. By May the Nazis has regained complete control of the ghetto. Nevertheless, the fierce struggle against impossible odds inspired many other struggles, and in a sense, the feeling of shared fraternity that accompanies the use of the word *ghetto* in modern parlance may be attributed, in part, to it.

SEE ALSO Catholic Church; Germany; Holocaust; Inquisition; Resistance

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Joshua Castellino

Goebbels, Joseph

[OCTOBER 29, 1897–MAY 1, 1945]
Nazi propagandist and close associate of Hitler

Joseph Goebbels was second only to Adolf Hitler as a propagandist of the Nazi movement. Small and sickly as a child, he was deemed ineligible for military service because of a clubfoot. His able and agile mind nonetheless led him to obtain a doctoral degree in German literature in 1921.

Goebbels joined the Nazi Party in 1924, entering a milieu where his talents were quickly recognized. Hitler appointed him as head of the Nazi Party in Berlin in 1926. In that city the party was in chaos, but within a year, Goebbels had expelled a third of the membership, put those remaining to work in creating effective propaganda, and begun a weekly newspaper titled *Der Angriff* (The attack). He made Bernhard Weiss (whom he nicknamed "Idisor"), the Jewish deputy commissioner of the Berlin police, his particular target. Although support for the Nazi Party remained small, it was not long before all of Berlin was keenly aware of the Brownshirts' presence. As Goebbels said, "Making noise is an effective means of propaganda" (Bramsted, 1965, p. 22).

Soon after the Nazi takeover on January 30, 1933, Hitler named Goebbels Minister of People's Enlightenment and Propaganda, in charge of a new ministry made to order for him. This position gave him a major say in most matters relating to propaganda, but Hitler's habit of establishing jobs with overlapping responsibilities meant that Goebbels had to constantly contend with other Nazi leaders for power. During World War II Goebbels's influence gradually increased. His Total War speech in February 1943 was an attempt to mobilize mass support for the war effort after the defeat at Stalingrad, but also to increase his own power. As a propagandist, Goebbels followed Hitler's thinking. Propaganda was a collection of methods to be judged only on the basis of their effectiveness. Methods that worked were good; those that failed were bad. Academic theorizing was useless. Through natural ability and experience the skilled propagandist developed a feeling for what was effective and what was not. Propaganda had to be founded on a clear understanding of the audience. One could not persuade people of anything without taking existing attitudes and building on them.

Goebbels wanted Nazi propaganda to be easy to understand. It had to appeal to the emotions and repeat its message endlessly (but with variations in style). He favored holding to the truth as much as possible. However, Goebbels had no compunction about lying—although he thought it safer to selectively present or distort material rather than completely fabricate it.

Goebbels was a prime mover in the Nazis' anti-Semitic campaign. He regularly issued orders to intensify the campaign against the Jews. At the book burning in Berlin in May 1933, he announced the end of an "era of Jewish hyperintellectualism" (Reuth, 1993, pp. 182–183) and worked to eliminate Jews from German cultural life. He played a central role in the anti-Semitic violence of Kristallnacht (the night of broken glass) on November 9, 1938. He wanted Berlin to be one of the first major German cities to be "free of Jews."

Goebbels took a particular interest in film, especially the two vehement anti-Semitic films released in

the fall of 1940: *Jud Suess* and *Der Ewige Jude* (The Eternal Jew). The former was a so-called historic film set in the eighteenth century that accused Jews of financial and sexual crimes, the latter a documentary-style film based largely on footage filmed after the German invasion of Poland. It compared Jews to rats and suggested that they were responsible for most of the world's ills.

In his final major anti-Semitic essay in January 1945, Goebbels wrote: "Humanity would sink into eternal darkness, it would fall into a dull and primitive state, were the Jews to win this war. They are the incarnation of that destructive force that in these terrible years has guided the enemy war leadership in a fight against all that we see as noble, beautiful and worth keeping" (p. 3). After Hitler committed suicide as the Russian siege of Berlin raged, Goebbels and his wife decided to also end their lives on May 1, 1945, to avoid capture, but only after administering a fatal dose of poison to their six children. To their way of thinking, death, even that of their children, was preferable to life under a government other than the Third Reich.

Although Goebbels did not succeed in persuading all Germans to be strongly anti-Semitic, his propaganda intensified existing attitudes and made it easier for Germans to believe that the persecution of the Jews was at least partially justified. The Holocaust would not have been possible in 1933. Ten years of unremitting anti-Semitic propaganda established the foundation on which the concentration camps were built.

SEE ALSO Advertising; Film as Propaganda; Propaganda

Joseph Goebbels, Hitler's Minister of Propaganda, c. 1940. A passionate advocate of Nazi policies, he stirred anti-Semitism and helped set the stage for the Final Solution. [HULTON-DEUTSCH COLLECTION/CORBIS]

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Randall L. Bytwerk

Goldstone, Richard

[OCTOBER 26, 1938–]

South African jurist and advocate for international justice.

Widely recognized for his advocacy on behalf of international justice causes, particularly the establishment of the International Criminal Court, Richard J. Goldstone can be credited for helping to instill greater respect for the rule of law within the post–cold war international legal order. During a career spanning over four decades, his significant contributions include striking down one of the apartheid regime's most pernicious laws, chairing a commission to investigate the causes of political violence in the run-up to South Africa's first democratic elections, serving as prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR), and helping to institutionalize the role of his country's first Constitutional Court.

Goldstone was born in Boksburg, South Africa, to Jewish parents, and grew up to be a politically active student leader at the University of Witwatersrand. After receiving his B.A. and LL.B. degrees (both cum laude), he was admitted to the Johannesburg Bar in 1963. He practiced as a commercial lawyer until his appointment to the Transvaal Provincial bench in 1980. Although only newly appointed, Goldstone wasted little time in ruling that police could not evict a black woman from her home in a white suburb unless they first provided

Richard Goldstone, chief United Nations prosecutor, addresses the audience regarding Bosnian Serbs' mass murder trial. [AP/WIDE WORLD PHOTOS]

her with alternative shelter. This was a landmark ruling that effectively halted prosecutions of blacks under the apartheid regime's segregated housing laws.

In the mid-1980s, in an effort to suppress the rising number of violent anti-apartheid protests, the government adopted some of the harshest security laws of its rule. Under these draconian laws, tens of thousands of protestors were detained in jails and police stations across the country, where they were at risk of being tortured. While Goldstone could do little to free them, he soon became well known for his habit of personally visiting prisoners and detainees. In his view, this practice served to reassure not only the prisoners, but also the administration, that someone was taking an active interest in their well-being. By doing so, Goldstone became a notable exception in a time when few white judges within the apartheid regime enjoyed the trust and respect of the black majority.

From 1990 to 1994, due to his reputation as an impartial and unimpeachable judge, Goldstone became the obvious choice to lead an independent commission to investigate the causes of public violence and intimidation, whenever such actions threatened to disrupt the then-ongoing constitutional negotiations. Under his leadership, the commission conducted 503 inquiries and triggered the initiation of sixteen prosecutions for crimes such as murder, conspiracy to commit murder, illegal possession of firearms, and failure to testify before the commission. In November 1992, in what became one of its most important investigations, the commission exposed a secret military-intelligence cell within the South African Defense Force that was working to sabotage the political legitimacy of the African National Congress, while posing as a legitimate business corporation. Due to these and other revelations, President DeKlerk later was forced to dismiss sixteen intelligence officers.

Notwithstanding the importance of some of its revelations, Goldstone believes the commission's greatest achievement to be the contribution it made to reducing the violence that threatened South Africa's fragile constitutional negotiations. In his view, the commission's role was not so much to ferret out secrets as it was to smooth the way for democracy. This point is illustrated by Goldstone's claim that one of his proudest achievements is the agreement he facilitated between the police and African National Congress (ANC) that all but eliminated violence during protest marches. Indeed, it is generally recognized that the Goldstone Commission's efforts were instrumental in enabling South Africa to peacefully hold its first-ever democratic elections in 1994. Shortly thereafter, with the inauguration of President Nelson Mandela and the ANC government, the commission transferred its files to a newly established National Truth and Reconciliation Commission.

At about the same time that a new multiethnic democracy was taking hold in South Africa, the United Nations Security Council acted under Chapter VII of the UN Charter to establish the world's first ad hoc international criminal tribunal. It did so not to prosecute the architects of apartheid, as some had previously predicted, but in response to reports of deliberate acts of ethnic cleansing and systematic rape in the conflict that ensued the breakup of the multiethnic state of Yugoslavia. After initially proceeding quickly with the election of a number of international judges, the creation of the International Criminal Tribunal for the Former Yugoslavia later stalled over the appointment of a suitable prosecutor. After many months of delay and one failed attempt to appoint a prosecutor, President Mandela finally asked Goldstone to take the job. Goldstone agreed to a two-year term as prosecutor, on the assurance that his appointment to the new South African Constitutional Court be held in abeyance during this time.

From the beginning, Goldstone clearly appreciated the legal, political, and historic significance of ensuring the success of the first truly international criminal court with jurisdiction over genocide, crimes against humanity, and war crimes. Critics of the idea of international justice predicted that the ICTY would fail due to a lack of political will on the part of those who had created it, and pointed to the absence of any accused before it as evidence of its impotence. As a result, by the time the first trial finally got under way, it was clear that the court proceedings would be as much about the feasibility of the idea of an international criminal court as they were about culpability of the accused. This challenge was made more difficult by the fact that the first accused to be tried, Dusan Tadic, was viewed by some as being only a minor actor. This view apparently was not shared by the ICTY, which convicted him of willingly participating in crimes against humanity.

During his two years as prosecutor, Goldstone came to be seen as both jurist and international statesman. He frequently visited foreign capitals, where he met with politicians, diplomats, and UN officials to secure their support for the work of the ICTY. These efforts, together with his public lectures and media appearances, gradually breathed life and vigor into what some regarded as an empty political gesture on the part of the UN Security Council. Yet, even as the ICTY struggled into life, it confronted perhaps its greatest threat—the possibility of a general amnesty for the perpetrators it was created to try. The prospect of such a promise arose during the U.S.–brokered peace negotiations on a military base in Dayton, Ohio.

Some commentators warned that the peace process would fail without the inclusion of an amnesty agreement. Goldstone immediately responded by traveling to Washington, D.C., to urge the U.S. president and secretary of state to resist any such demands. Simultaneously, others at the tribunal made it known that such an amnesty would not be a legal basis for the ICTY to stop indicting those against whom it had evidence, and that the only the UN Security Council had the power to halt the ICTY's efforts. In the end, no amnesty was included in the peace agreement.

While the conflict still raged in the former Yugoslavia, another tragedy was unfolding in the heart of Africa. In April 1994, President Juvenal Habyarimana of Rwanda was killed when unknown assailants shot down the plane that was carrying him back from peace negotiations in Tanzania. Reports immediately began to emerge of large-scale killings being perpetrated against the country's Tutsi minority. The killings continued for almost four months, while the UN debated whether or not to call the massacres a genocide. In the end, it was not the international community's intervention, but a military victory by the Tutsi-led Rwandan Patriotic Front, that ended the widespread and systematic killings. In what many regard as a belated and inadequate response, the UN Security Council again invoked Chapter VII of the UN Charter to establish yet another ad hoc international criminal tribunal, this time for Rwanda.

In an apparent attempt to ensure consistency between the two tribunals, the International Criminal Tribunal for Rwanda was made to share the same prosecutor and appeals chamber as the ICTY. As a result, Goldstone became an outspoken advocate on behalf of not only the two ad hoc tribunals, but also of a permanent international criminal court. In his view, the creation of ad hoc tribunals risked making international justice indefensibly selective unless these bodies were merely precursors to a permanent international criminal court.

Goldstone is the first to admit that the efforts of the ICTY and ICTR have not been flawless. For example, due to a seemingly endless refusal by North Atlantic Treaty Organisation forces operating in the former Yugoslavia to apprehend those whom the ICTY had indicted, the frustrated ICTY began holding ill-conceived Rule 61 indictment confirmation hearings, which effectively amounted to trials in absentia. Even without the problem of absent defendants, the Rwanda tribunal was plagued by a series of administrative missteps. Despite their shortcomings, the achievements and successes of the ad hoc tribunals, including the first-ever conviction of a former prime minister for genocide, paved the way for the adoption in 1998 of the Rome Statute, which established a permanent International Criminal Court (ICC). In this regard, it is also noteworthy that many of the precedents set by the ad hoc tribunals, particularly those regarding sexual violence and war crimes in internal conflict, are now codified in the ICC's statute.

After completing his two-year commitment as prosecutor for the ad hoc tribunals, Goldstone returned to South Africa to take up his seat on the still-nascent Constitutional Court. He served in that position for eight years, and participated in a number of precedent-setting decisions. Among these were decisions upholding the right of prisoners to vote, requiring the state not to extradite an accused without obtaining an assurance against the application of the death penalty, and overturning a state policy of not providing HIV treatment to pregnant mothers. He retired from the court in October 2003.

During his tenure on the Constitutional Court, Goldstone also participated in at least two international inquiries related to genocide and crimes against hu-

manity. One of these was an international panel established in 1997 by the government of Argentina to monitor the inquiry into Nazi activities in that country since 1938. The inquiry was launched by the government in response to accusations that some of the Nazi gold looted from Jewish victims of the Holocaust might have been transferred to Argentina.

Two years later, Goldstone chaired the Independent International Commission on Kosovo, which investigated the events that led to NATO's military intervention in that region in March 1999. Established by the prime minister of Sweden, the commission was mandated to investigate and analyze the events that occurred in Kosovo in the decade since autonomy was withdrawn from it in 1989. After a yearlong investigation, one of the commission's primary conclusions was that the intervention was illegal but legitimate. According to the commission, "it was illegal because it did not receive prior approval from the United Nations Security Council. However, the . . . intervention was justified because all diplomatic avenues had been exhausted and because the intervention had the effect of liberating the majority population of Kosovo from a long period of oppression under Serbian rule."

SEE ALSO Arbour, Louise; Del Ponte, Carla; International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia

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Garth Meintjes

Göring, Hermann

[JANUARY 12, 1893–OCTOBER 15, 1946]
German commander of the Luftwaffe, Hitler associate

After brilliant service as a fighter pilot and squadron commander during World War I, Hermann Göring was one of the early supporters of Adolf Hitler and rose through the ranks of the Nazi Party to become one of the Führer's closest associates and partners in the murderous campaign against European Jews. Of aristocratic birth, Göring was highly intelligent, utterly egocentric, and cynical, and his decisive weakness proved ultimately to be his sybaritic lifestyle and self-aggrandizing approach to policy and administration. Placed in charge of the Luftwaffe in 1935, he took on the challenge of the German economy the next year as commissioner of the Four Year Plan. Spearheading the confiscation of Jewish property, Göring had nominal oversight of the Jewish question as a whole at the time of the Kristallnacht riots against the Jews in 1938. He was also the leading promoter and organizer of Jewish emigration, centrally administered in an office he established in January 1939.

Notwithstanding these responsibilities, Göring's gradual estrangement from Hitler coincided with his yielding more and more authority over the Jewish issue to Heinrich Himmler, chief of Hitler's elite bodyguards, the Schutzstaffel (SS). With the outbreak of war in 1939, it was the latter who formulated German population policy in the east; Himmler's Reich police became the principal repressive arm of the state when it came to opponents of the regime, and his SS units began killing on a massive scale after the invasion of the Soviet Union in June 1941. Göring retained enough authority so that it was he who, on July 31 of that same year, signed an order charging Reich police chief Reinhard Heydrich with "making all necessary preparation with regard to organizational and financial matters for bringing about a complete solution of the Jewish question in the German sphere of influence in Europe." Heydrich operated under Himmler's command, however, and subsequent steps toward the deportation and murder of European Jewry fell unmistakably under the authority of the SS.

Having failed to successfully lead his Luftwaffe against Britain in 1940, and as a result of the political fallout from his inability to defend German skies from the menace of Allied bombing, Göring steadily slipped from favor, losing out to other paladins of the regime—Himmler, but also Joseph Goebbels, Hitler's propaganda minister; Martin Bormann, head of the Führer's chancellery; and Albert Speer, minister of armaments in charge of mobilizing the German economy for total war. At the end of the Nazi regime, Göring was dissolute, bitter, and diminished in stature, with much of his authority having eroded. Arrested by the Allies and sitting in the dock at Nuremberg, charged among other injustices with crimes against humanity for his role in the Holocaust, he soon became a leader among the defendants and stoutly defended the causes of Hitler and Nazism. Göring cheated the hangman by committing suicide on October 15, 1946, on the eve of his scheduled execution.

SEE ALSO Anti-Semitism; Germany; Gestapo

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Michael R. Marrus

Guatemala

In the early 1980s the Guatemalan army defeated a Marxist-led guerrilla movement by killing tens of thousands of Mayan Indians as suspected subversives. Remnants of various guerrilla organizations joined together in the Guatemalan National Revolutionary Union (URNG) and refused to stop fighting until they achieved peace with justice, that is, negotiated concessions. Only in 1996, and under much international pressure, did the Guatemalan government and the URNG formally end four decades of armed conflict. The army remains the most powerful institution in Guatemala. When active-duty or retired officers are prosecuted, activists, journalists, witnesses, and judicial personnel are besieged by anonymous threats and attacks, sending the deniable but unmistakable message that the army (or part of it) is willing to return Guatemala to the nightmarish political violence of earlier years. Under such conditions public support for human rights prosecutions has been limited. Yet to defer prosecution, until some distant future that may never arrive, risks perpetuating above-the-law status for the military. The dilemma raises key questions: Should human rights activists attempt to prosecute army officers for genocide and other crimes against humanity? Should the human rights movement insist on prosecution even if the defendants have the power to destroy Guatemala's tentative progress toward democracy?

In the October Revolution of 1944 schoolteachers, lawyers, and army officers overthrew the last of the liberal dictatorships that ran this Central American country like a giant hacienda. The elected governments of Juan José Arévalo (1945–1951) and Colonel Jacobo Arbenz Guzmán (1951–1954) abolished mandatory labor, encouraged workers to organize, and instituted land reform that led to the nationalization of United Fruit Company plantations. Because Arbenz had communist advisers, the Eisenhower administration in Washington decided to overthrow him. Through air strikes and a mock invasion staged by exiles, the Central Intelligence Agency (CIA) intimidated the Guatemalan army into abandoning Arbenz. Under the U.S.–selected Colonel Carlos Castillo Armas (1954–1957), the National Liberation Movement reversed the land reforms and many other achievements of the previous governments.

Insurgency and Counterinsurgency

Electoral fraud, political killings, and coups d'etat prevented the Guatemalan Left from competing in elections. In November 1960, 120 junior army officers tried to overthrow President Manuel Ydígoras (1958–1963) in order to, quoting from their manifesto, "install a regime of social justice in which wealth belongs to those who work and not to those who exploit." Several of the rebel officers went on to found the country's first Marxist guerrilla organizations. Resentful over its humiliation in 1954, the army was slow to welcome U.S. military advisers but, when it did in 1965, it soon exterminated the guerrillas' rural logistical base, which at this point consisted mainly of ladino (nonindigenous) peasants in eastern Guatemala.

In the 1970s surviving guerrilla cadre attracted new supporters among the indigenous Mayan peasants of the western highlands, who have been a subordinate caste since the Spanish Conquest and who represent approximately half the Guatemalan population. With the support of the Catholic Church, Protestant missions, and public schools, Mayas during this period began to regain control of many ladino-dominated municipal governments. They also started to demand equality for Mayan language and culture. Meanwhile, the left wing of the Catholic Church became a bridge for some Mayan communities to join the guerrilla movement, which by 1981 seemed to control much of the western highlands. Counterinsurgency violence peaked during the regimes of Generals Romeo Lucas García (1978–1982), Efraín Ríos Montt (1982–1983), and Oscar Mejía Victores (1983–1986). The Guatemalan army repeatedly butchered women, children, and elders as well as military-age men, even when they offered no resistance.

Under Mejía Victores the army allowed a new constitution to be drafted, which led to the resumption of elections and a civilian-led government. Under pressure from Europe, the United States, the United Nations (UN), and the Organization of American States, the government and army began negotiating with the URNG in 1990. Accords on refugee resettlement, indigenous rights, socioeconomic justice, and a truth commission culminated in the 1996 peace agreement, which is being monitored by the United Nations Mission to Guatemala (MINUGUA).

A forensic anthropologist cleans the remains of one of thirteen bodies found in a mass grave at a former army base in Chatalun, Guatemala, on December 19, 2000. About 5,000 Mayan Indians were rounded up by the Guatemalan army near Chatalun in December 1982. Of that number, 3,000 were reportedly killed and their bodies buried in several nearby locations. [AP/WIDE WORLD PHOTOS]

Two Truth Commissions: Did the Army Commit Genocide?

Like other Latin American militaries rejecting judicial accountability, the Guatemalan army has arranged broad amnesties for itself. The latest is the 1996 National Reconciliation Law, which extends amnesty to the guerrillas and is a condition to which URNG leaders agreed. Following protests from human rights organizations, the URNG obtained the government's commitment to a Commission for Historical Clarification (CEH). Because the CEH was prohibited from naming names or preparing cases for prosecution, the Catholic Church organized its own Recovery of Historical Memory (REHMI) commission. Led by Bishop Juan Gerardi, REMHI delivered its report in April 1998. Two nights later Gerardi was bludgeoned to death in his garage.

Several years of investigation were required to bring two army intelligence officers and a sergeant to trial for the murder. The "unknown men in civilian dress" who attack the army's critics have repeatedly been traced to the army's G-2 intelligence branch and to the presidential general staff, a security and intelligence operation that the peace accords sought to abolish, but which instead has continued to grow. Under international scrutiny death squad activity gradually diminished from the mid-1980s, to the point of almost disappearing in the mid-1990s, but since 1998 it has been on the rebound in response to the prosecutions of army officers. The trials of three military personnel for the murder of Gerardi, as well as of two generals and a colonel for the 1990 murder of the Guatemalan anthropologist Myrna Mack, were accompanied by threats and attacks against judges, prosecutors, and witnesses, with some killed and others forced into exile.

The amount of testimony compiled by REMHI and CEH is staggering and damning. The CEH was able to register a total of 42,275 victims, including 23,671 arbitrary executions and 6,159 forced disappearances, from which it estimates a total of more than 200,000 dead. According to its calculations, the Guatemalan state was responsible for 93 percent of the violations, and the

guerrillas for another 3 percent, with responsibility for the remainder unclear. The CEH's most controversial finding was that the army committed genocide against the Mayas—a crime not covered by the 1996 amnesty because of Guatemala's obligations to the international genocide convention. Human rights groups hailed the genocide finding, but it was not accepted by President Alvaro Arzú (1996–2000), who signed the peace accord with the URNG. The Mayas suffered 83 percent of violations according to CEH calculations, but thousands of ladinos were also killed for supporting the guerrillas. If the army's intent in targeting victims was the elimination of a political group, the genocide convention does not apply.

According to the CEH's 1999 report, the army "defined a concept of internal enemy that went beyond guerrilla sympathizers, combatants or militants to include civilians from specific ethnic groups." Furthermore, "the reiteration of destructive acts, directed systematically against groups of the Mayan population" and including "the elimination of leaders and criminal acts against minors who could not possibly have been military targets, demonstrates that the only common denominator for all the victims was the fact that they belonged to a specific group and makes it evident that these acts were committed 'with intent to destroy, in whole or in part' these groups." From 1981 to 1983, the CEH concluded, the army committed genocide against four specific language groups that it suspected of particularly strong support for the guerrillas: the Ixil Mayas; the Q'anjob'al and Chuj Mayas; the K'iche' Mayas of Joyabaj, Zacualpa, and Chiché; and the Achi Mayas.

Human Rights Prosecutions and Backlashes

Prosecutions for war-related crimes in Guatemala have been few. Until 2000 virtually all convictions were of junior officers, enlisted men, and leaders of the civil patrols, a counterinsurgency militia into which the army conscripted hundreds of thousands of men, most of them Mayan. Since the army killed soldiers and civil patrollers who failed to carry out orders, many of the homicides documented in the REMHI and CEH reports were arguably committed under duress. Consequently, human rights groups have decided to focus on senior army officers as intellectual authors of the crimes. But such indictments are hard to prove in court, as demonstrated by the Gerardi case. Although three military men were found guilty of that crime, the convictions were soon overturned on appeal. Of the three senior officers tried for the murder of Mack, only one was convicted, and even this conviction has been overturned on appeal. As of late 2003, the cases were still pending.

Because the Guatemalan judicial system lacked independence until the 1990s, and is still antiquated and underfinanced, prosecutions depend heavily on the families and friends of victims and require much international support. Like other Guatemalan human rights organizations, the Archbishop's Office on Human Rights that coordinated the Gerardi prosecution receives most of its funding from Europe and the United States. Threatened judges, prosecutors, and witnesses have been able to obtain foreign asylum with the help of the Canadian and other embassies. Freedom of Information Act lawsuits in the United States have provided documentation. Unfortunately, international support makes the human rights movement vulnerable to nationalist backlashes. Public fear of postwar crime waves has repeatedly trumped support for human rights. In 1999 voters rejected constitutional amendments to remove the army from internal security and grant equality to Mayan culture. Mobs dissatisfied with ineffective police and judicial reforms have lynched more than 360 suspected criminals since 1996. Ex-members of the civil patrols, whom the CEH found responsible for 18 percent of human rights violations, have demanded compensation for the unpaid duty they performed for the army.

The leading symbol of opposition to the human rights movement is Ríos Montt, the evangelical Protestant military dictator who defeated the guerrillas in 1982 and 1983. Despite the REMHI and CEH reports, as well as dozens of exhumations of massacre victims, Ríos Montt and his populist party won the 1999 presidential election as champions of law and order. The victory enabled Ríos Montt to assume leadership of the Guatemalan congress just as 1992 Nobel peace laureate Rigoberta Menchú was trying to indict him for genocide (Ríos Montt claims no knowledge of the massacres). In the hope of repeating the Pinochet precedent—a Spanish court's indictment of ex-Chilean dictator Augusto Pinochet for kidnapping, torture, and murder—in March 2003 the Menchú Foundation persuaded a Spanish court to hear a torture case for twelve Spanish victims. In Guatemala the Legal Action Center for Human Rights is the legal representative for the Association for Justice and Reconciliation (AJR), composed of massacre survivors. More than a hundred witnesses have given testimonies, corroborated by exhumations at the sites of twenty-five massacres that cost an estimated 2,100 lives. If the cases against Ríos Montt, Lucas García, and six other former officials go to trial, these will be the first genocide indictments to be tried in any country where the crime was committed.

A constitutional ban on candidates involved in military coups prevented Ríos Montt from running for

president in the 1990s. Then in July 2003 new constitutional court justices appointed by his party allowed him to run for president in the November election. Despite fears that Ríos Montt and his party would attract a massive Mayan vote, they finished third. Newly elected president Oscar Berger (2004–), a neoliberal businessman, has promised to reduce the army by nearly one-third. One reason that part of Guatemala's elite now supports neoliberal reform is that Guatemala has become a major shipment center for cocaine being transported from Colombia to the United States. Some army officers run protection rackets and the U.S. government has refused to certify Guatemala's compliance with drug enforcement. Under severe financial pressure from international lenders, the previous government agreed to a Commission to Investigate Illegal and Clandestine Security Forces (CICIACS). The new commission will be led by representatives of the UN, the Organization of American States, and Guatemalan citizenry. Now that Ríos Montt is no longer a congressman, he has lost his immunity from prosecution and is expected to face several indictments.

SEE ALSO Catholic Church; Death Squads; Forensics; Massacres; Ríos Montt, Efraín; Truth Commissions

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David Stoll

Gulag

Gulag is the generic term given to the system of forced labor camps that existed in the Soviet Union from the 1920s until the mid-1950s. These camps incarcerated millions of people and became an integral part of the Soviet economy's industrialization drive during the dictatorship of Joseph Stalin. The Gulag formed a central element in the Stalinist system of terror.

The word *Gulag* is an acronym from the Russian phrase *Glavnoe upravlenie lagerei* (Main Administration of Camps). This was the name of the administrative structure established in 1931 to oversee the camp network of the Soviet secret police. The precise subordination and nomenclature of the camps' administrative authority changed a number of times throughout its existence. Technically, therefore, the term Gulag was only the official name of the Soviet Union's forced labor

Location of Gulags throughout Russia, 1939–1953. [MAP BY XNR PRODUCTIONS. THE GALE GROUP.]

network for three years, until the first of these name changes occurred in 1934. Nonetheless, the acronym continued to be used as a generic term within the Soviet administration and beyond, eventually becoming widely known in the West through the title of Alexander Solzhenitsyn's celebrated three-volume work on the camp system, *Gulag Archipelago*.

Although the term *forced labor* was used in the Soviet Union, the more common official designation for the activity of the Gulag was "corrective labor." Understanding the nature of the Gulag requires an awareness of its distinct context. The Soviet Union was an ideologically based state, constructed in accordance with its interpretation of the central tenets of Marxism-Leninism. In terms of ideological justification, the Gulag camps were deemed superior to capitalist prison systems, with the ideological emphasis being on re-educating "criminals" through labor to become good citizens of the workers' state. In reality, labor far outweighed reeducation in the prisoners' experience.

The Gulag differed from straightforward conscripted slavery in that its victims were convicted of an offense and given a specific sentence. Peop
the Gulag at the end of their sentences, alt
were re-sentenced on the completion of
term, and millions died before their relea
reached, either due to the harsh conditions
or through execution. The Gulag camps we
different also from Nazi concentration ca
they were not primarily places of extermin
primary purposes were economic and pol
than genocidal.

Origins

Almost immediately after the Russian revol
tober 1917, Lenin's communist regime bega
on political opponents and, particularly o
war of 1918–1920 was under way, to execu
als who were deemed to be "class enemie
pression of opponents was the norm thro
1920s as the communists tightened their gr
society and, following Lenin's death in 1
Stalin gradually outmaneuvered his rivals
and became the undisputed leader of the S

To some extent the repressions of the post-revolutionary years can be seen as the forerunner of the Gulag system. They established the principle that Soviet law was subordinate to Soviet ideology. They also began on a small scale to use prisoners for economic purposes. Nonetheless, it was not until the industrialization drive from 1929 onward that the phenomenon of the Gulag came into being.

The forced labor camp identified within official Soviet documents as the forerunner of the Gulag was on the Solovetsky Islands, situated in the White Sea in the far northwest of Russia. The Soviet secret police took over a monastery on these islands and turned it into a brutal prison camp for political prisoners. By the mid-1920s the prisoners at the Solovetsky camp began to be used as conscripted labor. Although forced labor had existed in Soviet Russia since its earliest days, and had been a feature of Tsarist Russia before that, the difference at Solovetsky from around 1925 onward was that the economic purpose of labor gradually shifted from providing for the camp's needs, to contributing to the wider national economy. Prisoners of the Solovetsky camp began working in the forestry industry in Karelia. A Politburo decision of June 1929, titled "On the Use of the Labor of Convicted Criminals," paved the way for growth. By the turn of the decade, the example of the Solovetsky camp had been followed elsewhere in northern Russia, in Siberia, and in the Far East, with tens of thousands of prisoners being set to work in forestry, road construction, the chemical industry, and paper production.

Development of the Gulag

The rapid rate of the Gulag's development from 1929 onward was driven by the Soviet Union's push to industrialize. By the end of the 1920s, Stalin's position of power was unchallenged, and he used his authority to decree measures designed to create a strong industrial base in a country hitherto overwhelmingly rural. According to Stalin, the Soviet Union had ten years in which to either catch up with the industrialized capitalist world or, as he put it, be crushed. The creation of a network of forced labor camps fitted into this picture in a number of ways.

Alongside the industrialization policy, the Communist Party sought the collectivization of agriculture. In line with the state's ideological stance, peasants were forced into collective farms. At the same time, *kulaks* (so-called rich peasants) were labeled class enemies and removed from their land. From 1931 onward, millions of such *kulaks* became available to the secret police to work in forced labor.

A key element of industrialization was the opening-up of vast areas of the country, whose natural resources had hitherto remained unexploited. These regions were often remote, uninhabited, undeveloped, climatically inhospitable, and lacking in infrastructure. Forced laborers seemed like the ideal solution: They had no choice about where they would work; they were not paid wages; they formed a mobile workforce; and the conditions in which they lived and worked were considered relatively unimportant.

Stalin saw forced labor as a means of building a number of prestigious projects, such as the White Sea Canal or the Moscow underground. In the case of the former, he deemed it a positive propaganda move to publicize the way in which the Soviet state allegedly rehabilitated its criminals through allowing them to contribute to the well-being of the workers' state. In later years, such propaganda was replaced by secrecy and silence, as the extent of the Gulag increased.

Backed by this correlation of forces, the Gulag system grew rapidly throughout the 1930s. Furthermore, the existence of a cohort of forced laborers was written into the Soviet Union's economic plans. Given that failure to meet the targets of the plan would often result in severe punishment for those deemed responsible, a continuing supply of forced laborers was required.

Number of Victims

The number of victims of the Gulag was for many years the subject of, at times, acrimonious historical debate. During the Cold War years, estimates by Western scholars appeared to some extent politicized, with those on the anti-Soviet right coming up with estimates significantly higher than those on the less anti-Soviet left. The difficulty was, of course, that no data were available from the Soviet Union, and so a diverse range of methods for estimating the number of forced laborers at different periods was employed. To generalize, the higher figures came from those using estimates based on the personal experiences of, for example, former prisoners or former employees of the Soviet state. The lower figures came from methodologies that sought to use official Soviet economic and demographic data in order to calculate the proportion of the population in the forced labor system. Serious estimates for the number of Gulag prisoners in the year 1941 ranged from just over three million to fifteen million.

At the end of the Soviet era (from 1989 onward) Russian, and later Western, scholars began to gain access to the archives of the Soviet secret police, where detailed records of the population of the forced labor camps were kept. It is unlikely that these figures were falsified to any great extent, as were the figures used by the authorities for setting targets in the Five Year Plans for the Soviet economy.

Interpretation of these statistics from the Soviet archives was complicated by the fact that a number of different forms of forced labor existed in the Soviet Union during the Stalin era. Under the control of the Soviet secret police there were the "normal" forced labor camps to which the word Gulag usually refers. In addition there were what the Soviet authorities termed "forced labor colonies." The principal difference between colonies and camps was that inmates in the former were serving sentences of less than three years. Otherwise the experience of prisoners in camps and colonies was little different. As well as camps and colonies, millions of Soviet citizens were placed in "labor settlements" where they were forced to work on state-designated tasks. Although the regimen in such settlements was usually less stringent than that in the camps and colonies, some of them were fenced off, and all were overseen by the Soviet authorities. Labor settlements had a higher proportion of women and children in them than did the camps and colonies.

Camps, colonies, and settlements were the main categories which could be deemed forced labor in Stalin's Soviet Union. Besides these, however, there were prisons and, during and after World War II, "verification and filtration camps" for returning Soviet prisoners of war.

From the archival data available it is now possible to fairly firmly establish the population of the Gulag's forced labor camps and colonies from 1930 to 1953. These data show that the quarter-million mark was reached in 1932, there were over half a million prisoners in 1934, and over a million by 1936. The two-million figure was surpassed briefly in 1941, before the demands and hardships of war saw the camps and colonies population decline to below one and a half million. In the postwar years, it rapidly rose again and reached its all-time peak of over two and a half million between 1950 and 1953. To these figures can be added well over a million people in "labor settlements" in the prewar years, and a further two and a half million in such settlements from 1950 to 1953.

The remaining key question is, how many individual prisoners suffered in the Gulag during the Stalin era? This figure is less easy to determine, not only because the annual totals from which the figures above are taken fail to account for prisoner movement within each year, but also because those totals include some of the same prisoners from one year to the next. To avoid such double-counting, it would be necessary to know the number of new prisoners entering the Gulag each year, and complete data are not available. The most credible estimate, based on the archival, is that approximately eighteen million people were at some point imprisoned in a Gulag labor camp or colony between 1934 and 1952. This figure, however, does not count the millions in forced labor settlements or the other forms of incarceration noted above.

Economic Role

As well as disputes over the number of prisoners, academics have also disagreed on whether the primary motivation behind the creation and continuation of the Gulag was economic or political. This is to some extent a misleading question, as the economic and the political overlapped. A role for forced labor in opening up previously unexploited areas and participating in public projects was deemed useful by the Soviet state, at the same time as political pressures—such as rising official paranoia that the Soviet project was being undermined by the 'enemy within'—meant that the isolation of millions of perceived "enemies of the people" could be seen to both protect the state and serve as an example to others.

Nonetheless, it is a fact that in Five Year Plans, the Soviet Ministry of the Interior was given production targets that relied on the continuation and expansion of the forced labor network. Given the potential penalties for failing to meet these targets, and given the relatively high death rates in the Gulag, it is clear that there were plan targets to be met that were based on a growing number of prisoners, and, therefore, those prisoners would have to be found. There was clearly, then, an economic motivation for finding sufficient "enemies of the people" to keep Gulag production in line with targets.

Prisoners in the Gulag worked in a variety of industries, and they were in demand across the economy, particularly during the labor shortages of the war years. In the early 1940s the Ministry of the Interior set up a number of forced labor administrations, organized by industry. These included administrations for industrial construction, mining, and the metallurgical industry, railway construction, the timber industry, and road construction.

Leaving aside for now all discussion of morality, arguments in favor of the economic benefits of forced labor in the Soviet Union during the Stalin years are simplistic. They portray the Gulag population as a mobile, cheap workforce easily replenished and able to develop inhospitable areas that were rich in natural resources. In fact, the economic benefits of using forced labor over free labor are difficult to identify. The Gulag certainly was not cheap to maintain, requiring an entire infrastructure of its own. The conflict between seeing the population of the Gulag on the one hand as prisoners to be punished and on the other hand as a valuable

workforce was never reconciled, leading to unmotivated workers, weakened by poor living conditions and diet, and susceptible to a high death-rate.

In addition, it could be argued that the availability of such an easily identifiable workforce with no rights of its own led the authorities, and indeed Stalin personally, to indulge in projects with little intrinsic economic use. The much-publicized but economically useless White Sea Canal is but the best-known example of such a project, and many other long-disused railways and roads, not to mention now dead or dying industrial settlements, also testify to this tendency.

Life in the Gulag

The Gulag lasted in its mass form for more than two decades, and it was spread over the biggest state in the world. It is difficult therefore to generalize about living conditions, because they differed from camp to camp and year to year. Nonetheless, elements of the Gulag experience repeat themselves in the memoirs of its survivors.

Prisoners in the Gulag were dehumanized within the system. On arrest, or upon arrival at the camp, they were stripped of their clothes and made to wear standard prison garb. Their heads were shaved and they were given prisoner numbers. Contact with the outside world was denied to them, and their free relatives were denied information about the prisoners. A spouse or child would often not hear of a loved one again, and be left to wonder whether he had lived or died.

Rations in the camps were poor and were distributed according to the work performed by each inmate. Four categories of prisoner existed, based on fitness for work: the fitter the prisoner, the higher the rations. Workers were often organized into teams, so that collective responsibility for the ration given discouraged the inefficient worker.

Among the Gulag's prisoner population there was a division between "criminals" and "politicals." The distinction is not easy to make statistically, given that the harsh labor laws introduced during the industrialization drive made such things as lateness for work a criminal offense. Nonetheless, memoir materials, which were nearly always written by the politicals, tell of the brutality visited upon them by the criminals as well as by the guards.

Women usually made up under 10 percent of the Gulag population, though this rose to about 25 percent during World War II.

Terror and the Gulag

During the late 1930s, the Soviet Union suffered what has become known as the Great Terror, during which a significant proportion of the Soviet elite (Communist Party officials, military officers, industrial managers, and even the secret police) were purged by the regime. Some of these found themselves in the Gulag; many were summarily executed. Although the Gulag was a tool of the Stalinist terror, the two phenomena were not identical. At the lowest estimates, more than 750,000 victims of the Terror were executed without ever becoming part of the Gulag, although some estimates put this figure much higher. What is not in doubt is that, if the number of victims of the Stalinist repression who died in the Gulag is included, then somewhere between 3.5 and 7 million victims were killed by the Soviet regime. Such figures do not include the victims of the famine in Ukraine in the 1930s, nor the millions who died in World War II.

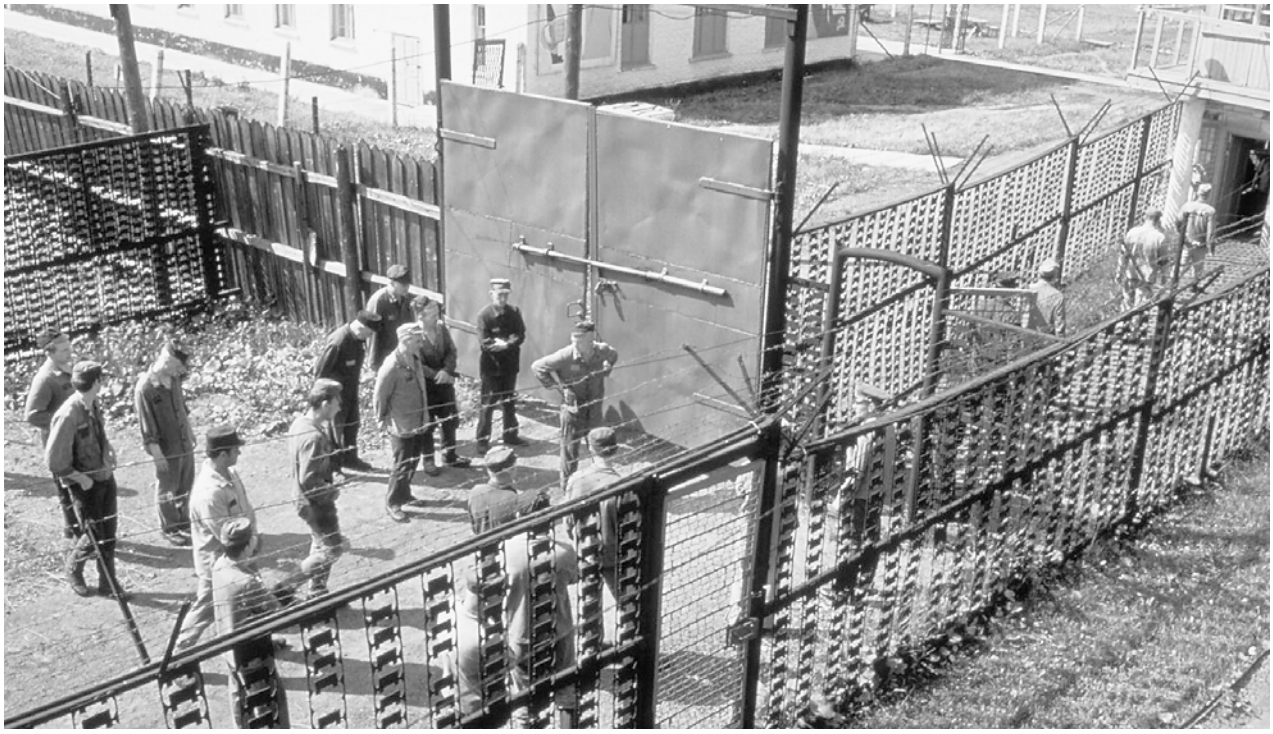
Periods in Gulag History

It is apparent that clear periods in the Gulag's history can be identified, such as the origins of the Gulag, the industrialization drive, and the Great Terror. Following on from these, other periods had particular features. From 1939 until the middle of 1941, the population of the camps grew rapidly. The Soviet Union's pact with Nazi Germany had given it control over new territories in East Europe, particularly in Poland, and the Soviet authorities there were only too ready to identify new class enemies to send eastward into the Gulag.

The outbreak of war in June 1941, when Germany invaded the Soviet Union, saw a rapid decrease in the number of prisoners, as most able-bodied men were called up for the front. During the war, conditions in the Gulag worsened to the point that death rates of 25 percent were occurring by 1942. The percentage of women in the camps increased, and the efforts of the workers, as of the country as a whole, were concentrated on the needs of war, particularly weapons production. What is perhaps remarkable is that the population of the Gulag stayed as high as it did during the war years, a period in which more Soviet citizens were incarcerated by their own state than were imprisoned by the enemy.

When the war ended, the Gulag population again rose rapidly, reaching its all-time peak in the early 1950s. Many returning Soviet prisoners of war were incarcerated in the camps, their capture by the Germans being taken as unwarranted surrender.

In the early 1950s the atmosphere in some of the camps began to change, and sporadic camp uprisings occurred. This small-scale shift gained momentum with the death of Stalin in March 1953. Within a few months of Stalin's death an amnesty was announced, though it was mainly the criminals, as opposed to the



Operations at the Gulag camps were conducted in secret, and much of the history of the camps located in Perm, Russia, deep within the Ural Mountains, will never be known. Perm-36 was perhaps the most brutal Gulag for political prisoners in the Soviet Union, and the last to close (in 1989). In this 1989 photo, prisoners at the Perm-36 camp. [P. PERRIN/CORBIS SYGMA]

politicals, who benefited from this. Nonetheless, the will to change was apparent by now in the highest echelons of the Communist Party, and over the next few years the Gulag as an instrument of mass incarceration and forced labor was gradually wound down. Khrushchev's "Secret Speech" in 1956, in which he went some way toward acknowledging the horrors of the Stalin years, gave the camp closures their final impetus.

Portraying the Gulag

The best-known chronicler of the Gulag's horrors is Alexander Solzhenitsyn, a former Gulag prisoner. In 1962 his short novel, *A Day in the Life of Ivan Denisovich,* appeared in a leading Soviet literary journal. Of course, all journals in the Soviet Union were controlled by the state. Nonetheless, 1962 was the height of the relative cultural thaw of the Khrushchev era, and so *Ivan Denisovich* was published. It caused a sensation, being the first work to deal directly and realistically with the taboo subject of life in the camps. By the time Solzhenitsyn's three-volume account of the horrors of the Gulag, *Gulag Archipelago,* was sent to the West and published in 1973, the hard line of the Brezhnev regime meant that Solzhenitsyn himself was about to be exiled from the Soviet Union. It was not until 1989 that his work once more became openly available in Russia.

SEE ALSO Ukraine (Famine); Union of Soviet Socialist Republics

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Edwin Bacon

Gypsies see Romanis.

Hague Conventions of 1907

The codification of modern international humanitarian law began at the end of the nineteenth century. A peace conference was held at The Hague, Netherlands, in 1899, followed by a second conference, which met in the same city in 1907. The latter adopted a series of international conventions related to the peaceful settlement of international conflicts and the laws of war, which are known collectively as the Hague Conventions. Convention IV, which is the most relevant here, proclaimed the Laws and Customs of War on Land. Still in force, this Convention imposes upon the parties the obligation to issue instructions to their armed land forces in conformity with the Regulations annexed to the Convention. Each party to a conflict is responsible for all acts committed by individuals forming part of its armed forces, including militia and volunteer corps commanded by a person responsible, having a fixed distinctive emblem and carrying arms openly. A belligerent party who violates the provisions of the Regulations shall, if the case requires, be liable to pay compensation. On July 9, 2004, the International Court of Justice, in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, referred to the 1907 Hague Convention IV as customary international law binding on all states in the twenty-first century.

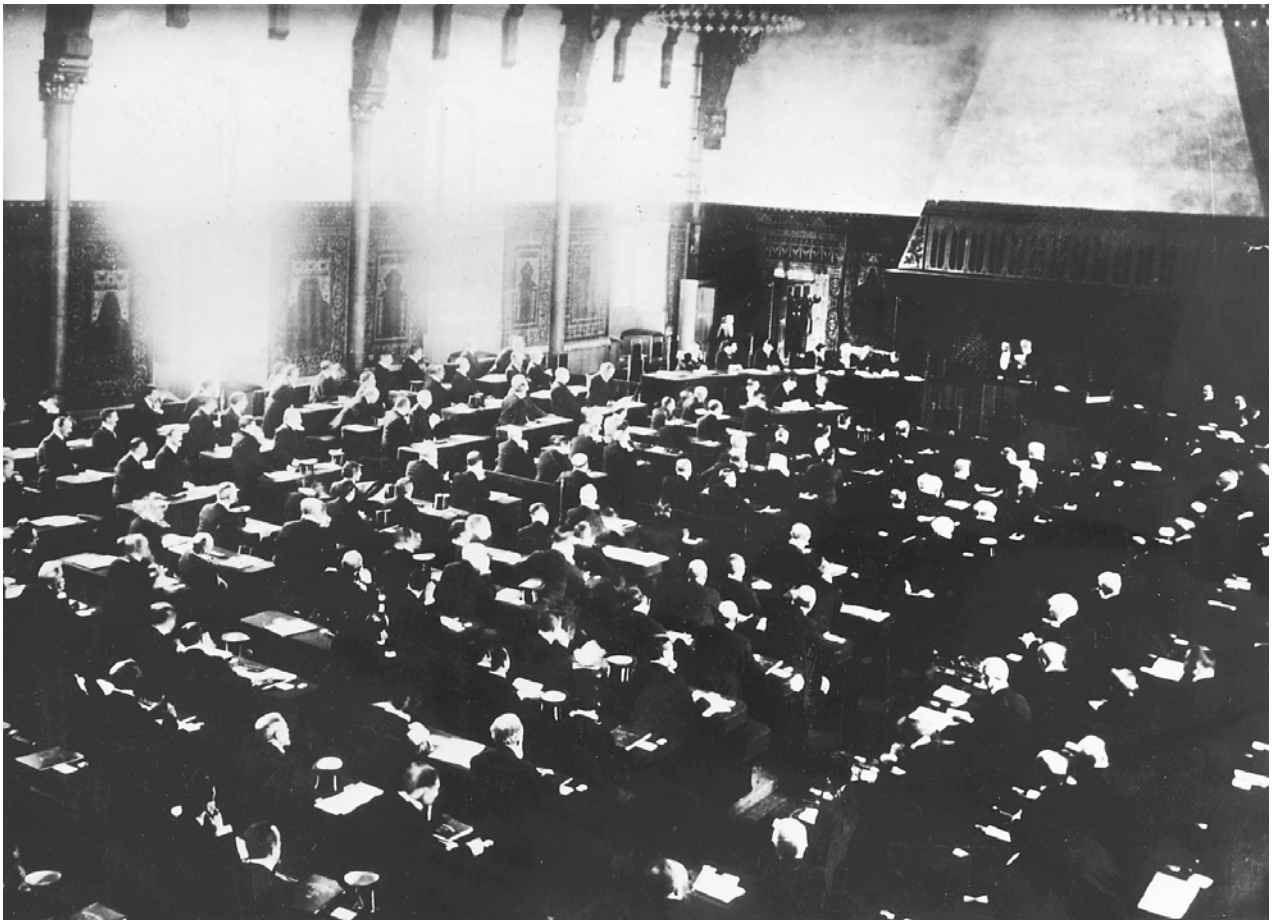
General Principles

The main principle of Hague Convention IV, formulated in Article 22 of the Regulations, proclaims that the right of belligerents to adopt measures of injuring the enemy is not unlimited. Paragraph 8 of the preamble of the Convention must be added: It formulates the so-called Martens clause, which appeared for the first time in the Hague Convention of 1899 and according to which:

> In cases not included in the Regulations . . . the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

It adds that certain provisions of the Regulations must be understood in this sense.

In different sections and chapters of the Convention, the following subjects are covered: the meaning and treatment of belligerents, prisoners of war, and the sick and wounded, as well as the means of injuring the enemy, the end of hostilities, and the military authority over occupied territories. Concerning the treatment of prisoners of war, the main principles affirm that while they are in the power of the hostile government they must be humanely treated, and all their personal belongings, except arms and military papers, remain their property. They may be interned and their labor can be used but must be paid and shall not be used in connection with the operations of war. Prisoners of war shall enjoy complete liberty in the exercise of their religion, on the sole condition that they comply with the measures of order issued by the military authorities. At the conclusion of peace, the repatriation of prisoners of war shall be carried out as quickly as possible.



The original 1907 Conventions remain a guiding force in international conflict resolution, human rights, and humanitarian law. Here, the inaugural session of the Hague Appeal for Peace Conference in the Riddersaal. [HULTON ARCHIVE/GETTY IMAGES]

A single article relates to the rules applicable to the sick and wounded: It only refers to the obligations inscribed in the 1864 Geneva Convention proposed by the International Committee of the Red Cross.

The section on hostilities forbids the employment of poison or poisoned weapons, killing or wounding treacherously individuals belonging to the hostile nation or army, killing or wounding an enemy who, having laid down his arms, or having no longer means of defense, has surrendered. It is also forbidden to declare that no quarter will be given, and to employ arms, projectiles, or material calculated to cause unnecessary suffering. The enemy's property shall not be destroyed or seized, unless such destruction or seizure is imperatively demanded by the necessities of war. It is forbidden to declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings that are undefended is prohibited. The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his or her power to warn the authorities. In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. It is, however, the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs. In fact the emblem of the Red Cross is used for this purpose. The pillage of a town or place, even taken by assault, is prohibited.

Obtaining information about the enemy and the country plays an important role in armed conflicts. Ac-

cording to the Hague Conventions, ruses of war and the employment of measures necessary for obtaining such information are permissible. Specific provisions are devoted to espionage. A person can only be considered a spy when, acting clandestinely or on false pretenses, he or she obtains or endeavors to obtain information in the zone of operations of a belligerent, with the intention of communicating it to the hostile party. Soldiers not wearing a disguise, as well as civilians carrying out their mission openly, entrusted with the delivery of despatches, are not considered spies. A spy taken in the act shall not be punished without previous trial.

Military Occupation

Various sections also set rules on truce, capitulations, and armistices. A noteworthy section concerns the military authority over the territory of the hostile state. Such territory is considered occupied when it is actually placed under the established and exercised authority of the hostile army. The occupant shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. Family honor and rights, the lives of persons, and private property, as well as religious convictions and practices, must be respected and private property cannot be confiscated. Pillage is formally forbidden.

If the occupant collects the taxes, dues, and tolls imposed for the benefit of the state, he or she shall do so, as far as possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate government was so bound. If, in addition, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question and shall be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force. For every contribution a receipt shall be given to the contributors. No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible. Requisitions in kind and services shall not be demanded from municipalities or inhabitants, except for the needs of the army of occupation and they shall be in proportion to the resources of the country. Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the state, as well as of depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the state that may be used for military operations. All appliances adapted for the transmission of news, or for the transport of persons or things, all kinds of arms, or munitions of war may be seized when they belong to private individuals, but must be restored and compensation fixed when peace is made.

The occupying state shall be regarded only as administrator and usufructuary of public building, real estate, forests, and agricultural estates belonging to the hostile state and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct. The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when state property, shall be treated as private property. All seizure of, destruction or wilful damage done to, institutions of this character, historic monuments, works of art, and science, is forbidden, and should be made the subject of legal proceedings.

Conclusions

The 1907 Hague Conventions had the merit to formulate principles that were applicable during World War I and World War II. In 1949 its rules, which were generally adopted although often not respected, were further developed by the four Geneva Conventions on humanitarian law, themselves completed later by two Protocols adopted in Geneva in 1977. Breaches of all these rules could and should be sanctioned both by national and international jurisdictions.

SEE ALSO Geneva Conventions on the Protection of Victims of War; Humanitarian Law; International Law; War Crimes

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Alexandre Kiss

Harkis

In 2003 there were approximately 500,000 Harkis living in France. At present *Harkis* is a generic term referring to the Algerians who fought alongside the French army during the Algerian war from 1954 until 1962. They became Harkis for assorted reasons: for the regular pay, out of loyalty to a French army officer, to be on the side of the likely winners, to avenge a member of their family killed by the National Liberation Front (FLN), to obey their chief (*bachaga*), because they were Francophiles, or because, following the French army's tricks, they were perceived as traitors to their own people.

In 1962 French President Charles De Gaulle decided to quickly resolve the Algerian crisis: He ordered the French army to disarm the Harkis before departing and to prevent them from fleeing to France. After the ceasefire on March 19, 1962, tens of thousands of abandoned Harkis—some claim 150,000—were vengefully massacred by their victorious fellow countrymen.

From 1962 onwards the estimated 45,000 Harkis who had reached France were lodged either in Harki settlements near existing urban centers, such as Dreux, or in isolated hamlets in the rural south built for that purpose or in so-called temporary camps, such as Bias. Some of these camps had formerly housed refugees and political prisoners of various sorts. They were run in military fashion, with curfews, barbed wire, and watchtowers. Inside the Harkis had very few, if any, contacts with French natives. In 1974 more than 14,000 Harkis remained in such camps. All these emergency measures alienated the Harkis.

Some French viewed the Harkis' presence in France as a reminder of a war France had lost and of the failure of the Évian Agreements, which stipulated no reprisals would be taken against those who had supported France. The FLN fighters as well as some French nationals—especially those from the Left and the *porteurs de valises* (suitcase carriers), whose major activity was to smuggle the funds collected from Algerians in France for the FLN—regarded the Harkis as collaborators in French colonialism and traitors to their own people.

In 1975 the Harkis protested publicly for the first time against what they described as years of official amnesia, neglect, and marginalization by the French authorities. Since then the Harkis' offspring have sporadically and violently expressed their resentment toward France over such treatment, and have claimed they are owed a debt for their fathers' past loyalty. With regularity they have attempted to force France to publicly acknowledge its responsibility for the death of many Harkis after March 19, 1962. These actions culminated in their August 2001 lawsuit against the French government for crimes against humanity.

On September 25, 2001, the Harkis ceased to be "the archetype of official nonmemory" (Rosello, 1998, p. 170). President Jacques Chirac paid special tribute to the Harkis in a national ceremony and on December 5, 2002 inaugurated a memorial to the Algerian war. Its electronic message boards scroll the names of those 22,959 who died for France during the Algerian war—3,010 of whom were North Africans.

Over the years the French authorities have financed housing, education, and employment programs for the Harkis. The feeling that these positive measures of discrimination have had a negative side effect and resulted in the Harkis' ethnicization is shared by a significant number of Harkis and French academics.

SEE ALSO Algeria

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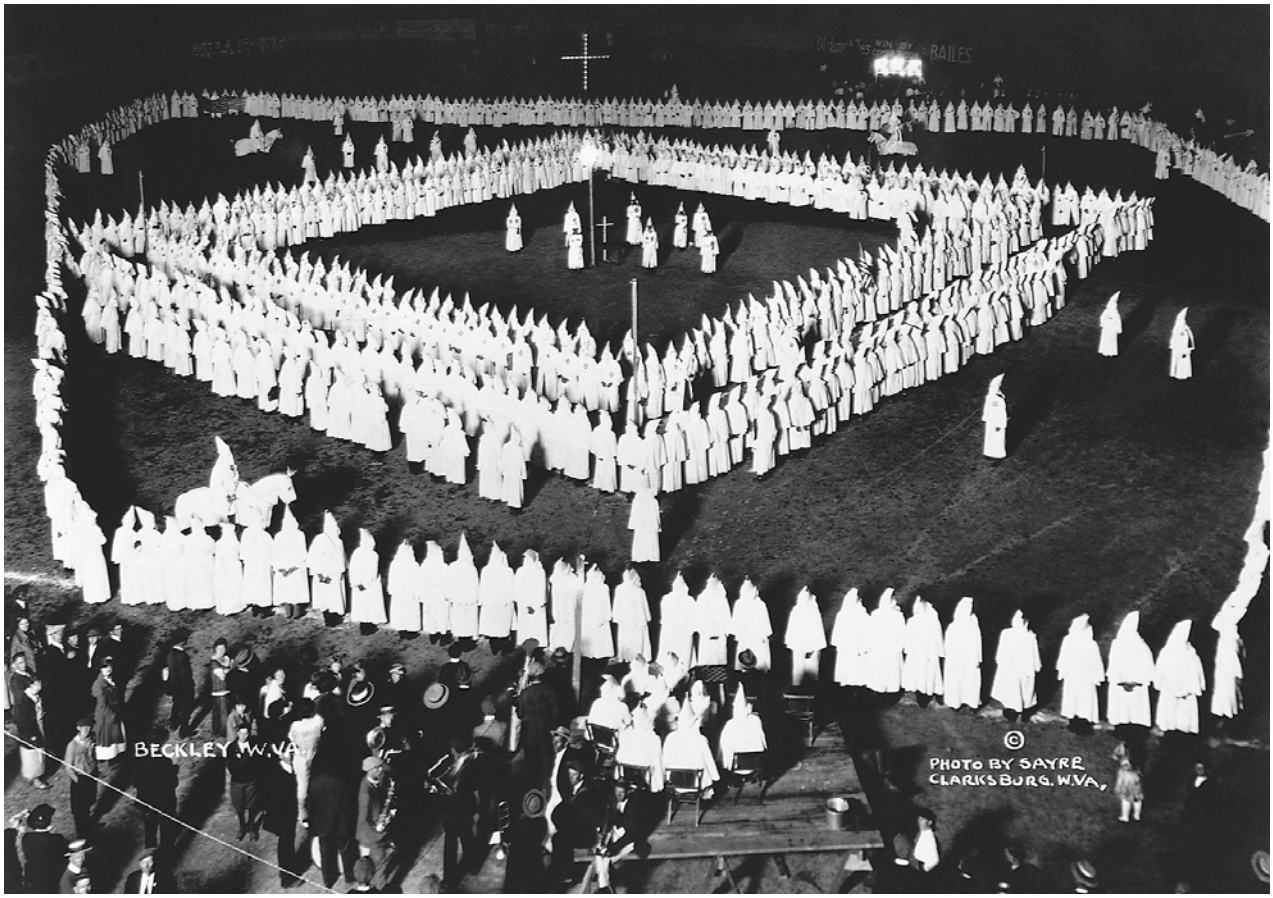
Géraldine D. Enjelvin



Knights of the Ku Klux Klan stand in formation at a rally in Beckley, West Virginia, August 9, 1924. Though the influence of this white supremacist organization has decreased dramatically since the civil rights movement, its members continue to use hate speech to not only rally support, but also intimidate and silence their opposition. [CORBIS]

Hate Speech

Hate speech is a broad term that is used to identify a great variety of expressions. In general, however, it refers to words or symbols that are offensive, intimidating, or harassing, and/or that incite violence, hatred, or discrimination on the basis of a person's race, religion, gender, sexual orientation, or another distinguishing status. Although hate propaganda is seen as a major societal and political problem, in particular in those countries confronted with racial, ethnic, or religious tension, attempts to suppress hate speech are controversial. At the center of this controversy is the question about the extent to which hate speech restrictions may be reconciled with the right to freedom of expression.

Hate Speech and Freedom of Expression

The right to freedom of expression is an internationally recognized human right. However, freedom of expression is not absolute. Both national constitutions and international conventions allow restrictions on speech to safeguard other societal values. Among human rights lawyers and scholars there is a heated debate as to whether hate speech deserves free speech protection. Both sides offer powerful arguments. Those who favor some form of regulation emphasize the different kinds of harm caused by hate speech, to both the individual person and society as a whole. Expressions of hatred, it is often argued, inflict psychological or even physical injuries on members of the targeted group. These harms include "feelings of humiliation, isolation, and self-hatred" (Delgado, 1982, p. 137). A related rationale for suppressing racist expression is that it advocates discrimination and denies the right to equal protection and treatment. As a mechanism of subordination, it would reinforce the structural discrimination of socially marginal groups. Proponents of regulation also point at the silencing effect of hate speech. Racial or ethnic insults in a face-to-face situation would function as a "preemptive strike," inhibiting members of a targeted group from participating in the marketplace of ideas (Lawrence, 1990, p. 452).

Critics of regulation argue that hate speech laws are inefficient and even counterproductive. Eliminating racist speech "would not effectively address the underlying problem of racism itself, of which racist speech is a symptom" (Strossen, 1990, p. 494). Some authors have submitted that there is no empirical evidence from countries with strict antihate speech laws that censorship is an effective means of fostering tolerance. On the contrary, public proceedings in a court would only provide the offender with the opportunity to further disseminate his or her hateful message. Moreover, censorship would have the effect of making martyrs of those who are suppressed. Arguments against regulation also draw on the more indirect, negative side effects of censorship. For example, it is argued that outlawing speech is a "diversionary approach," which would make it easier for the government to avoid tackling less convenient and more expensive, but ultimately more effective, ways to combat discrimination (Strossen, 1990, p. 561). Another frequently heard argument is that the suppression of hate speech drives racist attitudes underground, which may result in explosions of racist violence at a later time. Finally, a more principled reason for protecting hate speech is that speech restrictions based on their content are unduly paternalistic and violate the principle of personal moral responsibility. According to this view, it is not for the government or the legislature to decide which ideas are false and which ideas people should be allowed to express or can be trusted to hear.

International and Domestic Norms

The last fifty years of the twentieth century witnessed many national and international initiatives to outlaw expressions usually qualified as hate speech. However, the existing hate speech regulations differ substantially in regard to the types of expressions prohibited and the sanctions involved. The oldest international agreement to outlaw a very specific example of hate speech is the Convention on the Prevention and Punishment of the Crime of Genocide. The Genocide Convention was adopted by the United Nations (UN) in 1948 in the aftermath of the Holocaust. Its Article 3 prohibits "direct and public incitement to commit genocide." In the 1960s the international concern with anti-Semitism, apartheid, and racial discrimination led to the development of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

CERD, adopted by the UN General Assembly on December 21, 1965, and to which 169 states are party, contains the most far-reaching international provisions on the suppression of hate speech. According to Article 4 of this Convention, "the dissemination of ideas based on racial superiority or hatred" and "incitement to racial discrimination" should be declared "punishable by law." The decision to punish the mere dissemination of ideas, without regard to additional requirements such as incitement or the likelihood of subsequent violence, was highly controversial. In order to render Article 4 more acceptable, its introductory paragraph declares that all measures should be enforced "with due regard to the principles embodied in the Universal Declaration of Human Rights," including the right to freedom of expression. The effect of this clause is still subject to debate.

The CERD monitoring body—the Committee on the Elimination of Racial Discrimination—has broadly interpreted Article 4, emphasizing in its General Recommendations VII and XV that the prohibition of dissemination of all ideas based on racial superiority or hatred is compatible with the right to freedom of expression. This view is not shared by several states, some of which have issued reservations or interpretive declarations limiting the impact of Article 4 on domestic free speech guarantees. Another important international provision, framed in more speech-protective language, is Article 20 of the 1966 International Covenant on Civil and Political Rights, which provides that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

In addition to and as a means of implementing these international standards, many countries have adopted laws limiting hate speech. As with the international agreements, these national laws envisage different kinds of expression. Some are rather broadly worded and encompass a great variety of offensive speech (e.g., the laws in France, Germany, Denmark, and the Netherlands); others are more narrowly tailored and require, for instance, incitement and/or the intention to incite hatred, or the likelihood of a breach of peace (e.g., the laws in Canada, Great Britain, and Belgium) (Coliver, 1992).

Striking a Balance

Those committing hate speech crimes have sometimes challenged their convictions under the right to freedom of expression. National and international courts have thus had to review the national norms dealing with hate propaganda and weigh the competing interests at stake. Despite the international agreements global consensus does not exist.

The United States occupies a unique position in the debate. In this country the balance has been largely drawn in favor of freedom of speech. The Supreme Court's usual interpretation of the First Amendment free speech guarantee leaves little room for hate speech

regulations. Initially, the Court took a rather deferential stance toward legislation outlawing expressions of hatred. In the case of *Beauharnais v. People of the State of Illinois* (1952), it upheld a state law that made it a crime to distribute publications with racially or religiously defamatory content. Justice Felix Frankfurter, writing for the majority, analyzed the Illinois statute as prohibiting "group libel," a class of speech not within the area of constitutionally protected speech. Frankfurter conceded that strong arguments against hate speech restrictions exist, but he believed it to be "out of bounds for the judiciary to deny the legislature a choice of policy, provided it is not unrelated to the problem." Although this decision was never explicitly overruled, it has been thoroughly restricted by subsequent decisions limiting the constitutionality of libel laws in general.

An important step in this evolution was the Supreme Court's refusal to review a federal court's decision invalidating local town ordinances that prohibited the promotion and incitement of racial and religious hatred. One ordinance was designed to prevent a march of a neo-Nazi party in Skokie, Illinois, a town with a large Jewish community, including numerous survivors of the Holocaust. Arguments in favor of hate speech legislation have also drawn on the so-called "fighting words" doctrine. The Supreme Court has decided that fighting words—words "which by their very utterance, inflict injury or tend to incite an immediate breach of the peace"—are not protected by the First Amendment. Some scholars have argued that racist and discriminatory insults would clearly come within the ambit of this definition.

Nevertheless, reliance on the fighting words theory to justify hate speech laws was rendered ineffective by the Supreme Court's decision in *R.A.V. v. City of St. Paul* (1992). In this case the Court considered the conviction of white teenagers who had burned a cross on the property of a black family. The teenagers were prosecuted under a city ordinance that outlawed hate symbols, "which one knows or has reasonable grounds to know arouses anger, alarm, and resentment in others on the basis of race, color, religion, or gender." The majority ruled that the St. Paul ordinance drew impermissible content-based distinctions by outlawing fighting words, which injure on the basis of just a few categories, such as race and color. In the Court's view the First Amendment does not permit the imposition of special prohibitions on speakers "based on hostility—or favoritism—towards the underlying message expressed."

Critics of the U.S. approach have argued that its absolutist conception of freedom of speech refuses to recognize the competing values of liberty and equality at stake. In Europe the situation is quite different. If the U.S. Constitution could be said to reflect one perspective, the case law under the European Convention on Human Rights would surely represent the opposite side. One of the first European Convention cases to address hate speech regulations was *Glimmerveen and Hagenbeek v. The Netherlands* (1979). In this case the European Commission on Human Rights considered the convictions of two members of a right-wing political party for possessing leaflets inciting racial discrimination by urging the removal of all nonwhite immigrants from the Netherlands. The Commission declared the applications, based on the right to freedom of expression, inadmissible, relying primarily on Article 17 of the Convention, which prohibits the abuse of Convention rights. In the Commission's view, the applicant's discriminatory immigration policy was contrary to the text and the spirit of the Convention and likely to contribute to the destruction of the rights and freedoms of others.

The *Glimmerveen* case is illustrative of many subsequent decisions dealing with hate speech legislation. By declaring applications inadmissible on the basis of the "abuse of rights" doctrine, the bodies charged with enforcing the European Convention engage in a rather superficial examination of the circumstances of a case and the extent to which hate speech laws are compatible with the right to freedom of expression. This approach has been confirmed in several cases in which the European Court of Human Rights simply judged on the merits of the case. For example, in *Jersild v. Denmark* (1994), the Court stated, without further explanation, that "there can be no doubt" that racist remarks insulting to members of the targeted groups do not enjoy the protection of the right to freedom of expression. Although such a deferential attitude may be explained by the European experience with racist regimes in the first half of the twentieth century, it has been subject to criticism, even by those scholars who are generally sympathetic to some form of hate speech regulation.

Between these two extreme positions, courts in other countries have sought to arrive at a more balanced solution of the conflict caused by hate propaganda. The jurisprudence of the Canadian Supreme Court constitutes a good example of this. In *Regina v. Keegstra* (1990) it upheld a criminal statute prohibiting the communication of statements, other than in private conversation, that wilfully promote hatred against an identifiable group. The Court recognized that the provision interfered with the right to freedom of expression. But, according to the majority, such interference was justified, in regard to, among other things, the neg-

ative psychological results of hate propaganda, the importance of values such as equality and multiculturalism, the fact that the provision was narrowly tailored and that the accused was offered a number of defenses. For instance, the Crown had to prove a subjective intention to promote hatred and the likelihood of harm. After its careful analysis, the majority therefore concluded that the benefits of the challenged law outweighed its speech restrictive effects. However, in *R. v. Zundel* (1992), a case decided two years later, the Court struck down a much more broadly worded statute, which had been used to silence the author of anti-Semitic literature. In the majority's view the law, which prohibited the publication of false statements that cause or are likely to cause injury or mischief to a public interest, could "be abused so as to stifle a broad range of legitimate and valuable speech."

Which approach is preferable? The First Amendment and European Convention jurisprudence has the advantage of being clear in its commitment to either protect or not protect hate speech. The resolution of both systems can no doubt be explained and justified by the particular historical and philosophical backgrounds that characterize U.S. and European societies. The balancing approach, on the other hand, of which the case law of the Canadian Supreme Court is a good example, recognizes the harms resulting from both censoring and not censoring hate speech in terms of free speech and equality. It allows the courts to have regard for the different arguments advanced in favor of and against regulation.

SEE ALSO Incitement

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Herero

The Herero were traditional occupants of the temperate high plains of central Namibia. A Bantu people, they had moved south into this region from Angola, arriving about 1750. A series of nineteenth-century wars with the Nama, to the south, destabilized the entire region. Herero chiefs were autonomous, presiding over a decentralized tribal government, with extended families and their cattle herds spread over hundreds of miles. Germany first arrived in Africa in 1884, using the dubious private land claims of a businessman, Adolf Luderitz, as the legal basis for establishing a protectorate over a vast desert hinterland, making South West Africa its first African colony.

The first German treaties did not concern the Herero because they lived well-inland from the Atlantic Ocean. Chief Kamaherero negotiated a worthless agreement of protection with the British, who were unwilling to live up to its terms. Germans were everywhere in his country. It is, however, also clear that the Herero did negotiate *Schutzvertrags* (treaties of protection) in Okahandja and Omaruru in October 1885.

Germany had entered the race for African colonies long after its major European rivals. South West Africa was to be a model colony, showing the world what the new Germany, fresh from its victory in the Franco-Prussian War, was capable of. The brutality of the Herero War can be understood within the context of this need to perfect such a colonial ideal in order to estab-

lish modern Germany as the equal of other European powers. Indeed, evidence exists that the virulent racism characterizing the Holocaust was also partially formed there. Germany began experiments with sterilization on Herero prisoners of war in the name of the science of eugenics shortly after the turn of the century.

The Herero War

The Herero War of 1904 and 1905 killed at least 60,000 of the 80,000 Herero and resulted in the seizure of all their lands and cattle. The central region of South West Africa—now Namibia—was swept clean of black occupants, setting the stage for the creation of a white-dominated agricultural economy that has prevailed since. Although one can draw a number of meanings from the war, the central outcome in terms of land is clear: Germany terminated by conquest all Herero land rights in South West Africa. The details of the war are well known. Led by the aging Chief Samuel Maherero, offended by the increasing white occupation of their lands, and subjected to demeaning and inhuman treatment by colonists and traders, the Herero rose in revolt. Once the uprising was under way, the colonial administration refused all attempts to negotiate a resolution, instead adopting a policy of genocide to sweep the Herero off their lands.

German Genocide

Nothing in the origins of the Herero War is in any way unique to colonial practice. Other European powers forced African peoples off their lands in other colonial wars. What distinguishes the Herero War, and makes it an act of genocide, was a clearly announced military policy to destroy the Herero nation by killing all its members. This action seems to have developed in the upper echelons of the colonial hierarchy, born of acute frustration at the inability of troops to quickly win the war. The entire colonial enterprise was, in this group's view, endangered, and Germany's defeat in one of its colonies would be a disgrace in the eyes of its European competitors. Kaiser Willem II dispatched General Lothar von Trotha to take over control of the war from the discredited local administration. In a proclamation, issued at Osombo-Windimbe after church services on Sunday morning, October 2, 1904, he ordered all Herero men killed, and all their lands and cattle seized:

> I the great General of the German troops send this letter to the Herero people.
>
> The Herero are no longer German subjects. The Herero people must, however, leave the land. If the populace does not do this, I will force them with the cannon.
>
> Within the German borders every Herero, with or without a gun, with or without cattle, will be shot. I will no longer accept women and children, I will drive them back to their people, or I will let them be shot at.
>
> These are my words to the Herero people.
>
> The great General of the mighty German Kaiser.

[SAMUEL MAHERERO]

Herero Chief Samuel Maherero was a large, imposing and proud man, often appearing in a military uniform. The Herero were divided into nine tribes with a decentralized structure of leadership, and although no chief ruled above the others, Maherero was regarded as the "paramount" chief by German authorities.

Maherero was the son of Kamaharero, a great Herero warrior and cattle raider who maintained headquarters in Okahandja by the late 1860s. Maherero was educated in Lutheran mission schools. Upon his father's death in 1890, complex Herero rules of inheritance distributed most of his wealth and cattle to other relatives, but Maherero inherited the right to live in his father's house and, supported in wealthier relatives and relying on his education and connections with German missionaries, he soon rose to a position that enabled him to mediate between Herero culture and German rule. This enhanced his status and he became wealthy, although German administrators viewed Maherero somewhat derisively, as a cooperative chief fully under German control and, therefore, unlikely to lead a revolt.

Maherero's full role in the Herero War is still unknown, but he clearly came to resent Germany's colonial domination of his country, especially the loss of Native lands and cattle, the basis of the Herero's traditional culture. Acting with other chiefs, Maherero planned a secret uprising against German rule. The initial attacks were successful and resulted in the deaths of hundreds of German farmers; German women, children, and missionaries were spared. Maherero led the Herero forces during the conflict, but he was driven into the desert, together with most of his tribe. He reached Botswana, where he remained in exile until his death in 1923. He is buried with his father and grandfather in Okahanja. There the Herero people visit their former chiefs' graves every August on Herero Day.

There can be no doubt that genocide was the unambiguous intent of this action. Von Trotha personally read the proclamation to Herero prisoners and then proceeded to hang a number of warriors. After distributing copies of the document printed in the Herero language, he drove any remaining women and children into the Kalahari Desert.

Those Herero who fled were denied access to water holes, or their water supply was either poisoned or guarded, and they died. Few casualties of the war—several hundred at most—were due to military actions: Mass starvation over a period of months killed most Herero men, women, and children, and starvation and death occurred for several years afterward as stragglers tried to find their way across the Botswana border. Thousands of prisoners, most previously captured and held under inhuman conditions in prison camps where they were forced to work as slave laborers, also died. Their land was seized by the colonial state. To the extent that Germany needed to win the Herero War at all costs in order to protect its international position as a colonial power, the effort was successful. In the early twenty-first century central Namibia still functions as a model German colony. German colonial architecture remains evident in the cities, and a well-developed colonial infrastructure survived until South West Africa fell to invading British and South African forces in 1915, during World War I.

Herero Claims to Reparations

A few thousand Herero survived both genocide and exile only to face the imposition of apartheid by South Africa, which assumed the British mandate for South West Africa in 1919. Having taken refuge in northern Namibia, Angola, and Botswana, the Herero gradually returned to their traditional lands. Some labored as farmworkers, but others simply occupied unused desert land and rebuilt their herds. Namibian independence, in 1989, set the stage for the assertion of Herero claims for reparations, a legal claim that would have been impossible under apartheid.

In 1995 Herero Paramount Chief Kuaimi Riruako, on behalf of the Herero nation, demanded reparations of $600 million. In a related move, Chief Riruako filed a lawsuit against three German companies in the District of Columbia, asking for $2 billion in reparations, claiming that the companies had engaged in a "brutal alliance" with imperial Germany during the Herero War. Now numbering about 125,000, the Herero have persisted in pursuing their claim. The claim is based expressly on the belief that Herero War was an act of genocide, which links their claims to those of Jews and other European peoples seeking reparations for Nazi genocide later in the same century.

SEE ALSO Namibia (German South West Africa and South West Africa)

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Sidney L. Harring

Heydrich, Reinhard

[MARCH 7, 1904–JUNE 4, 1942]
SS officer and chief architect of the Final Solution

Tall, blonde, and blue-eyed, with chiseled features that reflected the Nazi "Nordic" ideal, Reinhard Heydrich was the second-most powerful person in the SS, subordinate only to Heinrich Himmler. He was intelligent and cynical, but not dogmatic. With ruthless ambition he managed the planning and execution of Hitler's Final Solution, the extermination of Europe's Jews during World War II.

Heydrich was born in Halle to an aristocratic family. Well educated and culturally sophisticated, he had displayed great promise as a violinist at a young age, but became a naval intelligence officer following his schooling. He was discharged from the navy in April 1931 and immediately joined the SS. Himmler entrusted him with the organization and leadership of the *Sicherheitsdienst* (Security Service or SD), the new intelligence branch of the SS.

Heydrich helped Himmler establish SS authority over the state police (Gestapo), first in Bavaria in 1933 and ultimately throughout the rest of Germany by the end of 1934. He played a key role in the brutal SS purge of the leadership of the SA, or *Sturmabteilung,* the military arm of the Nazi party, on June 30, 1934.

In June 1936 the SS unified all police forces in Germany under its authority. Himmler was named *Reichsführer-SS und Chef der deutschen Polizei* (Reichsführer-SS and Chief of the German Police). As *Chef der Sicherheitspolizei und des SD* (Chief of the Security Police and the SD), Heydrich became head of the Gestapo and Kripo (criminal police). He authorized the deportation

of Jews from Austria after the Anschluss in March 1938 and had thousands of Jews arrested and transported to concentration camps during the Kristallnacht pogrom of November 9, 1938. Following the pogrom, Hermann Göring concentrated authority for Jewish emigration in the hands of the SS and authorized Heydrich to establish the *Reichszentrale für jüdische Auswanderung* (Reich Central Office for Jewish Emigration) in Berlin on January 24, 1939. This office facilitated the forced emigration of Jews throughout Germany using brutal methods perfected by his subordinate, Adolf Eichmann, in Austria.

The creation of the *Reichssicherheitshauptamt* (Reich Security Main Office or RSHA) under Heydrich's direction in 1939 formally unified state and party secret police agencies (the Gestapo and SD). He took charge of the Einsatzgruppen (action squads) that supervised the relocation of Polish Jews to squalid, overcrowded ghettos and their inhuman treatment there, as well as the establishment of *Judenräte* (Jewish Councils) beginning in September 1939. He was also instrumental in plans to concentrate Polish Jews on reservations in the East (the Nisko and Lublin plans) in 1939 and European Jews in Madagascar in 1940. For the brutality of his methods, Heydrich soon became known as "the hangman."

Heydrich's *Einsatzgruppen* undertook the mass murder of Russian Jews and Soviet officials during Germany's invasion of the Soviet Union. On July 31, 1941, Göring charged him with the task of devising a *Gesamtlösung* (total solution) to the Jewish question in Europe. Although the origins of the decision to systematically murder all of the Jews of Europe are still debated, Heydrich was responsible for drawing up the plans for the Final Solution. He revealed these plans to party and state officials at a meeting he convened at Wannsee in Berlin on January 20, 1942, to enlist their cooperation.

In September 1941 Heydrich was named Deputy Reich Protector of Bohemia and Moravia, and appointed Protector later that year. Attacked by Free Czech agents in an ambush near Prague on May, 27, 1941, he died of his wounds seven days later. In retaliation the SS destroyed the nearby Czech village of Lidice and killed its entire male population.

Heydrich's ruthless quest for power, perhaps more than his anti-Semitism, resulted in the murder of millions of Jews and other victims, and, ultimately, his own violent death.

SEE ALSO Gestapo; Germany; Kristallnacht; SS; Wannsee Conference

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Francis R. Nicosia

Himmler, Heinrich

[OCTOBER 7, 1900–MAY 23, 1945]
Father of the concentration camp

Heinrich Himmler has been labeled the "architect of genocide," the Nazi leader who more than any other encouraged and facilitated Adolf Hitler's decision to implement the Final Solution to the Jewish question, as well as other programs of ethnic cleansing that destroyed untold millions of lives during World War II. Few understood, embraced, and exalted the Führer's evil dreams as thoroughly as Himmler. For him they were a moral imperative.

Himmler was born the second son of a secondary-school teacher and one-time tutor to the Bavarian royal family. None of Himmler's scholarly biographers trace his hate-filled, phobic prejudices to his formative years. He no doubt absorbed conventional prejudices about minorities and outgroups, but nothing virulent. Germany's defeat in World War I transformed his conservative nationalism, like that of many future Nazis, into xenophobia, while conspiracy theories about Jews increasingly provided a scapegoat for national failure. His growing anti-Semitism fused with widely held ideas about racial purity versus degeneracy. His romantic nationalism evolved into a mystic vision of German regeneration through a combination of racial breeding and heroic struggle to colonize Slavic lands to the east. By 1924 he had abandoned Catholicism as inconsistent with his evolving views and added it to his conspiracy theories.

During this same period Himmler became a career Nazi as deputy to Gregor Strasser, head of the party's propaganda office, and his growing worldview received reinforcement. By 1926 he coordinated the propaganda of the SS, then a small paramilitary group with a bodyguard formation, and had become its deputy leader. That brought him into contact with Hitler. Impressed by Himmler's absolute loyalty, the Führer named him Reichsfuhrer SS. Himmler found his mission. He

Himmler preparing to address a crowd gathered at the town hall in Linz, Austria, in 1938, after the Nazis had invaded that country. Answerable only to Hitler, he soon became responsible for removing all undesirables from territories conquered by the Reich and ensuring an ethnically "pure" Aryan race.[HULTON-DEUTSCH COLLECTION/CORBIS]

dreamed of turning the SS into a racial and ideological elite, the highly trained police force of the Nazi movement, a state protection corps that would unquestioningly fulfill the Führer's will and advance their common goal of creating a homogeneous and disciplined society.

By the time the Nazis came to power in 1933, Himmler had built the SS into a power base in competition with Hitler's other paladins. He envisioned a fusion of Germany's police, as the internal defense force of the nation, with his SS. Although Hitler undoubtedly encouraged such dreams, Himmler had to compete with many rivals in the divide-and-control system that the Führer employed to keep any lieutenant from becoming powerful enough to threaten his preeminence or to set policy.

Himmler succeeded by early 1934 in gaining nominal control over all the separate political police, and by 1936 had consolidated them into a unified national Gestapo. At the same time he acquired unified command of all German state police to become Reichsführer SS and Chief of German Police. As Hitler moved toward war, his phobias about domestic opposition had led him to favor Himmler's plans for an SS-police state as the most suitable means for domestic control. Soon Himmler was virtually independent from most normal state mechanisms of control, answerable almost exclusively to Hitler.

Himmler's SS-police state involved a tripartite wedding of SS, police, and concentration camps, all under his personal authority, with any legal appeals against them channeled through him. During the war his SS empire expanded further to become a veritable "state within a state," including the Waffen-SS military formations, a near monopoly of foreign and domestic intelligence operations, SS industries and social and cultural institutions, control over a vast reservoir of slave labor, the authority to resettle or exterminate millions, and the design and construction of the facilities needed

for the expansion of the Nazi racial utopia into the occupied lands of the East.

The key to Himmler's powerful position was his dogged efforts to fulfill the Führer's every wish, especially in pursuit of a "racially pure" national community. To do so, he had to anticipate every evolution in Hitler's goals, and often encourage and facilitate their development toward ever more radical conclusions. Every step in the growth of Himmler's SS empire made it possible for Hitler to conceive of something more ambitious, and that in turn led to yet more opportunities for Himmler to add to his power.

Himmler and lieutenants like Reinhard Heydrich and Kurt Daluege developed police forces that eliminated opposition and proceeded to purge society of so-called undesirable elements, defined ideologically, religiously, culturally, socially, medically, and racially. The concentration camps would reeducate through incarceration all salvageable elements and forcefully employ or eliminate all others. At first this campaign of terror was to intended to encourage the emigration of such segments of the population as the Jews.

Heydrich's SS academics and Jewish experts in his Security Service (SD) outmaneuvered more radical Nazi anti-Semites by ostensibly studying the Jewish problem scientifically and proposing "rational" solutions. After the pogrom of November 1938 (Kristallnacht), when the actions of radicals wreaked extensive economic damage with embarrassing international consequences, Heydrich was allowed to establish model emigration centers throughout the entire Reich under Gestapo authority. It thus became the executive agency for handling the Jewish problem.

As Himmler developed the means to carry out solutions, Hitler gave him more authority for handling "population problems." Heydrich's *Kriminalpolizei* (regular detectives) facilitated Hitler's euthanasia program, combated homosexuality and prostitution, and dealt with the Romani problem. When the 1939 invasion of Poland greatly expanded such population management problems, Heydrich's Einsatzgruppen either exterminated any potential resistance leadership among Poles and Jews or consigned them to labor camps. Himmler became Commissar for the Strengthening of Germandom, responsible for removing all undesirables from areas incorporated into the Reich, absorbing any suitable people into the German gene pool, and resettling the ethnic Germans from Soviet territories. With the invasion of the Soviet Union in 1941 and the "racial war" that Hitler unleashed, Himmler's authority expanded to encompass most matters involved in building the future racial empire that would extend to the Urals. This rapidly came to include total extermination of the Jewish population in the East, and finally, by perhaps the fall of 1941, orders from Hitler to exterminate all Jews in Europe. With them would go most Romani and gradually all other peoples regarded as unsuitable human breeding stock in the occupied East.

Even after defeat became inevitable, Himmler could not turn against his Führer. Nevertheless, he increasingly allowed subordinates to pursue half-baked schemes for peace feelers with the Western Allies. He also approached Hitler as early as December 1942 with plans for trading Jews for foreign currency or other advantages. Although this contradicted their determination to exterminate all Jews, Hitler consented. Many convoluted maneuvers ensued with little benefit to any Jews. By late 1944 Himmler combined the two options, negotiating with the Allies for the release of some Jews, hoping to appear as the "responsible" leader. On April 28, 1945, when Hitler learned of Himmler's efforts to negotiate surrender, he ordered his arrest. Himmler survived but he was captured by the British and soon thereafter committed suicide.

Although most scholars agree that Hitler made the ultimate decisions to unleash first mass murder and finally genocide, and they concur on Himmler's responsibility for its execution, greater debate exists about Himmler's role in Hitler's decisions. Some argue, convincingly, that he and Heydrich presented far-reaching proposals or contingency plans as early as 1939. In the field their lieutenants and other Nazi and military regional authorities creatively exceeded their authority, thereby encouraging escalation. In particular, however, Himmler's SS empire consistently demonstrated that it had not only the organizational machinery for whatever Hitler conceived, but that it could also overcome the psychological barriers to the mobilization of the hundreds of thousands of perpetrators needed for the job.

SEE ALSO Einsatzgruppen; Gestapo; Heydrich, Reinhard; Hitler, Adolf; SS

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George C. Browder

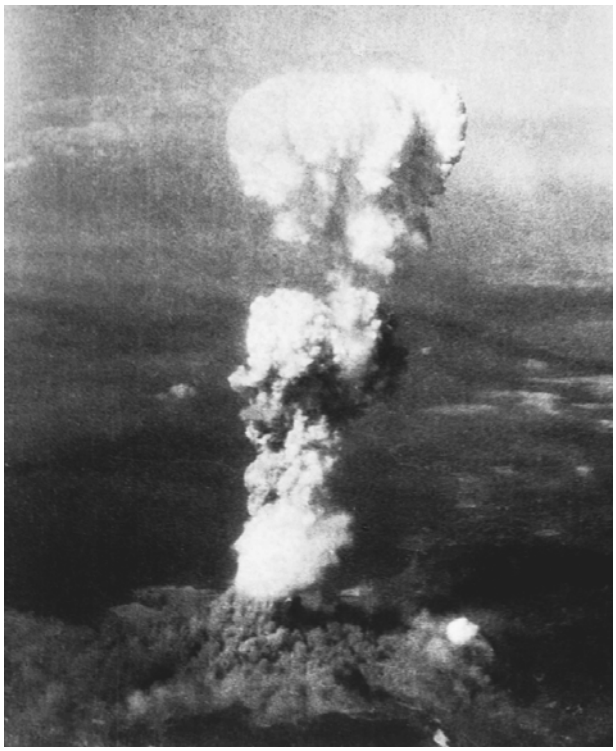
Hiroshima

On August 6, 1945, a U.S. bomber, the *Enola Gay*, dropped an atomic bomb on Hiroshima, Japan. Three days later, a second atomic bomb destroyed the city of Nagasaki. Estimates of the number killed in both cities range as high as 210,000. Thousands more later succumbed to radiation disease. These two acts, authorized by President Harry S. Truman, raised profound ethical and legal issues.

The possibility of an atomic bomb had been revealed by Albert Einstein in a 1939 communication to President Franklin Roosevelt. Under the code name Manhattan Project, three bombs were built, and a test bomb was detonated at Alamogordo, New Mexico on June 16, 1945. Some Manhattan Project scientists urged a demonstration of the new weapon before its military use, but President Truman, advised by a high-level committee, ordered its use against Japan as soon as possible.

Truman's decision came at the end of a war of escalating brutality. The Japanese occupation of Nanking, China, in 1937, had been marked by extreme cruelty. Japan's surprise attack on Pearl Harbor; the wanton killing of U.S. prisoners by Japanese soldiers in the notorious 1942 "Bataan Death March"; and the ferocious Japanese resistance on Iwo Jima and Okinawa were all part of the context of the president's action. So, too, was the racist wartime propaganda, purveyed in editorials, songs, movies, and political cartoons, that had portrayed all Japanese as apes, vermin, and rats—subhuman creatures to whom the usual standards of ethical behavior did not apply.

Furthermore, throughout the twentieth century, new technologies—tanks, poison gas, aerial bombing, and rockets—had vastly increased war's destructive potential, including the mass killing of civilians. In World War II, German V-1 and V-2 rocket attacks on English cities had taken a heavy civilian toll. As the war became increasingly ferocious in 1944 and 1945, British and U.S. bombing raids on major German cities created firestorms that killed hundreds of thousands from blast, fire, and asphyxiation. The devastating February 1945 attack on the beautiful city of Dresden—a city of little military significance—epitomized the massive death and destruction caused by these raids. These were attacks deliberately calculated to produce indiscriminate devastation, to "break the morale" of the target population. In Japan, sixty-four cities endured massive air raids prior to Hiroshima, with casualties estimated at 300,000 killed and some 340,000 severely injured. A March 1945 raid on Tokyo killed an estimated 100,000. The deliberate targeting of civilians, and even the wholesale slaughter of tens of thousands in a single raid, in short, antedated the atomic bomb. The only thing new about the events of August 6–9, 1945 was the technology employed.



A spiraling cloud from the atomic bomb nicknamed "Little Boy" signals the destruction of Hiroshima, Japan, on August 6, 1945. Some 140,000 people, mostly civilians, were killed, with thousands more eventually perishing from the effects of radiation. [CORBIS]

As Americans assessed the moral implications of the mass killing of civilians in World War II, culminating at Hiroshima and Nagasaki, the so-called "Just War" doctrine offered some benchmarks. From St. Augustine onward, theologians and ethicists had sought

to place moral limits on war. The "Just War" doctrine holds, for example, that the means employed in war must not produce greater evil than the evil one seeks to eliminate. This doctrine also insisted that noncombatants, as well as wounded soldiers and prisoners, must be treated humanely. Pope John Paul II declared in 1995: "[T]he direct and voluntary killing of an innocent human being is always gravely immoral." By definition, this precludes deliberate attacks on civilian populations. As the Roman Catholic catechism sums up the doctrine: "Every act of war directed to the indiscriminate destruction of whole cities . . . is a crime against God and man." Other religious and ethical traditions express similar principles, declaring that even for a nation waging a legitimate war, the moral law remains in force. Having justice on one's side does not mean that victory by any means possible is ethically defensible.

Well before Hiroshima and Nagasaki, these principles had been swept aside as the concept of "total war" had become the Allies' guiding principle. Hiroshima and Nagasaki, by the magnitude and the instantaneous nature of the destruction, raised the question of ethical legitimacy in the starkest possible way. The "Just War" doctrine also holds, for example, that every possible means of a nonviolent resolution must be exhausted before the resort to war. By extension, this means that once a war is underway, each new step in the escalation of violence should be undertaken only after all possibility of ending the conflict has been explored. Much of the debate over Hiroshima and Nagasaki has focused on precisely this point: Did the American government exhaust all possible means for ending the war before destroying these two cities and snuffing out tens of thousands of human lives?

Many historians have concluded that the answer is no. Japan was a defeated nation in August 1945, its war-making capacity shattered. The Japanese government was divided, with influential figures seeking an exit from a hopeless war. The Japanese government had asked the Soviet Union to act as an intermediary in the surrender negotiations—a fact known to Washington since U.S. cryptologists had broken the Japanese diplomatic code. Many Japanese saw the survival of the Emperor as a key issue—a point the Americans conceded after the war, despite their demand for unconditional surrender. Further, the invasion of Japan, should the war have continued, was not scheduled until November 1, 1945—three months in the future.

Confronting these facts, many have questioned the morality of dropping two atomic bombs before all possibility of ending the war by negotiation had been explored. Of course, no one knows for certain that Japan's surrender could have been achieved through negotiations. The point is that this option was never tried. The fact that Japan surrendered five days after the Nagasaki bombing, often cited by defenders of Truman's action, is irrelevant to the question of whether the war could have been ended by other means. From an ethical perspective, this is the crucial issue.

A Bomb Dome (Genbaku Dome) Memorial in Hiroshima. For many, the skeletal remains of a building that survived the first nuclear attack pose a fundamental question: Was the U.S. decision to use this weapon a legitimate act of war, or does it qualify as a crime against humanity? [DAVID SAMUEL ROBBINS/CORBIS]

Truman always insisted that his sole consideration in ordering the use of the atomic bomb was to save American lives, but other factors may have been in play. At the February 1945 Yalta conference, and again at the Potsdam conference in June, Soviet premier Joseph Stalin had promised to enter the Pacific War within three months of Germany's surrender. Germany surrendered on May 7, 1945, and Moscow declared war on Japan on August 8. Some evidence suggests that Truman's decision was influenced by his desire to force Japan's surrender before Russia became a significant factor in the outcome. These speculations have a bearing on how one assesses the ethics of the Hiroshima bombing. The Nagasaki bombing raises further questions: Once Hiroshima had been destroyed, did the United States wait a sufficient time for the Japanese

government to assimilate this terrible new reality before destroying a second city?

All these questions have shaped the discourse over how the atomic bombing of Hiroshima and Nagasaki should be viewed. Was it a legitimate act of war, or does it fall into the category of a crime against humanity? This debate arose in the earliest moments of the Atomic Age. President Truman, predictably, insisted that the bomb was justified, since it prevented the U.S. casualties that an invasion of Japan would have entailed. Many Americans, then and since, have agreed. But the alternative view has also found its supporters. Immediately after the Hiroshima bombing, for example, the future secretary of state, John Foster Dulles, then an official of the Federal Council of Churches, telegraphed Truman urging him, on moral grounds, not to drop a second atomic bomb. In *The Challenge of Peace* (1983), the American Roman Catholic bishops, addressing the larger ethical issues posed by the nuclear arms race, came close to condemning the Hiroshima and Nagasaki bombings as morally indefensible. In 1995 and again in 2003, proposals by the Smithsonian Institution to display the *Enola Gay* triggered further discussion of this question, which continues to trouble the nation's conscience, raising ethical issues of the gravest sort.

SEE ALSO Japan; Memoirs of Survivors; Memorials and Monuments; Memory; Nuclear Weapons; Photography of Victims; United States Foreign Policies Toward Genocide and Crimes Against Humanity; Weapons of Mass Destruction

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Paul S. Boyer

Historical Injustices

History is replete with episodes of genocide, slavery, torture, forced conversions, and mass expulsions of peoples. For political, economic, religious, or ethnic reasons, states often abused or allowed the abuse of specific minorities or foreign populations. These events remain alive in memory and sometimes resurge as the foundation of modern conflicts. To a large extent, the existence and boundaries of all modern states are the result of past acts and omissions that would be unlawful today according to international law and most national constitutions and laws. The acts are also viewed in retrospect as morally wrong, even if they were not illegal at the time they were committed. Such acts and omissions are referred to as historical injustices.

Reparations Claims

Historical injustices are the subject of a growing number of legal and/or political claims to repair the harm they caused. In some instances, the consequences of the injustices persist into the present. As a consequence, states and societies throughout the world are being asked to account for historic abuses and provide redress to victims or their descendants. Unresolved injuries and losses from World War II, for example, have been addressed in recent years through litigation and negotiations. In Greece alone, more than sixty thousand cases were filed in the past decade concerning World War II abuses.

Some historical injustices involve events occurring a century or more ago. The United Nations Conference on Racism, held in Durban in 2001, debated the issue of reparations for the Atlantic slave trade and colonialism. In the United States, slave reparations have been claimed at least since the Emancipation Proclamation of 1865. Many descendants of slaves continue to seek redress and have brought lawsuits against individuals and companies for an accounting of their profits and assets acquired exploiting slave labor.

Abuses perpetrated against indigenous peoples represent perhaps the largest number of historical injustices. Many of these groups' demands are based on

breaches of treaties entered into between a state and an indigenous group. In Canada, claims involve the relocation of the Inuit in the 1950s, and the sexual and physical abuse of aboriginal students in residential schools where they were sent after removal from their families. Native Hawaiians demand redress for the loss of their independence, lands, and culture. They have filed state law claims for back payment of ceded land trust revenues and to enjoin the negotiation, settlement, and execution of a release by trustees because of the overthrow of the government in 1893.

State Responses to Historical Injustice Claims

States and governments have responded in varying ways to the claims concerning historical injustices. Many heads of state or governments have issued formal apologies for past acts. Some claims, particularly those of indigenous groups, have led to the negotiated restitution of lands and resources. Australia returned 96,000 square miles of land in 1976 to Aborigines in partial compensation for land seized by white settlers. Canada also restored land to indigenous groups, after some thirteen years of negotiations. A recent agreement between Quebec and the Cree Nation gives the latter management of their natural resources and recognizes their full autonomy as a native nation. In the United States, as early as 1946 an Indian Claims Commission received jurisdiction to hear and resolve claims arising from the seizure of Indian lands and treaty breaches by the United States. The 1971 Alaska Native Claims Settlement Act granted indigenous Alaskans monetary relief as well as land. A 1990 federal law in the United States orders the restitution of human remains of Native Americans along with goods and funerary objects recovered from the original graves. New Zealand created a process for redressing wrongs committed in the late 1880s that involves returning lands and factories, fishing vessels, and fishing rights.

Compensation has also been forthcoming. In October 2000 Austria established a $380 million fund to compensate individuals forced into slave labor during World War II. Five U.S. Native-American groups successfully recovered monetary compensation, as did indigenous groups in Norway and Denmark. In 1995 the State of Florida paid $2.1 million in compensation for a race riot and massacre that occurred in 1923 in the town of Rosewood, Florida. In January 1998 Canada established a $245 million "healing fund" to provide compensation for the First Nation children who were taken from their families and transferred to residential schools.

Governments have rejected some claims. Japan has refused to offer an official apology or make reparations to World War II sex slaves, arguing that the acts were not illegal at the time and rejecting the assertion that the women were de facto slaves. The Australian government has denied reparations to members of the "Stolen Generations" of Aboriginal children taken from their families as part of a government assimilationist policy, despite recommendations to that effect contained in the government-commissioned official report on the matter.

Slave owners in the antebellum South routinely practiced the most severe forms of corporal punishment. This c. 1862 photo (taken after the Civil War had started) shows the scars of one whipped slave. [CORBIS]

Legal and Political Issues

Claims of historical injustice are considered moral rather than legal claims because either the law did not prohibit the acts at the time they were committed, there is some uncertainty about the state of the law, or there are procedural barriers to bringing a case. As a result of these problems, nearly all resolution of disputes over historical injustices, whether in the form of an apology, land, or money, has come about through negotiations

or the political process rather than through the courts. To give one example, the U.S. 9th Circuit Court dismissed a case seeking reparations for slavery (Cato v. United States, 70 F3d 1103, 1105 [1995]), saying that damages due to enslavement and subsequent discrimination should be addressed to the legislature, rather than the judiciary. The court was unable to find "any legally cognizable basis" for recognizing the claim, distinguishing Native-American claims because the latter were based on treaties between nations.

Despite the lack of success in court, many lawsuits have been widely publicized and have led to negotiated or legislative settlements. Cases brought against insurance companies who failed to pay on policies owned by Holocaust victims led to the establishment of an International Commission on Holocaust Era Insurance Claims, formed by five of the major insurers. In February 2000 the commission announced that it would begin a two-year claims process to locate and satisfy unpaid Holocaust-era insurance policies. Similarly, a 1995 German–U.S. agreement concerning final benefits to certain U.S. nationals who were victims of National Socialist measures of persecution resulted from a lawsuit brought by an individual Holocaust victim.

Arguments For and Against Reparations for Historical Injustices

Reparations for historical injustices are supported for several reasons. First, some acts were illegal under national or international law at the time they were committed, but the victims have been unable to secure redress for political reasons, because evidence was concealed, or because procedural barriers have prevented them from presenting claims. In such circumstances, advocates argue that a lapse of time should not prevent reparation for harm caused by the illegal conduct. Second, states, communities, businesses, and individuals unjustly profited from many of the abuses, garnering wealth at the expense of the victims. Third, most examples of historical injustices have a compelling moral dimension because the events took place during or after the emergence of the concept of basic guarantees of human rights to which all persons are equally entitled. Redress is a symbol of moral condemnation of the abuses that occurred. Proponents argue that if human rights are truly inherent and universal, then they apply not only territorially, but also temporally and provide a basis to judge past practices. Advocates for redressing historical injustices also reject the notion that present generations have no responsibility for the past. They note that every individual is born into a society or culture that has emerged over time and that shapes each person, making the past part of the present and giving the society and individuals a historic identity. On a practical level, un-righted wrongs fail to deter further harmful conduct and foster social resentment.

The most common objection to redress for historical injustices is that it involves retroactive application of the law. Nonretroactivity of law derives from the notion of fundamental fairness, the idea that individuals may legitimately rely on legal norms in force at the time they act:

> Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal (*Landgraf v. USI Film Products,* 511 US 244, 265 [1994]).

Nevertheless, reliance may not be legitimate if the rule is openly contested, in transition, or patently unjust.

Opponents also point to the long passage of time that clouds issues of causality and damage. They invoke the notion of personal responsibility to object to persons today paying for the acts of their predecessors, sometimes distant ancestors. In addition, opponents note that in many instances not only are living perpetrators absent, but there are no present-day victims of long-past violations. In some instances, opponents cite existing laws protecting human rights and affirmative action, calling these measures reparative in aim and effect. Some view reparations for historical injustices as the triumph of a victim psychology that blames everyone else for today's problems. They argue that when a community bases its communal identity almost entirely on the sentimental solidarity of remembered victimhood, it may give rise to recurring cycles of violence and turn victims into perpetrators.

International and national law can have retroactive effects, but is presumed to have prospective force. Most human rights treaty procedures, for example, permit complaints to be filed only for violations occurring after the treaty becomes legally binding for the state. The rule does allow a case to be filed, however, for a violation that began before the state was bound by the law if the wrong continues after the state becomes obliged to respect the treaty. Human rights law also requires nonretroactivity of criminal offenses, but this rule would not apply to resolving historical injustices through means other than prosecution. For property, international and national laws recognize that the unilateral acts of states may divest property owners of their previously acquired property, provided the taking is for

a public purpose and nondiscriminatory, and accompanied by appropriate compensation.

It is not always clear that historical injustices involved acts that were legal at the time they were committed. If they were illegal, the law of reparations will apply. If the acts were lawful, the question of whether or not to ascribe retroactive effect to the law and condemn the acts involves a balancing of the equities, the strength of the claims, the need for reconciliation, and the practicalities of devising appropriate reparations between appropriate entities and persons. When considerable debate has arisen over the morality or legality of the acts, it may be more just to award reparations on the basis that reliance on the existing law was misplaced and unwarranted.

Experience thus far suggests that the resolution of claims which lack a legal foundation will take place through the political process. Many factors will affect the likelihood of reparations being afforded for past injustices and most of them are linked to the amount of time that has passed. First, it is more likely that reparations will be offered if the perpetrators are identifiable and still living. Second, the victims should be identifiable, with most still alive, or their immediate descendants present. The size of the group will certainly affect the amount, if not the fact of reparations. Third, demands for reparations will probably only succeed with political pressure and strong, cohesive support by the victims themselves. Perhaps most important, the substance of the claim must be one that presents a compelling human injustice which is well documented. The claim will be even stronger when there is continued harm and a causal connection between present harm and the past injustice.

Claims for historical injustices are pursued because redress can challenge assumptions underlying past and present social arrangements. They may involve restructuring the relationships that gave rise to the underlying grievance, addressing root problems leading to abuse and systemic oppression. This brings the notion of reparations close to the current idea of restorative justice as a potentially transformative social action. It also provides a reason why legislatures may be better suited to determine reparations. They are not bound by precedent and legal doctrine, but can fashion equitable remedies to avoid the creation of future historical injustices.

SEE ALSO Compensation; Reparations; Restitution

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Dinah L. Shelton

Historiography, Sources in

Suppressing, denying, or eliminating evidence of genocide is patently wrong. Morally and ethically, justice ought to mean the punishment of all culprits—political, religious, and media leaders from afar, and executioners in the killing fields alike—in proportion to their misdeeds. The duty of professionals assigned to study specific cases is to record legitimate, authentic documentation, not to prepare prosecutions or facilitate harmony. Meticulously and accurately—in the original language to prevent any misunderstandings and the potential loss of context in translation—reconstructing criminal events is their primary responsibility.

An expert analysis of personal testaments and written submissions by eyewitnesses to mass murders, particularly in terms of their inclusion in academic scholarship or journalistic publications, is highly problematic, especially in traditional cultures. Dilemmas concern the enormous risks inherent in identifying victims. Innocent people may be stigmatized, losing respect and dignity in their neighborhoods. Sensitivity and even self-imposed ethical boundaries—such as the scope of questioning—to determine authenticity are warranted. The brutally wounded suffer physical injuries and psychological troubles, having lost both close friends and relatives. Their pain endures, even if they survived without visible scars. To desensitize such traumatized people is a major challenge.

Nevertheless, even the most sympathetic researcher needs to probe for exact details, including time, place, scope of atrocities, names, and the severity of crimes. Interviews often involve deep memories of humiliation, for instance, those commonly associated with rape. They therefore remind subjects of personal shame, likely triggering immediate and or long-term psychological impact. These emotional circumstances may obscure the retrieval of imperative facts, or credible transcripts may be subsequently reversed during a judicial hearing, due to fears of a public loss of dignity

or communal pressure. The creation of comprehensive archives with concrete evidence is crucial to determining the truth about perpetrators, and to bringing them to justice through a formal indictment.

An accurate, systematic, and balanced methodology is thus a necessity for responsible officials or human rights organizations. The advent of technology has provided some answers. The use of tape recorders, video cameras, websites, and the Internet in general allows the compilation of a multitude of resources and the classification of such accounts, while making them widely accessible. Another solution, after the violence has ended, is to treat the collection and assessment of information, and signed summations, as part of the healing process that collectives and individuals ought to face.

Rules to ensure consistency in analyzing evidence—especially in the most common form, oral history—have emerged gradually. They are not yet uniform, nor universally accepted, as so many individuals, organizations, and governments are involved. Conventional practices of qualitative analysis to evoke well-structured narratives of memories take psychological research theories on cognition into account. Oral and written data culled through methodologies employed in a plethora of academic pursuits enrich and make more sensitive mainstream thinking on how to best gain and assess relevant knowledge.

Any effort to reconstruct events related to genocide and crimes against humanity must incorporate input from segments of numerous traditional scientific authorities. Important disciplines include law, sociology, forensic and clinical psychology, medicine, pathology, social work, criminology, criminal justice, ethnography, cultural anthropology, gender studies, education, media and communications, history, political science, international relations, strategic and military studies, comparative literature, theology, philosophy, geography, demography, and economics. In addition, studies of racism, especially of anti-Semitism, coupled with the exploration of colonialism and the customs prevalent among particular urban or rural populations, are helpful. This comprehensive effort must be complemented by an analysis of the specific circumstances defining the lives of victims, such as Jews, Armenians, and any other affected groups, nations and tribes alike, in Africa, Asia, and Europe, and indigenous populations in Latin America and Oceania.

How killers and their cohorts reach the degree of hatred or vengeance necessary to commit crimes against humanity is another important query. The trials and tribulations of German and Jewish history, as obvious examples, are worthy of thorough exploration. Objective assessments of powerful social, economic, and political relationships in affected societies are necessary to understand, perhaps corroborate, although never justify, the circumstances attendant to a particular genocide, not the least of which is the context of the oral and written evidence provided by witnesses.

In sum, no one solution exists that perfectly addresses all the major dilemmas and boundaries faced by practitioners in the field on how to aptly translate the horrors of genocide into recognizable, perceptible terms and appropriate sources. Only a combination of standards, compassion, and common sense provides a flexible guideline. Exposing as many people as possible around the world to the visuals, graphics, and sounds inherent in genocide, thus educating them about such circumstances, may be the best measure to prevent future atrocities.

SEE ALSO Evidence; Historiography as a Written Form

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Historiography as a Written Form

Crimes against humanity and genocide may be seen as realities distinct from more normal human events, thus requiring a distinctive historiography. Cruelty carried to the point of genocide is abnormal in two ways: It violates moral norms that are central to many ethical and religious traditions, and the vast majority of people do not engage in such actions, or else feel guilt or discomfort if they do. Although continuity undoubtedly exists between normal, everyday human wrong-doing and genocide and crimes against humanity, these acts ought to occasion a special sense of revulsion, for by the deliberate intentions and actions of human beings, they lay waste to entire human worlds and leave ruin in their wake. The same can also be said of systematic and deliberate violations of human rights.

Large-scale atrocity raises peculiar difficulties for historians. First, it tends to wipe out those who know atrocity most intimately: the murdered many. Second, the historian's characteristically literal mode of representation (showing the past "as it actually was") risks representing the victims of atrocity not as human beings but as trodden upon objects. Third, historians face problems with regard to the assessment of atrocity. Characteristically, professional historians hold back from offering moral judgments concerning the events they describe. For example, it would generally be considered irrelevant and a sign of naiveté were a historian to make a negative moral judgment on that episode in the French Revolution whereby revolutionaries forced a group of two hundred alleged counterrevolutionaries, their hands tied behind their backs, onto boats, which they then sank in the Loire. To people concerned with discouraging atrocity in the present, such equanimity may seem misplaced, and yet the historian also has to treat readers as free persons capable of reaching moral judgments on their own.

These problems suggest that there are limits to what historians can do in confronting atrocity. In fact, confronting atrocity is not a task for historians alone, but also involves social scientists, jurists, philosophers, theologians, novelists, poets, and artists, as well as ordinary people. In their responses to atrocity, at least four different modes of approach may be found. One can think of these approaches as falling under the following headings: the investigation and reconstruction of what actually happened; the cultivation of memory and tradition; the creation of aesthetic forms; and ethical, philosophical, and religious reflection.

The historian's deepest emphasis is on investigation and reconstruction. (This is not the only task that historians engage in, but it is the most characteristic.) A classic example is Raul Hilberg's *The Destruction of the European Jews* (1961/2003). The historian is joined in the effort of investigation and reconstruction by two close allies, the journalist and the jurist. Each has a distinctive role to play. Hard-working and courageous journalists can bring genocide to light while there is still hope of limiting it. Jurists arrive when the action is over, bringing an element of justice to the scene and assembling a historical record. There is also the peculiarly hybrid institution of the "truth commission," such as the Argentine Commission on the Disappeared, which was established in 1983 and issued its report in 1986, and the South African Truth and Reconciliation Commission (TRC), which was established in 1995 and reported its findings in 2002. Such commissions might be regarded as semi- or quasi-judicial. They lack the punishment powers of a court, but they investigate and report on abuses, as well as provide a forum for victims and their families to give their accounts of what happened, and some offer recommendations on the actions to be taken to prevent a recurrence. The South African TRC also offered amnesty in return for a sincere statement of confession accompanied by full disclosure of what had occurred.

The historian's task is more distanced than that of the journalist, jurist, or truth commissioner. More so than journalists, historians attempt to explore the wider historical context of atrocity. Unlike jurists, who have to make specific decisions regarding guilt or innocence, historians can be open-ended in approaching issues of moral and legal responsibility. Unlike jurists, historians do not have the power to punish. Finally, historians have more time to do their work than jurists, journalists, or truth commissioners, who are usually under pressure to arrive at their conclusions with some measure of speed.

However, confronting atrocity is not simply a matter of conducting an investigation and then writing up the results (or delivering a verdict). Legal and historical investigation may well establish the outlines of what happened, but it can hardly be expected to represent adequately, let alone repair, the hole that large-scale atrocity makes in the moral and human world. Confronting atrocity involves not just establishing what happened, but also coming to terms with what happened. Here is where memory and tradition, the creation of aesthetic forms, and ethical, theological, and religious reflection play their role. Indeed, the history of atrocity cannot be adequately written unless historians, too, take account of the breach that atrocity opens in the world.

Existentially considered, memory, and the testimony that memory generates, stand closest to the actual event of atrocity. When mass slaughter is intended, the survival of one eyewitness comes like a voice from another world, linking a horrible past experience to the present. The historian's word can never match the impact of a witness like Rivka Yoselewska, the sole survivor of a Nazi killing pit near Pinsk in Russia. Because victims' voices tend to be silenced in crimes against humanity and genocide, those voices tend to acquire a value of their own. Transcribed interviews, audiotapes, and videotapes are ways of preserving the testimonies of survivors. In relation to the Holocaust, the collection of such testimonies began in 1944 in Poland, under the auspices of the Central Jewish Historical Commission, and from the 1950s onward it continued on a larger scale at Yad Vashem and elsewhere. As evidence, these testimonies need to be regarded with caution, for eyewitness testimonies are often unreliable. However, the

real aim of the continuing collection of testimonies is usually not to provide more evidence. Rather, it is to commemorate what happened and, in so doing, to reaffirm a communal (ethnic or religious) bond. Tradition and commemoration are not history, but to many people they offer a comfort and sense of meaning that history cannot.

Nonetheless, there are limits to the meaning that testimony offers. This is not only because most eyewitnesses of atrocity were themselves shot, gassed, or hacked to death, but also because the immediacy of the experience and the enormity of what happened may exceed what testimony can convey. In short, a special problem exists: speaking about the unspeakable. Here aesthetic forms—poetry, novels, painting, sculpture, architecture, film, and even comic books (e.g., Art Spiegelman's *Maus* [1986, 1991])—offer another way of confronting atrocity. Works like Anatoly Kuznetsov's *Babi Yar* (1970) and D. M. Thomas's *The White Hotel* (1981) tell stories that no historian could adequately verify, or imagine fantastic happenings in an attempt to speak the unspeakable. There is also a large genre of Holocaust memoirs, some of which take on, as with Primo Levi's *The Periodic Table* (1984), an aesthetic distance that makes them all the more powerful as meditations on genocide and humankind. Often the contemplation of mass atrocity leads to an art that is abstract, elliptical, fragmentary, or phantasmagorical, all in the interests of evoking an absence. Thus, one is moved by the only partly reconstructed Neue Synagogue in Berlin, its sanctuary left as a mere broken framework, and by the empty, interminably shunting trains of Claude Lanzmann's film *Shoah* (1985).

Mass atrocity also raises a philosophical/theological/religious question that can and perhaps must be acknowledged by historians—as in the very title of Arno J. Mayer's *Why Did the Heavens Not Darken?: The "Final Solution" in History* (1988)—but can hardly be answered by them. The "why?" question evoked here has to do not with issues of causation (which historians are certainly capable of addressing), but with issues of ultimate meaning. The question might best be posed as: On what grounds and to what ultimate end did this evil occur? It is primarily political theorists, philosophers, and theologians who pose this question, whereas social scientists leave it aside (since "evil" is not a category that social science recognizes). Much of the work of the French philosopher Emmanuel Levinas, for example, can be seen as addressing such a question, as is also true of the German theologian Dietrich Bonhoeffer's *Letters and Papers from Prison* (1951), and it is arguably an impulse underlying the work of the French philosopher Jacques Derrida as well. Closer to historians is Hannah Arendt's *Origins of Totalitarianism* (1951), which actually gives two different answers to the "Why did it happen?" question. One answer is of a type that historians routinely offer: It happened because of anti-Semitism and imperialism. The other answer is ultimate and excluded from "normal" historical and social science discourse: It arose out of radical evil (or out of banal evil, to evoke Arendt's later book, *Eichmann in Jerusalem: A Report on the Banality of Evil* [1963]).

It is also important to note that the ultimate question is not confined to works of philosophy of theology, but can be asked by ordinary people in ordinary circumstances. When in Tony Kushner's *Angels in America* (produced as a play in 1993 and as a film in 2003) one such ordinary person asks where God was when the horrors of the twentieth century occurred, precisely this question is being posed. Since *Angels in America* is about ordinary people getting on with their lives under difficult circumstances, this suggests that, contrary to the hypothesis of the present article, mass atrocity and ordinary life are not so far apart after all.

The historian's primary obligation is to serve as a skilled and disinterested investigator, attentive to the limits imposed on historical assertion by the limits of evidence, able to discern wishful thinking and outright lies among subsequent interpreters, and also attentive to the complexities of human motivation. But one must also note that to offer a reconstruction of past atrocity is to engage in an act that is partly aesthetic in character; that the historian's understanding of the event would be defective without some awareness of how atrocity might fit within wider ethical and human frameworks; and that the historian also needs to take account of the presence—or absence—of past atrocity within present-day memory and tradition. It is to be regretted that many of the atrocities of the twentieth century were long passed over in silence—whether because the surviving communities lacked resources and a voice (as often happened under colonialism), or because the events (as under Soviet communism) were for a long time successfully rationalized as necessary steps on the road to a better future, or because people were simply not interested in knowing.

SEE ALSO Explanation; Political Theory; Sociology of Perpetrators; Sociology of Victims

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Allan Megill

Hitler, Adolf

[APRIL 20, 1889–APRIL 30, 1945]
German Führer, 1934 to 1945

Adolf Hitler's very first political document foreshadowed the Nazis' massive, ghastly genocide. In a letter dated September 16, 1919, the thirty-year-old lance corporal, then serving outside Munich in a political unit of the recently defeated German army, answered an inquiry about the Jews in postwar Germany by cautioning that they belonged to a deadly race scattered worldwide; national defensive measures against them, though needful and urgent, would be mere palliatives pending their "total removal." Five years later, in his self-mythicizing *Mein Kampf,* Hitler claimed that he came to his deadly anti-Semitism through observation and reflection while a day laborer in prewar Vienna. However, just as no day labor has ever been documented for the street artist in Vienna, no credible evidence of anti-Semitism is on record for Hitler before the German military defeat of 1918.

Outwardly seen, nothing in Hitler's distinctive early circumstances or upbringing predisposed him to mass-murder Jews. His father, Alois, was born to an unwed housemaid in Graz and, according to rumor, her Jewish employer; reportedly a skeptical Hitler attempted to disprove the rumor in 1930, but the effort backfired. In any case, his genocidal goal was set earlier. Alois grew up on a farm, and then made a career in the Austrian customs service, where he was reputedly bossy but liberal-minded. At age forty-seven, twice widowed with two young children in his charge, Alois married his twenty-five-year-old resident housekeeper and already pregnant mistress, Klara. She promptly bore him three children, all of whom perished in a diphtheria epidemic. Next came Adolf on April 20, 1889, and, after a five-year hiatus, a boy who died of the measles, then a girl who outlived Adolf. During the interlude following her tragic triple loss, Klara fretfully overmothered Adolf, leaving him affectively bound to her for life with a sense of special election and protection. Alois died in 1903, having retired to Linz. There, Adolf started school at the top of his class and gradually slid to the bottom, finishing late with a certificate that left him few career prospects. After two years at home idling, he went to Vienna in late September 1907 hoping to train at the painting school of the Academy of Fine Arts. He flunked the entrance examination upon arrival, but was settling in anyway; however, his mother's suddenly worsening breast cancer brought him back to Linz.

Adolf Hitler in front of an SA parade in Berlin in honor of his birthday, April 20, 1938. [AP/WIDE WORLD PHOTOS]

Hitler's intense involvement the rest of that year with his mother's suffering and death at the hands of her kindly but inept Jewish doctor, Eduard Bloch, was the point of departure for his later genocidal animus against the stereotype he called "the Jew." Her cancer having metastasized to the lungs since, or even before, a mastectomy the previous January, Bloch duly pronounced it incurable. But Hitler persuaded Bloch that, if the patient was dying otherwise, a desperate remedy might as well be tried. Bloch obligingly packed iodoform onto her surgical wound almost daily for six-and-a-half weeks—a toxic, even lethal, regimen. She succumbed on December 21 after a prolonged agony. Just after her funeral, on Christmas Eve, Bloch collected the

large balance due on his bill. Consciously Hitler felt only warm gratitude toward the hapless, compassionate doctor. However, all his later genocidal raging turned on three main themes, all dated 1907: the Jewish parasite (or cancer), the Jewish poison, and the Jewish profiteer.

Hitler's deadly hate for "the Jew," his take-off on Bloch, remained latent during his prewar years as a modest, self-taught view-painter in Vienna and later Munich, then his four years as a runner in a Bavarian regiment on the Western Front. He enjoyed good relations with Jewish comrades-in-arms including his last regimental adjutant, obtained for him an Iron Cross First Class in August 1918. His drastic turnabout dates from his gas poisoning near Wervicq in Flanders early on October 15, 1918. His eyes blindingly inflamed, Hitler suffered a nervous breakdown marked by depressive memories of his mother's death. Unlike several buddies gassed with him and treated topically close by the battlefield, Hitler was sent across Germany to Pomerania for psychiatric care. There Professor Edmund Forster, himself recently discharged from four years' service in Flanders, diagnosed Hitler's blindness as hysterical despite the regimental report that specified gas poisoning, perhaps because after some healing he relapsed into blindness at the news of the armistice on November 11. Through hypnosis, Forster called on Hitler to regain his eyesight by force of will because Germany needed him to triumph over her own disablement. He experienced Forster's therapy as a call from on high to save his mortally ailing Motherland. Within a year this summons took him into politics with the express aim of undoing Germany's defeat by removing the Jew from Germany and the world.

Hitler began by stressing the removal of Jews from Germany. Having infiltrated the small German Workers Party (soon to be renamed National Socialist German Workers Party) in September 1919 as an army spy, he fast became its star speaker, then its leader; spewing infectious rage in trenchant slogans and throaty accents, he blamed the parasitic, poisonous, profiteering Jew for Germany's defeat. Removing the Jew would reverse defeat—such was his key precept. Because the defeat had come from the west while German armies were triumphing in the east, this precept already hinted at a renewed eastward push. Hitler began calling outright for eastward expansion in the spring of 1921—sparingly for starters, but when he transformed himself from a local Bavarian agitator to a would-be national leader after a year in jail for his failed Beerhall Putsch of November 1923, he scaled back his rhetoric against the Jew and instead talked up a supposed German need for more land. Hitler's new victory formula ran: Remove the divisive, destructive element from the body politic to restore its inner strength for eastward conquest. Shortly after the Nazis' electoral leap forward in September 1930 he muffled his expansionism in turn to call simply for regaining outward strength. Finally he stressed the "national community," his middle term between removing the Jew and expanding eastward, as a cover term for both. The two diluted end terms registered no less effectively with his listeners, however blurrily. Together they were the long and short of Hitlerism, its single message. That message above all else fueled Hitler's rise to total personal power over Germany by the mid-1930s, the ground rule of his regime being that his word was law.

Meanwhile, in *Mein Kampf* (1925–1926) and especially in an unpublished untitled book (1928), Hitler theoretically reconciled those two end terms of his politics. Whereas other peoples compete for land and ultimately for world conquest, he argued, the Jew breaks this law of nature, being stateless, parasitic, egalitarian, and unwarriorlike; accordingly, nature mandates a "land grab" and a "Jew kill" both at once. The logic of this construction on its expansionist side was for Germany to ease Jews out, preferably to rival nations, so as to gain an edge in the struggle for the global reach needed to destroy the Jews altogether. It was emphatically not for Germany to kill Jews at home straightaway and thereby invite foreign reprisals, nor to push anti-Semitism abroad for the benefit of other peoples, let alone expend German resources ridding other nations of Jews. But logic could not always contain the animus against the Jew that took Hitler into politics in the first place. Thus he often called for destroying the Jew in Germany, or even abroad, before the expansionist battle was even joined. Mostly, though, he settled for ambiguities in his rhetoric such as "removing the Jew."

During his twelve-year dictatorship Hitler's policies betrayed the same tension between his hate for the Jew and its rational control for the sake of German expansion. Control predominated for roughly the first half of his rule, from the Havaara agreement of 1933 to the mission by Reichsbank President Schacht to London in late 1938, both aimed at facilitating Jewish emigration financially. Even the Nazis' internal discriminatory measures, including the much-publicized Jewish boycott of 1933 or Nuremberg Laws of 1935, served to induce Jews to emigrate voluntarily. Most such measures originated with lower authorities, though Hitler might intervene, as he did to prevent the crass marking of Jews or Jewish shops before 1941. However, he failed to curb the Reichskristallnacht pogrom of November 9, 1938, mounted by propaganda minister Joseph Goebbels, which besmirched the regime even in German

eyes. Thereafter, Jews were officially murdered only out of sight. At the same time, Hitler's Jewish policies took an impolitic turn overall: he stopped Schacht from sealing a deal on Jewish emigration, switched to exporting anti-Semitism rather than Jews, and on January 30, 1939, prophesied to the Reichstag "the annihilation of the Jewish race in Europe" should war come. With this prophecy midway between easing Germany's Jews out and a world pogrom, hate definitively gained the ascendant.

By then it was evident that induced emigration was coming short: the Reich's Jew count was roughly cut in half by 1938, the Anschluss that March brought it back near its starting point. The absorption of the Sudetenland that fall, then the establishment of a protectorate over Bohemia and Moravia the following March, and especially the occupation and partial annexation of western Poland beginning in September 1939, ruled out the emigration option conclusively. There are signs that Hitler considered starting mass exterminations during the Polish war—that he could hardly uphold his expansionist logic against so many helpless Jews already within his reach. But the noise and smoke of battle needed to cover mass shootings dwindled too fast. Open killings risked provoking the United States and even, as Hitler saw it, the Soviet Union, not to mention arousing the Germans themselves, whose reactions he feared even while the Holocaust was an open secret. He scrapped his doctrinaire subordination of his Jewish to his expansionist policy once and for all with the invasion of the Soviet Union in June 1941, which enabled for mass executions of Jews in the guise of anti-partisan warfare. The exterminations were next mandated for all of German-controlled Europe and then only (reversing Hitler's original victory formula) for Germany itself.

A scholarly controversy developed in Germany in the 1970s between so-called "functionalists," who saw the Holocaust as having developed out of separate, often local, initiatives, and "intentionalists," who saw it as having been planned by Hitler from the first. The functionalist case is plausible insofar as Hitler did ordinarily allow events to take their course so long as they went his way. It remains that he aimed from his political beginnings to kill Jews even if he vacillated about which Jews to kill and when to kill them. In the end he used his war in the east as cover for his war on the Jews—his controlling political purpose. After first billing a Jew-purge in Germany as a means to German expansion, then implementing Jew-purges across Europe at the expense of German arms, he exited history in the resultant rubble and ashes, still enjoining Germans to keep the genocidal faith.

SEE ALSO Anti-Semitism; Germany; Gestapo; Himmler, Heinrich; Holocaust; Kristallnacht; Nuremberg Laws; United States Foreign Policies Toward Genocide and Crimes Against Humanity; Wannsee Conference

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Rudolph Binion

Holocaust

The term *Holocaust* refers to the Nazi German policy that sought the annihilation of European and North African Jews. It comes from the Greek, *holókauton*, meaning "burnt sacrifice." More rarely, the term is also used to describe Nazi German violence in general. The persecution and mass murder of Europe's Jewry evolved out of a shift from religious to racial or ethnic anti-Semitism during the Industrial Revolution and the rise of liberal capitalism and the nation state in Europe during the second half of the nineteenth century. Prominent in many countries, including Russia and France, the new blend of anti-Semitism combined traditional and modern elements and became especially popular among many of Germany's intellectuals and elites. With the growing importance of the workers' movement and Marxism, anti-Semitism increased further after the Russian October revolution of 1917. Anti-Jewish conspiracy theories emerged, particularly in the states that lost World War I, that were established as its consequence, or that suffered badly in the worldwide economic crisis of 1929 to 1939. Most right-wing, authoritarian regimes that came to power in Europe in the 1920s and 1930s were anti-Semitic. Many adopted anti-Jewish laws. Chief among these, however, was Germany after Hitler's rise to power in 1933.

From 1933 to 1939, National Socialist (i.e., Nazi) Germany pursued a policy of enforced emigration. Out of 700,000 Jews in Germany and Austria, two-thirds left these countries before World War II, mostly the younger and more wealthy. Immigration restrictions abroad and Nazi "fees" for emigration permits hampered this process. Jews were dismissed from civil service in 1933. They faced economic ruin and the gradual expropriation of their property. They were routinely

harrassed, attacked by Nazi activists and youths, denied social services, and excluded from public education. Central as well as municipal institutions contributed to such policies. Sexual relations with non-Jews ("Aryans") were prohibited under the "Law for the Protection of the German Blood and Honor" in 1935. With the annexation of Austria in March 1938—where anti-Semitism was particularly widespread—and a nationwide pogrom ("Kristallnacht," or Crystal Night) on November 9 and 10, 1938, the persecution of Jews was intensified. Nearly 30,000 Jews were temporarily imprisoned in concentration camps after Kristallnacht, during which more than 1,000 synagogues were destroyed and Jewish shops were looted. At least 91 Jews died in the pogrom, and hundreds more committed suicide.

Beginning in late 1938, the infiuence of the SS and the police under Heinrich Himmler grew increasingly infiuential in setting Germany's anti-Jewish policy, although SS and police never gained exclusive control over it. After Germany successfully invaded Poland in September 1939, more than 2.5 million Polish Jews came under German rule. By May 1941, Germany occupied another eight European countries, further increasing this number. Anti-Semitic regulations aimed at the isolation, deprivation, and humiliation of Jews throughout Germany's vastly expanded territory were gradually adopted. Jews were forced to wear identifying insignia, their access to means of communication and transportation was limited, and their food rations were reduced. Local German authorities in Poland individually ordered the creation of Jewish ghettos wherein Jews were permitted extremely few resources and were assigned one room (or less) per family. The overcrowding led to increased mortality and the spread of diseases.

Beginning in 1939, German authorities developed plans for the enforced resettlement of the Jews to specially designated territories, where it was expected that harsh living conditions and an adverse climate would lead to their slow destruction. The first of these territories were eastern Poland, then Madagascar; later on, northern Russia or Siberia were considered. These plans called for the inmates to be separated according to sexes and kept under German "police supervision." Initially intended as postwar projects, these plans indicated a radicalization of anti-Semitic thinking under the Nazi regime. They were never implemented in their original form, but they fit into a larger framework of Nazi schemes for restructuring, ethnic cleansing, and resettlement in Eastern Europe. From 1939 to 1941, the SS tried to settle several hundred thousands of ethnic Germans from Eastern Europe in Western Poland. To make room for these newcomers, nearly 500,000 local inhabitants—including up to 200,000 Jews—were deported to the German-occupied General Government of Poland. Such actions increased the war-related scarcity of housing, sanitation, employment and food, particularly as a large proportion of the ethnic Germans had to stay in camps for months or years. The occupational authorities diverted the resulting shortages to the Jews and intensified the search for other "solutions."

Mass Murder of Soviet Jews

The German war against the Soviet Union was planned as a war of extermination jointly by Hitler, the SS, and military and economic authorities. The attack aimed at destroying "world communism," forcing "racially inferior" Slavs to submit to German colonial rule, eliminating the USSR as a military power, improving Germany's strategic position, and achieving self-sufficiency in food and raw materials such as oil. Schemes for large-scale German settlements had little infiuence on the actual occupation policy. While the majority of the Soviet population was to remain alive to provide cheap labor for the Germans, large groups of them were to be killed. Tens of millions were intended to die of starvation, particularly those who lived in the cities and the populations of certain northern and central areas. Also slated for death were millions of "commissars," communists, intellectuals, state officials, and Jews. This violence was considered vital for the long-term German appropriation of Soviet resources, which, in the short run, were needed for the militarily critical supplies of German troops fighting on the eastern front. The violence would also allow Germany to control a vast territory with a much smaller number of occupation troops than would otherwise be needed. Soviet Jews became a special target, because the racially charged propaganda blamed them for having designed the communist system, and they were expected to put up a fierce resistance.

Germany's military leaders wished to assign special units of the SS and the police the job of securing part of Soviet rear areas, thus reducing the need for using army troops to handle this task. These units included a total of 3,000 men in four *Einsatzgruppen* (Operation Units), deployed by the Security Police and Security Service under Reinhard Heydrich; mobile Police Batallions, deployed by the Order Police under Kurt Daluege; and Waffen-SS Brigades. These units started mass killings in the rear immediately after the German attack on June 22, 1941, and during that year more than 90 percent of their victims were Jewish.

The total extermination of Soviet Jews was not officially ordered at the outset. Instead, the SS and police targeted only those men considered to belong to the "Jewish intelligentsia": a group that included state officials, teachers, and lawyers, and others of the professional class. Between late July and early October 1941, this target group was enlarged—in different areas at different times—first by including women and children, and then by annihilating entire Jewish communities. This expansion began in Lithuania and Latvia, where the local, non-German, anti-Soviet police and administrators cooperated in acts of persecution and violence. By the end of 1941, 800,000 Jews had been killed throughout the German-occupied Soviet territories. Most victims were marched to remote locations near their home towns or cities and shot at previously prepared mass graves.

Cooperation went especially smoothly between SS and police and the military, with army officers calling for mass executions or giving logistic and manpower support. Military and civil administrations handled the first measures, such as making the Jews wear yellow badges, concentrating them in ghettos or special districts, assigning them to forced labor, and seizing their assets. In territories under German military administration, such as northern and central Russia, eastern Byelorussia, and eastern Ukraine, nearly all the indigenous Jews had been killed by December 1941. Demand for Jewish forced labor was low because the urban centers were largely destroyed and the German occupiers pursued a general policy of de-industrialization. The drive to violence was aggravated by food and housing shortages. The destruction experienced in the western territories of Byelorussia and Ukraine (Polish territory until 1939) was less intense because the economies of these regions were more dependent on Jewish artisans. Here, the civil administrations were more apt to spare the Jews, and as many as 75 percent survived until 1942. Direct orders and inspections by Himmler, Heydrich, and Daluege coordinated the killing actions. Of particular importance was the chain of command that extended downward from Himmler to his regional plenipotentiaries, the Higher SS and Police Leaders. Yet local officers were given some autonomy as well. Massacres and the selection of target groups were based on continuous negotiations between regional and local SS and police, civil, and military authorities. In the spring of 1942, such negotiations resulted first in the extermination of those Jews deemed unable to work. The killings were stepped up in the second half of the year to a policy of almost total annihilation, and by March 1943, at least another 650,000 Jews (excluding eastern Galicia) were killed.

Toward a Continent-Wide Program of Annihilation

The killing of the Soviet Jews marked the beginning of the extermination. Mass killings soon took place in other areas as well. Eastern Galicia had been declared part of the General Government, and was ruled under a German civil administration. By the end of 1941, 70,000 Jews from this region were killed. In Serbia, which was under military occupation, the German army killed the entire adult male Jewish population—7,000 in all—as reprisals against partisan resistance in the fall of 1941. The women and children were murdered by the SS and Police in 1942. In Poland, food rationing was intentionally unequal, with Jews receiving less than their non-Jewish fellow citizens, and much less than Germans. More than 40,000 Jews died of starvation and diseases related to overcrowding in the ghetto of Warsaw in 1941. In the German-annexed Reichsgau Wartheland (in Western Poland) and in the General Government, the civil administrations together with SS and the police developed plans for extermination camps to kill a portion of the Jewish population. The first killing center went into operation in Chelmno, Wartheland, on December 8, 1941, and the second was opened in Belzec, in the General Government's territory, on March 17, 1942.

It is unclear how much of this policy was ordered by the German central government and how much might have resulted from local initiatives. There were several parallel developments in German anti-Jewish policy in the fall of 1941, and Nazi leaders issued a number of declarations of intent (of which there remain only fragmented records). Beginning in mid-1941, experiments in new mass killing techniques, including gassing, were carried out by different branches of the SS and the police and in several concentration camps. Under pressure from the SS and regional Nazi Party leaders, Hitler permitted the deportation of Jews from the German Reich into the East in September 1941. By December, 50,000 had been deported to Lodz, Minsk, Kaunas, and Riga. Six thousand of these deportees were killed in Kaunas and Riga in late November 1941, after which Himmler called a temporary halt to the mass murders. However, they were resumed in Lodz and Minsk in May 1942.

Hitler announced his intention to exterminate all European Jews during World War II in a meeting of Nazi Party leaders on December 12, 1941, after declaring war on the United States. On January 20, 1942, in a high-level meeting in Berlin with government and Nazi Party officials plus SS officers, Heydrich claimed responsibilty for "the solution to the Jewish question in Europe," and especially the definition of who was de-

clared a "Jew" was discussed. He set out his plans for mass murder, which were probably still only vaguely developed at that time. In this meeting, called the Wannsee Conference, the governmental bureaucrats raised no objections to Heydrich's plans for the extermination of Europe's Jews, but they could not reach full agreement on how to proceed nor on a complete centralization of the measures against the Jews. Many scholars of the era argue that the extermination of European Jewry was ordered by Hitler no later than the autumn of 1941 (some saying that the order was issued early in the year), but others suggest that such a decision was not reached before December 1941 or in the spring of 1942. Some hold that the Holocaust simply "evolved," without the need for any explicit command decision issued by Hitler.

It has been argued that Himmler preferred using gas to kill Jews because he wanted to protect his firing squads in the east from mental stress. However, only a small proportion of the Soviet Jews were gassed in 1942 (in mobile gas vans). The majority, numbering some 500,000 in total, were shot. Killing techniques were never standardized. Only two of six major death camps (Auschwitz and Majdanek) employed prussic acid (also called Zyklon B) in gas chambers. In the Belzec, Sobibor, and Treblinka camps in the General Government, Jews were killed in stationary gas chambers into which engine exhaust fumes were vented. In Chelmno, the murders were performed in mobile gas vans. These killings differed from the mass murder of approximately 100,000 disabled patients. In that case, the patients were suffocated using bottled carbon monoxide, administered in stationary gas chambers or gas vans between September 1939 and August 1941. The killing of the disabled was organized by Hitler's chancellery in his capacity as the leader of the Nazi Party, known as the Kanzlei des Führers, or was carried out by regional civil administrations in annexed Western Poland, with the assistance of the SS. Personnel who had gained experience through participating in this "euthanasia" program (code named "T-4") were transferred to Belzec, Sobibor, and Treblinka in late 1941 and 1942.

In Poland, the mass killings were expanded and accelerated in 1942 in two stages, similar to the way the policies were pursued in the German-occupied Soviet territories. General Governor Hans Frank argued that a policy of extermination could reduce food problems, health risks, and black market activities. Jews deemed unfit for work in the districts of Lublin, Galicia, and Krakow were deported on trains to Belzec, beginning on March 17, 1942 and to Sobibor beginning on May 6, 1942, while other victims were rounded up and killed in mass shootings. The second phase of the mass killings in the region began in July, with the establishment of a third death camp at Treblinka, near Warsaw. Construction on the camp had started in May, and murders began there on July 22, 1942. At the same time, new and bigger gas chambers were installed in Belzec, with Sobibor and Treblinka following suit during September and October of that year. On Himmler's orders (and with the support of the head of the German Four-Year Planning Office, Hermann Göring), the demand for forced labor was largely ignored during the period from July to October 1942, and many Jewish workers summarily killed. Approximately 1.15 million Jews from the General Government were thus killed in the second half of 1942, and only 297,000 remained alive.

The deportations of French and Slovakian Jews to Auschwitz began in March 1942, although most of the first deportees were not killed upon arrival. Auschwitz had been founded in 1940 as a concentration camp, but by 1942 it was gradually being transformed into a death center. Large-scale gassings began in early May 1942—the first victims were Jews from German-annexed East Upper Silesia in Poland—and the extermination of prisoners reached full scale in July 1942, handling transports of Jews arriving from Poland and Western and Central Europe. Between 10 and 35 percent of the new arrivals were selected for forced labor, the rest were killed. The first two permanent, if improvised, gas chambers in the main camp of Auschwitz went into operation in May and on June 30, 1942. Planning for bigger gas chambers and crematoria to be built in the subcamp of Auschwitz-Birkenau began in August, but they only became operational in March 1943. More than half of all the Jews who were killed in the Holocaust died between March 1942 and March 1943.

Massive transports of Jews from Western and Central Europe began to arrive in Auschwitz in June 1942. Deportations of Jews from the Netherlands progressed smoothly, but in Belgium and France the deportees were primarily, if not exclusively, limited to foreign Jews (the authorities in these two states were reluctant to cooperate in the deportation of their own citizens). Many Jews from Germany, particularly the elderly, were sent at first to a "show" camp in the Czech town of Terezín (Theresienstadt), allegedly as a place for convenient long-term settlement, but most were later sent to Auschwitz to be killed. Deportations to Auschwitz continued throughout 1943, and the later transports included Greek and (beginning in autumn, 1943) Italian Jews. To a certain extent, the definition of "Jew" was kept vague. Outside of the eastern territories, however, Jews married to gentiles and so-called half-Jews

were usually not murdered, even though they were required to register. Some German officials, and Hitler himself, objected to killing Jews of mixed heritage because they were afraid of protests by non-Jewish relatives.

The extermination of European Jews reached a new peak in the summer of 1944, after Germany invaded Hungary, and the new (but not yet fully fascist) Hungarian government fully cooperated in the deportation of 430,000 Jews to Auschwitz in only seven weeks, from May 15 to July 9. About 100,000 of the Hungarian Jews were selected for forced labor—they were assigned to work in the construction of factories for German fighter planes and other tasks. Another 80,000 Jews were exempted from deportation and consigned instead to the Hungarian Army's forced Labor Service. Deportations were temporarily stopped by the Hungarian leader, Admiral Miklos Horthy, on July 9. He balked at transporting the more "useful" urban Jews of Budapest. After Horthy was ousted from office by the fascist Arrow-Cross Party on October 15, 1944, the transports were resumed on a limited scale. In total, nearly 500,000 of Hungary's approximately 730,000 Jews were killed.

Deportation transports from outside the General Government and the Soviet Union were organized by the office for Jewish affairs (IV B 4) in the Head Office of Reich Security under Adolf Eichmann. Because they usually deployed only several hundred men for each occupied country, the security police and security service required the cooperation of the German military and civil administrators, foreign office occupation personnel, the local national police and administrations, and German and foreign railway authorities. As a result, deportations were not only based on complex bureaucratic procedures but depended also on negotiations at a political level.

By the fall of 1943, virtually all remaining Jews in German-ruled Central and Eastern Europe had been interned within the concentration camp system of the SS. In 1944, Himmler gave orders not to let prisoners fall into enemy hands during military retreats. In the last months of World War II, this led to murderous death marches, in which columns of concentration camp inmates were forced to walk hundreds of kilometers, on often circuitous routes, with few supplies, and under brutal treatment by their guards, by German Nazi Party organizations, by home defense units, and by individuals. Estimates of the mortality in these marches range from less than a third to half of the participants.

The Jewish Response

The Jewish response to this qualitatively new threat took various forms. These included traditional solutions, such as the payment of tributes, renewed spirituality, and emigration. This latter option proved to be the most effective response. Once World War II began, however, emigration was an option only open to a small minority, primarily young adults and single people, especially because of the stringent immigration restrictions imposed by potential recipient countries. For most people, other survival strategies were needed.

The German resolve to kill all Jews became clear only gradually so, at first, Jewish leaders attempted to make the members of their communities indispensable through employment in war-related industries. This strategy largely failed, due to the low demand for industrial labor in Poland and the German-occupied Soviet territories, where most of Europe's Jews lived. To meet the increasing demand for such labor in Germany after the intensification of war production in 1942, other sources, such as Soviet civilians, were given preference. The SS also increasingly turned to the principle of "selection" to counter Jewish labor schemes, separating Jewish workers from those not employed, and tar-getting the latter group to be killed first. Sometimes the organizers of the Holocaust gave priority to annihilation over any labor considerations, and many Jewish workers died of starvation and brutal treatment. With little access to arms, often isolated from non-Jewish resistance groups, and facing overwhelming German power, Jews turned to armed resistance only as a last resort, most prominently in the ghetto uprisings in Warsaw (April and May 1943) and Bialystok (August 1943), and through service in Soviet partisan units. Such uprisings usually could not rescue large groups. Instead, uprisings served as a final, symbolic signal of defiance and resistance.

Cooperation and Resistance of Non-Germans

A number of countries allied with or occupied by Germany, as well as non-German social groups and individuals, participated in the Holocaust, supported it, or (in the case of states) even ran their own extermination programs. Others resisted or obstructed German demands. In many places, however, Jews who could not claim citizenship were at a distinct disadvantage. This contributed to a considerable variation in the proportion of Jews killed during the Holocaust, with less than 1 percent mortality of Finland's Jews, 20 percent in Denmark, 25 percent in France, 40 percent in Belgium, 67 percent in Hungary, and more than 80 percent in the Netherlands.

Romania organized its own program of mass killings of Jews in 1941 and 1942, working in parallel with

When U.S. and British soldiers entered the Nazi concentration camps at liberation, they brought camera crews with them. These crews were the first to document the horrors of the camps. In this photo, taken April 17, 1945, U.S. soldiers walk across the grounds of the Nordhausen concentration camp, past row upon row of corpses. Nordhausen was a subcamp of the concentration camp Dora-Mittelbau. [AP/WIDE WORLD PHOTOS]

the German Einsatzgruppen murders. At least 250,000 Jews living in, or deported to, the Romanian-occupied Soviet territories were massacred by Romanians or died of deprivation. However, Romania refused to allow the Jews from their mainland to be deported to German death camps in the fall of 1942. Although most of these Jews survived, they nonetheless suffered from persecution. Half of Croatia's 40,000 Jews were killed by their fellow, non-Jewish citizens in 1941; the rest were deported to Germany in 1942, where they were all killed. Approximately 30,000 Jews from Hungary were killed or died under the authority of Hungarian nationals in the army's forced Labor Service from 1941 to 1943, and during the chaotic Budapest ghetto violence between October 1944 and early 1945.

Germany demanded that all its European allies surrender their Jews in September 1942. The Slovak and Hungarian governments were eager to deport most of their Jews, with Slovakia complying in 1941 and 1942. Hungary refused at first, but began sending its own shipments in 1944. Finland, although a German ally, refused to deport its Jews, and Bulgaria vetoed deportations from its home territory. However, the Bulgarian government handed over the Jews who lived in the annexed territories of Macedonia and Thracia. Fascist Italy protected its Jews as well as those in Italian-occupied French, Yugoslav, Greek, and Albanian territories until September 1943. Then a new government took power in Italy and switched sides—German troops occupied most of the country. The fascist states of Spain and Portugal maintained neutrality, and diplomatically protected their Jewish subjects in the German sphere of influence. Some of their diplomats made limited attempts to rescue Hungarian Jews in 1944. Swiss

and Swedish envoys did the same, but on a larger scale. Such options were unavailable in countries such as Poland and in the Soviet territories, which were denied any central government by the Germans.

The cooperation of administrators, elites, professional organizations, and individual citizens was crucial to the outcome of the Holocaust. It is difficult to accurately gauge popular attitudes toward the persecution and murder of Jews, because the Germans threatened harsh reprisals for anyone who helped Jews escape deportation or death in their occupied territories. In many countries, especially in Eastern Europe, local anti-Semitic propaganda, denunciations, and even manhunts made the survival of Jews nearly impossible. In the first weeks of the German attack on the USSR, a wave of bloody pogroms swept through the western Soviet territories from Latvia to Moldova. In many occupied countries, local police officers participated or were forced to participate in anti-Jewish measures and violence. Most of the guards in the four death camps in the General Government of Poland were actually Soviet auxiliaries, mostly Ukrainians, under German supervision. Lithuanian, Latvian, and Ukrainian police units under German command took part in the mass execution of Jews inside and outside their countries. Some local administrations created ghettos and many confiscated Jewish assets for redistribution to non-Jews.

In all European countries, including Germany, individuals and small groups made attempts to rescue Jews, especially in the Netherlands, Poland, and the Soviet Union, although these efforts were overshadowed by widespread administrative cooperation and popular anti-Semitism. A number of Jews escaped capture with the help of the clergy. The most prominent nongovernmental collective rescue action took place in German-occupied Denmark in October 1943. The German representatives in Denmark wanted to avoid a political confrontation, and non-Jewish citizens were able to help 7,200 Jews escape to Sweden by boat. Another 500 Danish Jews were nonetheless deported to the German Reich.

The readiness of foreign governments, civil administrators, and the general public to support anti-Jewish violence depended less on their attitude towards the Germans, than on domestic political considerations, and on their own attitudes regarding Jews. Local authorities, rather than German troops, seized Jewish property in most of these areas (the exception was in Poland) and sold it to finance their costs of war or German occupation, or used it to solve social and economic problems like housing, land scarcity, or a shortage of consumer goods. The deportation of Jews also facilitated the redistribution of professional positions and the building of new, allegedly more loyal elites. This helps to explain why Eastern European states such as Romania, Hungary, and Bulgaria were more willing to remove Jews from newly annexed territories. For some time, Lithuanian nationalists and the Hungarian government cooperated in the killing and deportation of Jews as a foreign policy strategy, in exchange for more political independence from the Germans. Conversely, protecting Jews earned the favor of the Anti-Hitler Coalition and the Vatican, which was important to Romania and Slovakia, and to Hungary before March and after July of 1944. During 1942, the United States, Great Britain, and the Soviet Union recognized Germany's comprehensive extermination program against the Jews and threatened punishment in a joint public declaration on December 17, of that year. However, they concentrated on achieving a military victory over Nazi Germany instead of mounting major rescue operations, in part to deny domestic anti-Semitic propaganda claims that the Allies were fighting to protect Jewish interests.

Consequences

Reliable statistics document that between 5.5 and 6.1 million Jews were killed in the Holocaust. Between 2.2 and 2.5 million of these deaths came from the Soviet Union, 1.9 million from Poland (both within the borders of 1945), 500,000 from "Greater Hungary" of 1944, 165,000 from Germany, 100,000 from the Netherlands, and 80,000 from France. Three million victims were killed by gassing, nearly two million were shot, the others were killed by other methods, died of starvation, exhaustion, forced labor, or the extreme living conditions imposed on them.

Among long-range consequences of the Holocaust was the loss of much of Europe's Jewish cultural heritage. This loss was further exacerbated by the postwar emigration of survivors to Israel and other countries. The Holocaust also led to the traumatization of generations of Europe's Jews, suffered not only by the survivors but also by many of their descendants. The Holocaust has been understood as an expression of a moral crisis either of European civilization, or the modern industrial society in general. Together with the enforced resettlements, population exchanges, and border adjustments during and after World War II, the Holocaust contributed to the emergence of ethnically and culturally far more homogeneous nation states after 1945.

Juridical trials and investigations against the perpetrators of the Holocaust took part in two phases, first during the immediate postwar era and then after 1957. Initially seen as one crime among oth-

ers (there was no separate treatment of the Holocaust among the thirteen Nuremberg Trials), a special awareness developed over time, and was evident in cases like the Einsatzgruppen and Auschwitz trials in West Germany (1957-58, 1963) and the Eichmann trial in Israel in 1961. Although nearly 100,000 persons were under investigation for Nazi violence in the two German states, an equal number in the Soviet Union, and many in the rest of Europe, few (except in the USSR under Stalin) received substantial punishment, and the trials raised doubts as to whether legal systems can adequately respond to modern mass violence, given a general lack of documentation and the division of labor and state-level participation of the crime. However, the trials did succeed in educating the public, and in the accumulation and dissemination of knowledge about the Holocaust. Further, they provided the opportunity for symbolic atonement.

Interpretations and Controversies

Increasingly, the Holocaust has been viewed as the most important result of World War II—it is even viewed by some to be the central event of the twentieth century, though both views are confined to North America and Western Europe. Several schools of interpretation have evolved. The "intentionalists" represent the dominant approach in teaching, arguing that the extermination of European Jewry was primarily based on Nazi ideology, Hitler's anti-Semitism, ordered by a central authority at a relatively early time, conducted within a hierarchical and homogenous system, and based on long-term, covert plans. Competing theorists, called "functionalists" or "structuralists," place less emphasis on ideology and central leadership. Instead, they suggest that the Holocaust emerged out of a political system that contained various, competing power centers with unclear or overlapping authority. They view the violence against Jews as arising out of a struggle among leaders for Hitler's favor or in anticipation of Hitler's will, which resulted in a radicalization of anti-Jewish policies. In such a view, the issuance of Holocaust orders from the central authority came late. Other scholars have pointed out the importance of a bureaucratic division of labor, or insisted that the Holocaust remains inexplicable.

Research in the 1990s and early 2000s has shown that broad intentionalist and structuralist interpretations are outdated, overly theoretical, and poorly documented. Newer studies have tried to combine elements of different approaches, acknowledging a variety of initiatives from outside the center, and offering multicausal explanations. Scholars try to link anti-Semitism with contemporary political issues such as ethnic cleansing, food policy, or the generation of political collaboration.

The research of specialists has remained widely detached from comparative genocide research, although the intentionalist understanding of the term "Holocaust" often serves as the model for the notion of genocide.

Interconnections between the Holocaust and other mass violence in Nazi Germany remain a matter for further research. Major areas of debate include the question of the uniqueness of the Holocaust in comparison to other cases of mass violence; the decision-making process and the degree of centralization in the Holocaust; the explanatory weight put on ideology, state organization, or popular participation in Germany; the role of non-German cooperation; the motives of perpetrators and organizers (including economic motives); and the significance of Jewish armed resistance as opposed to other survival strategies.

SEE ALSO Concentration Camps; Einsatzgruppen; Extermination Centers; Germany; Ghetto; Jehovah's Witnesses; SS; Statistical Analysis; Wannsee Conference

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Christian Gerlach

Homosexuals

The terms *homosexuality* and *homosexual* were coined by Karl Maria Kertbeny, a German-Hungarian journalist, in 1868 to describe sexual relations between individuals of the same sex. Such relations have existed throughout history and have often fallen under social scrutiny. Much of modern history has witnessed persistent discrimination against homosexuals, in some cases leading to persecution and crimes against humanity.

Image of Homosexuals in History

Attitudes toward homosexuality have fluctuated greatly over time. Examples of homosexuality can be found in religious texts dating back to the third and fourth century BCE, such as the Kama Sutra and other Eastern Tantric texts. This recognition of same-sex relations suggests that tolerance toward homosexuality has deep historical roots. In modern India homosexuality is tolerated as long as it does not interfere with the institution of marriage. The individuals who suffer discrimination are those who refuse to adhere to social

A plaque on Sheridan Square in New York City's West Village commemorating the Stonewall Riots. On June 27, 1969, police raided the nearby Stonewall Inn and a scuffle soon broke out with the bar's homosexual patrons: The violence continued for the next two nights. The event led many in this community, and others worldwide, to openly acknowledge their homosexuality and demand equality, it is regarded as a defining moment in the Gay Liberation movement. [KEVIN FLEMING/CORBIS]

pressures and instead lead openly homosexual lives. Although in China homosexuality is now legal, homosexuals suffered discrimination under the Qing government in 1740. The regulations that emerged were in response to homosexuality becoming an accepted way of life, one explored openly in literature of the time. The subsequent political reaction fueled a social intolerance that still exists in the early twenty-first century.

Western culture during the Greco-Roman period of history is laden with expressions of same-sex sexual desire. In general, society accepted such sexual activity as long as those involved adhered to accepted social conventions. This situation changed with the growing influence of Christianity, which referred to the story of Sodom in Genesis 18 and 19, and other biblical sources banning same-sex sexual behavior.

Between the fall of Rome and the beginning of the Renaissance, the rule of the Roman Catholic Church dominated Western views condemning homosexuality or any other sexual act not performed for the purpose of procreation. This era witnessed a significant increase in the persecution and execution of suspected "sodomites" (which included anyone who engaged in any act of sexual or social deviance). After the Protestant Reformation same-sex relations were still considered a sin and states began passing harsher statutes punishing sodomy as a crime. These convictions, primarily in Europe, reached their peak between 1750 and 1830, turn-

ing into social hysteria and leading to a relatively large number of arrests and executions.

Severe discrimination gave birth to a distinct identity based on sexual expression and desire. A new, more specific category of "homosexual" emerged during the Victorian era when a medical definition was assigned. The concurrent social discrimination paralleled an increase in self-identity and community awareness, as well as a desire by homosexuals to become socially recognized. Self-expression through literature blossomed during this era.

Discrimination against homosexuals in Europe and both North and South America took on a new and more virulent form from the late 1930s through the 1960s. In Germany the widespread acceptance that homosexuals had experienced under the Weimar Republic (especially in Berlin) was shattered during the Nazi regime. The Nazis employed a range of increasingly severe measures to repress homosexual conduct, including surveillance, registration, incarceration, medical experimentation, and, ultimately, extermination. Although female homosexual conduct was not expressly proscribed or as actively repressed by the state, lesbians suffered persecution as well. After World War II during the McCarthy era, homosexuals in the United States fell under increasingly severe pressures to conceal their identity. Those who refused risked alienation and, in many cases, loss of livelihood. Such social pressures gave rise to political and social organizations in both the United States and Europe throughout the 1950s and 1960s.

In the early twenty-first century a patchwork of laws and varying degrees of social acceptance exist throughout the world alongside mainstream television programs and other media forms that encourage social integration. These vastly different approaches reflect the great divergence of views about homosexuality and same-sex sexual conduct. In many parts of the world homosexuality is increasingly seen as a legitimate identity, with same-sex sexual behavior being a natural consequence of that identity. Among other groups, including major religious institutions, same-sex sexual attraction is seen as disordered and same-sex sexual conduct as a destructive aberration.

Legal Regulation: Prohibition and Protection

The legal position of homosexuals varies significantly from country to country—from constitutionally entrenched freedom, from discrimination on the basis of sexual orientation, to laws that make homosexual acts punishable by death. Even among countries where all individuals are guaranteed a standard of equal treatment, controversies remain over whether homosexuals should be protected as such. One example is the continuing debate in the United States over hate crimes legislation and the inclusion of sexual orientation as grounds for that kind of criminal charge. Another example is the wide range of contemporary responses to same-sex marriages, partnerships, or civil unions.

Until very recently no legal protection on the basis of sexual orientation could be found at the international level. Although the horrors of World War II gave rise to significant advances in the protection of individuals and identifiable groups under international law, such protection did not extend to homosexuals. Notwithstanding the mass execution of homosexuals during World War II, there is virtually no mention of this victim group in the judgment of the International Military Tribunal at Nuremberg. Nor did homosexuals find protection in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, an instrument drafted on the heels of World War II and designed to protect groups from discriminatory annihilation. The continuing lack of protection for homosexuals as a group likely flowed, at least in part, from the belief that homosexuality is not intrinsic or fundamental to one's identity, but that it is simply a matter of aberrant behavior which cannot be justifiably regulated. Indeed for many years, the leading psychiatric diagnostic manual listed homosexuality as a mental illness, greatly influencing public opinion.

While international criminal law evolved little during the cold war, it gained renewed vigor following the establishment of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) in the mid-1990s. Despite the great strides in jurisprudence these institutions made, such developments did little to advance the legal protection of homosexuals. The Rome Statute of the International Criminal Court (ICC), adopted in 1998 and in many ways reflecting the culmination of international developments, fails to make any reference to sexual orientation. Indeed, the term *gender*, included as one of the grounds for the crime of persecution, is expressly defined as "the two sexes, male and female, within the context of society." The definition continues, "The term 'gender' does not indicate any meaning different from the above," in an apparent attempt to prevent the interpretation of gender from including sexual orientation (Rome Statute, Article 7[3]). Although the definition of persecution includes the residual phrase "or other grounds that are universally recognized as impermissible under international law," the use of "universal" could prevent the ICC from interpreting this phrase to include sexual orientation given the lack of consensus noted above.

Similarly, international human rights law has been slow to afford protection from discrimination on the basis of sexual orientation. The nondiscrimination provisions of the major human rights treaties make no mention of sexual orientation. Nevertheless, advances have been made through the jurisprudence of international human rights mechanisms. The earliest developments were grounded in the right to privacy, encompassing such matters as the decriminalization of same-sex sexual conduct, but failing to extend into public life.

Over time, however, the conceptual framework employed by human rights mechanisms has shifted from one grounded in privacy to one based on nondiscrimination. For example, the Human Rights Committee, the treaty body charged with monitoring implementation of the International Covenant on Civil and Political Rights, has found that "the reference to 'sex' in [the nondiscrimination provisions of the Covenant] is to be taken as including sexual orientation" (*Toonen v. Australia*, para. 8.7). While the Human Rights Committee ultimately grounded its decision in that case on the right to privacy, its reference to and interpretation of the nondiscrimination provision marked a significant turning point in the protection of homosexuals as such. Similar advances have been made among regional human rights mechanisms, particularly in Europe.

Even within the European human rights system, though, the scope of protection from discrimination remains limited. The European Court of Human Rights ultimately found that France's refusal to authorize the adoption of a child by a single gay man, a decision "based decisively on the latter's avowed homosexuality," was not discriminatory under Article 14 of the European Convention on Human Rights (*Fretté v. France*, para. 43).

Nonetheless, a clear trend exists within human rights law toward greater protection of homosexuals as a group. This trend is also reflected in the domestic sphere. For example, within the context of refugee law, domestic courts in many countries are increasingly granting asylum on the basis of persecution against homosexuals as a social group.

SEE ALSO Holocaust; Identification; Persecution

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Huguenots

Huguenot was the popular term for French Protestants—the men and women who formed the French Reformed Church—from the mid-sixteenth through eighteenth centuries. The word's origins are unclear and contested. Opponents initially used it as a slur. Only gradually did *Huguenot* become the accepted designation for a French Calvinist. The Reformation had an early, forceful impact on France, and by the 1550s the Calvinist or Reformed tradition dominated. Reformed Protestantism, inspired by the Frenchman John Calvin and his ecclesiastical reorganization of the francophone city of Geneva, spread quickly throughout the realm. The growth of the Huguenot community provoked strong Catholic and monarchial reaction. Religious warfare erupted in 1562 and the turmoil devastated France for nearly forty years.

In addition to the clash of Catholic and Protestant armies, the assassination of individual political leaders and less calculated outbreaks of collective violence—deadly riots and vicious massacres—underscored the intense and bitter enmity surrounding these rivalries. The most famous incident was the Saint Bartholomew's Day Massacre of August 24, 1572. Huguenot nobles had gathered in Paris for the marriage of their leader Henry of Navarre to the king's sister. The king and queen mother seized the occasion to rid themselves of political and religious opponents. Zealous Parisian Catholics soon transformed the purge into carnage as they butchered thousands of Huguenots. The constant warfare and brutality did not cease until 1598 with the king's proclamation of the Edict of Nantes. The royal legislation established structures for promoting peaceful coexistence between Catholics and Protestants.

The Huguenots were never more than a minority. At their height during the 1560s they may have

Painting depicting the St. Bartholomew's Day Massacre in Paris, August 24, 1572. In the months that followed, similar massacres of Huguenots took place in Rouen, Orléans, Lyon, Bourges, Toulouse, Bordeaux, and other French cities and towns. The artist, François Dubois, was an eyewitness to the events in Paris and a Huguenot who survived the rampage. [THE PICTURE DESK]

amounted to 10 percent of the population. This initial growth did not survive the Saint Bartholomew's Massacre; afterwards Huguenot ranks thinned considerably. By the close of the sixteenth century they were no more than 7 to 8 percent of the French populace. Their strength further eroded in the seventeenth century. When Louis XIV finally revoked the Edict of Nantes in October 1685, the Huguenot community was 800,000 to 1 million persons.

The options for French Protestants after 1685 were limited and demanding. Some individuals were extraordinary in their resistance. For most, however, open defiance and the prospect of prison, the galleys, or execution were unattractive. The vast majority converted to Catholicism, if insincerely. About one-fifth of Huguenots—150,000 to 200,000—chose exile in the Swiss cities, various German states, the Netherlands, British Isles, and eventually North America, South Africa, Scandinavia, and Russia.

Many Huguenots who remained in France began to assemble secretly in the *désert* (wilderness), a moving biblical image that emphasized their tenacity. Women assumed an especially strong role. They led clandestine worship complete with prayers, scriptural readings, and the singing of psalms. Some women endured agonizing confinement. Those arrested at illicit religious assemblies were incarcerated in Catholic hospitals and nunneries. Women judged to have committed more serious offenses went to prison, where they often remained forgotten for decades. Finally, a few young women, and in time men, turned to prophesy, becoming anguished voices crying out to protest their oppression.

The prophesying movement spread and eventually turned violent as the more zealous adherents sought to wreak God's retribution on their Catholic oppressors. The murderous, protracted revolt of the Camisards—so designated for the simple white shirts that the insurgents wore—began in 1702. Protestants carried out acts of vengeance, such as murdering priests and burning churches. They also waged organized guerrilla warfare. Royal troops responded with further repression and reprisals. The fighting dragged on for eight years and led to the death of many Protestants and Catholics.

Although the active persecution of Huguenots gradually abated, the restoration of their civil status occurred only with the Edict of the Toleration in 1787 and the French Revolution two years later. In the end

the ordeal of the désert became the heroic age for French Protestants. The memory of the eighteenth-century persecution and attending diaspora has eclipsed earlier struggles in shaping collective identity and goes to the very meaning of Huguenot.

SEE ALSO Catholic Church; Massacres; Persecution

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Humanitarian Intervention

The doctrine of humanitarian intervention in international law typically refers to the threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of a particular state from widespread deprivations of internationally recognized human rights, including genocide and crimes against humanity. Because the doctrine is not expressly recognized in the Charter of the United Nations (UN) as a permissible basis for using force, many states and scholars oppose its use, at least when exercised without authorization by the UN Security Council. Nevertheless, some states and scholars favor the use of the doctrine in extreme situations on the grounds that, in any just legal system, the value of preventing the loss of life and suffering must outweigh the value of normative constraints on the use of transnational force.

Humanitarian Intervention Prior to the UN Charter

Although he did not use the term *humanitarian intervention*, the great Dutch jurist Hugo Grotius (1583–1645) asserted in his treatise on the law of war and peace that resort to war was permissible to assist peoples who were resisting extreme tyranny. In developing this view, Grotius drew on earlier just war doctrines associated with Saint Augustine and Saint Thomas Aquinas. Grotius's position was adopted by many scholars throughout the nineteenth century. Moreover, state practice during the period reflected a belief in the doctrine of humanitarian intervention. Thus, during the 1800s European powers repeatedly intervened in areas under the control of the Ottoman Empire because, according to the interveners, such action was necessary to protect Christian minorities from Ottoman rule.

Throughout this period, however, there was no accepted prohibition on states' resort to the use of armed force in international law, so the concept of humanitarian intervention was not an exception to a general prohibition but, rather, a basis for explaining why an intervention was just. After the outbreak of World War I in 1914, states became increasingly interested in legally prohibiting the resort to war, out of a belief that international legal constraints could help prevent or at least contain warfare. This interest led first to an effort in 1919 to discourage warfare by creating the League of Nations (which promoted the use of arbitration to resolve disputes backed by the possibility of collective action against a recalcitrant state) and then to the outright renunciation of war as an instrument of national policy in the 1928 Kellogg–Briand Pact (a treaty that, as of 2004, remains in force with over sixty parties). These efforts, however, failed to prevent the outbreak of World War II, plunging the world once again into a lengthy and deadly conflict that only ended with the deployment of a terrible new type of weaponry, nuclear arms. Moreover, the conduct of the Axis powers during World War II demonstrated the potential for grave misuse of the doctrine of humanitarian intervention: Japan invaded Manchuria in 1931 claiming a right to protect the local population from anarchy; Italy invaded Ethiopia in 1935 claiming a need to abolish slavery; and Germany invaded Czechoslovakia in 1939 claiming, in part, a need to protect the Czech peoples.

States emerged from World War II even more committed to creating legal structures that would prevent the resort to war. The four powers that met at Dumbarton Oaks, Washington, D.C., in 1944 (China, the Soviet Union, the United States, and the United Kingdom) to begin drafting what would become the UN Charter were aware of the atrocities committed by Nazi Germany against its own nationals, but the four-power focus was broadly prohibiting the use of military force, and not allowing any exceptions to that prohibition for the protection of human rights. Although states meeting at San Francisco in 1945 to complete and adopt the UN Charter ultimately included in it some provisions on the recognition of and respect for human rights, the Charter remained heavily oriented toward preventing the resort to war, without any express language permitting humanitarian intervention.

French troops arriving in northern Rwanda as part of Operation Turquoise, a French-led UN peacekeeping mission, June 1994. Later media reports accused France of arming and supporting the Hutu-dominated government even after word of its atrocities and campaign of genocide reached the West. [PETER TURNLEY/CORBIS]

The UN Charter Paradigm

Article 2(4) of the UN Charter asserts that states "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." Although some scholars have argued that this language allows for humanitarian intervention if the purpose of the intervention is not to alter the boundaries of a state or to topple a government, the negotiating history of the text confirms that the drafters sought a broad prohibition.

The UN Charter, however, contains two exceptions to this broad prohibition. First, Article 51 of the Charter provides that "[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." Second, the remaining articles in Chapter VII of the Charter envisage the Security Council making decisions to address a threat to peace, including authorizing states to use armed force. The Security Council consists of fifteen member states, five of which are permanent members (China, France, Russia, the United Kingdom, and the United States) and the remaining ten are elected periodically by the General Assembly. For the Security Council to adopt any nonprocedural decision, the affirmative vote of nine members is required, including the affirmative vote or abstention of all five permanent members.

Thus, the basic UN Charter paradigm is that states are prohibited from using force against other states, but may do so when they are acting in self-defense against an armed attack or when authorized by the UN Security Council. The Security Council, in turn, is only empowered to act when there is a "threat to the peace," which was originally conceived as transnational threats. The doctrine of humanitarian intervention does not fit easily within this paradigm, since a state that uses force to protect the human rights of another state's nationals is not acting in self-defense against an armed attack and, in many instances, the deprivation of human rights may not entail a threat to transnational peace. At the

same time actual situations where the doctrine of humanitarian intervention is at issue often do not fall neatly into such categories. In situations of widespread deprivations of human rights, there may be foreign nationals threatened (thus allowing an intervening state to claim a right of self-defense to protect those nationals) and there may be collateral effects that arguably threaten transnational peace (thus allowing Security Council action), such as by flows of refugees across a border or by the agitation of related ethnic or religious groups in an adjacent state. In such situations it may be difficult to ascertain whether an intervention is purely humanitarian.

Even if an intervention is purely humanitarian, the practice of the Security Council reveals general acceptance that the Security Council may declare any situation a threat to the peace, even if its transnational effects appear minimal. As for purely humanitarian intervention without Security Council authorization, a minority of states and scholars have maintained either that the meaning of Article 2(4) must be interpreted to allow humanitarian intervention in extreme situations (since it cannot be that peoples in 1945 accepted the charter to the extent that it would protect a government engaged in murdering its people) or that such intervention should be regarded as legitimate even if not technically legal.

Humanitarian Intervention after the UN Charter

During the period of the cold war (1946–1989) the prospect of nuclear confrontation between East and West helped promote strong unity on the prohibition of the transnational use of force, thus tempering any enthusiasm for the doctrine of humanitarian intervention. At the same time, the East–West divide resulted in repeated deadlocks at the UN Security Council, with any one of the five permanent member nations having the power to veto a proposed action. As such, although many states might have supported efforts by the Security Council to authorize humanitarian intervention, the Security Council itself proved incapable of serving that function, thus fueling calls by a minority of scholars for greater latitude in allowing regional organizations or states acting alone to use force to protect human rights.

Despite those sentiments no authoritative state practice developed in support of a doctrine of humanitarian intervention. In several instances a state intervened in a manner that appeared to protect human rights, but the state typically would justify its intervention on the basis of self-defense, thus evincing doubt even on the intervener's part that humanitarian concerns alone were permissible legal base for acting (e.g., Tanzania's intervention in Uganda in 1979 against Idi Amin). Moreover, the international community, through the voice of the UN General Assembly, usually would condemn such interventions as unlawful (e.g., Vietnam's intervention in Cambodia in 1978 against the Khmer Rouge).

The end of the cold war in 1989 allowed for a transformation of the Security Council as a collective security mechanism. In several instances during the 1990s the Security Council authorized a transnational use of force to address a threat to the peace that, at its heart, involved a widespread deprivation of human rights. Thus, in December 1992 the Security Council authorized a U.S.–led intervention in Somalia to end a civil conflict that threatened the lives of hundreds of thousands of Somalis (from violence or starvation). In June 1994 the Security Council authorized France's intervention in Rwanda to end a brutal civil conflict and genocide between the Tutsis and Hutus. The slowness with which the Security Council acted—some 800,000 Tutsis were killed prior to the intervention—led to sharp criticism that powerful states were not living up to their moral responsibilities in addressing such crises. In July 1994 the Security Council authorized a U.S.–led intervention in Haiti to reverse a military coup that had ousted the democratically elected president, Jean-Bertrande Aristide.

Nonetheless, the Security Council remained incapable, in certain circumstances, of reaching agreement on such intervention. During 1998 and 1999 many states feared that President Slobodan Milosevic of the Federal Republic of Yugoslavia (FRY) was about to unleash a wave of ethnic cleansing (and perhaps genocide) against ethnic Albanians living in the FRY province of Kosovo. Milosevic was widely regarded as the architect of genocide and crimes against humanity in Bosnia-Herzegovina in the early 1990s; the International Criminal Tribunal for the former Yugoslavia, located in The Hague, indicted him for such crimes in 2001. Russia and China, however, were unwilling to support a Security Council resolution expressly authorizing the use of force against the FRY to protect the Kosovar Albanians. Consequently, in March 1999 states of the North Atlantic Treaty Organization (NATO) collectively decided that the intervention was justified as a matter of international law and policy, leading to a ten-week bombing campaign against the FRY. Ultimately, Milosevic backed down and agreed to withdraw all FRY military and paramilitary personnel from Kosovo.

The Kosovo incident may support an emerging acceptance by states in the post-Cold War era of a doctrine of humanitarian intervention even without Security Council approval, since the Kosovo intervention was supported by the nineteen NATO states and many

non-NATO states as well, was not condemned by the General Assembly, and was legally justified by several governments with reference to the doctrine of humanitarian intervention. At the same time many states (including Russia and China) opposed and condemned as unlawful the use of force against the FRY, whereas other states that supported the intervention (such as the United States) asserted that its legality turned on a variety of factors, including prior Security Council resolutions identifying the FRY's actions as a threat to the peace.

Criteria for Conducting Humanitarian Intervention

Various scholars have sought to delineate criteria that should govern the resort to humanitarian intervention. In the wake of the Kosovo incident one highly-respected group of experts—convened as the International Commission on Intervention and State Sovereignty (ICISS)—advanced in a 2001 report several criteria falling into four general categories.

First, the commission stated that there must be a just cause for the intervention, which can arise when there is serious and irreparable harm occurring (or likely to occur) to human beings. Specifically, the commission identified such harm as the "large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation." Such harm might also consist of "large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape" (ICISS, 2001, p. 32).

Second, the commission advocated four precautionary principles as a means of ensuring that the intervention is undertaken properly. The primary purpose of the intervention must be to halt human suffering. All nonmilitary options for resolution of the crisis must first be explored. The scale, duration, and intensity of the intervention should be dictated by what is necessary to achieve the humanitarian objective. Finally, there must be a reasonable chance of success in halting the suffering, such that the consequences of action are not likely worse than those of inaction (ICISS, 2001, pp. 35–37).

Third, the commission urged that before embarking on such intervention, states must formally seek Security Council authorization. If Security Council authorization is not forthcoming, states should seek authorization from the General Assembly, regional, or subregional organizations. In the absence of such authority the commission did not declare humanitarian intervention to be unlawful, but noted that "in conscience-shocking situations crying out for action, . . . it is unrealistic to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations" (ICISS, 2001, p. 55).

Finally, the commission proposed certain criteria to guide the military operation itself. The intervening military must have a clear and unambiguous mandate and the resources to support that mandate. When the intervention is conducted by several states, there must be a unified command, with clear channels of communication and chain of command. The intervening military must accept that there are limitations on the force to be used, since the objective is to protect the population of the state, not to completely defeat the state (at the same time the use of force cannot be limited to the protection of the intervening forces themselves). The intervening military must abide by precise rules of engagement that match its humanitarian objective, adhere to international humanitarian law, and coordinate their actions as much as possible with humanitarian organizations.

Criteria of this type provide useful guidance in the event that a state is considering a humanitarian intervention, but until such criteria are incorporated in a binding document and accepted by a wide variety of states, the legality of humanitarian intervention (at least in the absence of Security Council authorization) and the manner in which it is to be conducted will remain controversial.

SEE ALSO International Law; Prevention; United Nations

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Humanitarian Law

International Humanitarian Law (IHL) is the *jus in bello,* or the law that regulates the conduct of armed conflicts. The International Committee of the Red Cross describes IHL as "the body of rules which, in wartime, protects people who are not or are no longer participating in the hostilities. Its central purpose is to limit and prevent human suffering in times of armed conflict. The rules are to be observed not only by governments and their armed forces, but also by armed opposition groups and any other parties to a conflict." Serious violations of this law are called war crimes.

Since World War II, the term *IHL* has also been used by scholars to include crimes against humanity insofar as that category of crimes has emerged from war crimes, even though it is now unrelated to war crimes and is applicable in times of war and peace; and genocide, insofar as that crime was originally a broader extension of crimes against humanity, which applies in times of war and peace.

IHL does not include the *jus ad bellum,* meaning the law applicable to the right or legitimacy to resort to war. Thus, "crimes against peace," as referred to in the International Military Tribunal Charter and the International Military Tribunal for the Far East Statute, and since the United Nations Charter's adoption known as aggression, are not part of IHL.

Framework

IHL's genesis dates back more than five thousand years to various civilizations that evolved humanitarian principles underlying the regulation of armed conflicts. In time, these humanitarian principles formed an interwoven fabric of norms and rules designed to prevent certain forms of harm from befalling civilian noncombatants and some categories of combatants such as the sick, wounded, shipwrecked, and prisoners, as well as persons covered by the Red Cross/Red Crescent emblems and those who provide medical and humanitarian assistance during armed conflicts. Eventually, the more serious breaches of these rules were criminalized.

IHL's normative development has never been part of a consistent or cohesive international legal policy. Instead, the law developed as a haphazard mixture of conventions, customs, general principles, and the writings of scholars. At first, the Hague conventions of 1899 and 1907 codified some of the customary principles and norms on which the state parties could agree. The Four Geneva Conventions of August 12, 1949, became a more comprehensive codification, later to be supplemented by two protocols in 1977.

Throughout history the tensions between humanitarian goals and military/political ones have been evident. Proponents of the former seek to expand the protections of persons and nonmilitary targets, to limit the use of force in general, and to restrict the use of certain weapons in particular. They have encountered resistance and opposition from those who press the concept of "military necessity" and seek to achieve victory through the fastest means and with the least costs, irrespective of the harm inflicted on the enemy. Humanitarian arguments alone have seldom been sufficient to induce states to limit the use of their might against their enemies, particularly against weaker ones who are incapable of inflicting reciprocal harm. Pragmatic and policy arguments, however, have greatly aided the development of IHL. Mutuality of interest and other considerations, such as economic costs and effectiveness, have combined with humanitarian ones to produce the existing body of norms and rules of conduct governing armed conflicts.

The Law of Armed Conflict Through the Ages

A historical review of the regulation of armed conflicts reveals that civilizations for more than five millennia have either prohibited or condemned unnecessary use of force against certain categories of persons and against certain targets. This historical process reveals the convergence and commonality of basic human values in diverse civilizations, in light of the fact that geographically separated groups have reached the same humanistic conclusions without, in some cases, any evidence of the migration of such ideas from one civilization to another. This convergence is embodied in the Preamble of the 1907 Hague Convention which indicates that such commonly shared values make up the "dictates of humanity" leading to the concept of "crimes against humanity."

The Chinese scholar Sun Tzu, in the fifth century BCE, asserted that in war it is important to "treat captives well, and care for them." He also wrote that a general should only attack the enemy's armies, "for the worst policy is to attack cities." The Chinese code of chivalry reveals that it is not the purpose of war to inflict unnecessary or excessive suffering on the enemy, nor is it useful. It was not until the late 1800s that Western civilization accepted the principle of prohibiting unnecessary human pain and suffering during wartime. This principle first appeared in the 1874 Brussels Declaration (Brussels Conference on the Laws and Cus-

Geneva headquarters of the International Committee of the Red Cross. The organization played a pivotal role in developing the four Geneva Conventions of August 12, 1949, for victims of war, still the core of modern international humanitarian law. [VERNIER JEAN BERNARD/CORBIS SYGMA]

toms of War) and was then included in the 1899 and 1907 Hague Conventions' Annexed Regulations. It is a basic principle of the 1949 Geneva Conventions and is considered to be part of customary international law. Like some other principles of IHL, namely, proportionality and discrimination, it is relative and subject in application to good judgment and good faith.

Parallel to the developments in China, and without evidence of the migration of Chinese ideas, the Indian civilization evidenced in the fourth century BCE the same values and policies. One of India's epic poems, *Ramayana,* reveals that it was expressly forbidden to use a mythical weapon that could obliterate an entire enemy nation because "such destruction en masse was forbidden by the ancient laws of war, even though [the enemy] was fighting an unjust war with an unrighteous objective." Another famous Hindu epic, the *Mahabharata,* which may date from as early as 200 BCE, similarly prohibits the use of hyperdestructive weapons. In the story, the mythical weapon called the *pasupathastra* was forbidden because its use was not conventional and Hindu teachings held that unconventional weapons were not moral.

Even though these tales are from mythological literature, they reflect social values. In the fourth century BCE, the Book of Manu developed norms based on these values. The Laws of Manu, as they were sometimes called, stated that "when a king fights his foes in battle, let him not strike with weapons concealed, nor with barbed, poisoned, or the points of which are blazed with fire . . . [because] these are the weapons of the wicked." The laws also prohibited weapons that caused unnecessary or excessive suffering. These included arrows with heated, poisoned, or hooked spikes and tips.

In ancient Greece, awareness existed that certain acts were contrary to traditional usages and principles spontaneously enforced by human conscience, thus establishing the applicability of customary law to armed conflicts. Herodotus recounts that as early as the fifth century BCE certain conduct was prohibited in Athens as "a transgression of the laws of men, and of the law of the human race generally, and not merely as a law applicable exclusively to the barbarians." In Homer's epic *The Odyssey*, the use of poisoned weapons was considered to be a grave violation to the way of the

gods. Once again, history records the recognition by a civilization that the "human race" has its laws.

Roman law evidenced these same values, probably inspired by the ancient Greeks. The Roman armies were more disciplined than those of any other ancient nation. They did not as a rule degenerate into indiscriminate slaughter and unrestrained devastation. They observed restrictions that others did not. This was the beginning of the notion of professionalism in armies that ripened in the nineteenth century to form a foundation for the modern law of armed conflict.

Such self-imposed restrictions were not universally respected. Ancient Greeks and Romans both applied the law of war only to civilized sovereign states, properly organized, and enjoying a regular constitution. Hence, barbarians and savage tribes were debarred from the benefits of these rules. The assumption was that such uncivilized combatants would not abide by the same rules. This assumption is reflected in the nineteenth-century law of armed conflict, namely, in the concept of mutuality of obligations.

Roman law also developed the terms *jus ad bellum* (the law governing the right to use armed force) and *jus in bello* (the law governing the conduct of hostilities), terms that continue to be used in contemporary international law. The Roman *jus belli*, or the law of war, served as a foundation for legal developments until the late 1800s.

The three monotheistic faiths of Judaism, Christianity, and Islam join in the affirmation of humanitarian principles. The second Book of Kings states:

> the King of Israel . . . said to Eli'sha, "My Father shall I slay them?". . . He answered, "You shall not slay them. Would you slay those whom you have taken captive with your sword and bow? Set bread and water before them that they may eat and drink and go to their master."

Another relevant text of the Old Testament is found in Deuteronomy, in which specific regulations for the conduct of sieges are spelled out:

> When thou shalt besiege a city a long time in making war against it to take it, thou shalt not destroy the trees thereof by wielding an axe against them; for thou mayest eat of them, but thou shalt not cut them down; for is the tree of the field man, that it should be besieged of thee? Only the trees of which thou knowest that they are not trees for food, them thou mayest destroy and cut down, that thou mayest build bulwarks against the city that makes war with thee, until it fall.

Traditional Jewish law in the Talmud also regulated the destruction of vegetation:

> Josephus elaborates that this included not setting fire to their land or destroying beasts of labor. Maimonides flatly states that the destruction of fruit trees for the mere purpose of afflicting the civilian population is prohibited and, finally, we have the broad interpretation of Rabbi Ishmael that "not only are fruit trees but, by argument, from minor to major, stores of fruit itself may not be destroyed."

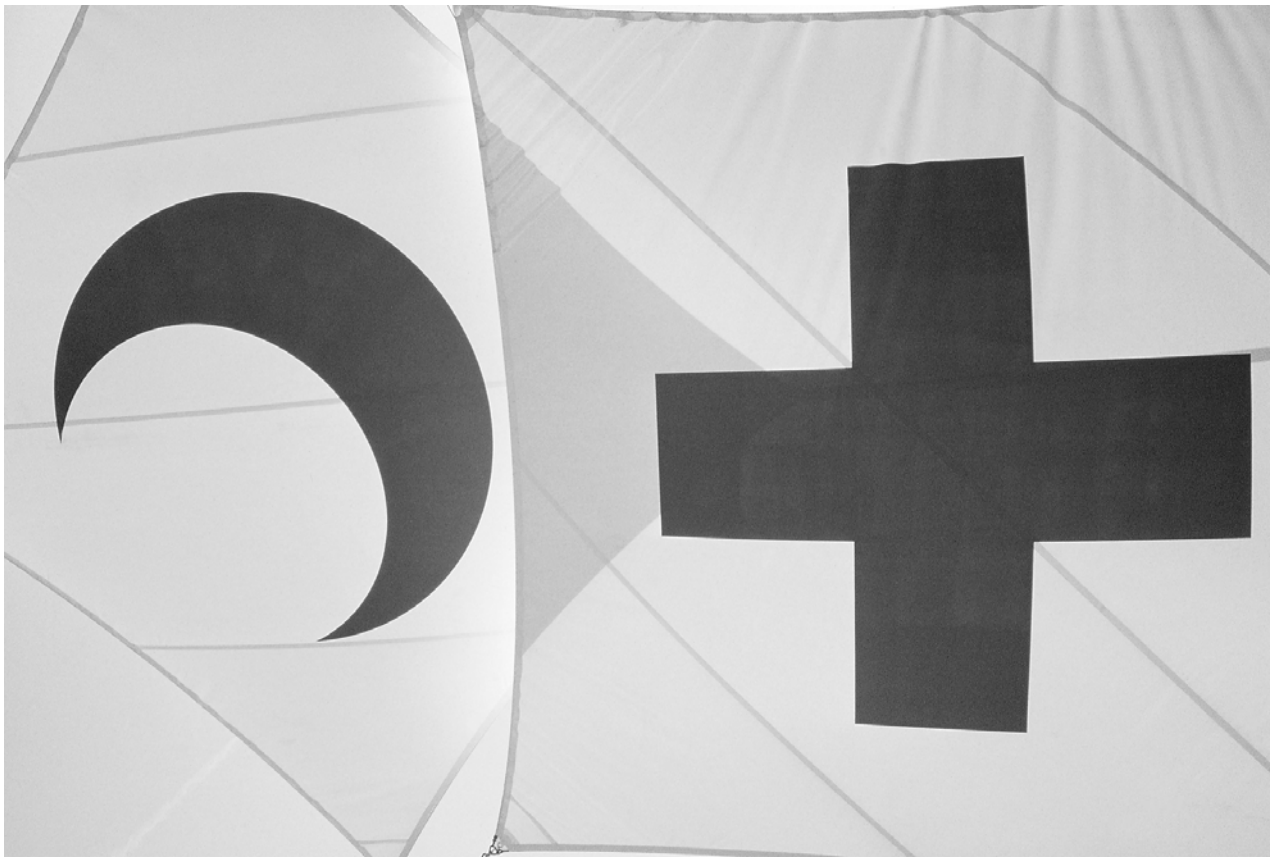
Jews honor the Sabbath and other holy days like Yom Kippur, when no warlike activities can be conducted; the same is true in Islam on the days of the Eid. In Medieval times, the Roman Catholic Church also specifically proscribed the conduct of war on particular days. The Archbishop of Arles proclaimed in 1035 that there was to be a "truce of God" from "vespers on Wednesday to sunrise on Monday."

The Islamic civilization had specific rules on the legitimacy of war and its conduct, based on the Koran and the Sunna, the tradition of the Prophet Muhammad, which are the two principal sources of the *Shari'a*, Islamic law. The Prophet Muhammad himself entered into a peace treaty with the Meccans, the treaty of Hudaibiya that provided for the protection of civilians.

Early Islamic values relating to warfare included the reduction of unnecessary or excessive suffering. The Koran enjoins on the victor the duty to feed captives. Also, Islamic legal treatises on the law of nations from the ninth century forbade the killing of women, children, elderly, blind, crippled, and the insane.

Since the Middle Ages, it has been primarily Western civilization that advanced the common values and shaped the principles, norms, and rules of conduct of what are now parts of IHL. The writings of Aristotle, Cicero, St. Augustine, and St. Thomas Aquinas set forth the philosophical premises for the conditions of legitimacy of war, the jus ad bellum, so as to distinguish between just and unjust war; but Western civilization also developed principles, norms, and rules of conduct limiting the means and harmful consequences of the conduct of war. St. Thomas Aquinas refers to these basic laws of humanity in the treatment of civilian noncombatants, the sick, wounded, and prisoners of war as follows, "these rules belong to the *jus gentium* which are deduced from natural law as conclusion principles." He called it "positive human law," not because it was codified, but because citizens of civilized nations had agreed to it.

As the laws of chivalry developed in medieval Western Europe, so did rules limiting the means and manner of conducting war. Heraldic courts developed a code of chivalry, enforced by the Christian princes



Flags of the International Red Cross and Red Crescent Movement fly at the societies' official museum, Geneva, Switzerland. The conventions on the protection of victims and conduct of war authored by their parent organization, the International Committee of the Red Cross, following World War II remain the core of international humanitarian law.[BARNABAS BOSSHART/CORBIS]

that regulated a knight's conduct in battle. The codes of chivalry prohibited the use of certain weapons, such as the cross-bow, whose use was forbidden by the Second Lateran Council of 1139.

National laws and military regulations followed the evolution of the law of armed conflict. Among early national regulations are those that Gustavus Adolphus of Sweden promulgated in 1621 in the *Articles of Military Laws to be Observed in the Wars*. They provided in the general article that "no Colonel or Captain shall command his soldiers to do any unlawful thing; which who so does, shall be punished according to the discretion of the judge." This was probably the first time that the rule of command responsibility was posited in a normative prescription. In the modern law of armed conflict it is a well-established principle.

In the United States, the first Articles of War, promulgated in 1775, contained explicit provisions for the punishment of officers who failed to keep good order among the troops. It also included a number of prescriptions for the protection of civilians, prisoners of war, and the sick and injured in the field. This provision was retained and strengthened in the Articles of War of 1806 and served as the basis for prosecutions arising out of the Civil War for conduct against the law of nations.

The most noteworthy national regulations are the United States Lieber Code of 1863, the 1880 *Oxford Manual*, the German General Staff *Kriegsbrauch im Landkriege* of 1902, and Great Britain's War Office *Manual of Military Law of 1929*. These are only some examples of national military regulations that preceded the "Law of Geneva."

Today most countries of the world have military or other legislation that includes either in whole or in part the norms of the four Geneva Conventions of August 12, 1949 and the two Additional Protocols of 1977. These conventions require the introduction of such norms in the national laws of the contracting parties, their dissemination, and training of military personnel to ensure compliance and to avoid claims of ignorance of the law.

Sources of Law and Legal Regimes

Assuming the broader meaning of IHL as encompassing all violations of the law of armed conflict, crimes against humanity, and genocide, it is necessary to distinguish between various legal regimes that pertain to the three subjects. They have not been brought together into a single legal regime, even though they all share the same goals and purposes of minimizing human harm and material damage.

The first legal regime is the customary international law applicable to the conduct of war, binding on all states. Its historical evolution described earlier ripened into the 1899 Hague Convention, which codified what the state parties considered the customary practices of states. That convention was amended in the 1907 Hague Convention No. IV on land warfare and its annexed regulations. Because the 1907 Convention and annexed regulations contained several broad principles that withstood the test of time, they are considered the foundation of customary international law applicable to armed conflicts. The four Geneva Conventions of August 12, 1949, which as of July 1, 2004, have been ratified by 192 states, are also deemed to reflect customary international law, as are parts of Protocol I (1977), which deals with conflicts of an international character (ratified by 161 states), and Protocol II (ratified by 156 states) relating to internal conflicts or civil wars. State parties and nonstate parties differ as to which provisions of these two protocols embody customary international law. Although it is thus clear that there is an overlap between the customary and conventional international law of armed conflict, there is a distinction between these two legal regimes that is confusing to nonexperts, particularly to those in the armed forces who have to apply these norms in the course of armed conflicts.

The Hague Conventions and the Geneva Conventions are often referred to as separate bodies of law because the main topic of regulation for each group differs to some extent. The Hague Conventions focus primarily on prohibited means of warfare, whereas the Geneva Conventions address the various categories of protected persons (civilians, sick, wounded, and prisoners of war). There is nonetheless considerable overlap in the so-called Law of the Hague and the Law of Geneva.

The regulation of armed conflict under customary or conventional international law is also divided on the basis of distinguishing conflicts of an international character from conflicts of a non-international character. The 1907 Hague Convention and its annexed regulations apply only to conflicts of an international character, that is conflicts between states. The Four Geneva Conventions of 1949 also generally apply to international conflicts, but they also establish a special regime for conflicts of a noninternational character. The latter are regulated by Article 3, which is identical in all four Geneva Conventions, and by Protocol II (1977), which deals exclusively with conflicts of a noninternational character. Common Article 3 of the Four Geneva Conventions of 1949 is also deemed part of customary international law, as are some parts of Additional Protocol II (1977). In addition, there are purely domestic conflicts that some experts argue should be included under Common Article 3 and Protocol II. Minor domestic or internal conflicts that do not rise to the threshold level of violence to be regulated by Common Article 3 or Protocol II are subject to another legal regime that is discussed later.

The existence of three sublegal regimes applicable to conflicts of an international and noninternational character and minor domestic or internal conflicts is incongruous insofar as the goals and purposes of all three regimes are the same, namely, the protection of certain persons and targets in times of violent conflict. Scholars have argued that there is no valid conceptual basis to distinguish between the same protections offered to the same persons and targets, depending on whether the conflict is legally defined as being of an international or a noninternational character or purely domestic or internal. The distinction, however, exists because it reflects the interests of governments who do not wish to give insurgents and combatants engaged in domestic conflicts with their government a legal status likely to give these groups political legitimacy. Governments usually argue that the resort to violence by domestic insurgent groups is in the nature of terrorism and thus deny them not only legitimacy, but the fundamental safeguards and protections contained in the regulation of armed conflict.

Under the 1949 Geneva Conventions, "grave breaches" include, inter alia, murder, torture, rape, mistreatment of prisoners of war and civilians, wanton and willful destruction of public and private property, destruction of cultural and religious monuments and objects, use of civilian and prison-of-war human shields, collective punishment of civilians and prisoners of war. Common Article 3 does not contain the same specificity, although scholars argue that the prohibitions are the same. Common Article 3 refers to transgressions of its prohibitions as "violations" and not as "grave breaches."

The 1949 Geneva Conventions and Protocol I (1977) establish certain consequences for "grave breaches," which include the duty for states to criminalize these violations in their domestic laws, to prose-

cute or extradite those who commit such violations, and to provide other states with judicial assistance in the investigation or prosecution of such "grave breaches." The Conventions also establish a basis for universal jurisdiction so that all state parties to the Geneva Conventions can prosecute such offenders, and removes statutes of limitation for such offenses. Common Article 3 of the 1949 Geneva Conventions and Protocol II (1977) do not contain the same explicit legal obligations. Scholars argue that the obligations to prevent and suppress "violations" of Common Article 3 and Protocol II (1977) should be treated in the same manner and with the same legal consequences as the "grave breaches" of the 1949 Conventions and Protocol I (1977); that is, as war crimes.

Contemporary doctrinal developments complement customary and conventional international law. In other words, the writings of scholars become the bridge between the different legal regimes of customary and conventional international law, the "Law of the Hague" and the "Law of Geneva" and between the subregimes of conflicts of an international character and conflicts of a noninternational character. This proposition is also bolstered by the fact that both conventional and customary international law are predicated on certain general principles enunciated in both the "Law of the Hague" and the "Law of Geneva," such as the principles of prohibiting the infliction of unnecessary human pain and suffering, proportionality, and discrimination in the use of force.

Prohibitions and restrictions on the use of certain weapons are deemed part of the customary law of armed conflict, but control of weaponry usually arises out of specific international conventions. Nonetheless, overarching principles contained in both customary and conventional international law prohibit the infliction of unnecessary human pain and suffering and require proportionality in the use of force.

The first efforts to proscribe weapons that cause unnecessary pain and suffering developed in 1868 in the St. Petersburg Declaration, which prohibits the use of explosive projectiles. The subsequent Brussels International Declaration Concerning the Laws and Customs of War (1874) states, "the only legitimate object which states should have in view during war is to weaken the enemy without inflicting upon him unnecessary suffering." Based on this principle, a 1925 protocol was adopted for the Prohibition of the Use of Asphyxiating, Poisonous, or Other Gases. A protocol prohibiting bacteriological methods of warfare followed, and later treaties addressed other weapons, culminating in the Anti-Personnel Mine Convention of 1997. In 1980 a major effort was undertaken in the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects. Four additional protocols have been adopted to ban or restrict Non-Detectable Fragments; the Use of Mines, Booby-Traps, and Other Devices; the Use of Incendiary Weapons; and Blinding Laser Weapons. The treaties clearly indicate continuity in the evolution of the basic principles mentioned earlier, and the efforts of the international community from 1868 to date in its pursuit of the humanization of armed conflicts. Governments argue that each and every one of the 73 conventions prohibiting or restricting the use of certain weapons is binding only on the states parties to the particular treaty. Yet, both customary international law and general principles of law also apply and are binding upon nonstate parties to these conventions.

Weapons of mass destruction, including chemical, biological, and nuclear weapons, which inflict unnecessary pain and suffering, also violate the principle of discrimination because these weapons cannot distinguish between combatants and noncombatants. The prohibition of chemical and biological weapons in the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare and the 1993 Chemical Weapons Convention (which carries criminal consequences), reflect customary law principles, as does the 1972 Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction. Notwithstanding the efforts of a majority of the state parties, the 1972 Biological Weapons Convention has not been amended to parallel the same level of prohibition and criminalization achieved by the 1993 Chemical Weapons Convention, because of the opposition of the United States government, which views such a regime as placing undo burdens on the American chemical and pharmaceutical industries. For similar but different political/military considerations, nuclear weapons have not so far been banned, even though they clearly, if used, violate the principle of discrimination between combatants and protected persons, and inflict unnecessary human pain and suffering on civilian populations. They also cause damage to the present and future environment and indiscriminately have an impact on future health. Thus, politics, more than rationality and humanitarian considerations, frequently impedes the development of international law.

An example illustrating the tension between international humanitarian law and the political/military interests of certain governments is the 1997 Convention on the Prohibition of the Use, Stockpiling, Production,

and Transfer of Anti-Personnel Mines and on their Destruction. The states parties take the position that the prohibition of landmines that cannot be detonated or removed after the end of a conflict is necessary because they have proven to cause unnecessary human pain and suffering to innocent civilians long after the end of a conflict. Other governments, such as that of the United States, continue to claim that the use of landmines even without the ability to detonate or remove them after the end of a conflict is permissible. Clearly, the use of landmines violates the principle of discrimination between combatants and noncombatants, but proponents of their continued availability as a weapon argue that the principle of military necessity justifies the use of landmines without restrictions. Although military necessity may permit the use of mines in times of armed conflict, it is not a justification for not having mines that can be detonated after the end of the conflict, nor is it a justification for failing to require the state that placed these mines to remove them after the conflict's end.

The Expanded Meaning of Humanitarian Law

The expanded contemporary meaning of IHL includes crimes against humanity and genocide. There are two reasons for this inclusion, even though both of these crimes apply in peacetime as well as during war, in contrast to the law of armed conflict. Crimes against humanity originated in the work of the 1919 Commission on the Responsibility of the Authors of War and War Crimes, which was established after World War I by the preliminary Peace Conference in Paris. In that original conception, the notion of what was then called crimes against the laws of humanity was an extension of "war crimes" as defined in the 1907 Hague Convention and annexed regulations. The 1945 International Military Tribunal Charter, relying upon the 1919 Commission's concept, defined "crimes against humanity" as an international crime in Article 6(c). The Far East Tribunal followed suit in 1946. In both of these instruments, the connection to "war crimes" was necessary. Subsequently, that connection was removed, first by a 1950 report of the International Law Commission and then in the statutes of the ad hoc Tribunal for Rwanda and the International Criminal Court. The statute of the International Criminal Tribunal for the Former Yugoslavia preserves a connection between "crimes against humanity" and an armed conflict.

In 1948 the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide, which was intended to encompass "crimes against humanity." But the latter concept is broader and includes conduct not covered by the Genocide Convention. Genocide requires a specific intent to "eliminate in whole or in part" a "national, ethnic, or religious group," which excludes social and political groups, whereas crimes against humanity protects any group of persons against whom a state policy of persecution is directed and does not require a specific intent to eliminate the group in whole or in part.

Since the end of World War II, and with the establishment of the United Nations, a parallel development has taken place in the legal regime of international human rights law (HRL). Like IHL, HRL springs from the same commonly shared human values. Its norms and standards, however, apply in times of peace, but many of them also apply in times of war. For example, the right to life and the protection of physical integrity are protected under both IHL and HRL. Similarly, the protection of public and private property, cultural monuments and objects, and cultural heritage are equally protected under IHL and HRL. Other human rights may be curtailed in times of war or other national emergency. Thus there is an imperfect overlap between IHL and HRL.

Since the two legal regimes have different political constituencies, it is frequently argued by governments and military establishments that IHL should be kept separate and apart from HRL. Although that argument is methodologically appealing, it ignores the fact that HRL also applies in times of war, save for the human rights that may be suspended temporarily during wartime. If the aim is to protect persons and certain objects or property, then it makes little legal sense to have two superimposed and separate legal regimes whose ultimate goals and purposes, as well as specific protections are the same. A good example is the rights of victims to reparations and other forms of redress, which should not be distinguished on the basis of whether the violation occurs under IHL or HRL.

The inclusion within the meaning of IHL of violations of the law of armed conflict (whether they be called "war crimes" or "grave breaches" of the Geneva Conventions or "violations" of Common Article 3 of the Geneva Conventions and Protocol II), crimes against humanity, and genocide is conceptually justified from a humanistic perspective, namely, that of the protection of persons from certain depredations. For the same reason, HRL should also be integrated in a single legal regime. Suffice it to recall that torture is prohibited under HRL by the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment, which criminalizes acts of torture. It is also prohibited under IHL by both conventional and customary international law, and is a "grave breach" of the Geneva Conventions, as well as a war crime. Other protections of life and physical integrity contained in IHL and HRL also evidence this

conclusion. Since the goals and purposes of IHL and HRL are the protection of persons, it should make no difference whether the context is one of war or peace, or whether it is that of a conflict of an international or noninternational character, or a minor internal conflict.

The International Court of Justice, in an advisory opinion rendered in July 2004, held as follows: "the Court considers that the protection offered by human rights conventions does not cease in case of armed conflicts as regards the relationship between international humanitarian law and human rights law, some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law." The International Court of Justice concluded that human rights law is the general applicable law and that international humanitarian law is the lex specialis.

SEE ALSO Crimes Against Humanity; Geneva Conventions on the Protection of Victims of War; Genocide; Hague Conventions of 1907; Human Rights

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M. Cherif Bassiouni

Human Rights

Human rights can mean different things to different people, but perhaps the best way of defining human rights is to refer to the body of international human rights law that has come into being over the past five decades. Today, there are literally thousands of ratifications to dozens of human rights treaties—coming out of every region of the world. Solemn declarations by political leaders and others reinforce this international legal regime, and there are numerous institutions that have been created to oversee its implementation. The most broadly based treaties are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights—each of which has been ratified by approximately 150 countries. Regional human rights systems exist in Europe, Africa, and the Americas. Other more specialized treaties deal with human rights violations that center on racial discrimination, women, children, migrant workers, torture, minorities, and labor rights.

The United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) was adopted by the UN General Assembly on December 9, 1948, a day before its seminal adoption of the Universal Declaration of Human Rights. The Genocide Convention might be thought of as the first contemporary "human rights" convention, although earlier international treaties addressed concerns such as the slave trade, trafficking in women, and workers' rights.

Genocide is a particular form of mass killing, and it may be the ultimate human rights violation, since it is directed not only against individuals but against the communities to which those individuals belong. In addition, the Genocide Convention codified genocide as an international crime, and placed international legal obligations on states to prevent and punish that crime. This dual character—as human rights violation and international crime—renders genocide almost unique; only the international treatment of the crime of torture, which came about much later, is similar.

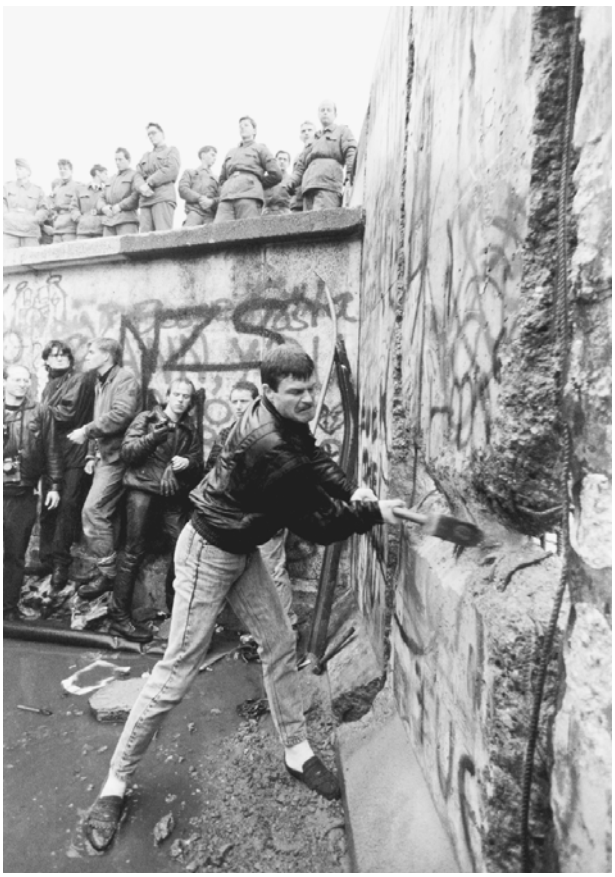
The Human Rights Content of the Genocide Convention

The Genocide Convention deals only with the most serious kinds of human rights violations, although its adoption in 1948 was a landmark in the evolution of protection for human rights. Today, however, conduct outlawed by the Genocide Convention is also effectively prohibited under later treaties, which do not contain the unique requirement of intent that characterizes the crime of genocide in the Genocide Convention. Thus, genocide would be prohibited today under international human rights law, even if the Genocide Convention did not exist.

The parallels between human rights as articulated in the Genocide Convention and more contemporary definitions of human rights are clear. As defined in Article 2 of the Genocide Convention, the crime of genocide takes in:

- "killing," which would be defined in human rights language as violation of the right to life
- "causing serious bodily or mental harm," which violates security of person and is also likely to constitute torture or inhuman or degrading treatment
- "inflicting on the group conditions of life calculated to bring about its physical destruction," which also constitutes arbitrary deprivation of life
- "preventing births within the group," which interferes with the rights to privacy and family
- "forcibly transferring children of the group to another group," which violates the rights to privacy and family, as well as the rights of the child

The right to life is obviously fundamental to all other human rights. At the same time, however, it is not an absolute concept, and it is only the "arbitrary" deprivation of life that is prohibited in the convention. For example, it is possible to imagine circumstances in which a state's killing of a person would be both morally and legally permissible, and some human rights treaties carefully codify such exceptions. Under Article 2 of the European Convention on Human Rights, for example, a government may execute a duly convicted prisoner (although a later amendment to this convention abolishes capital punishment). In addition, deadly force may be used if it is "absolutely necessary" to protect a person from unlawful violence, to effect a lawful arrest or prevent the escape of a lawfully held prisoner, or to quell a riot. Other treaties, such as the International Covenant on Civil and Political Rights (Civil and Political Covenant), simply prohibit arbitrary killing, implying that there are some circumstances in which the use of deadly force may not be arbitrary and therefore may be justifiable.



The failure of the USSR to sponsor or support the Universal Declaration of Human Rights in the decades following 1948 played a role in delegitimizing the communist regime and even contributed to its demise. Here, a man with a sledgehammer whacks at the Berlin wall (whose dismantling became a symbol of the cold war's end). [REUTERS NEWMEDIA INC./CORBIS]

There are many difficult concepts that lie at the edges of international formulations of the right to life: Does the right to life imply interventionist duties on the part of the state? Does the right to life affect the issues of abortion or suicide? Is capital punishment always prohibited? Under what specific conditions is the use of deadly force by law enforcement officials permissible? The provision (pertaining to the right to life) in the Genocide Convention, on the other hand, is relatively clear: Killing members of a group identified in the convention is prohibited. Because genocide, as formulated in the convention, also requires an "intent to destroy," genocidal killings are by definition committed deliberately, and attempts to destroy a group and its members cannot be justified under any of the exemptions from the crime of genocide enunciated in other treaties. Indeed, Article 6.3 of the Civil and Political Covenant specifically provides that the covenant cannot be interpreted as taking away from or lessening in any way the

A journalist/filmmaker has been allowed to set up inside Abu Ghraib and to film some of its operations on May 10, 2004—approximately two weeks after the infamous photographs of the U.S. abuse and torture of Iraqi prisoners had first come to light and provoked an international outcry. A May 2004 report of the International Red Cross cited estimates by U.S. Army intelligence officers that 70 to 90 percent of the prison's earlier inmates had been innocent civilians. **[AP/WIDE WORLD PHOTOS]**

obligations that states have assumed under the Genocide Convention.

Imposing "conditions of life" calculated to destroy a group also constitutes an arbitrary deprivation of life, even if that imposition is accomplished in an indirect manner. Deliberately starving a population or infecting it with a fatal disease violates international human rights norms; when these deeds are carried out for the purpose of destroying a group protected under the Genocide Convention, in whole or in part, they also constitute genocide.

"Security of person" protects individuals from treatment that might seriously injure them but not cause death. Such treatment is prohibited, whether it occurs while a person is in custody or under any other circumstances. Accordingly, all persons held in prisons or other detention facilities should be treated with respect, whether they have been convicted of a crime or only accused of one.

Domestic law (in many nations) usually prohibits the physical ill-treatment of any persons by government officials, and violation of this prohibition may result in compensation being paid to the victim or to dismissal of criminal charges. The international standard is not as all-encompassing, however, and the usual formulation prohibits only those acts that constitute "torture or inhuman or degrading treatment or punishment." There have been many attempts to shed light on these phrases in court cases, but there is no doubt that the "serious bodily or mental harm" that is prohibited under the Genocide Convention would be included within this broader international prohibition against ill-treatment.

"Rights to family and privacy" are also part of international human rights law, even though they may not be specifically protected under all domestic legal systems. The Civil and Political Covenant refers to the family as "the natural and fundamental group unit of

society" and recognizes the right to marry and to found a family. Similar provisions may be found in the African, American, and European human rights conventions. The right to found or raise a family obviously includes the right to have children, and attempting to prevent births against the wishes of the parents would clearly violate international human rights norms.

The right to privacy is specifically articulated in many human rights treaties. It has a public sphere, wherein one's honor and reputation should be protected from the libelous or slanderous statements or actions of others, and a private sphere, which would entail noninterference by government in such matters as lifestyle and the decision to have children. As is the case with other human rights, however, the right to privacy may be restricted to accommodate other legitimate concerns of citizenries; only "arbitrary or unlawful" interference with privacy is prohibited under the Civil and Political Covenant. The regional human rights treaties are more specific, permitting the placement of restrictions on the right to privacy when those restrictions are necessary to protect, for example, national security, public safety, public health, public morals, or the rights and freedoms of others. It is inconceivable that attempts to prevent births within a national, ethnical, racial, or religious group (as prohibited by the Genocide Convention) would fall within one of these permitted restrictions.

The "rights of the child" are referred to in general terms in all of the major human rights treaties. More important, they are now guaranteed by the International Convention on the Rights of the Child (Child Convention), which as of 2003 had been ratified by every country in the world except Somalia and the United States. The basic principles underlying this convention are: (1) the best interests of a child should guide any governmental action that affects that child; and (2) a child's rights and responsibilities should evolve as the child's own capacities evolve with age and maturity.

Under Article 9 of the Child Convention, it is possible for a child to be separated from his or her parents against the parents' will, but only ". . . when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case, such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence." Nothing in this formulation would justify transferring a child from one group to another group, as part of an effort to destroy the group from which the child is taken.

"Nondiscrimination" is at the heart of international human rights law, and the UN Charter itself states that human rights must be guaranteed to all, without distinction as to race, sex, language, or religion. Under human rights law, nondiscrimination is a separate norm, distinct from prohibitions against arbitrary killing or other ill treatment.

Under the Genocide Convention, however, discrimination and the attempt to destroy a group are implicitly linked. This linkage derives from the fact that it is not widespread killing per se that constitutes genocide—it is rather the attempt to destroy, in whole or in part, a national, ethnical, racial, or religious group. In contrast to the less restrictive characterizations of genocide that are part of international human rights norms, the Genocide Convention requires that three conditions must be obtained before an act rises to the level of the crime of genocide: [1] the commission of a prohibited act (killing, transferring children, imposing conditions of life, and so on) [2] with the intent of destroying a group [3] of a particular kind, that is, national, ethnical, racial, or religious. This restrictive formulation deliberately excludes from its scope the murder of political opponents and indiscriminate violence—although the widespread killing of individuals, whether or not the individuals belong to a particular group, surely violates contemporary human rights norms.

The prohibitions of the Genocide Convention are limited to acts calculated to destroy a group physically, and the convention fails to address issues of discrimination or cultural intolerance. Human rights norms have evolved to fill this gap, by recognizing special rights for certain kinds of minorities. Under Article 27 of the Civil and Political Covenant, for example, rights are granted to members of ethnic, linguistic, and religious minorities within states. In Europe, both linguistic and national minorities are protected by conventions and institutions created in the 1990s.

Modern formulations of minority rights include, among other things, the rights of minority group members to use their own language; to practice their own culture; to be educated in ways that will preserve and promote their distinct characteristics; and to participate effectively in the economic and political life of their society. In part, this broadening protection of minority rights is evidence that the mere prohibition of violence against minority groups is insufficient to protect them and to promote tolerance and diversity. But when these rights are respected, in spirit as well as letter, genocide is much less likely to occur.

Implementing Human Rights

Given the fact that the Genocide Convention was adopted in 1948, it is not surprising that it dealt only

with the most heinous kinds of human rights abuses. Unfortunately, its early adoption also meant that a consensus could not be reached on how the convention might be implemented effectively—beyond the purely legal obligations imposed on states when they ratified it.

Today, human rights treaties generally have provisions that require the creation of institutions to oversee the implementation of those treaties. These institutions are usually composed of individual experts, rather than the diplomatic representatives of states, and their powers vary widely. Typically, human rights bodies are given the power (1) to periodically review and comment on reports submitted by state parties, in which the states describe how they are implementing the treaty in question and what problems they have encountered in doing so; (2) to receive, investigate, and determine the validity of allegations, made by individual victims or other state parties, that a state has violated its obligations under the treaty; (3) to investigate and report on the overall state of human rights in a particular country, outside the context of specific complaints; (4) [in the case of conventions on torture] to visit places of detention to ensure that ill-treatment is not occurring; (5) to interpret the treaty, often via the issuance of commentaries on specific rights or the scope of state obligations; and (6) to educate governments and the general public on the content of human rights law.

There are now three regional human rights courts. The European Court of Human Rights is the only permanent human rights body in the world, and every party to the European Convention on Human Rights is legally bound to obey the court's judgments. The judgments of the Inter-American Court of Human Rights are also legally binding (on parties to the American Convention on Human Rights), but acceptance of the court's jurisdiction by those parties is optional. The African Court on Human and Peoples' Rights was created in January 2004, although only a minority of African Union members has thus far accepted its jurisdiction.

Direct means of enforcing human rights treaties, such as the creation of bodies of experts and international tribunals, were unknown when the Genocide Convention was adopted in 1948, and the law that served as a model for the drafters of the convention was that of traditional international law between states. No specialized institution to oversee the convention was provided for, and signatory states are under no obligation to provide reports on their conduct to any international body. Although states are legally required under general international law to abide by their obligations under the convention (pursuant to the doctrine of *pacta sunt servanda* [promises must be kept]), there is no forum automatically available to complainants that might hear complaints that a state is not fulfilling its obligations. In particular, individuals have no right under the Genocide Convention or customary international law to direct access to an international court or other body that could determine whether their rights have been violated.

Article 9 of the Genocide Convention does provide that disputes between the state parties, including disputes that have to do with the responsibility of a state for genocide that has been committed, or for allowing genocide to go unpunished, can be submitted to the International Court of Justice (ICJ) for resolution. Unfortunately, some states opted out of this provision by filing a reservation to the convention at the time they ratified it; the ICJ upheld this practice in a 1951 Advisory Opinion, even though the Convention does not specifically provide for it.

Despite the many instances of genocide and alleged genocide that have become apparent since 1948, only two petitions alleging a violation of the Geneva Convention have been submitted to the ICJ. Both grew out of the war in the former Yugoslavia in the 1990s, and they were filed against Serbia and Montenegro (by Croatia and Bosnia-Herzegovina). The omissions are only too obvious: Although Rwanda has been a party to the convention since 1975, it has not accepted Article 9 and thus could not be brought before the ICJ without the Rwandan government's special consent. Cambodia is a party to the convention and has accepted the court's jurisdiction, but no state was willing to challenge the conduct of the Khmer Rouge in the late 1970s by submitting a petition to the court, despite the efforts of many nongovernmental organizations to promote such an application.

Human Rights Crimes and Human Rights Violations

It is not uncommon to read references to human rights crimes in the press and other media, and many people view the newly created International Criminal Court (with headquarters in The Hague, Netherlands) as a human rights court. Such references are incorrect, however, and they blur a basic difference between (abrogations of) human rights per se and the international crime of genocide.

The protection of human rights is primarily an obligation of states or governments—those obligations stemming from international treaties and customary international law. While there are increasing efforts to impose moral or political obligations on corporations and other bodies in the private sphere to respect human rights, the obligation to promote and protect the

human rights of individuals over whose lives these bodies hold sway legally falls on states.

Although there are a few exceptions, international human rights law does not generally impose criminal liability on those who may be the individual agents of human rights violations. Neither the policeman who seizes a banned publication, nor the magistrate who sends an accused person to prison after an unfair trial, nor the bureaucrat who discriminates against a religious group in making social welfare payments is committing a crime under international law, even though each of these acts might constitute a human rights violation on the part of the government that the individual agent represents. One of the only exceptions to this principle is the crime of torture, which has been specifically designated as an international crime under both global and regional antitorture treaties.

The other major exception, of course, is genocide. Article 1 of the Genocide Convention begins by affirming that genocide "is a crime under international law which they [the parties to the treaty] undertake to prevent and punish." Articles 5 and 6 specify that states will adopt laws to ensure "effective penalties" for persons guilty of genocide, and that persons accused of genocide will be tried by the state in which the genocide occurred (or by an international tribunal).

The distinctions between human rights violations and individual crimes may help to explain the absence of provision for enforcement machinery in the Genocide Convention. There was no international criminal court in 1948, and one would not come into force until more than fifty years later. Thus, because the criminal prosecutions called for under the convention could only be carried out by national authorities, the drafters may have felt that there was no need to create a new international oversight body.

Treaty formulations of the particularly heinous conduct called genocide have more common ground with the concept of a war crime or crime against humanity, rather than the typical human rights violation. For example, some types of conduct that take place within the context of an armed conflict are criminalized in the 1949 Geneva Conventions, and states must punish those who commit grave breaches of the laws of war. As was true for the Genocide Convention, the 1949 Geneva Conventions set up no new mechanisms to monitor the implementation of the provisions of the conventions, and enforcement was left to domestic law.

More direct international enforcement of international criminal norms was not achieved until 2002, when the Rome Statute of the International Criminal Court (ICC) entered into force. The Rome Statute confers on the ICC jurisdiction over the crime of aggression, war crimes, crimes against humanity, and genocide. Human rights violations per se are not addressed under the ICC Statute, although the crimes it enumerates, if committed or tolerated by a government, would also constitute violations of a state's obligations under international human rights law.

Of course, the impact on victims is the same, whether, technically, they are victims of crime or of a human rights violation. But a verdict of genocide demands that there be an element of conscious intent (to destroy a protected group), which is absent from definitions of human rights obligations. The various international oversight bodies created to monitor the implementation of human rights treaties do not need to inquire into the motives of those responsible for alleged human rights violations. It is enough if government actions do violate international norms; those governments need not also intend to commit the violation.

This element of specific intent is what often leads lawyers and diplomats to contend with one another over whether a situation in which large numbers of people are being killed constitutes "genocide." The presence (or absence) of conscious intent in the human rights context is irrelevant, since "arbitrary" killings are prohibited no matter what their motivation(s). Every state is required to protect people under their jurisdiction from wholesale violations of the right to life, whether or not the deaths result from a discriminatory or genocidal motivation.

Conclusion

At the time it was adopted, the Genocide Convention was a milestone in international law, as it set limits on what a state was allowed to do within its own borders to its own citizens. Today, the international attention that is garnered by the internal affairs of states is familiar. The acts that constitute genocide are now illegal under a variety of domestic and international legal regimes.

At the same time, *genocide* remains an emotive word, as it evokes the horrors of the Nazi Holocaust and the end-of-century killings in Rwanda. Diplomats avoid its use, fearing the political consequences of identifying murderous events as genocide in instances in which they are unable or unwilling to stop the events. For opposite reasons, activists (oblivious to or wishing to reject genocide's actual definition in the Genocide Convention) attach the label of genocide to almost any killing of an identifiable group of people.

Legalistic and diplomatic debates over what constitutes genocide usually obscure the real question, which is—how the international community should react to

widespread human rights violations or losses of life, whether or not the criminal actions meet the strict requirements of the Genocide Convention. Today, there is no concrete international law that permits the use of armed intervention in the prevention of serious human rights violations, although Rwanda and the Balkan wars have inspired a burst of scholarly and political commentary on this issue. Those who support intervention in extreme circumstances certainly believe that halting ongoing or imminent genocide justifies the use of force, but the limiting of intervention to genocide as it is defined in statutes may negate or nullify the principle of intervention. There is, as yet, no consensus on what criteria might justify intervention, who should authorize it, and by whom intervention might be carried out.

Despite its symbolic importance, genocide is now only one of many harms that international law seeks to prevent. Whether or not genocide was committed in Cambodia, Ethiopia, or the former Yugoslavia is less important than the fact that government-sponsored terror in these countries resulted in the deaths of millions of people. Rather than argue about what to call the killings, advocates should focus on how to prevent them and how to stop them if they recur. Protecting the lives of those at risk, for whatever reason—and continuing the daily task of promoting the human rights of tolerance, participation, and free expression—is more likely to accomplish the humanitarian goals of those who first sought to outlaw genocide.

SEE ALSO Humanitarian Law; International Law

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Identification

The defining feature of the crime of genocide is the deliberate destruction of a group. That the term *genocide* denotes group destruction is evident in the term itself: Sensing that no word captured the horror of Nazi atrocities, Polish attorney Raphael Lemkin coined the term from the ancient Greek *genos* (meaning race, nation, or tribe) and the Latin suffix *cide* (meaning "killing") (1947, p. 147). Article II of the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter referred to as the 1948 UN Genocide Convention) thus describes genocide as the commission of a specified act or acts "with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." Murder motivated by hatred of one person, as opposed to hatred of the group of which the person is a member, does not comport with this definition. Nor does the deliberate starvation of others, unless the perpetrator deprives victims of food for the purpose of eradicating the group to which the victims belong. There is no doubt that an action perpetrated against an individual can be criminal—in some cases, a crime against humanity. But such an action could not be genocide, the offense often called "the crime of crimes."

The designation of genocide as the supreme crime recognizes the importance of human grouping. Much of human rights law focuses on the autonomy, security, and development of the individual; accordingly, many human rights norms are intended to protect the individual against mistreatment at the hands of those in positions of power. Yet even classical liberals, whose work has provided a philosophical basis for human rights law, consider an individual's assimilation into a society a step toward the realization of individual human dignity. Human beings group together because of shared ideas and interests, and to work for common goals. The intentional destruction of a group—the essence of genocide—warrants the most severe condemnation for the very reason that it thwarts these ends.

Some have argued that all, or perhaps many, human collectivities should be counted as among those groups protected by bans on genocide. The drafters of the 1948 UN Genocide Convention thought otherwise, extending protection only to national, ethnical, racial, and religious groups, and thus excluding other groups, such as political, cultural, or social groups.

Group membership implies a common identity, shared attributes, and a sharing of ideas or beliefs with others. Group members may be linked by a single commonality, such as an affinity for jazz piano, or a passion for the local football team. Groups susceptible to the possibility of genocidal aggression and protected by the ban on genocide typically share unique complexes of traits. *Identification* denotes the process by which one of these complexes of shared attributes—this identity—is recognized. Group nonmembers, as well as members, participate in this process of creating group identity. With regard to genocide, the phenomenon of identification provokes two lines of inquiry: Is it the victim or the perpetrator of genocide who identifies the victim as belonging to a group? Does the subjective understanding of either, or both, suffice to establish group membership? Ad hoc international tribunals estab-

lished in the 1990s, set up to investigate violations of international criminal law, expressed ambivalence with regard to these questions.

In what was the first international judgment of conviction for the crime of genocide, the International Criminal Tribunal for Rwanda (ICTR) placed emphasis not on subjective perceptions but on objective factors. It thus interpreted the UN proscription against genocide to be applicable only to "'stable' groups, constituted in a permanent fashion," and to groups whose members belong to those groups "automatically, by birth, in a continuous and irremediable manner" (*Prosecutor v. Akayesu*, para. 511). This stable-and-permanent-group formula, as it came to be known, drew criticism. Many social scientists as well as biologists have in recent decades rejected claims that race is fixed and biologically determined; to the contrary, they have concluded that attributions of "race" derive from "social myth," formed in no small part by subjective perceptions (UNESCO Statement, 1950, p. 15). By the mid-1990s Professor Thomas K. Franck had posited a right of individuals "to compose their own identity by constructing the complex of loyalty references that best manifest *who they want to be*" (Franck, 1996, p. 383). Assignment of group status based on a search for constant and unchanging attributes clearly would run counter to this latter view of group identification as a dynamic process of social construction. The Rwanda tribunal's second decision thus underscored the subjective aspects of identity and group membership; in attempting to refine its concept of what constitutes a group, it wrote of "a group which distinguishes itself, as such (self-identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others)" (*Prosecutor v. Kayishema*, para. 98). This new emphasis won praise as "a welcome shift that takes into account the mutable and contingent nature of social perceptions, and does not reinforce perilous claims to authenticity in the field of ethnic and racial identities" (Verdirame, 2000, p. 594).

The 1948 UN Genocide Convention's definition of genocide, it would seem, rested only on the perpetrator's subjective perception. The UN proscription against genocide arose of a desire not just to punish those who succeeded in destroying groups, but more fundamentally to prevent such destruction from occurring in the future. The convention thus prohibits acts executed with the intent to destroy, and permits conviction even if those acts failed to wreak permanent harm on a group. The definition speaks of a group not as an independent and objectively demonstrable element, but rather of one's subjective belief in the existence of a group as a component of the mens rea (the guilty mind) that one must possess before one's crime qualifies as genocide. The text of the definition could be construed to mean that all that matters is the state of mind of the perpetrator; that is, that the element of the group is met as long as the perpetrator subjectively identified the victim as belonging to a group.

Wholly subjective determinations of group status could lead to absurd results, however. Surely there is a risk of overinclusion. Imagine a serial killer who, aiming to bring an end to the wearing of earrings, chose victims solely on the basis of whether they wore earrings. Earring-wearing could then be viewed as the shared attribute according to which the perpetrator subjectively grouped persons. To identify as composing a group persons who have never grouped themselves—who have never engaged in any of the joint human endeavors that the ban on genocide is supposed to shield—could result in a finding that genocide was "committed against a group that does not have any real objective existence" (Schabas, 2000, p. 110). Conversely, there is also a risk of underinclusion. Imagine a defendant who professed to be unaware of victims' group membership, who maintained that any such membership was coincidental to any violence that might have occurred. If all that mattered were the perpetrator's state of mind, this kind of testimony alone might lead to acquittal, even in the face of objective evidence that victims belonged to an identifiable and protected group. Decision on whether a defendant possessed the requisite malevolent intent, therefore, must entail an examination of more than just the defendant's own perceptions.

Evidence that relates to the subjective understandings of persons who identify with a group is thus key to the resolution of a victim's group status. As in the case of the perpetrator's perceptions, however, this criterion of victim perception ought not to provide the exclusive basis for identification. During the first fifty years that followed World War II, in the absence of any treaty that defined crimes against humanity, groups that had been the objects of certain kinds of violence endeavored to have their sufferings recognized as the aftereffects of genocide; even into the twenty-first century, conventional wisdom reserves its harshest condemnation for persons labeled *génocidaires*. But a desire to establish that victims belonged to a group protected by bans on genocide, and thus that their sufferings constituted a byproduct of genocide, could distort testimony regarding commonalities. In contrast with this risk of overinclusion, there is, again, a risk of underinclusion. Victims unaware that they were targeted because the perpetrator believed that they belonged to a group—victims who may not, in fact, have belonged to

any such group—would be unable to establish that they suffered harm on account of the perpetrator's group loathing.

Early tribunal judgments were not oblivious to these concerns; even those that emphasized one type of evidence gave at least passing attention to other types. Group status in the twenty-first century is determined by the comprehensive examination of a particular context. Considerable weight is placed on subjective perceptions. The defendant's understanding, manifested both by the defendant's testimony at trial and by things the defendant has written or told others, receives careful scrutiny. Also receiving careful scrutiny is testimony that victims saw themselves as belonging to a group, or that other group members claimed a victim as one of their own. Contextual inquiry likewise looks to objective indicators. The Rwanda tribunal, for example, recognized Tutsi as a group, in no small part because of the evidence adduced regarding identity cards that the Rwandan government had issued, cards that perpetrators used to confirm cardholders' ethnicity, as a means to select whom to victimize (*Prosecutor v. Akayesu*, paras. 83, 122–123, 170, 702; *Prosecutor v. Kayishema*, paras. 523–526). Similarly, the International Criminal Tribunal for the Former Yugoslavia, even as it refused to look for "scientifically irreproachable criteria," found objective evidence of victims' group status in the Yugoslav Constitution's description of Bosnian Muslims as a "nation" (*Prosecutor v. Krstic*, paras. 70, 559). Both tribunals relied on expert sociohistorical testimony to bolster their conclusions. In short, a combination of case-specific factors—subjective and objective evidence, evidence of self-identification and of other-identification—is relevant to resolution of whether a victim was identified as belonging to a group protected against genocide.

SEE ALSO Ethnic Groups; Racial Groups; Religious Groups

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Immunity

As a general rule of international law, states, some holders of high-ranking office in a state (such as heads of state or heads of government), and diplomatic and consular agents enjoy immunity from civil suits and criminal prosecutions inaugurated in other states (but not those inaugurated in international courts and tribunals). Many treaties, such as the Vienna Convention on Diplomatic Relations (April 18, 1961), the Vienna Convention on Consular Relations (April 24, 1963), and the New York Convention on Special Missions (December 8, 1969), guarantee this immunity. Immunities are meant to allow states and their representatives to engage in international relations as equal and independent entities. Thus, no state can be subject to legal proceedings in another state, as it would imply statuses of inferiority and superiority, or the subordination of one state to another.

A distinction is generally made between functional and personal immunities. Functional immunities cover the activities of any state official carried out in his official capacity—such as issuing passports or negotiating treaties. These activities are attributable to the state, and the individual cannot be held accountable for them, even after he leaves office. Personal immunities attach to the particular status of the holder of these immunities, such as the head of a diplomatic mission. They cover all activities carried out by the holder, but cease to apply when that particular status is concluded (with the exception, obviously, of activities covered by functional immunities).

Recent developments, in particular the establishment of international criminal tribunals and their statu-

tory provisions on immunities, as well as the occurrence of national proceedings against incumbent or former dignitaries, have raised questions about the scope of these traditional immunities. In particular, the applicability of the principle of immunity in the case of genocide, crimes against humanity, or war crimes has been seriously questioned. Some questions have been answered, other have not.

Genocide and Crimes Against Humanity

Article IV of the United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide (1948) states: "Persons committing genocide . . . shall be punished, whether they are constitutionally responsible rulers, public officials, or private individuals." Article 7 of the International Law Commission's (ILC's) Draft Code of Crimes Against the Peace and Security of Mankind (1996) states: "The official position of an individual who commits a crime against the peace and security of mankind, even if he acted as head of State or Government, does not relieve him of criminal responsibility or mitigate punishment." These and other authoritative sources clearly indicate that individuals committing crimes against humanity or acts of genocide are individually responsible for them. Even heads of State, when they commit, authorize, attempt, incite, or conspire to commit acts of genocide or crimes against humanity, are personally liable for their actions, their official positions notwithstanding.

But immunity from prosecution is distinct from legal obligation to obey the law, and legal responsibility and immunity are not necessarily irreconcilable. The first question therefore is whether a temporary, procedural bar of immunity applies in the case of international crimes. In its commentary on the abovementioned Draft Code, the ILC stated that Article 7 also aims to prevent an individual from invoking an official position as a circumstance conferring immunity on him, even if that individual claims that the acts constituting the crime were performed in the exercise of his functions.

Second, even if, in principle, the responsibility of dignitaries is accepted, it must be determined which jurisdiction or jurisdictions can prosecute a state or its representative. A judgment of the International Court of Justice (ICJ) of February 14, 2002 (pertaining to *Democratic Republic of the Congo (DRC) v. Belgium*, whereby the DRC launched proceedings against Belgium for issuing an arrest warrant against the DRC's acting minister for foreign affairs, Abdoulaye Yerodia Ndombasi (Mr. Yerodia), for alleged crimes constituting violations of international humanitarian law), distinguishes between international courts and the national jurisdictions of other states.

International Courts

The statutes of the Nuremberg and the Tokyo tribunals that were created in the aftermath of World War II both contained provisions stating that official immunities could not bar prosecution for genocide-related and other crimes in international courts. In its Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal (the so-called "Nuremberg Principles" of 1950), the ILC stated: "The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law" (Principle III). The statutes of the International Criminal Tribunal for the former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994), as well as the Special Court for Sierra Leone (2000), contain similar provisions.

The wording in Article 27 of the Rome Statute of the International Criminal Court (ICC, 1998) is even more precise (in rejecting the principle of selective immunity), as it clearly distinguishes between criminal responsibility and immunities, and covers both functional and personal immunities:

> 1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, [or] an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence. 2. Immunities or special procedure rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

One may conclude that there is a *lex specialis*, under customary international law, to the effect that, when charged with the offense of genocide, crimes against humanity, or war crimes by an international jurisdiction, no state official is entitled to functional or personal immunities.

For states parties to the ICC statute—as of early 2004, ninety-two states have ratified or acceded to this statute—Article 27 also has an important effect on national immunities law, even that which is established by constitutional law. Read in conjunction with Article 88 (specifically, that "States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part"), Article 27 imposes an obligation on the states parties to amend national legislation, even

constitutionally protected immunities of the head of state, in order to be in a position to comply with ICC orders for arrest or surrender.

In its judgment of February 14, 2002 (*Democratic Republic of the Congo v. Belgium*), the ICJ confirmed the annulment of some immunities before international courts. The court specifically mentions "criminal proceedings before certain international criminal courts, where they have jurisdiction" as one of the circumstances in which the immunity enjoyed under international law by an incumbent or former minister of foreign affairs does not represent a bar to criminal prosecution.

National Jurisdictions

One reading of the ICC statute, favored by Amnesty International and other members of the international coalition of nongovernmental organizations (NGOs) committed to achieving full support for the ICC, holds that the rejection of official immunities with respect to acts of genocide, crimes against humanity, and war crimes applies also to proceedings before national jurisdictions. This is considered to be a consequence of the principle of complementarity that is laid down in the ICC statute (in essence, that the primary role for prosecuting these international crimes remains at the national level), and of the absence of a separate provision in the statute on immunity before national courts.

National proceedings against former Chilean President Augustus Pinochet have also been cited as evidence of the emergence of a new rule of international law denying immunity. Pinochet was arrested in London, on the basis of two arrest warrants issued by U.K. magistrates at the request of Spanish courts for Pinochet's alleged responsibility for the murder of Spanish citizens in Chile, and for conspiracy to commit acts of torture, the taking of hostages, and murder. The alleged crimes were committed while Pinochet held office in Chile as head of state. In its judgment of March 24, 1999, the English House of Lords, which is in effect the country's Supreme Court, held that Pinochet was not entitled to immunity for acts of torture and conspiracy to commit torture, insofar as these acts were committed after the United Kingdom's ratification of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). As a result, extradition proceedings were allowed to continue. The judgment was welcomed by the international human rights movement as a great step in the international fight against impunity. However, the precedent value of this judgment is subject to various interpretations. The judgment did not cover the issue of personal immunities of incumbent heads of state. Some judges

Former Chilean dictator Augusto Pinochet under house arrest in London, January 16, 1999. National proceedings against Pinochet were cited as evidence of the emergence of a new rule of international law denying individuals immunity for certain crimes. [AP/WIDE WORLD PHOTOS]

expressed the opinion that if Pinochet had still been holding office at the time of his arrest, he would have been entitled to personal immunities and thus protected against arrest and extradition proceedings.

In the abovementioned *Democratic Republic of the Congo v. Belgium* (February 14, 2002), the ICJ ruled, in a thirteen-to-three vote, that the issuance and circulation of the arrest warrant by the Belgian investigating judge against the minister of foreign affairs of the DRC violated international law. The court found that, after a careful examination of state practice, it had been unable to find "any form of exception to the rule according immunity from criminal jurisdiction and inviolability to incumbent ministers for foreign affairs, where they are suspected of having committed war crimes or crimes against humanity." The court also noted that immunities could be invoked in national courts of a foreign state, even when those courts exercise jurisdiction under treaties that deal with the prevention and punishment of certain serious international crimes. The court added that although jurisdictional immunity may bar prosecution for a certain period of time, it does not exonerate the person to whom it applies from criminal responsibility. Emphasizing that immunity does not amount to impunity, the ICJ identified four circum-

stances under which immunities do not bar criminal prosecution. In the specific context of crimes against humanity, the first two circumstances (criminal prosecution before the domestic legal system or the existence of a waiver of immunity) are highly theoretical. In addition to the abovementioned circumstance of criminal proceedings before certain international criminal courts, the court also referred to the legal standing of former ministers foreign affairs: "[A]fter a person ceases to hold the office of Minister for Foreign Affairs . . . a court of one State may try a former Minister for Foreign Affairs of another State in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity."

Questions That Remain

Despite the illuminations of the ICJ judgment in *Democratic Republic of the Congo v. Belgium*, several issues remain unclear.

First, it is unclear as to which dignitaries enjoy immunity. The court spoke of the immunities that belong to (but not only to) "certain holders of high-ranking office in a State, such as the Head of State, Head of Government, and Minister for Foreign Affairs." In the ICJ judgment, there is no indication as to whether the same immunities apply to, for instance, a minister of defense, or of education, a state secretary of development cooperation, or a senator-for-life charged with international relations. International comity may require analogous treatment of some other dignitaries, but comity is no source of customary law and analogy is a poor basis on which to build legal rules.

Second, the nature and scope of "acts committed in a private capacity" are undetermined. The court seems to be suggesting—without elaboration or specification—that serious international crimes can be committed either in a private capacity or in an official capacity. The postulation of such a distinction is deplorable, and seems untenable within the specific context of international crimes. It would have been preferable for the court to add, as did several judges in a joint separate opinion and as did several members of the House of Lords in deciding the Pinochet case, that serious international crimes can never be regarded as acts committed in an official capacity because they are neither normal state functions nor functions that a state alone (in contrast to an individual) can perform.

Third, it is not clear what type of activities violate the immunities in question. In *Democratic Republic of the Congo v. Belgium*, the ICJ found that the issuance of an arrest warrant and its international circulation "significantly interfered with Mr. Yerodia's diplomatic activity," and as a result affected the DRC's international relations. In light of the rationale of the immunities, one might agree with those judges who found, to the contrary, that the mere launching of criminal investigations—which may include the hearing of witnesses—does not necessarily negatively affect the carrying out of of a state's international relations and, therefore, does not in itself violate international law on immunities.

Fourth, the ICJ judgment does not address the issue of how this immunities regime applies in the case of criminal prosecutions before criminal tribunals that are located in between the national and international legal orders, such as the Special Court for Sierra Leone.

Finally, the ICJ judgment addresses the immunity of state representatives who have had criminal proceedings brought against them. It does not address the immunity of a state in the instance of civil actions filed against it and its representatives for monetary damages. In the case of *Al-Adsani v. the United Kingdom* (November 21, 2001), heard before the European Court of Human Rights, a Kuwaiti applicant, the victim of acts of torture in Kuwait, was denied the right to initiate civil compensation proceedings against Kuwait before a UK court on the basis of the UK's domestic State Immunity Act. With a majority vote of nine-to-eight, the court found no violation of Article 6, Section 1 (declaring the right of access to court) of the European Convention on Human Rights. The court argued as follows: "Notwithstanding the special character of the prohibition of torture in international law, the Court is unable to discern . . . any firm basis for concluding that, as a matter of international law, a State no longer enjoys immunity from civil suits in the courts of another State where acts of torture are alleged." The eight dissenting judges expressed the view that the prohibition of torture, as a peremptory rule of international law, should prevail over State immunity rules, which do not have the same peremptory character. In their view, the United Kingdom should have allowed the applicant to initiate a civil action against Kuwait.

SEE ALSO Amnesty; Convention on the Prevention and Punishment of Genocide; Conventions Against Torture and Other Cruel, Inhuman and Degrading Treatment; International Court of Justice; International Criminal Court; Pinochet, Augusto; Prosecution; Sierra Leone Special Court; War Crimes

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Impunity

Generally speaking, *impunity* refers to an offender escaping punishment for an offense that involves a particular form of harm inflicted on an offended party. Such an outcome often is due to the same conditions contributing to the offensive act in the first place. A favorable vantage ground enables a perpetrator not only to commit an offense but also to elude punishment. The related vulnerability of the victim is part of the same equation. However, when transposing this portrayal to the level of intergroup conflicts capable of culminating in crimes against humanity and genocide, a paradigm of impunity becomes discernible. The relationship of the favorable vantage ground of the offender to the vulnerability of the victim yields the principle of disparity in power relations. Within this framework, the offender, seen as relying on his power advantage, seeks and often attains impunity through the artful exercise of power politics. The methods used may include an assortment of tactics of outright denial, blame transfer, trade-offs through deal-making, intimidation, suppression of evidence, manipulative persuasion, and manipulative dissuasion. Closely related to this practice is the incidence of a culture of general indifference to the offenses at issue that is sustained by growing multitudes of bystanders. Impunity is, accordingly, seen here as intimately connected with the phenomenon of inaction that is being indulged in face of and in the wake of crimes against humanity and genocide. Accordingly, two areas emerge as of paramount importance for the understanding of the consequences of such impunity.

In the area of social psychology these consequences are related first of all to the lingering plight of the victim population and over time to their progeny. At issue is not only the matter of denial of justice that impunity implies, but also problems of residual collective trauma, frustration, bitterness, and even a pathos for revenge. Equally important, however, are the social and psychological effects of impunity bearing on the perpetrator group and those identified with it. Free from the claws of punitive justice and/or the onus of general public condemnation, these people tend to become sufficiently emboldened to twist the facts by redefining at will their offenses. Accordingly, the offenses are suppressed by a variety of methods, rationalized, minimized, or dismissed altogether. The resulting denial complex in extreme cases may also include rebutting the right of others either to question the denial or to condemn it. Inherent in this frame of mind is the tendency to perpetrate in the future similar and perhaps even more grave offenses involving genocidal violence.

The most severe consequences implicit in impunity in this respect are likely to materialize, however, when inaction incrementally becomes part of a political culture in certain areas of international relations and therefore becomes predictable. Historically speaking, this practice of predictable inaction often served as a signal for permissiveness in default. The Sultan Abdul Hamit–era Armenian massacres in the period from 1894 to 1896, their sequel, the 1909 Adana massacre, and the progressive escalation of the tempo and scope of these episodic massacres that culminated in the World War I Armenian genocide epitomize this fundamental fact. Devoid of requisite inhibitions and lacking a weighty sense of remorse, successive Ottoman governments, armed with a legacy of impunity, proceeded to decimate and ultimately destroy the bulk of their subject Armenian population.

Still, acts of genocide rarely manage to eradicate completely the targeted victim group. More often than not the survivors and their progeny remain hostage to the post-genocide incubus of haunting images and memories. The persistent tensions and animosities ob-

taining between Armenians and Turks, for example, remain fertile soil for the eruption of new cataclysms. Such a possibility is due to the negative reward of impunity accruing to the perpetrators of the Armenian genocide and indirectly to their heirs identified with modern Turkey.

The mitigation, if not elimination altogether, of the problem of impunity through the initiation of institutional remedies involving legal-criminal procedures is therefore of utmost relevance. Of particular concern in this respect are the matters of prevention and punishment of crimes against humanity and of genocide. Impunity as a factor can be reduced to irrelevance when a culture of punishment becomes established and its successful practice functions as a deterrent, thereby paving the ground for prevention. Institutionalized retributive justice is seen here as a principal instrument of remedy against impunity. Yet existing systems of such justice in the past have been handicapped by a whole gamut of problematic subsidiary instruments.

Notable in this respect is the lack of appropriate legislation establishing codes relative to crimes against humanity and genocide; an international criminal court competent to deal with these offenses and administer appropriate justice; operative connectedness between international laws as embedded in certain treaties, and national municipal laws.

These and other inadequacies were cast in stark relief in a series of post–World War I criminal proceedings launched against a whole series of Turkish and German offenders charged with offenses akin to crimes against humanity and genocide. As a result, the national (or domestic) criminal trials in Istanbul (1919–1921) and Leipzig (1921–1922), initiated under the pressure of the victorious Allies bearing down on defeated Turkey and Germany, proved nearly total fiascos. Moreover, rejecting the legal grounds of competence of the courts involved, Holland and Germany refused to extradite Kaiser Wilhelm II and Talaat, respectively, the latter being the architect of the Armenian genocide. The general atmosphere surrounding these legal undertakings became even more clouded when many defendants sought impunity by invoking the principle of immunity. Specifically put forth in this respect were such claims of defense as act of state, superior orders, and sovereign immunity.

Following World War II, these and other technical impediments were gradually cast away through a series of criminal proceedings against offenders charged with not only aggression and war crimes but, above all, crimes against humanity and genocide. By enunciating the Nuremburg doctrine, the Nuremberg International Military Tribunal pioneered in this respect. Its Article 6c codified the new legal precept of "crimes against humanity," which included the companion legal precept of "genocide." This was achieved by adopting and incorporating the May 24, 1915 declaration of the Allies who, for the first time, publicly and formally enunciated that principle of "crimes against humanity" in warning the Ottoman-Turkish authorities in connection with the then unfolding Armenian genocide that after the war they would be prosecuted and punished. The subsequent promulgation of the 1948 UN Genocide Convention further codified these twin legal norms in a new body of international law. Pursuant to this convention, two ad hoc tribunals were instituted to deal with new crimes encompassing, in different combinations, genocide, aggression, war crimes, and crimes against humanity: the ICTY (International Criminal Tribunal for the Former Yugoslavia), in July 1994, and the ICTR (International Criminal Tribunal for Rwanda), in December 1994.

The inauguration in July to October of 1998 of the ICC (International Criminal Court) in Rome marks the apogee of this series of legal endeavors to substitute an international system of retributive justice for the pernicious practice of impunity. When defining crimes against humanity in Article 7, for example, the framers of the statutes of this new court deliberately provided a broad scope for interpreting such crimes. They thereby discarded two major defects in the body both of the Nuremberg Charter and of the UN Convention on Genocide. These defects involved (1) limiting the victim civilian population only to "national, ethnical, or religious" groups; and (2) insisting on the presence of genocidal "intent" in the motivation of perpetrators of genocide. However, the ICC is binding only for those nation-states that are signatories to the international treaty the ICC statutes represent. As of April 2004, 139 states had signed the treaty and there were 92 ratifications. Because only 60 ratifications were required, the treaty came into force as of July 1, 2002.

Unless administered with consistency and optimal results, no criminal justice system, whether domestic or international, can be considered meaningful and functional. Given the vagaries incident to international relations and the sway of a culture of political expediency in the handling of post-conflict situations, there is no certainty that an international criminal court armed with the best available criminal statutes can under all circumstances militate against impunity and deliver appropriate justice. The treatment of the Armenian case in Lausanne in 1923 is illustrative. Through a provision of general amnesty embedded in the respective peace treaty, the first major genocide of the twentieth century was nonchalantly consigned to oblivion.

This was repeated with the amnesty the Truth and Reconciliation Commission in South Africa accorded to "politically motivated" perpetrators in exchange for their willingness to provide "truthful" testimony. It appears that the intrusion of expedient politics in the administration of retributive justice will remain an abiding factor impeding the enforcement mechanisms and thereby handicapping the quest for predictable justice.

SEE ALSO Perpetrators

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Incas

The Incas emerged as a distinct group near present-day Cuzco in approximately 1200 CE. Although their expansion did not begin until 1438 under Pachacuti Inca, by the time the Spanish arrived about 1532 their empire, known as Tawantinsuyu, or the Land of the Four Quarters, extended from Northern Ecuador to Central Chile, a distance of some 3,500 kilometers.

The Incas emerged from conflicts between a number of competing polities in southern Peru and Bolivia. Military success, particularly against the Chanca, helped the Incas to believe that they were under the protection of the sun god, Inti, of whom the emperor was an earthly manifestation. As such, the Incas considered they were on a divine mission to bring civilization to those they conquered. Their expansion was also driven by the development of the royal mummy cult, according to which the lands owned by a dead emperor were needed to support his cult, thereby forcing the new emperor to acquire new lands for himself.

Inca expansion was brought about by military campaigns. Where possible, the Inca used diplomacy by offering gifts to native lords in return for submission to Inca rule. The vast Inca armies, which might have numbered tens of thousands of soldiers, probably intimidated many groups into submission, but others fiercely resisted. This resistance resulted in considerable loss of life. Successful campaigns were concluded by triumphal marches in Cuzco, where the army displayed its trophies and prisoners of war, and subsequently received gifts of gold, cloth, land, or women. Important defeated leaders were executed and their skulls made into trophy cups, and soldiers often used the bones of the enemy for flutes or made the skins of flayed prisoners into drums. Little punishment was exacted on subjugated societies as a whole, except where resistance was fierce or they subsequently rebelled, in which case Inca reprisals were swift and harsh. It has been estimated that between 20,000 and 50,000 and Cayambe and Caranqui were massacred at Yaguarcocha, in northern Ecuador, in revenge for their resistance. To ensure the subjugation of conquered peoples, the Incas established garrisons and undertook massive resettlement schemes that involved the transfer of rebellious groups nearer to the Inca heartland. To further this end, loyal subjects were also moved to regions where Inca control was more tenuous.

Pre-Columbian ruins at Machu Picchu, the center of Inca culture set high in the Andes Mountains of Peru. When the ruins were discovered in 1911, anthropologists found evidence of winding roads, irrigation systems, agricultural storehouses, and landscaped terraces. [ROYALTY FREE/CORBIS]

The emperor or other high-ranking nobles led Inca military campaigns. The professional army comprised the emperor's bodyguard of several thousand soldiers and captains drawn from among the Inca nobility. For military campaigns, local leaders mustered soldiers through a rotational system of labor service called the *mit'a*. Military training began at an early age, and all able-bodied males were required to do military service. Led by their native rulers, these groups of soldiers would link up with campaign armies as they passed through their territories. In this way, armies of tens of thousands of soldiers, and on occasion, in excess of 200,000, were mustered. Storehouses and lodgings strategically placed along the Inca highways facilitated the movement of troops.

Spanish conquest of the Inca Empire was relatively swift, although the last Inca ruler, Tupac Amaru I, was not executed until 1572. The Spanish possessed certain military advantages over the Incas. The Incas knew how to produce bronze, but did not make widespread use of it for weapons, which were largely made of stone. These included stone tipped spears, bows and arrows, clubs, and slings. The Inca also used stone boulders to ambush enemies in narrow passes. Inca stone weapons made little impression on Spanish steel armor, while their own cotton quilted armor and shields of hide or wood provided little protection against Spanish steel swords. Although the Spanish possessed harquebuses and sometimes cannon, these were unwieldy and only accurate over short distances. More critical were horses, both for the terror they inspired among the Inca, who had never before seen them, and for their speed and maneuverability. They were considered to be worth one hundred men in battle, and they could be used effectively on the Inca highways, facilitating the rapid movement of troops, supplies, and information.

Inca military strategy also proved to have limitations in conflicts with Spaniards. Inca strategy was carefully thought out and was imbued with symbolism and ritual. Hence, Inca attacks were often conducted at the full moon and, in respect for the lunar deity, fighting ceased at the new moon. The Incas were therefore unprepared for Spanish attacks that appeared to follow no ritualized pattern. The Spanish often used surprise tactics effectively, for example, in the capture of the Inca leader Atahualpa at Cajamarca in 1533. Neverthe-

less the Incas were quick to adapt to the new external threat and often used local geographical knowledge to mount ambushes or to lure the enemy to terrain that was not suitable for the deployment of horses or for open battle, which was favored by the Spanish.

Even though the Spanish may have possessed certain military advantages, most scholars believe that conquest was greatly facilitated by epidemic disease and political conflicts within the Inca Empire that weakened native resistance. In 1525, smallpox arrived in the Andes ahead of the Spanish, probably through native trade networks. This resulted in high mortality, because the Incas lacked immunity to Old World diseases. It was also the cause of the death of the Inca emperor Huayna Capac, which precipitated a dynastic war between his sons, Huascar and Atahualpa. This war was raging when the Spanish arrived.

Spanish rule brought major transformations to native economies and societies. The Spanish sought wealth, primarily from mining gold and silver, and they attempted to convert native Andeans to Christianity. During this process they congregated the Indians into new towns, subjected them to tribute and forced labor, and usurped their lands. Due to epidemic disease, conquest, and changes to native societies, by 1620 the population of Peru alone had fallen from approximately 9 million in 1532 to only about 670,000.

Some people argue that even without the Spanish arrival, the Inca Empire would have collapsed. Its continued expansion depended on a supply of gifts to satisfy subjugated lords and reward those who had taken part in military campaigns. The burden of supplying goods and soldiers increasingly undermined native production and the power of native lords, straining their loyalty to the Inca cause. Indeed, some local groups even became Spanish allies. When the Spanish arrived, the Inca Empire had clearly become overextended.

SEE ALSO Indigenous Peoples; Peru

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In July 1533 Francisco Pizarro ordered his Spanish Conquistadors to execute Atahualpa, the last independent Inca king in Peru. Engraving by Alonzo Chappel, eighteenth-century American artist. **[BETTMANN/CORBIS]**

Incitement

Incitement to commit an offense is an attempt to persuade another person, by whatever means, to commit an offense. There are many ways of doing this. Both rewards and punishments can provide the incentive to commit crimes. Someone can offer a reward for committing genocide, or they can try to blackmail a person. Incitement can be achieved by threats. A person can also try to get others to commit an offense by the use of argument and rhetoric. "Rabble rousing" is a common method of used to convince large groups of people act to in a particular way. Inflammatory speeches in political rallies have been used to prepare the way for genocide, or to whip crowds into states of frenzy in

which killings may easily occur. The drafters of the genocide convention knew this all too well, and therefore included incitement to commit genocide as a listed crime in the 1948 Convention.

The Nature of the Crime of Incitement

Direct and public incitement to commit genocide is criminalized in Article III(c) of the 1948 Genocide Convention. A provision akin to Article III(c) can be found in the Rome Statute of the International Criminal Court (Article 25(3)(e)). Incitement is one of a limited group of crimes related to genocide (the others are attempts at genocide and conspiracy to commit genocide) which do not require the commission of one of the genocidal acts set out in Article II of the 1948 Genocide Convention. Incitement, attempt and conspiracy are crimes in themselves. As none of these offenses require an act of genocide to be committed, they are referred to as inchoate (incomplete) crimes. Their incompleteness does not change the fact that they are criminal, as is clear from Article III of the 1948 Convention. However, incitements to commit crimes against humanity or war crimes are not internationally criminal unless they actually lead to the commission of those crimes.

The difference between incitement that does not lead to genocide (or is not proved to have done so) and encouragement that does lead to a crime is an important one. In the case of encouragement leading to an offense, the wrong is in participating in the crime of another by encouraging it. When the incitement does not lead to an offense by another person, the wrong is in the attempt to persuade someone else to commit the crime, as there is no other crime to be complicit in. The difference is not one which has always been respected by courts prosecuting people for acts that amount to incitement. This is probably because there is a considerable overlap between incitement to genocide and complicity in genocide. Therefore incitement can have a dual character, both as an inchoate crime, and, where it leads to others committing genocide, as a form of complicity in crimes of those others.

The History of Incitement to Genocide

The historical background against which Article III(c) of the Genocide Convention was drafted was the trial in the Nuremberg International Military Tribunal of two Nazi propagandists, Julius Streicher and Hans Fritzsche. Streicher was convicted of crimes against humanity by that tribunal, and sentenced to death. Fritzsche was acquitted. Streicher edited the newspaper *Der Stürmer*. *Der Stürmer* was, in both the literal and metaphorical sense, obscene. It mixed vicious anti-Semitism with pornography. Streicher was obsessed with the idea that the Jewish population represented a threat to the "purity" of the "Aryan race."

Streicher's fantasies were not the basis of his conviction at Nuremberg, however. Instead, it was charged that his writings "infected the German mind with the virus of anti-Semitism" and also advocated participation in the Holocaust. Before the war he was an ardent anti-Semite. In 1939 he continued his campaign of hatred and advocacy of the Holocaust in a leading article in *Der Stürmer*, which read:

> A punitive expedition must come against the Jews in Russia. A punitive expedition which will provide the same fate for them that every criminal and murderer must expect: Death sentence and execution. The Jews in Russia must be killed. They must be exterminated root and branch.

The fact that he made such statements when he knew that the Holocaust was being perpetrated was sufficient for the judges at the Nuremberg International Military Tribunal to sentence him to hang. This was not, strictly speaking, for incitement to genocide. It was prosecuted as complicity in crimes against humanity rather than as an inchoate crime of incitement.

Streicher's conviction has not gone without criticism. Telford Taylor, chief counsel at the later American trials in Nuremberg, did not condone Streicher's actions, but he nonetheless criticized the judges for having allowed their personal disgust for him to lead them to convict him of participating in crimes against humanity without due regard for determining on what principles he was liable. Streicher could easily have been found guilty of inciting genocide, had the offense existed at the time.

Fritzsche was a radio propagandist, best known for his program "Hans Fritzsche speaks," in which he manifested his anti-Semitism. He escaped conviction before the Nuremberg International Military Tribunal because, despite the anti-Semitic thrust of his radio work, he did not advocate the physical destruction of the European Jews. In the words of the Nuremberg International Military Tribunal, Fritzsche's claims that "the war had been caused by Jews and . . . their fate had turned out 'as unpleasant as the Führer had predicted' . . . did not urge persecution or extermination of Jews." The tribunal determined that Fritzsche's broadcasts constituted propaganda for Hitler and the war, rather than direct incitement to participate in the Holocaust. The distinction between the two may not always be clear.

Infamous examples of incitement to genocide occurred in Rwanda, in which mass media, in particular radio, was used to prepare the ground for, then encour-

age, the genocide against the Tutsi people in 1994. The use of radio was particularly important because a large part of the Rwandan population was illiterate, and therefore earlier attempts to encourage genocide in Rwanda through newspaper editorials failed to reach many people.

The most well-known Rwandan radio station was Radio Télévision Libre Mille-Collines (RTLM). This popular station was known for its informal style and comments such as "the graves are half full, who will help us fill them?" during the genocide. Throughout the genocide in 1994, RTLM broadcast dehumanizing propaganda against Tutsis, gave out information about where Tutsis could be found still alive or hiding, and encouraged people to kill them. In the *Media* trial, the International Criminal Tribunal for Rwanda (ICTR) convicted two of the founders of RTLM, Ferdinand Nahimana and Jean-Bosco Barayagwiza, of incitement to commit genocide in December 2003. They received sentences of life and 35 years imprisonment, respectively. In paragraph 1031 of the judgement, the Trial Chamber described RTLM as "a drumbeat, calling on listeners to take action against the enemy and enemy accomplices," and in paragraph 486 said that through ethnic stereotyping RTLM promoted hatred and contempt for Tutsis. As an illustration of this stereotyping, and its incitement to violence, the Trial Chamber referred to a broadcast of June 4, 1994, in which the announcer said, "just look at his small nose and then break it," referring to an ethnic stereotype of Tutsi physical appearance.

The activities of RTLM also gave rise to controversies about whether or not such stations should be jammed, or prevented from broadcasting by force. Neither happened to RTLM, but when RTS (Radio-Television Serbia) was bombed in the 1999 Kosovo conflict, some justified the bombing on the basis that it was a propaganda organ for the Milosevic regime. The argument proved very controversial, and most commentators seeking to defend the lawfulness of bombing the RTS incorporated the propaganda claim with the charge that RTS was also part of a military information system.

Klan member in Reidsville, North Carolina, October 1989, attempting to garner support for the group's participation in a local Adopt-a-Highway program (whereby civic organizations clean roadside litter for official recognition). More inflammatory Klan speeches have urged racial hatred and violence. [JIM MCDONALD/CORBIS]

Criminalization of Incitement and the Harm Principle

It is a foundational principle of criminal law that for something to be criminalized there must be some form of relationship between that conduct and harm to others. A conviction for incitement to genocide does not require that anybody who hears, reads, or is exposed to the incitement be offended by it. Indeed, in many incidences of direct and public incitement to commit genocide, those who are being subject to the incitement agree with the sentiments that are being passed on. Thus, offensiveness alone cannot be a basis for criminalizing incitement. The justification must be found in the harm it causes.

The harm caused by incitement cannot be the harm involved in the actual crime of genocide, however, because the latter crime does not have to be committed for incitement to have occurred. If it did, there would be no appreciable difference between incitement and successful encouragement to commit genocide. Rather, the main type of harm that justifies the criminalization of incitement is that it creates the risk of commission of the final crime of genocide by those incited. Just because the final harm—the actual commission of an act of genocide—has not concretely manifested itself, the criminal law against incitement is not impotent. Subjecting any person (or a group) to an un-

warranted risk of harm is, in itself, violating the right of that person or group not to be wrongfully endangered. Although incitement results in a more remote form of harm than that caused by complete acts of genocide, its criminalization is justified on the grounds that it is a form of harm nonetheless.

It can be argued that someone who has tried, but failed, to get a person, a crowd, or even a country, to commit genocide is morally indistinguishable from someone who has successfully encouraged genocide. The only difference between success and failure is the actions of other people, who are responsible for their own actions. Therefore, if the criminal law is to be consistent, it should not criminalize successful incitements and ignore unsuccessful ones.

Criminalizing incitement to commit genocide allows the criminal law to intervene at an earlier stage than the actual attempts to commit the genocidal acts mentioned in Article II of the Genocide Convention. Genocide is an extremely serious, if not the most serious, international crime. It is better to prevent its commission at an early stage than to delay prosecution until after people have been killed. Genocide is usually a crime committed by a number of people at the instigation of smaller number of ringleaders. It usually takes some time to persuade people to commit genocide, with repeated propaganda against the targeted group. Therefore it is a good idea for the law to seek to bring an end to genocidal plans as soon as they have manifested themselves. It is by no means clear that a similar logic should not apply to other serious offenses, namely crimes against humanity and genocide.

Such arguments did not sway the drafters of the Rome Statute, however, so the International Criminal Court has no jurisdiction to prosecute those who directly and publicly, albeit unsuccessfully, incite war crimes or crimes against humanity, but is instead limited to the prosecution of specific incitements to genocide. However, incitement to particular examples of war crimes and crimes against humanity may be as serious as some instances of incitement to genocide. If a sadistic person sought to persuade others to drop a nuclear device on a city which would kill 100,000 people, for motives of personal pleasure or in order to persecute, rather than eliminate, a group, the act he or she seeks to incite would not meet the formal definition of genocide. Yet the act being encouraged is not much less serious than certain examples of genocide. There is perhaps some justification in the idea that genocide, with its eliminationist mental element, is simply different from other crimes, and should thus be treated differently. The question is whether genocide is sufficiently different from war crimes and crimes against humanity to justify that only incitements to genocide are serious enough to be criminalized.

Freedom of Speech and Incitement

There is a countervailing interest to the protection of the right of groups to exist that serves to narrow down the scope of the criminal prohibition of incitement. This interest underlies the limitations that the incitement must be "direct" and "public" and that the mental element required is very high. That interest is encapsulated in the right to freedom of speech. Most national human rights documents include a right of free speech. The first amendment to the U.S. Constitution is an example of such a provision. The right is also protected at the international level, most notably in Article 19 of the 1966 International Covenant on Civil and Political Rights (ICTR). The principle of free speech and the desire to prevent racism and genocide pull in different directions. It is not easy to determine precisely where the line between acceptable and unacceptable abridgments of the right of free speech lies.

The drafters of the Genocide Convention were mindful of this difficulty. The United States, for example, was uncertain about the need for a provision on incitement in the Genocide Convention. United States delegates involved in the drafting of the Genocide Convention pointed to the possibility of using incitement laws to illegitimately stifle the press. Cold War considerations played a role in this debate, for the Soviet Union was a strong advocate of an expansive incitement provision, and the U.S. delegation feared that it would use the provision as an excuse to suppress dissent. A majority of states favored retaining some form of incitement provision, however, and thus a compromise led to Article III(c) being included in the convention.

It does not unduly infringe the right of free speech to criminalize incitement of serious crimes, as the right of free speech, important as it is, has to be balanced with the rights of others. After recognizing the right of free expression, Article 19 of the International Covenant on Civil and Political Rights provides that the right may be limited in certain circumstances, when such limits were necessary to ensure the rights and freedoms of others. Article 20(2) of the International Covenant requires that states must prohibit "any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence." Direct and public incitement to genocide is incitement to discrimination, hostility, and violence, and thus it must fall under these exceptions to the right of free speech. Therefore, the criminalization of direct and public incitement to genocide does not violate the right of free speech.

Incitement to genocide is a narrower concept than racist speech. This makes it very unlikely that a domestic statute criminalizing incitement to genocide along the lines of the Genocide Convention definition could fall foul of the International Covenant on Civil and Political Rights. In the *Media* trial, the ICTR engaged in a detailed review of the case-law of the various human rights bodies, and accepted that some balancing of the rights of free speech and the right to freedom from discrimination was necessary. This balancing is done in the Genocide Convention by requiring that incitement be both direct and public for it to qualify as a criminal act.

It is controversial whether or not laws prohibiting Holocaust denial and other hate speech should be part of the law relating to incitement to genocide. They probably do not qualify. The Genocide Convention was not designed to prohibit all hate speech, but to require the prosecution of those who are directly trying to persuade people to kill others with genocidal intent. Hate speech can be the precursor to incitement to genocide. However, such speech, where not accompanied by more direct encouragement to genocide, may be too remote from the harm of genocide to be appropriately included as an aspect of the international prohibition of genocide. Laws against such speech may be justifiable, but they may be better dealt with outside the context of the "crime of crimes," genocide. There is a difference between even ugly propaganda and material that is directly aimed at encouraging people to commit genocide. Nonetheless, the line between the two is not always clear. Manfred Lachs, the Polish delegate to the conference that drafted the Genocide Convention and an international lawyer, noted that creating suspicion around groups by implying that they are responsible for various problems creates an atmosphere in which genocide may occur.

Conduct Amounting to Incitement

Crimes are normally split into two elements: the conduct element (sometimes called *actus reus*) and the mental element (sometimes called *mens rea*). Although the two categories are imperfect, they form a useful basis for discussion of incitement. Unfortunately, Article III(c) of the Genocide Convention does not give much detail about what amounts to incitement. For this, we have to look to the way the concept has been interpreted by courts.

The International Criminal Tribunal for Rwanda has been at the forefront of international interpretation of what amounts to the crime of incitement. The tribunal first attempted to set out examples of incitement in the case of Jean Paul Akayesu, a Rwandan *bourgmestre* (mayor), who was convicted in 1998 of, among other things, incitement to commit genocide. The basis for these charges was that, in his capacity as a bourgmestre, he had led a gathering over a dead Tutsi and urged those with him to eliminate Tutsis. He then read out lists of names of suspected Tutsis and Tutsi sympathizers, knowing that this would lead to the named individuals being killed. His incitement was successful, and he was prosecuted and convicted of incitement, although it might perhaps have been more appropriate to prosecute him for encouragement of the completed crime of genocide. In the case against Akayesu, the International Criminal Tribunal for Rwanda defined conduct amounting to incitement as follows:

> speeches, shouting, or threats uttered in a public place or at public gatherings, or through sale or dissemination, offer for sale, or display of written or printed material or printed matter in public places or at public gatherings, or through the public display of placards or posters, or through any other means of audiovisual communication.

In the *Media* case mentioned earlier, the ICTR picked up on the specific risks that audio communication poses when compared to newspapers or posters. In paragraph 1031 of its judgment, the Trial Chamber said:

> The nature of radio transmission made RTLM particularly dangerous and harmful, as did the breadth of its reach. Unlike print media, radio is immediately present and active. The power of the human voice . . . adds a quality and dimension beyond words to the message conveyed.

The Chamber also rightly noted that radio transmission added a sense of urgency to the calls for genocide in Rwanda. That is not to say that the Chamber completely discounted the danger of the print media. In the *Media* trial, the editor of the newspaper Kangura was also convicted of incitement to genocide for publishing content that was "a litany of ethnic denigration presenting the Tutsi population as inherently evil and calling for the extermination of the Tutsi as a preventive measure."

The Convention is clear that incitement which is not followed by the commission (by others) of genocidal acts must be public for it to be criminal. Only if incitement in private is consummated with actual acts of genocide is it thought serious enough to be criminal. In this latter case, the criminality arises from complicity in genocide, rather than incitement. In the drafting of the Genocide Convention, some participants proposed that private incitement be included, but these were removed as part of the compromise over the inclusion of the crime of incitement at all.

Karl Wolf raises his arm in a Nazi salute as he marches through the streets of Coeur d'Alene, Idaho, on July 18, 1998. Police in riot gear stand between parading white supremacists and protesters who jeer Aryan Nations marchers. [AP/WIDE WORLD PHOTOS]

The requirement that incitement must be public is a reflection of the need to balance the criminalization of incitement, which often criminalizes speech, against the right of freedom of speech. In the *Akayesu* case, the Rwanda Tribunal interpreted the concept of "public" to include two elements: "the place where the incitement occurred and whether or not assistance was selective or limited."

The Rwanda Tribunal's handling of incitement that is accomplished through the use of audiovisual communication raises interesting issues in relation to electronic communication. There may be no reason in principle for differentiating between someone displaying notices in a street and someone posting messages on an open-access internet page if both incite genocide. It may take more time for people to see a message on an internet page than one that is posted on the street, but this should not matter, because liability for incitement does not require that the actual occurrence of genocide. Open access internet pages should therefore be considered a public venue for the purpose of the crime of incitement, although there is no judicial authority on this.

E-mail presents a more difficult question. An e-mail to one person would almost certainly not be public, even though it could be read by other people in the same way that a letter sent by the post can be opened by someone other than the addressee. A message inciting genocide sent to a list of recipients, however, presents a more difficult question. If there are numerous subscribers to the list, some may feel that the public requirement is fulfilled. A relevant comparison might be whether a meeting of, for instance, ten people in a village square would be considered public. On the other hand, if the same ten people met in a private house, would this be considered public? If there are 10,000 or 100,000 subscribers to the list, the public criterion would almost certainly be met. Similarly, it would be

difficult to claim that an incitement sent as a "spam" e-mail to millions of people around the globe was not public.

To be prosecuted as criminal, the incitement must also be direct. Vague suggestions or hints are not enough. One reason for this limitation is the need to strike a balance between criminalizing incitement and preserving freedom of speech. Another is to reduce the possibility that frivolous claims arising from misinterpretation might be made against those speaking or writing. Such misinterpretations are not unknown. Charles Manson drew inspiration for his (non-genocidal) killings from the song "Helter Skelter" on the Beatles's *White Album*.

The directness problem was understood by the Rwanda Tribunal in Akayesu, which said:

> The direct element of incitement implies that the incitement assume a direct form and specifically provoke another to engage in a criminal act, and that more than mere vague or indirect suggestion goes to constitute direct incitement.

However, what is or is not direct is a matter of interpretation, and where the line is drawn is thus unclear, as the Trial Chamber in Akayesu continued "incitement may be direct and nonetheless implicit."

Matters are made even more complex by the fact that at different times and places, and in different cultural or linguistic contexts, words take on different implications and meanings. For example, it has become known that the word *Endlösung* (final solution), when it appeared in Nazi documents, referred to the Holocaust, and that the word *Sonderbehandlung* (special treatment) meant killing. This was not immediately apparent, however. At least two aspects of the problem of determining directness are worthy of mention. First, in wartime, when many, although not all genocides occur, language mutates very quickly, and in particular, euphemisms frequently gain currency. Many of those euphemisms refer to acts or groups involved the genocide. For example, in Rwanda, *Inyenzi,* which literally translates as "cockroach," was used to refer to Tutsis by proponents of genocide. Second, directness differs with place, language, and culture. The Rwanda Tribunal understood this, averring in its *Akayesu* decision that "a particular speech may be perceived as 'direct' in one country, and not in another." Some languages and cultures are more circuitous than others in modes of expression. In addition, the determination of incitement often relies on translated texts of suspect speeches or written articles, and translation itself adds a degree of ambiguity to the possible meanings of the words being used.

These considerations raise difficulties when the people making decisions on guilt or innocence regarding the crime of incitement are from a different cultural or linguistic background to the person being judged. In this instance, the only way to ensure that decisions on incitement are fair is to get expert cultural and linguistic evidence. This occurred in Canada, in the case of *Mugesera v. Minister of Citizenship and Immigration*.

Leon Mugesera was an academic who became an official in the Rwandan government. In 1992 he made a speech that many believed to have incited the 1994 genocide in Rwanda. He was set to be deported from Canada on the grounds that he had incited genocide in that 1992 speech, but filed an appeal. The Canadian Federal Court of Appeal secured a new translation of Mugesera's 1992 speech, and reversed the original deportation order. The court's strongly worded opinion declared that the initial translation and editing of the speech transcript was seriously misleading. To show this, the Court juxtaposed the version of part of the speech used in proceedings against Mugesera in 1996 and 1998, and the one they had before them in 2003.

The first version read:

> The fatal mistake we made in 1959 . . . was that we let them [the Tutsis] leave [the country]. [Their home] was in Ethiopia, but we are going to find them a shortcut, namely the Nyabarongo river. I would like to emphasize this point. We must react!

The second version read:

> Recently I made these comments to someone who was not ashamed to disclose that he had joined the PL. I told him that the fatal mistake we made in '59, when I was still a boy, was that we let them leave. I asked him if he knew of the Falachas, who had gone back to their home in Israel from Ethiopia, their country of refuge. He told me he did not know about that affair. I replied that he did not know how to listen or read. I went on to explain that his home was in Ethiopia but we were going to find him a shortcut, namely the Nyabarongo River. I would like to emphasize this point. We must react!

The first version omitted parts of the speech that contextualized the statement that the river would be used as a shortcut to return refugees. This implied a stronger link to the later genocide, in which bodies were often thrown into rivers, and suggested that Mugesera was referring to the idea, common in the genocide, that the Tutsis were Ethiopian newcomers to Rwanda. The second translation is considerably less clear on this point. This is not to say that Mugesera's speech could not be interpreted as incitement (many

people have interpreted it as such), but the differences in the two translations demonstrate that when euphemistic speech is used, it is not always simple to arrive at a firm understanding of the intended meaning.

These difficulties must not be overstated, however. Sometimes the meaning of a statement is easily determinable. The tone of voice used in the delivery of speeches or transmissions, as well as the context in which the words are used and the reaction of the people who heard them are all relevant clues to meaning. For example, Eliezer Niyitigeka was convicted of incitement to genocide by the Rwanda Tribunal for telling people to "go to work," because it was clear in context that this meant killing Tutsis and was that it was understood as such at the time. RTLM was used during the Rwandan genocide to whip up hatred against Tutsis and tell people where Tutsis could be found and killed. Defendants have tried to take advantage of interpretative difficulties by deconstructing relatively innocuous messages from clear material. In the *Media* trial, Hassan Ngeze attempted to argue that a picture of a machete that appeared on the front page of Kangura to the left of the question "what weapons shall we use to conquer the Inyenzi once and for all?" only represented one alternative. He claimed that another option, democracy, was represented by a photograph of Grégoire Kayibanda, the former president of Rwanda. The Trial Chamber had little problem responding to this argument, noting "that the answer was intended to be the machete is clear both textually and visually".

Mental Element

The other indispensable part of the crime of incitement is the mental element, which is equally fundamental to the definition of genocide. In the *Akayesu* case, the Trial Chamber defined the mental element as follows:

> [The mental element] lies in the intent to directly prompt or provoke another to commit genocide. It implies a desire on the part of the perpetrator to create by his actions a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging. That is to say that the person who is inciting to commit genocide must have himself the specific intent to commit genocide, namely to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.

Not only must the person intend to persuade others to commit genocide, but he or she must also want the national, ethnical, racial, or religious group to be, at least in part, destroyed. The necessity of finding both these elements remains a subject of debate. Some believe that knowingly persuading another to perpetrate genocide should be enough to qualify an individual for a charge of incitement, even if the inciter does not personally wish to destroy, in whole or in part, the group against whom the genocide is committed.

The offense of incitement was included in the Genocide Convention in order to prevent acts of genocide before they occurred. Prevention by the timely application of criminal sanctions to those attempting to bring genocide about is preferable to international criminal law only entering the picture when genocide is occurring, when it is already too late. It is arguable, however, that the offense of incitement is too narrowly defined to achieve its intended purpose.

SEE ALSO Complicity; Denial; Genocide; Nuremberg Trials; Propaganda; Radio Télévision Libre Mille-Collines; Streicher, Julius; War Crimes

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Robert Cryer

India, Ancient and Medieval

For ancient, early medieval, and medieval India, crimes against humanity have to be described against the backdrop of a multi-lingual, multi-religious, and multi-ethnic social complexity. Immediately striking, although not unique to the Indian subcontinent, are those personalities in history associated with perpetrating atrocities against human beings during the course of war and its aftermath. Such crimes most commonly are entwined with the zeal of religious bigotry. On the

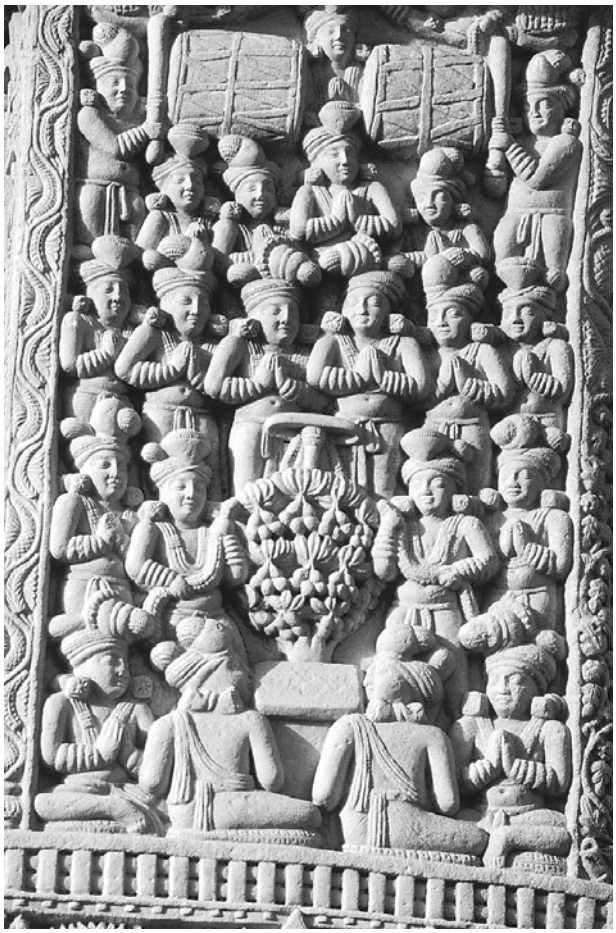
other hand, the persecution of large segments of the population exclusively in the name of religion or race appears to be rare in the early history of the subcontinent.

Documentary evidence of these ancient crimes exists in different languages of the subcontinent, and present certain limitations for scholars seeking to use them as authoritative sources. For a start, many of them are written according to the conventions of elite literary style, and as such do not represent the perceptions of the lower classes and castes. Most certainly, they do not represent the viewpoint of the victims of the crimes in question. Most, if not all, of these sources were rooted in distinct ideological viewpoints that must be kept in mind while using the texts as historical evidence. It must be understood that, within the temporal and spatial context of these eras of Indian subcontinental history, the descriptions of crimes against humanity, whether committed individually or collectively, are panegyrist and exaggerated. This makes it difficult to apply the word "genocide" in any meaningful way.

Extending our contemporary understanding and usage of this term into the past gives rise to a rather vile and barbaric picture of all these pre-modern and culturally diverse societies. The texts also sometimes incorporate elements of remorse or regret, articulated by the perpetrators of violence, making the use of modern terminology even more problematic. In fact, its use must necessarily hinge on the way ancient and medieval states were defined, the role of religion in defining the character of these polities, and, most importantly, the ethical and moral issues around which the notions of evil and violence were couched.

The Indian subcontinent contains few contemporary sources attesting to the atrocities from the point of view of the victims. This raises a fundamental question: Did large-scale torture and slaughter not occur, or did the sources of the period simply choose to be silent about it? In the latter case, a deeper philosophical understanding of violence and the human action which perpetrates it must be sought within the culture of the times. For instance, the eminent Indiologist Johannes Cornelis Heesterman notes that the ideology of karma views acts of violence, both by agents and recipients, as part of a larger scheme of maintaining or destroying dharma (societal order) and, therefore, the good or bad fruits of these actions would only be witnessed in the next life.

From the early medieval period onwards, inscriptions and contemporary chronicles begin to emerge, and these provide vivid descriptions of the horrors perpetrated, for instance after war. Yet these sources, though rooted in greater historical specificity, are also biased. All these descriptions of incidents of violence, killings, persecutions, and torture must be viewed within the context of particular regional situations. They should not be over generalized, nor should our understanding of them be based on the assumption of a monolithic Indian identity or attributed to an overarching religious motivation. In fact, scholarly analysis of these events must recognize the interplay of multiple identities in the society and culture of the time and the region.



Asoka is regarded by many as ancient India's greatest ruler. When Asoka attempted to complete the conquest of the Indian peninsula, he became so disgusted by the cruelty of warfare that he renounced it. Throughout India he ordered the creation of inscriptions, like the one shown here, to convey the peaceful teachings of Buddhism. [ADAM WOOLFIT/CORBIS]

Ancient India

Most ancient Indian political theorists glorified war and kings displayed their power through military might. War was central to defining the epic traditions of early India, and it is described in graphic detail in the texts. However, few of the reigning monarchs of the period

left records of their thoughts on the nature of human suffering as a result of war. One exception occurred during the period of Mauryan rule (321–185 BCE), which included one of the first attempts at empire-building on the Indian subcontinent. Emperor Ashoka Maurya, who in his edicts is called "Beloved of the Gods" (Devanampiya Piyadassi), invaded a region then called Kalinga in about 260 BCE. In his thirteenth Rock Edict, the emperor admits: "A hundred and fifty thousand people were deported, a hundred thousand were killed and many times that number perished." This record is unique, because the king also expresses remorse for the "slaughter, death and deportation of the people [that was] extremely grievous to the Beloved of the Gods and [had weighed] heavily on his mind. In the same record, Ashoka recognizes that everyone, from the *Brahmins* (priests) and *shramans* (ascetics) down to the ordinary householders, had suffered "violence, murder, and separation from their loved ones" (Thapar, 1997, pp. 255–256).

By way of penance, Ashoka went on to tell his subjects that he had become devoted to the diligent practice and preaching of *dhamma*, a policy of conquest by piety and virtue. He spread this new message through various edicts, and his influence was felt even beyond the frontiers of his own kingdom. It is, however, noteworthy that Ashoka did not announce his remorse immediately after the war. More importantly, the thirteenth Rock Edict was not put up in Kalinga, perhaps because it was considered politically unwise to publicize the King's remorse among the people against whom the war was fought. Thus, the Kalingans of the time did not know the extent of the killing or deportations, nor did they know of the king's repentance on these acts that had inflicted suffering on them.

The post-Mauyan period was marked by a series of foreign invasions. Even so, few descriptions of human slaughter or of conscious attempts to persecute people for their religious beliefs are found in the contemporary sources of the early centuries CE. A typical formulaic description coming from the semi-historical traditions of texts called the *Puranas* the destruction caused in the wake of these invasions. These texts were written in the future tense to depict conditions that would during what was called the Kali Age or the fourth in the stages of general moral decline within a cyclic view of time. An illustrative passage of the *Matsya Purana* reads thus:

> There will be Yavanas (foreigners) here by reason of religious feeling (*dharma*) or ambition or plunder; they will not be kings solemnly anointed, but will follow evil customs by reason of the corruption of the age. Massacring women and children, and killing one another, kings will enjoy the earth at the end of the Kali Age (Parasher, 1991, p. 243).

The use of the future tense may have been intended to suggest a warning of things to come and it may be a response to what has been called a "principled forgetfulness." These early Indian texts gave little importance to recording historical events that were accompanied by violence and this may be a response to what has been called a "principled forgetfulness." The term *Yavana* here refers to the early Greeks, but it became a general label for all outsiders who invaded the subcontinent from the west, and was often employed when traditional ideologues wished to emphasize that normal rules of the social, ethical, and moral order had been upset by people alien to their values.

Throughout much of the ancient world, the Hun armies left death, destruction, and suffering in the wake of their invasions. Although the Huns became a factor in Indian history from the middle of the fifth century CE, the deeds of one their most cruel rulers in India are vividly remembered even six hundred years later in the *Rajatarangini* written by Kalhana during the twelfth century in Kashmir. This text is considered the first systematic history written on the subcontinent. It describes Mihirakula, the Hun, as evil personified; a "man of violent acts and resembling Kala (Death). The notorious and violent acts of Mihirkula's armies did not even spare children, women, and the aged. Kalhana wrote: "He was surrounded day and night by thousands of murdered human beings even in his pleasure-houses."

Textual descriptions of violence often contain exaggerations, but in this case Kalhana's words are supported by the observations and testimony of a Chinese traveler named Hieun Tsiang (629 CE), who wrote an almost contemporary account of Mihirkula's rule. He note that not only did this evil king stir rebellion and kill the royal family in Kashmir and Gandhara, but he also destroyed innumerable Buddhist educational centers and residences. According to Hieun Tsiang, Mihirkula's armies killed thousands of people along the banks of the Indus while looting these religious places. Hieun Tsiang also interestingly noted that when his minister requested he not destroy certain Buddhist establishments, Mihirkula obliged, permitting the monks to return to their estates despite his own religious leanings being otherwise. Kalhana offered a similar observation. After graphically describing Mihirkula's misdeeds, Kalhana stated that the king made a shrine for Lord Shiva, an important god in the Hindu trinity, and that he granted tax-free villages to Brahmins from the Gandhara region, who were supposed to resemble Mihirkula in their habits and deeds.

The Early Medieval Period

Persecution was not the sole prerogative of foreign invaders, nor was it done solely for the protection and glorification of religious beliefs. Kalhana described an earlier willful destruction of Buddhist monasteries by a Shaivite ruler who was a worshipper of Lord Shiva and who later repented and then went on to build a new monastery. In another context he described how temples served as repositories of wealth, and were frequently attacked to satiate the greed of certain kings. One such king, Harshadeva of Kashmir, did not spare a single village, town or city in his attempt to despoil images and carry away the abundant wealth stored in them and even appointed an officer to do so.

One clear example of religious persecution resulting in the killing of members of another faith comes from the Pandyan kingdom of southern India in the eleventh century. This information is attested to by a variety of sources—hagiological literature, inscriptions and architectural evidence—and is best understood within the context of an upsurge in religious fervor and sectarian belief systems based on the idea of devotion (*bhakti*). This conflict is set against the backdrop of the Pandyan king, a Jaina follower, witnessing the debates and tests the Jaina monks had administered to the child Sambhandar, an ardent Shaivite poet and saint of the times. According to the *Periya Pranam*, the king was converted by this saint to Shaivism, a sect based on the sole worship of Lord Shiva and he ordered his minister thus:

> These Jainas, who had made a bet and lost in this test of the respective powers of their religions, had already done undesirable wrong to the Child Saint; Impale them on the lethal sharp stakes and execute the justice due to them.

Scholars put the number of Jainas thus killed at eight thousand. The Jainas having lost the patronage of this king nonetheless remained entrenched in the Tamil territories, but a number of Jaina temples were destroyed or converted into shrines dedicated to the worship of Lord Shiva.

Although the Jainas had a second lease on life in the spread of their faith into the Karnataka and Andhra countries during early medieval times, the Jaina conflict with worshippers of Lord Shiva continued here as well, especially with the rise and spread of a more aggressive form of shaivism called Virashaivism from the twelfth century onwards. A sixteenth century inscription from Srisailam in present-day Andhra Pradesh records the pride taken by Virashaivism chiefs in beheading a sect of Shvetambara Jainas. The Jainas are said to have made pejorative references to Shaivite teachers and sometimes sought protection from the ruling powers when the harassment towards them was severe, as during the Vijayanagar times.

It is well known that before an indigenous Indo-Muslim state was established in India in 1192 CE, there had been several raids by Persianized Turks who looted major cities and temples to support their power bases in Afghanistan. One such raid was in 968 CE by Sabuktigin (r. 977–997 CE), who ravaged the territory of the Hindu Shahi kings between Afghanistan and western Punjab. The *Sharh-I Tarikhi Yamini* of Utbi describes how places inhabited by infidels were burnt down, temples and idols demolished, and Islam established: "The jungles were filled with the carcasses of the infidels, some wounded by the sword, and others fallen dead through fright. It is the order of God respecting those who have passed away, that infidels should be put to death" (Elliot, 1964, p. 22). Writing about the raids of his son Mahmed against king Jaipal, Utbi stated: "The Musulmans had wreaked their vengeance on the infidel enemies of God, killing fifteen thousand of them, spreading them like a carpet over the ground, and making them food for beasts and birds of prey" (Elliot, 1964, p. 26). While noting the religious rhetoric, it has been argued by scholars that Mahmed of Ghazni who raided India seventeen times did so for economic reasons. In fact, he raided and sacked Muslim cities of Iran as well, in an effort to stabilize the Ghaznavid political and economic situation. But the rise of Ghurid power in northwestern Afghanistan from the mid-eleventh century brought the destruction of the city of Ghazni. Sultan Alauddin burned the city to the ground in revenge for the ill-treatment of his brothers by Mahmed Ghazni, and by this act the sultan earned the title of *Jahan-soz* or "the world burner." The Ghurids then came to operate from Ghazni under Shahabuddin Muhammad (1173–1206 CE), known as Muizzuddin Muhammad bin Sam. In the wake of his invasions, Turkish rule was establishment in India, between 1192–1206 CE.

Medieval Period

A major threat to the first Indo-Muslim state with its center at Delhi was the continual threat from the Mongols, who openly used terror as an instrument of war. In 1221 CE the notorious Mongol, Genghis Khan, had reached the Indus River, but the Turkish state at Delhi was yet to witness his full wrath. In fact, Balban (1246–1284 CE) and Alauddin Khilji (1296–1314 CE) effectively held back later Mongol attacks. Many Mongols accepted Islam and were admitted to the nobility or secured royal service. They came to be known as New Muslims but were often a discontented and turbulent lot and a continual source of trouble to the state.

A considerable amount of court intrigue thus developed and one major offshoot of this rivalry was seen when Alauddin Khilji's generals invaded Gujarat. On their return from the invasion, the soldiers rebelled over the share of booty that they were required to turn over to the state. A contemporary chronicle relates the punishments and torture meted out to those who tried to use underhand means to claim their share of booty. In reaction to the inhuman treatment, a large faction of the army, mostly New Muslims, revolted. The chief members of the rebellion escaped, but Alauddin Khilji ordered the rebels' wives and children be imprisoned. In another version, the king dismissed the whole community of New Muslims from his service, believing that the malcontents had hatched a plot to assassinate him. With the discovery of the plot, the king is said to have ordered the massacre of all New Muslims, and all those who killed a New Muslim were promised the right to claim everything their victims had owned. Between twenty and thirty thousand were slaughtered, and the murderers seized their wives, children, and property. A Gujarat campaign veteran, Nusrat Khan, used the decree to avenge the death of his brother, who had died at the hands of the rebels. He is reputed to have thrown the wives of his rebel victims to the scavengers of Delhi, and to have had their children cut into pieces in the presence of their mothers.

Further atrocities occurred as part of the larger Turkish conquest of eastern India during the early thirteenth century. For example, Ikhtiyar-Du-Din conducted raids on the famous Buddhist monasteries of Otandapuri and Vikramshila in Bihar, en route to Bengal, during which he ordered the extensive destruction of human and other resources. The monks there were all killed, and estimates set the death toll for these massacres in the thousands. Writers accompanying this invader are reported to have seen the total destruction of these Buddhist centers of learning. However, Minaju-s-Siraj (1243 CE) informed that they had mistaken them to be fortresses and wrote:

> [M]ost of the inhabitants of the place were Brahmans with shaven heads. They were put to death. Large number of books were found there, and when the Muhammadans saw them, they called for some person to explain their contents, but all the men had been killed. It was discovered that the whole fort and city was a place of study (*madrasas*) (Elliot, 1964, p. 306).

These crimes have to be seen in the larger milieu of intrigue and the need to maintain authoritative control and access to resources during the early days of the Turkish state in India. The relations among the Turkish rulers during times of succession were never peaceful. Controlling the massive local population of Hindus was equally difficult. Barani narrates a supposed dialogue between Qazi Mughis of Bayana and Sultan Alaudden on an ordinance related to imposing a tax called *jiziya* on the Hindus. The Sultan wanted to lower the prestige and economic power of this population and thus he invoked a Quranic injunction to support his claims:

> Hindus should be forced to pay their revenue in abject humility and extreme submissiveness; for the Prophet Muhammad had ordained that Hindus must either follow the true faith or else be slain or imprisoned and their wealth and property confiscated (Rizvi, 1998, p. 164).

Thus, according to Rizvi, other schools of jurisprudence of the time, except for the law school of Abu Hanifa, ordered for them "either death or Islam."

Timur justified his conquest of India by invoking what he perceived as a willingness of the Muslim rulers of the time to tolerate idolatry—a practice condemned by Islam. He ordered a vicious attack that was unparalleled in the history of the subcontinent. At every stage of his advance beyond the Indus River and especially at places like Talamba and Bhatnair, he massacred people. Subsequently, the cities were plundered and people who failed to escape were enslaved. The most vivid descriptions are those of his crossing the Jamuna River on December 10, 1398. No one was spared. At Loni the Hindu inhabitants were also wiped out. Near Delhi, the local people greeted the news of nearby resistance fighters with joy, but they paid for their indiscretion with their lives. The resisting army, led by Mallu and Mahmed, soon had to retreat, and the city was left to the ruthless invader. Timur initially granted amnesty to the population of Delhi, but an uprising of the people infuriated him. The city was then ransacked for several days, and many thousands of its inhabitants were killed. On January 1, 1399, Timur returned home via Meerut, and on this march, too, great numbers of Hindus were slaughtered.

Raids on peninsular India began around 1295 and continued to the early decades of the fourteenth century, making inroads from Aurangabad as far south as Madurai. After 1323, the Tughluqs sought permanent dominion in the Deccan Peninsula. The first account of the atrocities against the local population and the ruling elites was narrated in the Vilasa Grant of Prolaya Nakaya (1330). Despite the early success of the Kakatiya rulers of Warangal against the Delhi sultans, the invaders were able to overpower the ruling dynasty.

> The cruel wretches subjected the rich to torture for the sake of their wealth. Many of their victims died of terror at the very sight of their vicious countenances . . . the images of gods were overturned and broken; the *Agraharas* of the learned

> confiscated; the cultivators were despoiled of the fruits of their labour, and their families were impoverished and ruined. None dared to claim anything, whether it was a piece of property or one's own life. To those despicable wretches wine was the ordinary drink, beef the staple food, and the slaying of the Brahmanas was the favorite pastime. The land of Tilinga, left without a protector, suffered destruction from the Yavanas, like a forest subjected to devastating wild fire.

Literary sources also describe the devastation caused by the barbarians, who were either called Yavanas, Mlecchas, or Turushkas. The *Madhura-Vijaya*, written by Gangadevi in the second half of the fourteenth century, vividly describes Turushka rule over Madurai thus:

> The sweet odour of the sacrificial smoke and the chant of the Vedas have deserted the villages (*Agrahras*) which are now filled with the foul smell of roasted flesh and the fierce noises of the ruffianly Turushkas. The suburban gardens of Madura present a most painful sight; many of their beautiful coconut palms have been cut down; and on every side are seen rows of stakes from which swing strings of human skulls strung together. The Tamraparni is flowing red with the blood of the slaughtered cows. The Veda is forgotten and justice has gone into hiding; there is not left any trace of virtue or nobility in the land and despair is writ large on the faces of the unfortunate Dravias (Chattopadhyaya, 1998, p. 57).

War was common among the various states of the Deccan Peninsula and southern India. Kings professing Islam as their personal faith ruled some of these, whereas rulers of various Hindu sects controlled others. An important point common to both was the utter devastation caused by their armies when they invaded each other's dominions. For instance, the early Bahamani and Vijayanagar rulers struggled for control over the fertile Raichur territory. A contemporary chronicler, Ferishta narrated the various battles between the Bahamani Sultan, Mohammad Shah, and the Vijayanagar ruler Bukka Raya. Ostensibly the sultan insulted the Vijayanagar ruler, who responded with an invasion. He conquered Mudkal and put all its inhabitants—men, women, and children—to the sword. This infuriated Mohammad Shah, who took a solemn oath: "till he should have put to death, 100,000 infidels, as an expiation for the massacre of the faithful, he would never sheathe the sword of holy war, nor refrain from slaughter." The Sultan slaughtered about 70,000 men, women, and children.

The chronicles of Ferishta tell of subsequent and equally ferocious battles between the two. Haji Mull, a maternal relation of the Vijayanagar king, commanded the Brahmins to daily lecture the troops on the merits of slaughtering Mohamedans. During the actual battle, on July 23, 1366, large numbers of people were killed on both sides. Mohammad Shah then ordered a fresh massacre of the unbelievers, during which even pregnant women and children were not spared. According to Ferishta, Mohammad Shah slaughtered 500,000 Hindus, and "so wasted the districts of Carnatic, that for several decades, they did not recover their natural population."

The sources that have come down to us chronicling these crimes against humanity were framed within ideological and political concerns. They should be read as selective representations and thus treated as only partial constructions of the historical reality rooted in the concerns of either the colonial state or the modern nation. The historian must therefore interpret both the primary source and all subsequent interpretations in order to more accurately understand the events that occurred so far in the past.

SEE ALSO Genghis Khan; Historiography, Sources in; Historiography as a Written Form; India, Modern

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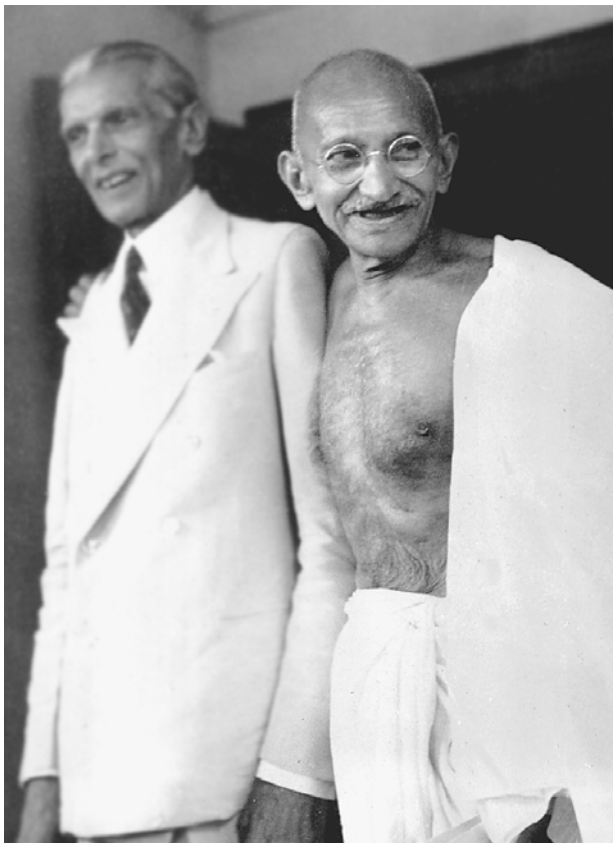

In October 1944 Mohatmas Gandhi and Mohammed Ali Jinnah met in a historic final, and ultimately unsuccessful, attempt to resolve political differences between India's Hindu and Muslim populations. [AP/WIDE WORLD PHOTOS]

India, Modern

The events accompanying the partition of India may be classified as genocidal massacres. While there is no available evidence of the intent to annihilate entire ethnic, national, racial, or religious groups as such, the victims of the mass killings were clearly chosen by their killers on the grounds of their membership in such groups.

No authentic figures are available as to how many people were killed during and after the partition. Radha Kumar, writing on the subject, has estimated that half a million to a million people were killed and over fifteen million were displaced. Genocidal massacre characterized both sides of the divide. While Muslims killed Hindus and raped their women on the Pakistani side, Hindus killed Muslims and raped their women on Indian side.

Muslims made up 25 percent of India's population before partition. They had fought alongside Hindus during the 1857 "mutiny" against the British rulers and also took part in various movements for independence together with Hindus. However, they were divided into various political and religious factions holding differing political opinions and perspectives. Mohammed Ali Jinnah, leader of the Muslim League, was a constitutionalist and, although he shared in the nationalist aspirations, he wanted a foolproof constitutional arrangement with the leaders of Indian National Congress to guarantee that Muslims (essentially the Muslim elite) would have a share in power and to prohibit constitutional changes without Muslim consent.

However, this was not to be. The other Muslim parties and groups, such as the Jami'at-ul-'Ulama-i-Hind the All India Momin conference, and the Ahrar of Punjab, as well as nationalist Muslims within the Indian National Congress, did not agree with Jinnah and his Muslim League. Also, Khan Abdul Ghaffar Khan, a Pathan leader from North West Frontier Province, also known as the Frontier Gandhi as he was close to Mahatma Gandhi and believed in the doctrine of nonviolence, also opposed Jinnah's demands for a separate Muslim homeland.

When no agreement could be reached between Jinnah and the leaders of Indian National Congress on the constitutional arrangements, Jinnah demanded the partition of India, invoking the theory that Muslims and Hindus constituted separate nations. In saying this, he endorsed the Hindu nationalists' stand, which based the idea of nationalism on cultural or religious grounds as opposed to the grounds of territorial unity.

Both sides thus used religious rhetoric to justify separate nationhood. The Hindu Mahasabha and leaders of the Rashtriya Swayamsevak Sang (RSS: National Volunteers Society) like Veer Savarkar, Hedgewar, and Guru Golwalkar also vehemently supported the concept of cultural nationalism. In the Hindu case, however, this nationalism also contained a territorial component, invoking the concept of a Hindu fatherland. Veer Savarkar coined the term *Hindutva* and described India as *pitra bhoomi* and *pavitra bhoomi* ("fatherland" and "sacred land") for the Hindus, and maintained that India could never become a sacred land for the Muslims.

Writing as a member of the Muslim League, an industrialist from Calcutta named Humayun Akhtar enumerated a list of differences between Hindus and Muslims on religious basis. Jinnah also justified his demand for a separate Muslim nation on the basis of religious and cultural differences between Hindus and Muslims. He maintained that the two groups revered different heroes, celebrated different festivals, spoke different languages, ate different foods, and wore different clothing. These claims were not entirely true, but in the heat

of the moment were accepted as common knowledge among the educated middle classes of both communities.

Interestingly, however, these ideological battles were being fought primarily among the elites. The lower classes of both communities were untouched by these controversies at first. Nonetheless, when violence erupted, it was the poorer classes on both sides of the ethnic divide that paid the price. In the carnage that followed partition, it was the poor people who were massacred.

The British colonial rulers also bore responsibility for India's partition. If Lord Mountbatten, the last Viceroy had not hurried the declaration of independence, perhaps the history of the Indian subcontinent would have been quite different. The genocidal massacres might have been avoided, half a million to a million lives might not have perished, and millions of people might not have been uprooted.

The Muslims in India suffered the most from partition in every respect. Those Muslims who opted to remain in India came primarily from the poorer classes (the elite and middle class Muslims migrated to Pakistan). Most of them did not support the formation of Pakistan, and yet their blood was shed for that cause and they carried the guilt for dividing the country. Within India they were reduced to small minority—10 percent of the total population, down from approximately 25 percent before partition. As a consequence they lost much of their political influence.

Some leaders of the Indian Congress, such as Mahatma Gandhi, Jawaharlal Nehru, Maulana Abul Kalam Azad, and Babasaheb Ambedkar, were strongly committed to retaining a secular Indian government. In 1953, however, right wing Hindus formed a new party called the Jan Sangh, which rejected the concept of secular India and advocated *Hindu Rashtra* (i.e., Hindu nationhood). They blamed Indian Muslims for partition and seriously doubted their loyalty to India.

Indian Muslims were dubbed as pro-Pakistan, and the Jan Sangh preached hatred against them. The RSS, an extreme Hindu nationalist organization employed thousands of *pracharaks* (preachers) to travel from place to place, spreading hatred against the Muslims. As in the pre-partition period, India's Muslim communities continued to witness carnage year after year. Thousands of people, most of them Muslims, lost their lives in these riots.

The first major post-partition riot took place in Jabalpur, in Central India, during Nehru's lifetime in 1961. Throughout the 1960s, several other major riots of increasing intensity also took place, particularly in eastern India. In Ahmedabad and other parts of the western Indian state of Gujarat, communal violence broke out on a large scale. More than a thousand people were brutally killed and many women were raped and murdered in 1969. The RSS, the Jan Sangh, and even a congressional faction were involved in organizing and justifying these genocidal massacres.

Another major episode of communal violence broke out in Bhivandi, some 40 kilometers from Mumbai, on May 18, 1970. More than 200 people were killed there. At the same time, in Jalgaon, a marriage party consisting of 40 Muslims (including the bridegroom) were burned alive. The Bhivandi-Jalgaon riots were mainly organized by an extremist Hindu right-wing organization called The Shiv Sena. This was a virulently anti-Muslim organization at the time, although its current leadership appears to have modulated its anti-Muslim virulence in recent years.

In the late 1970s and throughout the 1980s, several additional major communal riots took place. Once again, the main victims of the violence were Muslims. Thousands perished in these riots, which should be characterized as genocidal massacres. In all these riots, the Jan Sangh—renamed the Bhartiya Janata Party (BJP)—raised slogans like *Musalman jao Pakistan* or *Musalman jao qabrastan* ("O Muslims, go to Pakistan," "O Muslims, go to the cemetery"), inciting party followers to killed their Muslim neighbors. Thus did anti-Muslim violence continue in India long after the formal partition of the country in 1947.

The 1980s brought a worsening of the violence. Several major riots took place, some of which were inflamed by the recollection of historical grievances. For instance, controversy broke out over the centuries-old demolition of Hindu temples by medieval Muslim rulers. The BJP launched an aggressive campaign to restore one such temple—of Ramjanambhoomi, in Ayodhya, northern India—by destroying the mosque that had been allegedly constructed in its place by Babar's general, Mir Baqi Khan.

As a consequence of this campaign, several riots broke out throughout India, primarily directed against the Muslim minority. According to one estimate, more than 300 riots, both small- and large-scale broke out across the country. The Ayodhya mosque, Babri Masjid, was demolished on December 6, 1992. The demolition of Babri Masjid triggered further anti-Muslim violence throughout India, particularly in Mumbai, Surat, Ahmedabad, Kanpur, Delhi, and Bhopal. The riots in Mumbai and Surat were the worst. Government estimates for the violence in Mumbai alone suggest that more than a thousand people were killed. Unofficial estimates set the death count significantly higher.

The role of the police in the Mumbai killings was highly questionable. The local police force was openly pro-Hindutva and blatantly anti-Muslim. The Srikrishna Commission, convened to investigate the riots, charged thirty-two police officers with having been involved in killing or abetting the killing of Muslims. The Mumbai riots shocked the whole of India. The Muslims in Mumbai felt intensely insecure, and many of them fled the city. It is estimated that a total of more than 200,000 people—Muslims and Hindus alike—ultimately left Mumbai. The exodus was so huge that the Government had to organize special trains to handle the volume of traffic out of the city.

The riots of Mumbai were followed by similar violence in the western Indian city of Surat. Here, too, large numbers of Muslims were killed, their shops looted and burned, and their businesses completely destroyed. Many Muslim women were mass raped. More than four hudnred Muslims were killed by the right wing Hindu nationalists during the course of the Surat violence.

The worst case of violence in post-independence India was began on February 27, 2002, in the state of Gujarat, in western India. Rioting broke out after a passenger compartment of the Sabarmati Express was set on fire as it travelled from Ayodhya in northern India to Godhra, Gujarat. Fifty-nine Hindus were burned to death, including men, women, and children. Muslims living near the Godhra railway station were suspected to be involved in setting fire to the railway compartment. Some one hundred people were arrested and trials would show whether they were involved in the crime.

Rioting broke out on the morning of February 28, in which more than 1,000 people were massacred in brutal retribution of the Godhra protests. Once again, Muslim women were raped in several Gujarat villages. As a result of the escalating violence, more than 45,000 Muslims were displaced to refugee camps, where they were kept for several months. They were prohibited from returning to their homes, and their businesses were nearly ruined. In the city of Ahmedabad, 100 Muslim residents of a neighborhood known as Narodia Patia were killed (some were burned alive) and many women were raped. The case of Kausar Bano illustrates the violence that was perpetrated during these riots. Eight months pregnant, her womb was ripped opened and her unborn child was extracted and pierced with a sword. In the neighborhood called Gulbarga Society, 40 people, including a member of the Indian Parliament, were burned alive.

The BJP Government in Gujarat, led by Narendra Modi, was allegedly involved in the carnage. Modi justified the violence by saying it was a popular reaction to the Godhra incident. He even invoked the Newtonian law that there is equal reaction to every action, implying that the carnage was a natural, unavoidable occurrence. The genocidal massacre in Gujarat was but the latest in a long history of post-independence violence. Between 1950 and 2002, more than 13,952 outbreaks of local violence took place, 14,686 people have been killed and a further 68,182 have suffered injury.

SEE ALSO Genocide; India, Ancient and Medieval; Massacres

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Indigeneous Peoples

Indigenous peoples have lived in different part of the globe since time immemorial. In 2003 they number about 350 million, belonging to different nations, communities, and groups, with specific cultures, traditions, customs, languages, and religions. They have survived in spite of the massacres, discrimination, oppression, diseases, poverty, and misery inflicted on them principally by the colonial powers (Spain, Britain, France, the Netherlands, and the United States).

The problems of indigenous peoples exist, to varying degrees, on all continents. Even in countries where the indigenous still constitute a majority, they remain powerless, by and large unheard, misunderstood, or simply ignored by their governments. Their past history is disdained, their way of life scorned, their subjugation unrecognized, their social and economic system unvalued. The belief that indigenous peoples were subhuman and inferior was common among European invaders and colonizers.

Definition

There is not an international consensus on who indigenous peoples are; the term cannot be defined precisely or applied all-inclusively. International debate on the meaning of the term *indigenous* commenced in the late nineteenth century. Among European languages, notably English and Spanish, the term indigenous (*indigena*) shares a common root in the Latin word *indigenae*, which was used to distinguish between persons who were born in a particular place and those who arrived later from elsewhere (*advenae*). The French word *autochtone* has, by comparison, Greek roots and, like the German term *Urspung*, suggests that the group to which it refers was the first to exist in a specific location. Hence, the roots of the terms historically used in modern international law share a single conceptual element: priority in time.

Berlin Conference (1884 and 1885)

A good starting point for the examination of international practice with regard to indigenous peoples is the Berlin Conference of 1884 and 1885. The great powers of the time convened the conference with the aim of agreeing on principles for the recognition and pursuit of their territorial claims in Africa. In Article 6 of the General Act of the Conference, the great powers declared their commitment to "watch over the preservation of the native tribes" of Africa, with the term "native tribes" distinguishing between nationals of the great powers and the peoples of Africa living under the colonial domination of these same nations.

League of Nations

According to Article 22 of the Covenant of the League of Nations, members of the League accepted as a "sacred trust of civilization" the duty of promoting the well being and development of the indigenous population of those colonies and territories remaining under their control. The Covenant specifically used the word "indigenous" to distinguish between the colonial powers and the peoples living under their domination. The Covenant included a second element of qualification, however, characterizing indigenous populations as "peoples not yet able to stand by themselves under the strenuous conditions of the modern world." Both factors, that is, colonial domination and institutional capacity, were to be considered, under Article 22 of the Covenant, in determining the degree of supervision that was appropriate to particular territories and peoples. Another element important to the evolution of the term indigenous appeared in the Covenant. Article 22 also referred to "territories" as places demarcated by internationally recognized borders, in comparison to "peoples," who could be distinguished by sociological, historical, or political factors.

Sami in regional dress, Finmarken, Norway, c. 1885. With forced assimilation, including a ban on their Native language, came the loss of Sami traditions and a fading perception of their history. [MICHAEL MASLAN HISTORIC PHOTOGRAPHS/CORBIS]

Pan-American Union—Organization of American States (OAS)

The Pan-American Union, the predecessor of the present-day Organization of American States (OAS), began to use the term *indigenous* in a different manner. In its Resolution XI of December 21, 1938, the Eighth International Conference of Americas States declared that "the the indigenous populations, as descendants of the first inhabitants of the lands which today form America, and in order to offset the deficiency in their physical and intellectual development, have a preferential right to the protection of the public authorities."

As a matter of practice in the Americas, the term indigenous was used to identify marginalized or vulnerable ethnic, cultural, linguistic, and racial groups within state borders. The consolidated text of the Draft American Declaration on the Rights of Indigenous Peo-

Sami (or Lapps) are the Native people, primarily farmers and reindeer herders, living in the polar regions of Norway, Sweden, Finland, and Russia. In the 1880s (the time period of this portrait of a rural Sami family), Norway adopted strict policies aimed at assimilating its indigenous population.[MICHAEL MASLAN HISTORIC PHOTOGRAPHS/CORBIS]

ples (being negotiated by the OAS, as of June 2003) refers in its Article 1 to indigenous peoples as those who "descend from a native culture that predates European colonization and who conserve normative systems, usages and customs, artistic expressions, beliefs and social, economic, political and cultural institutions." Negotiations proceed within the OAS in a quest for consensus among states and indigenous peoples of the region on the latter's rights.

International Labor Organization (ILO) Convention

The 1957 International Labor Organization (ILO) Indigenous and Tribal Populations Convention (No. 107) applies to tribal populations that "are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization" and who remain socially, economically, and culturally distinct.

The Charter of the United Nations (UN)

The Charter of the United Nations (UN) contains nothing to help reconcile different uses of the term indigenous in international law. Article 73 of the Charter refers merely to "territories whose peoples have not yet attained a full measure of self-government."

In 1987 the UN published *Study of the Problem of Discrimination against Indigenous Populations* by Jose Martinez Cobo that offered the following definition for the term *indigenous:*

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider them-

> selves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems (p. 379).

This definition combines the element of distinctiveness, which characterizes both indigenous and tribal peoples, with the element of colonialism. In addition, the definition contains the following other essential elements: (1) "non-dominance at present," implying that some form of discrimination or marginalization exists; (2) the relationship with "ancestral land" or territories; (3) culture in general, or in specific manifestations (such as religion, living under a tribal system, membership in an indigenous community; (4) language (whether used as the only language, the mother tongue, the habitual means of communication at home or in the family, or the main, preferred, habitual, general, or normal language); (5) residence in certain parts of the country. This is the definition that has prevailed and is applied by the UN.

The 1989 ILO Indigenous and Tribal Peoples' Convention (No. 169), which revised the earlier 1957 Convention, defines indigenous peoples in terms of their distinctiveness, as well as their descent from the inhabitants of a territory "at the time of conquest or colonization or the establishment of present state boundaries." The only difference between the definition of indigenous and tribal peoples in the Convention relates to the principle of self-identification. A people may be classified as indigenous only if it so chooses by perpetuating its own distinctive institutions and identity. Article 1, paragraph 2, of the Convention provides that self-identification "shall be a fundamental criterion for determining the groups to which the Convention shall apply." Paragraph 3 contains a disclaimer stating, "the use of the term *peoples* in this Convention shall not be construed as having any implications as regards [to] the rights which may attach to the term under international law."

It should be noted in this regard that no accepted legal, sociological, or political definition of the term *a people* exists. General or customary international law does not provide any rules or principles concerning the term indigenous peoples, or its relationship with the wider concept of peoples. Whether a group is a people mainly for the purpose of self-determination depends on the extent to which the members of the group making this claim share ethnic, linguistic, religious, or cultural bonds. There is also a subjective element, which weighs the extent to which members of a group perceive the group's identity as distinct from those of other groups. Indigenous peoples are peoples in every political, legal, social, cultural, and ethnological meaning of this term. They have their own languages, laws, customs, values, and traditions; their own long histories as distinct societies and nations; and a unique religious and spiritual relationship with the land and territories in which they have lived.

Indigenous peoples' right to self-determination should ordinarily be interpreted as their right to freely negotiate their status and representation in the state where they live. This might best be described as a kind of "belated state-building," through which indigenous peoples are able to join with all other peoples making up the state on mutually agreed upon and just terms. It does not mean that indigenous individuals should be assimilated into the dominant culture, but that they should be recognized as distinct peoples and incorporated into the state on that basis. Indigenous peoples have repeatedly expressed their preference for constitutional reform within existing states that would allow this process to take place, as opposed to secession from the state. What most indigenous peoples mean when they speak of self-determination is the freedom to live as they have been taught.

History: West Indies

The Western Hemisphere was densely populated when Europeans began their colonization of the region. In 1492 Christopher Columbus set sail under the flag of King Ferdinand and Queen Isabella of Spain and soon subjugated the West Indies. The so-called Indians lived in a land across the ocean, with their own cultures, civilizations, and languages. The Spaniards waged a series of genocidal campaigns against the Indians of Hispaniola. On horseback, accompanied by infantry and bloodhounds, the conquerors destroyed the hunting and gathering nations of the island, and by 1496 they were in complete control. Besides the subjugation the Europeans also brought their diseases. Smallpox arrived in 1518 and spread to the mainland. By 1540 the Indians in the Caribbean had been virtually exterminated.

Catholic priests accompanying the soldiers would read out in Spanish, on reaching Indian villages the *Requerimiento*, a formal demand that the townspeople adopt Catholicism. If the Indians refused to acknowledge the authority of the king and the pope, the soldiers would kill them. Those who were not slaughtered were seized as slave-laborers for the mines. In 1502 the system known as *encomienda* was introduced, whereby the Crown granted land to Spaniards, usually soldiers, who

were also allotted a certain number of Indians to work it. This system of forced labor was known as *repartimiento*.

Subjugation of the Indians was accompanied by hideous acts of cruelty. Representatives sent by Catholic Church authorities began to protest. Spain passed the Laws of Burgos in 1512 in an attempt to control some of the abuses. In 1514 Bartolomé de las Casas, a priest who came to be called the father of human rights in the New World, decided that the Spaniards' treatment of the Indians was unjust and tyrannical, and he tried to intervene with the king to reform the *encomienda* system.

History: North America (Mexico)

After the Spaniards had subjugated the Indians of the West Indies, they invaded the mainland, where they encountered the great empires of the Aztec and Inca. In 1519 Hernando Cortés landed at Veracruz on the eastern shores of Mexico. Reaching the Aztec capital of Tenochtitlan, the Spaniards were astonished to find a beautiful city, the center of an empire of eleven million people. By 1521 Mexico was conquered. The Spaniards brought with them the disease smallpox, which was unknown in Mexico, and Indians died by the hundreds of thousands.

History: South America

By 1532 Francisco Pizarro had conquered Peru, where the Inca ruled over six million Indians. The empire of the Inca, established along the highlands stretching from Ecuador to Bolivia, was an astounding achievement: with winding roads through the mountains, irrigation systems, storehouses, and agricultural terraces. Manco Inca led the revolt of the Inca against the Spaniards. Tupac Amaru, the last Inca king, was captured and brought to Cuzco, where he was beheaded in the central plaza.

As early as 1523, a decade before Pizarro's encounter with Atahualpa, smallpox had begun to depopulate the empire of the Inca. A multitude of plagues, in addition to smallpox, ravaged the Indian population during the sixteenth and seventeen centuries: chickenpox, measles, influenza, pneumonia, scarlet fever; yellow fever, and typhus. Their enormous impact can be best understood by considering population statistics related to both North and South America. In 1519 the Indian population of central Mexico was estimated to be 25 million; by 1523 17 million remained; in 1548 there were only 6 million; and by 1568 a mere 3 million had survived. By the early seventeenth century the number of Indians in central Mexico was scarcely 750,000, that is, 3 percent of the population before the Spanish Conquest began. It is estimated that the Indian population of Peru likewise fell from 9 million before the arrival of Columbus to 1.3 million by 1570.

At the end of a half-century under Spanish rule, the peoples of the Aztec and Inca empires had undergone devastating cultural as well as numerical decimation. Ancient ceremonies of birth, marriage, and death disappeared. Old customs died. A cultural genocide was committed. In the Brazilian rain forest during the twentieth century the epidemics of the earlier Conquest—smallpox and measles—and diseases such as malaria, influenza, tuberculosis, and yellow fever killed thousands of indigenous peoples, in particular, the Yanomami. Depopulation placed terrible stress on the social institutions of indigenous society. From 1900 to 1957, according to Darcy Ribeiro, an anthropologist who sought to help the Urubus-Kaapor in 1950, the Indian population of Brazil dropped from one million to less than two hundred thousand. Seventy-eight Indian communities became extinct. What remains of pre-Colombian civilizations are ruins such as Maccu Picchu, the lost city of the Inca, while the heirs of the conquered peoples sell handicrafts and beg in the streets of Andean cities.

History: North America

In North America the destruction of the Indian population did not necessarily occur at the time of first contact, as was the case in Central and South America. In the sixteenth century a remarkable federal and state structure was established among Indians from the Great Lakes to the Atlantic, and as far south as the Carolinas and inland to Pennsylvania. Known as the Iroquois Confederacy, it incorporated five widely dispersed nations of thousands of agricultural villages. It later included the Tuscarora of the south and refugees from British colonization.

Bordering the Iroquois state to the west were the peoples of the plains and prairies of central North America, from West Texas to the sub-Arctic; in the Canadian prairies, the Cree; in the Dakotas, the Lakota and Dakota (Sioux); and to their west and south the Cheyenne and Arapaho peoples.

Prior to the arrival of the British colonizers with African slaves, the territory was a thriving civilization, with most peripheral areas having been settled by the year 1600. The inhabitants were the Muskogee-speaking Choctaw, Creek, and Chickasaw Nations; the Cherokee, an Algonquin-speaking people just as the Iroquois in the eastern half of the region; and the Natchez Nation to the west, that is, the Mississippi Valley area. The total population of the region is estimated to have been between two to three million. The Natchez

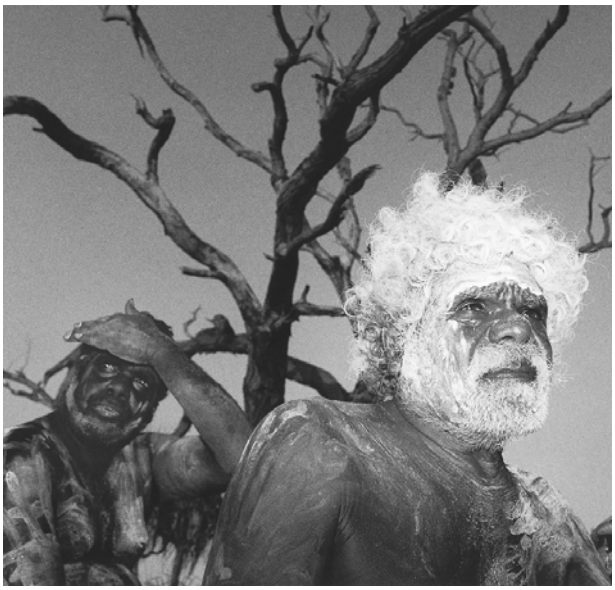
Nation alone, which was totally destroyed by colonization with the remaining population sold into slavery, may have numbered several million.

In the 1890s an American whaling fleet from San Francisco entered the Beaufort Sea and established whaling stations in the western Arctic. Eskimos were hired to gather driftwood to conserve the ships' stocks of coal, and to hunt caribou and musk ox to supply the whalers with fresh meat. The whalers brought syphilis, measles, and other diseases. When the whaling industry collapsed in 1908, of the original population of 2,500, there were only approximately 250 Mackenzie Eskimos left in the region between Barter Island and Bathurst Peninsula.

Alcohol was used by some of the Indians in the Americas. Most indigenous peoples regard the abuse of alcohol as one of the most disruptive forces brought on by colonization and the most serious danger to the future of their communities. There are disturbing contemporary studies of indigenous communities in the Arctic and Sub-Arctic regions that identify a social pathology which threatens to destroy life there: family violence, alcoholism, and a high suicide rate among young people, with most victims being in their teens and early twenties. This is the tragic outcome of the policies pursued by dominant nonindigenous societies for many years. Certain governments and their economic, social, and educational institutions, as well as some missionaries and clergy, have made every effort to destroy indigenous languages, cultures, customs, and traditions. Despite this history, Native peoples remain in the New World.

History: Oceania

With respect to Oceania, there is archaeological evidence that Aborigines have lived in Australia for at least sixty thousand years. On May 13, 1787, a fleet of eleven ships, most carrying convicts, set sail for New South Wales. It arrived on January 26, 1788, giving birth to modern-day Australia. Starting with British occupation, Aboriginal and Torres Strait Islander peoples have been subjected to successive government policies seeking to "protect," "civilize," and "assimilate" them. The policy of assimilation, which often involved removing indigenous children from their families and communities and placing them in nonindigenous communities, government or church institutions, or foster homes, reached its peak between 1910 and 1970. These children, commonly referred to as the Stolen Generations, were not only isolated from their families and traditional lands, but also forbidden to speak their language or practice their culture. Frequently, they never learned of their indigenous origin. This policy and practice may be viewed as a form of genocide on the basis of Article II(e) of the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide.



Though their numbers declined significantly with the advent of European colonization, Aborigines, whose presence in Australia can be traced back some 60,000 years, still enact their ancestors' rituals. In this 1992 photo, an Aborigine participates in "Dreamtime," a ritual intended to signify the continuity of all life unlimited in space and time. [CHRIS RAINIER/CORBIS]

History: Asia

In Asia, Japan recognizes the Ainu as a religious and culture minority, but Ainu efforts to celebrate, preserve, and revive their traditions and customs of the past are severely circumscribed. Japan maintains that the Ainu have lost most of their cultural distinctiveness through assimilation. Despite the official position of the Japanese government, the Ainu place strong emphasis on their distinct cultural identity.

Most of the countries in which indigenous peoples live are relatively poor and less developed. Government officials, and the executives of development banks, and other financial institutions and transnational corporations, often have a limited knowledge of indigenous societies and their culture. As a result, the projects these executives conceive, authorize, and fund—dams, roads, and the utilization of natural resources sometimes involving the large-scale relocation of populations—irrevocably affect the peoples who lie in their paths. The land and natural resource issues of indigenous peoples remain critical and unsolved in many states. In North America, Great Britain and later the

United States signed over three hundred treaties with Indian nations that were subsequently broken.

In 1840 the Maori in New Zealand signed the Treaty of Waitangi with Great Britain. According to it, they ceded sovereignty in exchange for exclusive and undisturbed land rights. However, within a few years the British Crown forcibly purchased half of the guaranteed area, some thirty million acres, and by successive acts of Parliament much of the remaining land has also been wrested from the Maori. At the end of the twentieth century they owned only 3 percent of New Zealand territory. Present-day Maori (along with North American Indians, including those residing in Canada) insist on their treaty rights and continue to demand that the treaties they earlier signed be recognized as legitimate international agreements.

In 2002 the indigenous Wanniyala-Aetto in Sri-Lanka; the forest-dwelling Adivasis in India; and the San, Hadzabe, and Ogiek in Africa all faced situations in which they were either denied access to their ancestral lands, or evicted from them in order to make way for commercial hunting or logging interests. Pastoralists suffered hardships in Ethiopia and Tanzania, where land dispossession increasingly threatened their livelihood. Even the Saami reindeer pastoralists of the European Saamiland—considered the most privileged indigenous people in the world—experienced economic setback.

The Torres Strait Islanders are an indigenous Melanesian people of Australia. At present they are slowly working toward a system that will provide both a strong government and relatively autonomous local island councils, together with protection for and political inclusion of the nonindigenous residents of the islands. Such an arrangement will contribute to economic and social improvement for all. In addition the State of Queensland has demonstrated some recognition of Native status since the landmark decision of the high court in *Mabo v. Queensland* (1992), which recognized Native title in the Torres Strait Islands.

Many states regard indigenous peoples as an obstacle to their national development, not as an economic asset. By pursuing such a philosophy and policy, they ignore the potential contribution of a large portion of their national population and condemn them to poverty, despair, and conflict. Ignoring the economic potential of indigenous communities is a waste of resources in the short term, and a source of high social and financial costs in the long term.

In the Andes and Southeast Asia, where the majority of the world's indigenous peoples live, the flow of private foreign investment and expropriation of lands and natural resources continues unabated, without the free consent of indigenous peoples. National parks, biosphere preserves, and the lands set aside for indigenous peoples have been opened to mining and logging. Large-scale development projects, such as hydroelectric dams and transmigration programs have not just displaced many thousand of peoples, they have also leveled rain forests, emptied rivers, and eliminated much of the word's biological diversity. Indigenous peoples have been an integral part of the worldwide environmental movement that led to the 1992 Earth Summit at Rio de Janeiro. Chapter 26 of Earth Summit Agenda 21, Recognizing and Strengthening the Role of Indigenous People and Their Communities, was adopted during this conference.

Indigenous Peoples Movement and Contemporary Global Protection

In 1923 Chief Deskaheh, leader of the Council of the Iroquois Confederacy, traveled to Geneva to inform the League of Nations of the tragic situation of indigenous peoples in Canada and to request the League's intervention in their long-standing conflict with the Canadian government. In spite of Chief Deskaheh's efforts, the League decided not to hear the case, claiming that the issue was an internal Canadian matter.

Since 1921 the ILO has sought to address the plight of Native workers in European colonies. The 1930 Forced Labor Convention (No. 29) was one result. In the period from 1952 to 1972 the Andean Program, a multi-agency effort under the leadership of the ILO, was launched in Argentina, Bolivia, Chile, Colombia, Ecuador, Peru, and Venezuela; its work affects some 250,000 indigenous peoples. The ILO has further adopted two conventions on indigenous peoples (Nos. 107 and 169 on "Indigenous and Tribal Populations" and the "Convention Concerning Indigenous and Tribal Peoples in Independent Countries"). The 1989 convention (No. 169) is an important international standard on the subject.

After the UN was created in 1946, a number of attempts were made to prompt that body to consider the situation of indigenous peoples around the world. From 1960 to 1970 indigenous movements grew in a number of countries to protest the systematic and gross violations of Native human rights, and the discriminatory treatment and policies of assimilation and integration promulgated by various states. In the 1970s indigenous peoples extended their efforts internationally through a series of conferences and appeals to international intergovernmental institutions and nongovernmental organizations (NGOs). Among the hallmark events of the movement was the International NonGov-

ernmental Organization Conference on Discrimination Against Indigenous Populations in the Americas, held in Geneva in 1977. This conference has contributed to forging a transnational indigenous identity that may be subsequently extended to include indigenous peoples from many corners of the world. Of particular interest was the Fourth General Assembly of the World Council of Indigenous Peoples, held in Panama in 1984, which developed a declaration of principles. This declaration is one of the primary papers on which the Draft United Nations Declaration on the Rights of Indigenous Peoples, as of 2003 under debate in the UN Commission on Human Rights, is based.

In 1982 the UN Working Group on Indigenous Populations (WGIP) was created with a twofold mandate: to review developments relating to the promotion and protection of human rights and fundamental freedoms of indigenous peoples, and to elaborate international standards concerning their human rights. The WGIP, under the chairmanship of Erica-Irene Daes, has produced valuable work. Its annual meetings became the official gathering place for more than nine hundred indigenous representatives from all over the world. The principles of openness, freedom of expression, equality and nondiscrimination, the rule of law, transparency, and democracy have been the subject of its debates, and a constructive dialogue between representatives of indigenous peoples, governments, intergovernmental organizations, NGOs, and members of the WGIP have ensued as a result. With the free and active participation of indigenous peoples, it has drafted and unanimously adopted the Draft Declaration on the Rights of Indigenous Peoples.

On the basis of WGIP's recommendation, the UN proclaimed 1993 the historic "International Year of the World's Indigenous Peoples." Then Secretary-General Boutros Boutros-Ghali called on all governments to respect and cooperate with indigenous peoples. The General Assembly then declared 1995 through 2004 "The International Decade of the World's Indigenous People," with the theme of partnership in action. In 1992 the Permanent Forum on Indigenous Issues was established by the UN Economic and Social Council, as a watchdog on behalf of indigenous peoples. Its most important function and role has been to ensure that the operational side of the UN system focuses on the rights of indigenous peoples, including the right to development, and brings indigenous peoples into a real partnership for development with other sectors of international society. As of 2003 the Permanent Forum held two constructive annual sessions (in 2002 and 2003).

Consequently, indigenous peoples are no longer just victims of development, but also contributors to development and the protection of the environment. With their own special talents, deep knowledge, and long expertise, they will gradually contribute to the improvement of their economic situation and to the prosperity of all people throughout the world.

Reconciliation and Recommendations

In the dawn of the new millennium indigenous peoples worldwide, after centuries of inaction and suffering, have become aware of their rights and responsibilities. The injustice, the exploitation, the discriminatory treatment and dark deeds of the past and present require those who have benefited the most to aid those who have endured the greatest injustices during the last five centuries. Governments must recognize the needs of indigenous peoples and then find a path of restitution that leads to reconciliation. No longer can claimed ownership rights of land and natural resources be ignored. No longer can indigenous customary laws, traditions, and culture be disregarded.

There is a need for national constitutional reforms within existing states, as opposed to secession, with the free and active participation of indigenous peoples. Forced assimilation and integration must be prohibited by law. It is imperative that nations worldwide adopt the UN General Assembly's Draft Declaration on the Rights of Indigenous Peoples. The proclamation will serve as the foundation of a new and just relationship between states and indigenous peoples, and contribute to a successful and viable reconciliation. The education of indigenous peoples must be encouraged, and public awareness properly promoted. The World Bank, International Monetary Fund (IMF), and other international and regional financial institutions must take into consideration the culture of indigenous peoples. Making the right to development a reality will need to entail a very effective socioeconomic planning and implementation process. Indigenous peoples in defending their human rights and fundamental freedoms should not be compelled to routinely seek legal recourse in order to achieve these ends. It must be a last resort against oppression; all their human rights, including the rights to self-determination and development, must be recognized and guaranteed by the rule of law.

SEE ALSO Australia; Aztecs; Beothuk; Canada; Cheyenne; Incas; Native Americans; Pequots; Trail of Tears; Wounded Knee

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Erica-Irene A. Daes

Indonesia

During about five months, from late October 1965 until March 1966, approximately half a million members of the Indonesian Communist Party (Partai Komunis Indonesia, PKI) were killed by army units and anticommunist militias. At the time of its destruction, the PKI was the largest communist party in the non-communist world and was a major contender for power in Indonesia. President Sukarno's Guided Democracy had maintained an uneasy balance between the PKI and its leftist

allies on one hand and a conservative coalition of military, religious, and liberal groups, presided over by Sukarno, on the other. Sukarno was a spellbinding orator and an accomplished ideologist, having woven the Indonesia's principal rival ideologies into an eclectic formula called NASAKOM (nationalism, religion, communism), but he was ailing, and there was a widespread feeling that either the communists or their opponents would soon seize power.

The catalyst for the killings was a coup in Jakarta, undertaken by the September 30 Movement, but actually carried out on October 1, 1965. Although many aspects of the coup remain uncertain, it appears to have been the work of junior army officers and a special bureau of the PKI answering to the party chairman, D. N. Aidit. The aim of the coup was to forestall a predicted military coup planned for Armed Forces Day (October 5) by kidnapping the senior generals believed to be the rival coup plotters. After some of the generals were killed in botched kidnapping attempts, however, and after Sukarno refused to support the September 30 Movement, its leaders went further than previously planned and attempted to seize power. They were unprepared for such a drastic action, however, and the takeover attempt was defeated within twenty-four hours by the senior surviving general, Suharto, who was commander of the Army's Strategic Reserve, KOSTRAD.

There was no clear proof at the time that the coup had been the work of the PKI. Party involvement was suggested by the presence of Aidit at the plotters' headquarters in Halim Airforce Base, just south of Jakarta, and by the involvement of members of the communist-affiliated People's Youth (Pemuda Rakyat) in some of the operations, but the public pronouncements and activities of the September 30 Movement gave it the appearance of being an internal army movement. Nonetheless, for many observers it seemed likely that the party was behind the coup. In 1950 the PKI had explicitly abandoned revolutionary war in favor of a peaceful path to power through parliament and elections. This strategy had been thwarted in 1957, when Sukarno suspended parliamentary rule and began to construct his Guided Democracy, which emphasized balance and cooperation between the diverse ideological streams present in Indonesia.

The PKI, however, had recovered to become a dominant ideological stream. Leftist ideological statements permeated the public rhetoric of Guided Democracy, and the party appeared to be by far the largest and best-organized political movement in the country. Its influence not only encompassed the poor and disadvantaged but also extended well into military and civilian elites, which appreciated the party's nationalism and populism, its reputation for incorruptibility, and its potential as a channel of access to power. Yet the party had many enemies. Throughout Indonesia, the PKI had chosen sides in long-standing local conflicts and in so doing had inherited ancient enmities. It was also loathed by many in the army for its involvement in the 1948 Madiun Affair, a revolt against the Indonesian Republic during the war of independence against the Dutch. Although the party had many sympathizers in the armed forces and in the bureaucracy, it controlled no government departments and, more important, had no reliable access to weapons. Thus, although there were observers who believed that the ideological élan of the party and its strong mass base would sweep it peacefully into power after Sukarno, others saw the party as highly vulnerable to army repression. A preemptive strike against the anticommunist high command of the army appeared to be an attractive strategy, and indeed it seems that this was the path chosen by Aidit, who appears to have been acting on his own and without reference to other members of the party leadership.

In fact, the military opponents of the PKI had been hoping for some time that the communists would launch an abortive coup, believing that this would provide a pretext for suppressing the party. The September 30 Movement therefore played into their hands. There is evidence that Suharto knew in advance that a plot was afoot, but there is neither evidence nor a plausible account to support the theory, sometimes aired, that the coup was an intelligence operation by Suharto to eliminate his fellow generals and compromise the PKI. Rather, Suharto and other conservative generals were ready to make the most of the opportunity which Aidit and the September 30 Movement provided.

The army's strategy was to portray the coup as an act of consummate wickedness and as part of a broader PKI plan to seize power. Within days, military propagandists had reshaped the name of the September 30 Movement to construct the acronym GESTAPU, with its connotations of the ruthless evil of the Gestapo. They concocted a story that the kidnapped generals had been tortured and sexually mutilated by communist women before being executed, and they portrayed the killings of October 1 as only a prelude to a planned nationwide purge of anticommunists by PKI members and supporters. In lurid accounts, PKI members were alleged to have dug countless holes so as to be ready to receive the bodies of their enemies. They were also accused of having been trained in the techniques of torture, mutilation, and murder. The engagement of the PKI as an institution in the September 30 Movement

Major General Suharto (in camouflage fatigues) in an October 6, 1965, photograph. Suharto, right-wing dictator and President of Indonesia from 1967 to 1998, ruled through military control and media censorship. When East Timor, a Portuguese colony, declared its independence, on November 28, 1975, Suharto ordered his army to invade and to annex East Timor as an Indonesian province. It is estimated that, during the annexation, one-third of the local population was killed by the Indonesian army. [AP/WIDE WORLD PHOTOS]

was presented as fact rather than conjecture. Not only the party as a whole but also its political allies and affiliated organizations were portrayed as being guilty both of the crimes of the September 30 Movement and of conspiracy to commit further crimes on a far greater scale. At the same time, President Sukarno was portrayed as culpable for having tolerated the PKI within Guided Democracy. His effective powers were gradually circumscribed, and he was finally stripped of the presidency on March 12, 1967. General Suharto took over and installed a military-dominated, development-oriented regime known as the New Order, which survived until 1998.

In this context, the army began a purge of the PKI from Indonesian society. PKI offices were raided, ransacked, and burned. Communists and leftists were purged from government departments and private associations. Leftist organizations and leftist branches of larger organizations dissolved themselves. Within about two weeks of the suppression of the coup, the killing of communists began.

Remarkably few accounts of the killings were written at the time, and the long era of military-dominated government that followed in Indonesia militated against further reporting. The destruction of the PKI was greeted enthusiastically by the West, with *Time* magazine describing it as "The West's best news for years in Asia," and there was no international pressure on the military to halt or limit the killings. After the fall of Suharto in 1998, there was some attempt to begin investigation of the massacres, but these efforts were hampered by continuing official and unofficial anti-communism and by the pressure to investigate more recent human rights abuses. President Abdurrahman Wahid (1999–2001) apologized for the killings on behalf of his orthodox Muslim association, Nahdlatul Ulama, but many Indonesians continued to regard the massacres as warranted. As a result, much remains unknown about the killings.

Many analyses of the massacres have stressed the role of ordinary Indonesians in killing their communist

neighbors. These accounts have pointed to the fact that anticommunism became a manifestation of older and deeper religious, ethnic, cultural, and class antagonisms. Political hostilities reinforced and were reinforced by more ancient enmities. Particularly in East Java, the initiative for some killing came from local Muslim leaders determined to extirpate an enemy whom they saw as infidel. Also important was the opaque political atmosphere of late Guided Democracy. Indonesia's economy was in serious decline, poverty was widespread, basic necessities were in short supply, semi-political criminal gangs made life insecure in many regions, and political debate was conducted with a bewildering mixture of venom and camaraderie. With official and public news sources entirely unreliable, people depended on rumor, which both sharpened antagonisms and exacerbated uncertainty. In these circumstances, the military's expert labeling of the PKI as the culprit in the events of October 1, and as the planner of still worse crimes, unleashed a wave of mass retaliation against the communists in which the common rhetoric was one of "them or us."

Accounts of the killings that have emerged in recent years, however, have indicated that the military played a key role in the killings in almost all regions. In broad terms, the massacres took place according to two patterns. In Central Java and parts of Flores and West Java, the killings took place as almost pure military operations. Army units, especially those of the elite para-commando regiment RPKAD, commanded by Sarwo Edhie, swept through district after district arresting communists on the basis of information provided by local authorities and executing them on the spot. In Central Java, some villages were wholly PKI and attempted to resist the military, but they were defeated and all or most villagers were massacred. In a few regions—notably Bali and East Java—civilian militias, drawn from religious groups (Muslim in East Java, Hindu in Bali, Christian in some other regions) but armed, trained, and authorized by the army, carried out raids themselves. Rarely did militias carry out massacres without explicit army approval and encouragement.

More common was a pattern in which party members and other leftists were first detained. They were held in police stations, army camps, former schools or factories, and improvised camps. There they were interrogated for information and to obtain confessions before being taken away in batches to be executed, either by soldiers or by civilian militia recruited for the purpose. Most of the victims were killed with machetes or iron bars.

The killings peaked at different times in different regions. The majority of killings in Central Java were over by December 1965, while killings in Bali and in parts of Sumatra took place mainly in early 1966. Although the most intense of the killings were over by mid-March 1966, sporadic executions took place in most regions until at least 1970, and there were major military operations against alleged communist underground movements in West Kalimantan, Purwodadi (Central Java), and South Blitar (East Java) from 1967 to 1969.

It is generally believed that the killings were most intense in Central and East Java, where they were fueled by religious tensions between *santri* (orthodox Muslims) and *abangan* (followers of a syncretic local Islam heavily influenced by pre-Islamic belief and practice). In Bali, class and religious tensions were strong; and in North Sumatra, the military managers of state-owned plantations had a special interest in destroying the power of the communist plantation workers' unions. There were pockets of intense killing, however, in other regions. The total number of victims to the end of 1969 is impossible to estimate reliably, but many scholars accept a figure of about 500,000. The highest estimate is 3,000,000.

Aidit, who went underground immediately after the failure of the coup, was captured and summarily executed, as were several other party leaders. Others, together with the military leaders of the September 30 Movement, were tried in special military tribunals and condemned to death. Most were executed soon afterward, but a few were held for longer periods, and the New Order periodically announced further executions. A few remained in jail in 1998 and were released by Suharto's successor, President B. J. Habibie.

It is important to note that Chinese Indonesians were not, for the most part, a significant group among the victims. Although Chinese have repeatedly been the target of violence in independent Indonesia, and although there are several reports of Chinese shops and houses being looted between 1965 and 1966, the vast majority of Chinese were not politically engaged and were expressly excluded from the massacres of communists in most regions.

Outside the capital, Jakarta, the army used local informants and captured party documents to identify its victims. At the highest level, however, the military also used information provided by United States intelligence sources to identify some thousands of people to be purged. Although the lists provided by the United States have not been released, it is likely that they included both known PKI leaders and others whom the American authorities believed to be agents of commu-

In March 2001 indigenous Dayaks in Indonesia attacked Madurese settlers in the Central Kalimantan town of Sampit, forcing some 50,000 from their homes and killing at least 469. When the government did finally evacuate remaining Madurese—such as the refugees shown disembarking in Surabaya Harbor, East Java, in this March 6 photo—many accused it of ethnic cleansing, in handing the Dayaks a victory in their bid to drive the Madurese from Borneo. [REUTERS/CORBIS]

nist influence but who had no public affiliation with the party.

Alongside the massacres, the army detained leftists on a massive scale. According to official figures, between 600,000 and 750,000 people passed through detention camps for at least short periods after 1965, though some estimates are as high as 1,500,000. These detentions were partly adjunct to the killings—victims were detained prior to execution or were held for years as an alternative to execution—but the detainees were also used as a cheap source of labor for local military authorities. Sexual abuse of female detainees was common, as was the extortion of financial contributions from detainees and their families. Detainees with clear links to the PKI were dispatched to the island of Buru, in eastern Indonesia, where they were used to construct new agricultural settlements. Most detainees were released by 1978, following international pressure.

Even after 1978, the regime continued to discriminate against former detainees and their families. Former detainees commonly had to report to the authorities at fixed intervals (providing opportunities for extortion). A certificate of non-involvement in the 1965 coup was required for government employment or employment in education, entertainment, or strategic industries. From the early 1990s, employees in these categories were required to be "environmentally clean," meaning that even family members of detainees born after 1965 were excluded from many jobs, and their children faced harassment in school. A ban on such people being elected to the legislature was lifted only in 2004. A ban on the teaching of Marxism-Leninism remains in place.

Although the 1948 United Nations Convention on Genocide does not acknowledge political victims as victims of genocide, the Indonesian case indicates that the distinction between victims defined by "national, ethnical, racial, or religious" identity on the one hand and political victims on the other may be hard to sustain. Indonesian national identity is defined politically, rather than by ethnicity or religion, so that the communist victims of 1965 and after, constituting a different political vision of Indonesia from that of their enemies, may be said by some to have constituted a national group.

SEE ALSO East Timor; Kalimantan; West Papua, Indonesia (Irian Jaya)

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Robert Cribb

Inquisition

During the Middle Ages *inquisition* meant an enquiry, undertaken ad hoc by papally appointed inquisitors. While at the time the Latin term *inquisitio* could be applied to enquiries of any kind, historians have come reserve the term to describe the task of detecting, prosecuting, and punishing heretics and their sympathizers by papally appointed judges. This procedure flourished mostly in the thirteenth and fourteenth centuries; in the fifteenth century many aspects of inquisitorial procedure were adopted by bishops to deal with heresy in their dioceses, especially in England and Bohemia.

During the early modern period this office became the basis for the creation of several national institutions, generally dedicated to the prosecution of religious dissent but whose main interests and concerns varied according to local demands. While the medieval and early modern inquisitions share many characteristics, notably of procedure, they should not be confused and shall be discussed here separately.

Inquisition in the Middle Ages

The Christian Church was marked by religious dissent from its very beginning. In the patristic period St. Paul and St. Augustine repeatedly warned about the dangers of heresy. Between the sixth and eleventh centuries the Western Church's concern for heresy waned as it devoted itself to the conversion of Europe. In the eleventh century, however, a spirit of religious reform led to the articulation of a concept of Christian society in which the prospect of salvation was believed to be greatly improved if all Christians reformed their ways. Sometimes called the second wave of conversion, this reform led to a greater concern with individual Christians' beliefs and behavior.

While the origins of medieval heresies remain a complex issue, this climate of religious reform contributed to the creation of heretical movements by those who thought the Church had not gone far enough in its reforms. The spread of popular heresies in Europe during the eleventh and twelfth centuries spurred church officials and lay authorities to action. During the twelfth century, ecclesiastical and lay authorities took steps toward prosecution, the former by making it the duty of bishops to locate and prosecute heresy in their dioceses, and the latter through legislation applying the death penalty or exile to those convicted of heresy. These attempts proved largely ineffective and by the thirteenth century heresy had spread through many parts of southern France, northern Italy, and the Rhineland.

Pope Gregory IX (1227–1241) found a solution to the bishops' ineffectiveness with the appointment, in

1231, of full-time investigators empowered to locate and prosecute heretics. The new inquisitors of heretical depravity followed a Roman law procedure in which the judge was allowed to initiate proceedings ex officio, that is, by virtue of his office, without waiting for an accuser to bring formal charges against a suspect. The judge was also made responsible for every step of the process, from investigation to trial and sentencing. This procedure proved highly effective in dealing with crimes of a public nature and it was not unique to heresy prosecution. In fact, it was adopted by criminal courts through much of Europe at the time.

Inquisitorial tribunals were set up in many areas of present-day France, Germany, Italy, Sicily, and northern Spain. The area most visited by medieval inquisitors was southern France, where they focused especially on the prosecution of Cathars and Waldensians. Different from what is widely assumed, however, there was no single Inquisition coordinated from Rome during the Middle Ages. What is commonly referred to as the medieval Inquisition was in fact not an institution but rather a series of tribunals, following inquisitorial procedure, scattered across Europe and staffed by clergymen and advised by legal experts. Local bishops often had some influence in the workings of a tribunal. Cooperation between the different tribunals depended largely on the initiative of individual inquisitors; there was no official effort in ensuring this cooperation took place.

An inquisition started with the appointment of the inquisitor by the pope to investigate the existence of heresy in a certain locality. The inquisitor was usually drafted from the Dominican or Franciscan order and the area under his jurisdiction varied. Often, as was the case of the tribunals of Carcassone and Toulouse, jurisdiction could extend over the area of several dioceses. Inquisitors' jurisdiction was a priori limited to Christians, but Jews were sometimes prosecuted for returning to Judaism after having converted to Christianity or for protecting those hiding from the inquisitors.

After the area of jurisdiction was determined, the inquisitor then chose a centrally located seat from which to summon suspects from all areas under his purview. At the outset of the investigation, the inquisitor gave a public speech in which he affirmed his authority and established a period of grace (*tempus gratiae*), usually lasting between two weeks and one month, during which anybody who volunteered a full and truthful confession would be spared the harsher punishments allowed by law. From the evidence gathered from confessions, the inquisitor then summoned suspects for interrogation. The many manuals written for inquisitors during the twelfth and thirteenth centuries warned about the need to distinguish between truthful and false abjuration, and inquisitors seem to have paid great attention to accusations based on personal enmity. While the names of witnesses testifying against a suspect were kept secret to avoid retaliation, the accused was allowed to list all of his or her enemies and if any of these were among those who testified against him or her, the name was removed from the roll of witnesses.

If the accused admitted guilt and showed themselves willing to repent, they were usually given a light penance, warning, and absolution. If there was no admission of guilt and sufficient evidence against the accused accumulated, inquisitors were allowed to use torture. The use of torture to exact confessions was not unique to the inquisition—indeed, it was common practice in all ecclesiastical and lay courts of Europe, with the exception of England. Evidence from inquisitorial registers and inquisitors' manuals suggests that the most widely used technique for eliciting confessions was incarceration rather than torture. Separation from family and friends, the mounting cost of imprisonment (for which the accused was held responsible), and the general dreariness of prison life proved more effective than torture in bringing about confessions.

As the aim of the inquisition was to reconcile the accused to the Catholic Church, punishments for heretical crimes were both spiritual and corporal. In theory, a first offender was not supposed to be burned and punishments were calculated to bring about repentance. The harshest penalty for first time offenders was life imprisonment and loss of property. This imprisonment could be either under normal or strict regime; while normal regime was not considered very harsh, strict could mean solitary confinement, little food, and shackles.

Inquisitors were the first judges to use imprisonment as a punishment for crimes. Something akin a parole system was also devised and those who showed contrition and good behavior had their sentences commuted. Life imprisonment, therefore, could mean only a few years of incarceration and the rest of the sentence could be served in freedom pending good behavior or it could be commuted to a lighter punishment. Other forms of punishment included pilgrimages, fasting, wearing penitential garments bearing yellow crosses, and lighter spiritual penances. Burnings were supposed to be a last resort and only unrepentant and relapsed heretics faced relaxation, that is, being handed over to secular authorities for execution.

The ad hoc nature of the process and the lack of centralized control, however, meant that considerable variation existed both regionally and from inquisitor to

inquisitor. Conrad of Marburg, a papally appointed inquisitor, created a reign of terror in Germany during his two-year career in the early 1230s. Most inquisitors, however, proved to be conscientious judges and, contrary to popular belief, relatively few heretics were executed. Estimates from thirteenth-century southern France indicate that 1 percent of those convicted by the inquisition received the death penalty and approximately 10 percent were imprisoned. The vast majority received lighter penances.

By the mid-fourteenth century the great heretical movements that constituted the inquisitors' main target, Catharism and Waldensianism, had mostly disappeared. Consequently, the appointment of inquisitors by the papacy waned until the creation of the early modern institutions in the fifteenth and sixteenth centuries.

The Spanish Inquisition

In 1391 a series of pogroms against Jewish communities swept across Castile and the Crown of Aragon, leading to the forced conversion of thousands of Jews. These violent actions created a new group in the Iberian Peninsula, new Christians known as *conversos*. While some truthfully converted, many *conversos* remained practicing Jews. Ferdinand and Isabella, in an effort to ensure their kingdoms were truly Catholic, applied for a license to confront what became known as the *converso* problem.

The creation of the Spanish Inquisition to deal with the *converso* problem took place in stages, beginning with a bull issued by Pope Sixtus IV on November 1, 1478. This bull granted the Spanish monarchs the right to appoint two inquisitors to oversee the eradication of the Judaizing heresy. Four years later, seven more inquisitors were appointed. Initially established only in Castile, the Spanish Inquisition was extended into the Crown of Aragon in 1483 to 1484. For Castile, the imposition of an inquisitorial court was entirely new, as the medieval inquisition had previously existed only in the Crown of Aragon. One crucial difference distinguished the Spanish Inquisition from its predecessor: the former was entirely under the control of the Crown. In 1488, with the creation of the *Consejo de la Suprema y General Inquisicion* (or the *Suprema*), the Inquisition became an organ of the Spanish government.

During the course of its three-hundred year history, the Spanish Inquisition prosecuted many different groups for crimes against Catholic orthodoxy. These included Protestants, *alumbrados* (illuminist mystics), and unruly clergy, as well as the general population for sexual offenses (such as adultery and homosexuality), blasphemy, and anticlericalism. Their greatest targets, however, were the *conversos* (1478–1530; 1650–1720) and converted Muslims, the *moriscos* (1520–1609, especially in Granada, Valencia, and Aragon). By the end of the seventeenth century, the Spanish Inquisition was largely concerned with enforcing Counter-Reformation ideals of Catholic orthodoxy. The reach of the Inquisition extended throughout the Spanish colonies where indigenous populations also came under its purview.

The Spanish Inquisition was at first itinerant and then established in sixteen urban centers. Structurally, the tribunals consisted of legally and theologically trained inquisitors, prosecutors, and familiars (lay officials who acted within local communities as investigators). All were under the control of the *Suprema* to prevent the abuse of authority by local inquisitors. Centralizing efforts had all sentences submitted to the *Suprema* for review by the mid-seventeenth century, and all prosecutions were initiated by this council in the eighteenth century.

Procedurally, the Spanish Inquisition did not differ from its medieval predecessor. Denunciations by neighbors and voluntary confessions, made after the reading of the Edict of Faith in a community, were thoroughly investigated. Once arrested, suspects had their property confiscated and inventoried. They were then imprisoned until their hearings. Trials consisted of interrogating suspects and witnesses in a series of audiences. One vital difference from the medieval inquisition was the granting of defense counsel to the accused. Judicial torture was licit and, contrary to popular belief, was used by inquisitorial authorities less frequently than in secular courts. Cases were judged by a council of inquisitors and representatives of the local bishop.

In addition to the punishments borrowed from the medieval inquisition, the Spanish inquisitors also imposed flogging and service on the galleys to punish those convicted of heresy. After its initial harsh prosecution of *conversos,* the Spanish Inquisition dealt with those who came before its court with much greater leniency and few of those convicted faced the stake. All sentences were handed out at an *auto de fé,* the public "Act of Faith" designed to act as a deterrent to bad behavior by the rest of the community. By the eighteenth century few prosecutions were initiated, and on July 15, 1834, the Spanish Inquisition was abolished by the acting regent, Queen Maria Cristina.

The Portuguese and Roman Inquisitions

Elsewhere in Catholic Europe, Inquisitions were established on the foundations laid by medieval inquisitors. In Italy, Pope Paul III created the Roman Inquisition in 1542, which centralized the existing office under the

authority of Rome. The Italian city-states, however, retained a great degree of influence over its activities. The Roman Inquisition aimed at eradicating Protestantism throughout Italy, although by the end of the sixteenth century, it primarily dealt with crimes of witchcraft, magic, clerical discipline and Judaizing.

Between 1534–1540, King João II of Portugal worked with Rome to bring the Inquisition to his realm. Modeled on the Spanish institution, the Portuguese Inquisition aimed its prosecutions at *conversos,* many of whom had been forcibly converted with the expulsion of the Jews in 1496, but also investigated cases of witchcraft, blasphemy, bigamy, and sodomy. The Portuguese Inquisition had tribunals in Lisbon, Évora, Coimbra, Lamego, and Tomar in Portugal, and in Goa in Portuguese India. It was abolished in 1821.

The Inquisition as Myth

From their creation, the Early Modern Inquisitions were seen as perpetrators of great crimes against humanity, a view that has persisted into the twenty-first century. Associated with indiscriminate arrests, overzealous use of torture, and reliance on false witnesses, all surrounded in a veil of secrecy and leading to certain death, the Inquisition was seen as a great miscarriage of justice. This view is particularly linked with the Spanish Inquisition, which popular legend described as an institution built on fear, terror and violence.

In fact, historical evidence demonstrates that after the initial harsh prosecutions of *conversos* in the late fifteenth and early sixteenth centuries, the Spanish Inquisition was much less vicious than imagined. This is particularly true if it is examined in comparison to other courts of its time. By the beginning of the seventeenth century, when secular courts in areas such as the Holy Roman Empire were burning thousands of suspected witches, the Spanish Inquisition rarely produced a sentence of death and instead handed out relatively mild punishments. Much of the myth surrounding the Spanish Inquisition was created in the seventeenth and eighteenth centuries by European Protestants who used it as an example to demonstrate the evils of Catholicism. Although often accused of horrific crimes, the centralized nature of the early modern Inquisitions worked rather to keep abuses in check, something severely lacking in localized secular courts.

SEE ALSO Cathars

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Intent

The anatomies of international crimes tend to include material elements (relevant to conduct), mental elements (relevant to state of mind) and contextual or circumstantial elements (relevant to the context or pat-

tern within which the criminal conduct occurs). Each of these elements must be established beyond a reasonable doubt—within the context of international criminal jurisdictions—if a criminal conviction is to be sustained. In addition, one must establish beyond a reasonable doubt the appropriate mode of liability or form of participation by the accused in the relevant crime, such as individual perpetration, superior responsibility, complicity, or common purpose. Legal definitions of modes of liability have both subjective and objective requirements.

Intent describes a specific state of mind, proof of whose existence is required in the establishment of some of the abovementioned mental elements of crime. The distinction between the scope and degree or quality of requisite intent is valuable in international criminal law in the same way as it is in many national jurisdictions. There is a logical distinction to be made between the intensity of intent (i.e., its degree or quality) and the result, consequence, or other factor that such intent is alleged to have engendered (i.e., its scope). Intent may be described in relative terms, as lesser in degree (at the level of premeditation) or greater in degree (rising to the level of recklessness, or *dolus eventualis*).

This article examines the degree or quality of intent that is requisite to a finding of guilt with regard to the international crime of genocide. The definition of genocide in international law includes specific intent (*dolus specialis*) as a distinctive mental element of the crime; namely, the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. However, the degree of that specific intent is not articulated explicitly in the relevant international treaties. Thus, a close analysis of case law coming out of the two ad hoc international criminal tribunals—the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—is in order. Also relevant are other sources of international criminal law (including the work of the United Nations (UN) International Law Commission), national case law, and commentaries by some publicists in the field. The state of international criminal law is critically appraised, with particular reference made to the Judgment of the ICTY Appeals Chamber in *Prosecutor v. Goran Jelisić* and other related cases.

International Treaty Law on Degree or Quality of Genocidal Intent

International treaty law does not define the degree or quality of intent that is requisite to the international crime of genocide more precisely than is provided by its use of the word *intent*. The 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) simply states that the genocidal conduct must have been committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." This definition is, in the words of the International Law Commission, "widely accepted and generally recognized as the authoritative definition of this crime." The same wording is used in the Statutes of the ICTY, the ICTR, and the International Criminal Court (ICC). The chapeaux of Article 4, paragraph 2, of the ICTY Statute and Article 2, paragraph 2, of the ICTR Statute reiterate a portion of Article II of the Genocide Convention. Article 6 of the ICC does the same. This minimalist formulation of the requisite degree or quality of intent may have been of practical value to the declaratory function of the Genocide Convention and to national counterparts of the Convention, but it has proven to be somewhat vague, to the point where appellate litigation in the ICTY has been needed. *Prosecutor v. Goran Jelisić* provides an appropriate window on the problem.

International Case Law on Degree or Quality of Genocidal Intent

ICTY

The Judgment of the ICTY Appeals Chamber in *Prosecutor v. Goran Jelisić* sets forth the prevailing legal standard on the degree or quality of intent that must accompany the crime of genocide. In this case, the Prosecution appealed the Trial Chamber Judgment on the grounds that it "is ambiguous in terms of the degree or quality of the mens rea required under Article 4 for reasons articulated by the Trial Chamber itself." In its brief for the Appeals Chamber the Prosecution stated that the

> Trial Chamber erred in law to the extent it is proposing that the definition of the requisite mental state for genocide in Article 4 of the Statute only includes the *dolus specialis* standard, and not the broader notion of general intent [. . .].

The expression "to the extent it is proposing" suggests a caution or conditionality in this declaration of the grounds for the appeal; indeed, its written Appeals submission had suggested that the Trial Judgment was far from clear, left open the question of degree of intent, and used inconsistent terminology.

The Appeals Chamber astutely ruled, without any detailed discussion, that in order to convict an accused of the crime of genocide, he or she must have sought to destroy a group entitled to the protections of the Genocide Convention, in whole or in part. The mental state that corresponds to having sought the destruction of a group is referred to as *specific intent:*

> The specific intent requires that the perpetrator, by one of the prohibited acts enumerated in Article 4 of the Statute, seeks to achieve the destruction, in whole or in part, of a national, ethnical, racial or religious group, as such.

The Appeals Chamber went beyond setting aside the arguments of the Prosecution. It stated that the Prosecution had based its appeal on a misunderstanding of the Trial Judgment. The Appeals Chamber stated that a "question of interpretation of the Trial Chamber's Judgment is involved," and that

> the question with which the Judgment was concerned in referring to dolus specialis was whether destruction of a group was intended. The Appeals Chamber finds that the Trial Chamber only used the Latin phrase to express specific intent as defined above [. . .].

In other words, because the Prosecution was judged to have misunderstood the Trial Chamber's singular use of the term *dolus specialis* in the Trial Judgment, the Appeals Chamber did not consider it necessary to take on the substance of the Prosecution's submissions. Rather, the Appeals Chamber ruled that the term *intent* (as it appears in the definition of genocide that is used in international law) means "specific intent," which again must be understood as an intent to seek the destruction of a group. The Prosecution's attempt to advance a broader interpretation of the term was dismissed as a mere misunderstanding of the Trial Chamber's Judgment.

The Appeals Chamber affirmed that insofar as its preferred term, specific intent, is concerned, it "does not attribute to this term any meaning it might carry in a national jurisdiction." In making this statement the Appeals Chamber could be seen to have characterized comparative analysis of domestic criminal law as having little significance in the development of ad hoc tribunal case law relating to the requisite quality or degree of genocidal intent.

The *Jelisić* Appeals Judgment was rendered on July 5, 2001. Less than five weeks later, in *Prosecutor v. Radislav Krstić*, an ICTY Trial Chamber—in a Judgment dated August 2, 2001—convicted General Krstic of genocide for his participation in genocidal acts following the fall of the "safe area" of Srebrenica in July 1995. The *Krstić* Trial Judgment is in keeping with the *Jelisić* Appeals Judgment with respect to the mental state requirement for the establishment of guilt for the crime of genocide:

> For the purpose of this case, the Chamber will therefore adhere to the characterization of genocide which encompasses only acts committed with the goal of destroying all or part of a group.
>
> The Trial Chamber stated that it
>
> is aware that it must interpret the Convention with due regard for the principle of *nullum crimen sine lege*. It therefore recognizes that, despite recent developments, customary international law limits the definition of genocide to those acts *seeking* [italics added] the physical or biological destruction of all or part of the group.

However, the *Krstić* Trial Chamber did not exclude the possibility that the definition of genocide is a portion of the international law on genocide that is evolving. The Judgment provides that "[s]ome legal commentators further contend that genocide embraces those acts whose foreseeable or probable consequence is the total or partial destruction of the group without any necessity of showing that destruction was the goal of the act."

On the whole, in *Prosecutor v. Radislav Krstić*, the Trial Chamber's discussion of genocidal intent was unusually event-dependent. The discussion of the elements of genocide never strayed from the facts of the case. (In this way a Trial Chamber may try to shelter its legal findings and prevent them from being overturned on appeal.) The Trial Judgment did, however, give more space to its finding on the mental state requisite to the crime of genocide than the corresponding (and very brief) discussion in the *Jelisić* Appeals Judgment. The *Krstić* Appeals Chamber held that the Trial Chamber "correctly identified the governing legal principle" and "correctly stated the law," but "erred in applying it."

The *Jelisić* Appeals Chamber standard (with respect to genocidal intent), as reinforced by the *Krstić* Trial Chamber, has been upheld by later decisions of the ad hoc tribunals.

ICTY Trial Chamber III, in *Prosecutor v. Duško Sikirica et al.*, issued a "Judgment on Defense Motions to Acquit" (September 3, 2001), in which it engaged in an elaborate and frank discussion of the law of genocide. The Prosecution's response to the half-time challenges submitted by the Defense, as well as the oral hearing before the *Sikirica* Trial Chamber, predated the *Jelisić* Appeals Judgment. In other words, the Prosecution had not adjusted its statements on the question of intent so as to encompass the *Jelisić* Appeals Judgment. It had, however, formulated these statements so as to be in line with the revised position advanced by the Prosecution during the oral argument in the *Jelisić* appeal.

Hence, the Prosecution proposed that three different mental state standards be part of the mental state requirement of the genocide provision in the ICTY Statute (Article 4):

1. The accused consciously desired the genocidal acts to result in the destruction, in whole or in part, of the group, as such;
2. The accused, having committed his or her genocidal acts consciously and with will to act, knew that the genocidal acts were actually destroying, in whole or in part, the group, as such; or
3. The accused, being an aider and abettor to a manifest, ongoing genocide, knowing that there was such an ongoing genocide and that his or her conduct of aiding and abetting was part of that ongoing genocide, knew that the likely consequence of his or her conduct would be to destroy, in whole or in part, the group, as such.

The Trial Chamber's response to this proposition is, although cursory, unmistakably clear. The Chamber stated that Article 4 of the ICTY Statute, "expressly identifies and explains the intent that is needed to establish the crime of genocide. This approach follows the 1948 Genocide Convention and is also consistent with the ICC Statute. [. . .]." The Chamber also noted that, "[a]n examination of theories of intent is unnecessary in construing the requirement of intent in Article 4(2). What is needed is an empirical assessment of all the evidence to ascertain whether the very specific intent required by Article 4(2) is established."

The Trial Chamber adopted a purely textual approach in its interpretation of genocidal intent, and refused to "indulge in the exercise of choosing one of the three standards identified by the Prosecution"—because, in its opinion, the wording of the ICTY Statute (and hence, the Genocide Convention) expressly provides and explains the applicable standard. The fact that the word *intent* does not reveal the degree of intent that is required suggests that the Trial Chamber wished to defuse the notion of quality or degree of intent (as opposed to its scope) in the context of the international crime of genocide.

The half-time Decision in *Prosecutor v. Milomir Stakić* provides some clarification. It was a Decision pursuant to a Defense challenge to dismiss the Prosecution's case on the grounds that there was insufficient evidence to sustain a conviction prior to the Defense's presentation of its evidence (in accordance with Rule 98*bis* of the ICTY Rules of Procedure and Evidence). The *Stakić* Trial Chamber had observed that genocide is "characterized and distinguished by the aforementioned surplus intent." Genocidal conduct, it held, is only elevated to the crime of genocide

> when it is proved that the perpetrator not only wanted to commit those acts but also intended to destroy the targeted group in whole or in part as a separate and distinct entity. The level of this specific intent is the dolus specialis. The Trial Chamber observes that there seems to be no dispute between the parties on this issue.

At the time of this Decision (October 2002), the ad hoc tribunal Prosecution had for more than one year accepted the mental state requirement as set forth in the *Jelisić* Appeals Judgment and the subsequent *Krstić* Trial Judgment. The emphasis of the *Stakić* Rule 98*bis* Decision was therefore not the quality or degree of genocidal intent, but rather the mental state requirement for accomplices. The *Stakić* Trial Judgment, not surprisingly, confirmed *Jelisić* and *Krstić* and its own half-time Decision. The Trial Chamber observed that the crime of genocide is "characterized and distinguished by a surplus of intent." The perpetrator must not only have "wanted to commit those acts but also intended to destroy the targeted group in whole or in part as a separate and distinct entity. The level of this intent is the *dolus specialis* or *specific intent*—terms that can be used interchangeably."

ICTR

Several decisions of the ICTR in effect confirm that there is a specific intent requirement for the international crime of genocide. In *Prosecutor v. Jean-Paul Akayesu* the Trial Judgment clearly states that a "specific intention" is required, a dolus specialis; however, the Judgment is rather unclear when it attempts to describe what this means. The Judgment suggests that the significance of this "specific intention" is that the perpetrator "clearly seeks to produce the act charged." Accordingly, the object of the seeking is "the act charged," and not the complete or partial destruction of the group, as such. In other words, the ordinary meaning of the formulation used in the Judgment would suggest that the "specific intention" referred to by the *Akayesu* Trial Chamber actually concerns the genocidal conduct or *actus reus,* and not the aim of destruction.

Furthermore, in *Prosecutor v. Clément Kayishema and Obed Ruzindana,* the Trial Judgment states that a "distinguishing aspect of the crime of genocide is the specific intent (dolus specialis) to destroy a group in whole or in part." The Trial Chamber then opined that, "for the crime of genocide to occur, the mens rea must be formed prior to the commission of the genocidal acts. The individual acts themselves, however, do not require premeditation; the only consideration is that the act should be done in furtherance of the genocidal intent."

The expression "done in furtherance of the genocidal intent" is to a certain extent helpful in addressing the relationship between the genocidal conduct and the

genocidal intent. The genocidal conduct must be undertaken in the service of the broader intent to destroy a group in whole or in part. The expression suggests the presence of both a cognitive component and volition as part of the mental state. It is difficult to imagine how one can do something to further the realization of an intention without knowing about and wanting the intended result. Doing something in furtherance of a specific intent would seem to imply a conscious desire.

Prosecutor v. Alfred Musema also includes a consideration of genocidal intent. In this case, the Trial Chamber stated that the crime of genocide is distinct from other crimes "because it requires a dolus specialis, a special intent." The Trial Chamber then tried to elucidate what it meant by dolus specialis by positing that the "special intent of a crime is the specific intention which, as an element of the crime, requires that the perpetrator clearly intended the result charged." This language expressly identifies result as the object of the perpetrator's intent or mental state. The specific intent does not refer to the conduct of destroying, but rather the result of at least partial destruction of the group. In this sense, it may be illustrative to use the term *subjective surplus* (of intent).

However, the *Musema* Trial Judgment refers to the result "charged." Identifying the result of destruction as pivotal (in the assignment of guilt), rather than the conduct that contributes to or brings about that destruction, would seem to be based on the assumption that the result of destruction is an integral part of the crime of genocide. Regrettably, paragraph 166 of the *Musema* Trial Judgment reinforces this assumption:

> The dolus specialis is a key element of an intentional offense is characterized by a psychological nexus between the physical result and the mental state of the perpetrator.

The word *nexus* is not particularly descriptive in this context; neither is the reference to physical result. The very notion of subjective surplus presupposes a broader intent that goes beyond the actus reus and includes a further objective result or factor that does not correspond to any objective element of crime. That is why this intent requirement amounts to a "surplus." International case law suggests that there has been no recognition of an objective contextual element (such as actual physical destruction) for genocide in international treaty law. It is certainly difficult to locate such an objective contextual element in the wording of the Genocide Convention.

The Musema decision draws on the earlier *Rutaganda* Trial Judgment (*Prosecutor v. Georges Anderson Nderubumwe Rutaganda*). The latter asserts that the distinguishing feature of the crime of genocide is the requirement of "dolus specialis, a special intent." It also uses the expression "clearly intended the result charged"—as well as "encompass the realization of the ulterior purpose to destroy"—both of which have been discussed in preceding paragraphs.

Finally, the International Court of Justice itself *insisted* (borrowing the word of the *Krstić* Trial Judgment), in its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, that specific intent to destroy is required for the international crime of genocide, and it indicated that "the prohibition of genocide would be pertinent in this case [possession of nuclear weapons] if the recourse to nuclear weapons did indeed entail the element of intent, towards a group as such, required by the provision quoted above." The *Krstić* Trial Chamber noted that some of the dissenting opinions criticized the Advisory Opinion "by holding that an act whose foreseeable result was the destruction of a group as such and which did indeed cause the destruction of the group did constitute genocide."

Other Relevant Sources on the Requisite Quality or Degree of Genocidal Intent

Even if international case law were unequivocal vis-à-vis the question of the requisite quality or degree of genocidal intent, it is also useful to consider additional sources of international law.

International Law Commission

Notably, the International Law Commission stated in its commentary on the 1996 Draft Code of Crimes Against the Peace and Security of Mankind that "the definition of the crime of genocide requires a specific intent which is the distinguishing characteristic of this particular crime under international law." The Commission further observed that

> [a] general intent to commit one of the enumerated acts combined with a general awareness of the probable consequences of such an act with respect to the immediate victim or victims is not sufficient for the crime of genocide. The definition of this crime requires a particular state of mind or a specific intent with respect to the overall consequences of the prohibited act."

Caution should be observed in relying on the *travaux préparatoires* (preparatory work, or works) of the Genocide Convention, insofar as it is often difficult to establish the prevailing thinking of the negotiating states at the time. One can find support for widely differing positions on the same issues in the preparatory work. However, the *Krstić* Trial Judgment invoked the preparatory work for its position, claiming that it "clearly shows that the drafters envisaged genocide as an enterprise whose goal, or objective, was to destroy

a human group, in whole or in part." The Chamber continued:

> The draft Convention prepared by the Secretary-General presented genocide as a criminal act which aims to destroy a group, in whole or in part, and specified that this definition excluded certain acts, which may result in the total or partial destruction of a group, but are committed in the absence of an intent to destroy the group.

National Case Law

A few recent cases presented in German courts may be relevant to this discussion (although there is little evidence of other relevant national case-law). The Federal Supreme Court of Germany observed in its review of a 2001 case that genocidal acts "only receive their imprint of particular wrong by their combination with the intent [Absicht] required by section 220a(1) to destroy, in whole or in part, a group protected by this norm as such, keeping in mind that the desired goal, i.e., the complete or partial destruction of this group, does not have to be accomplished." The German term *Absicht* signifies *dolus directus* in the first degree—or, in more familiar terminology, conscious desire. The Court added, with an encouraging degree of precision:

> However, this goal has to be included within the perpetrator's intent as a subjective element of the crime that does not have an objective counterpart in the actus reus. This intent, which really characterizes the crime of genocide and distinguishes it, presupposes that it is the objective of the perpetrator, in the sense of a will directed towards a specific goal, to destroy, in whole or in part, the group protected by section 220a.

In another case that went before the German Federal Supreme Court, the judges provided further elaboration of the same conscious desire standard that was upheld by the *Jelisić* Appeals Chamber:

> The desired result, i.e., the complete or partial destruction of the group as such, does not have to be accomplished; it suffices that this result is comprised within the perpetrators intent [Absicht]. It is through this subjective element that, figuratively speaking, "anticipates" the desired outcome in the subjective sphere, that the crime of genocide [. . .] as such and thus its full wrong is determined.

Commentaries

Antonio Cassese, a widely recognized authority on international criminal law, observes that genocidal intent "amounts to dolus specialis, that is, to an aggravated criminal intention, required in addition to the criminal intent accompanying the underlying offense [. . .]." He states that it "logically follows that other categories of mental element are excluded: recklessness (or dolus eventualis) and gross negligence." He correctly points out the ad hoc tribunals have contributed greatly to the elucidation of the subjective element of genocide.

William A. Schabas, an expert on the law of genocide, commenting on Article 6 (concerning genocide) of the ICC Statute, mentions "the special or specific intent requirement," "this rigorous definition," and the "very high intent requirement" without describing what the standard set out in the Genocide Convention and the ICC Statute actually is. It would seem that Schabas does not recognize the concept of degree or quality of mental state. He reiterates that the "offender must also be proven to have a 'specific intent' or dolus specialis," but without elaboration of what this phrase or the language of the intent formulation in the Genocide Convention actually means. He does observe that a "specific intent offense requires performance of the actus reus but in association with an intent or purpose that goes beyond the mere performance of the act." He also suggests that the chapeau of Article II of the Genocide Convention actually defines the specific intent via the formulation "with intent to destroy, in whole or in part."

German legal scholar Albin Eser's brief but sophisticated treatment of specific intent in a contribution to Cassese's three-volume commentary on the Rome Statute of the ICC is instructive. He observes that "with special intent particular emphasis is put on the volitional element." Or, more specifically on genocide:

> In a similar way, it would suffice for the general intent of genocidal killing according to Article 6(a) of the ICC Statute that the perpetrator, though not striving for the death of his victim, would approve of this result, whereas his special "intent to destroy" in whole or in part the protected group must want to effect this outcome.

This overview of the positions taken by leading specialists on the issue of degree or quality of genocidal intent shows that there are no significant discrepancies between principal and secondary sources of international law with respect to the requisite degree or quality of intent for the international crime of genocide.

The Nature of the Prosecution's Third Ground of Appeal in *Prosecutor* v. *Goran Jelisić*

Against the background of such strong and consistent arguments coming out of primary and secondary sources of international criminal law, it is necessary to inquire whether the Prosecution's third ground of appeal (pertaining to genocidal intent) in the *Jelisić* case was completely without merit, and whether it was misinterpreted by the Appeals Chamber.

The essence of the Prosecution's argument was: (1) that the Trial Chamber had erroneously held that the requisite quality or degree of intent for genocide is dolus specialis; (2) that the Trial Chamber had erroneously construed dolus specialis as being confined to consciously desiring complete or partial destruction; and (3) that the Trial Chamber had erred in not including the following two mental states in the scope of the requisite genocidal intent: knowledge that one's acts were destroying, in whole or in part, the group, as such; and that described by the case in which an aider and abettor commits acts knowing that there is an ongoing genocide which his acts form part of, and that the likely consequence of his conduct would be to destroy, in whole or in part, the group as such.

The Appeals Chamber held that the Prosecution's first assertion in the foregoing sequence was wrong and based on a misunderstanding, and that as a consequence it was rejecting the Prosecution's third ground of appeal. The Appeals Chamber proceeded to interpret the word *intent* as requiring that the perpetrator was seeking the result of destruction, which in reality amounts to a requirement of conscious desire. In other words, the Appeals Chamber did not address whether the Trial Chamber had held that the genocide provision of the ICTY Statute requires conscious desire (the Prosecution's second assertion in the foregoing sequence), but the Appeals Chamber itself held that conscious desire in the form of seeking the destruction of the group is required under the Statute. The concern that underlay the Prosecution's third ground of appeal was of course the level of the requisite intent, not whether or not it was called dolus specialis.

The Prosecution had advanced the two additional mental states (described above) that it claimed fell within the scope of the requisite genocidal intent—the first referring to the perpetrator of genocidal conduct, the second referring exclusively to accomplice liability. By insisting that the point of departure of the Prosecution's argument had been based on a misunderstanding, the Appeals Chamber chose not to discuss the merits of the Prosecution's second and third assertions with respect to the Trial Chamber's putative failings. As a consequence, there does not seem to be a recorded consideration by the Appeals Chamber of the possible merit of the Prosecution's material propositions.

This omission is noteworthy, not only against the background of the extensive briefing on this issue by the parties in the *Jelisić* appeal, but also in light of recent case law coming out of the same ad hoc tribunal.

Concluding Considerations

The relevant sources in international criminal law provide a firm legal basis for the conclusion that conscious desire is the special intent requirement for the international crime of genocide.

It would seem that findings by the ICTY *Jelisić* Appeals Chamber and the *Krstić* Trial Chamber of the requisite quality or degree of genocidal intent remain sound. It is difficult to see how one can avoid requiring that the perpetrator of genocide has sought at least partial destruction of the group, or had such destruction as the goal of the genocidal conduct. It is reasonable to assert that the mental state must be composed both of a cognitive and emotive or volitional component. The perpetrator consciously desires the result of destructive action if that is what he or she seeks or harbors as the goal. The idea that one can seek a result with a mind bereft of volition as regards this result seems to be an abstraction not in conformity with practical reality. Consciousness of the result of action undertaken to further the destruction of the group, of the process leading to the destruction of the group, or of how one's conduct is an integral part of this process is not the same as wanting, desiring, or hoping for the destruction to occur. Desiring the destruction itself, with no awareness of a process to bring it about, of one's own contribution to such a process, or of the ability of one's conduct to bring about partial destruction would amount to a mental state that lacks the resolve that characterizes the intent to undertake action with a view to that action's ensuring at least the partial destruction of the targeted group.

It is unlikely that the state of the law will evolve significantly in the milieu of the ad hoc Tribunals, which are expected to be in operation until sometime between 2008 and 2010. The ICTY Appeals Chamber did not leave sufficient room for the Trial Chambers to attempt to expand the scope of the applicable standard for genocidal intent. The *Krstić* Trial Judgment is courageous in this respect, insofar as it suggests that customary international law could have moved on this question but had not done so by 1995.

SEE ALSO Complicity; Convention on the Prevention and Punishment of Genocide; International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Superior (or Command) Responsibility; War Crimes

Morten Bergsmo

International Committee of the Red Cross

The International Committee of the Red Cross (ICRC), the founding agent of the International Red Cross and

Red Crescent Movement, is registered under the laws of Switzerland, where it has its headquarters, as a private association. At the same time, it is recognized in public international law and has signed a headquarters agreement with the Swiss federal authorities as if it were an intergovernmental organization. Although its professional staff has been internationalized since the early 1990s, its top policy-making organ, variously called the Committee or the Assembly, remains all-Swiss. The mandate of the ICRC has always been, and remains, responding to the needs of victims of conflict. The organization started with a focus on wounded combatants in international war, then progressively added a concern for: detained combatants in international war, all persons adversely affected by internal or civil war, those detained by reason of "political" events in domestic troubles and tensions, civilians in international war and occupied territory, and all those adversely affected by indiscriminate or inhumane weapons. The ICRC seeks both to provide services in-country, and to develop legal and moral norms that facilitate its fieldwork.

Historical Overview

In 1859 a Swiss businessman, Henry Dunant, witnessed the Battle of Solferino in present-day northern Italy, then the site of clashing armies from the French and Austro-Hungarian Empires. Dunant was appalled at the lack of attention given to wounded soldiers. At that time European armies provided more veterinarians to care for horses than doctors and nurses to care for soldiers. Dunant not only set about caring for the wounded at Solferino, with the help of mostly female locals, but also returned to Geneva determined to find a more systematic remedy for the problem.

The Original Vision

By 1863 Dunant helped create what has become the ICRC. Originally composed of Dunant and four other male volunteers from the Protestant upper and middle classes of Geneva, the Committee initially adopted a two-track approach to help victims of war. It tried to see that "aid workers" were sent to the field to deal firsthand with primarily medical problems arising from war. It also sought to develop international humanitarian law to guarantee the protection of human dignity despite what states saw as military necessity. An early example of the pragmatic track was the dispatch of observers to the war in Schleswig-Holstein (1864). An early result of the second track was the 1864 Geneva Convention for Victims of War, a treaty that encouraged medical attention to war wounded and neutralized both the wounded and medical personnel. The pragmatic and normative tracks were intended to carve out a humanitarian space in the midst of conflict, to set limits on military and political necessity in order to preserve as much humanity and human dignity as states would allow. This two-track approach remains, even though the ICRC's scope of action has been expanded in terms of geography covered, conflicts addressed, and victims helped.

At first Dunant and his colleagues on the Committee thought it would be sufficient for them to help organize national aid societies for the pragmatic humanitarian work. They set about promoting, later recognizing, aid societies in various countries. Other dynamic personalities, such as Clara Barton in the United States and Florence Nightingale in the United Kingdom, were also intent on doing something about the human tragedy stemming from war, and they were responsible for the creation of the American and British Red Cross Societies, respectively. These societies, and others, were loosely linked to the ICRC in a growing network that focused first on medical assistance in war.

The Ottoman Empire, the remnant of which is present-day Turkey, was the first Muslim authority to become a party to the 1864 Geneva Convention and create an official aid society primarily for medical assistance in armed conflict. However, Ottoman officials insisted on using the emblem of the Red Crescent rather than the Red Cross. The ICRC, not anticipating subsequent controversies over proliferating emblems and trying to play down the role of religion (Dunant was an evangelical Christian), deferred to this Ottoman fait accompli. In the early twenty-first century there are more than 180 national Red Cross and Red Crescent Societies. They have to be recognized by the ICRC, after meeting a set of conditions, including use of an emblem approved by states when meeting in diplomatic conference. States establish neutral emblems in war through treaty making.

By the 1870s Dunant had retired to the sidelines in the context of failed business ventures carrying the hint of scandal, something not tolerated in Calvinistic Geneva, and his leadership role was taken over by Gustave Moynier. Dunant was later "rehabilitated" and named a cowinner of the first Nobel Peace Prize in 1901. But it was the cautious lawyer Moynier who, with considerable organizational skills, decisively shaped the early ICRC.

A New Vision

The Committee initially overestimated the appeal of international or universal humanitarianism and underestimated the power of nationalism. The Franco-Prussian war of 1870 showed the limits of the original vision, as the French and Prussian aid societies helped only their

conationals—and even that was not done very efficiently. Neutral, impartial, and universal humanitarianism, which means tending to victims of conflict without regard to nationality or other characteristics besides human need, was not much in evidence. The emerging Red Cross and Red Crescent movement was in considerable disarray at this time. The various national Red Cross and Red Crescent societies were being nationalized and militarized by their governments.

By World War I the ICRC decided that it must become more of an actor in the field, that Switzerland's permanent neutrality allowed a role for Swiss ICRC personnel that could not be matched by nationals of the fighting parties. If neutral humanitarianism was to survive, the ICRC would have to become more than a mailbox and far-off storage depot. World War I greatly affected the evolution of the organization. For all its brutality the war saw the emergence of the ICRC as a more widely known organization serving the victims of war. It developed a reputation for stellar work not so much in the medical field but as the neutral supervisor of conditions for prisoners of war (POWs).

The ICRC did not, however, play much of a role in the Armenian genocide that occurred in the Ottoman Empire between approximately 1890 and 1922. Historians have yet to establish the precise role of the ICRC in these events, but clearly the American Red Cross played a much more dynamic role in trying to respond to the killings in the 1890s. In 1915 and 1916 the ICRC may have contented itself with discreet overtures to Germany, the ally of the Ottoman Empire, whose personnel sometimes held key positions in the Ottoman military. At this time the ICRC was still defining its exact role as an actor in the field; remained a very small, amateurish, and inconsistent organization; and continued to focus primarily on the sick and wounded and detained combatants rather than civilians. The ICRC was more active on the Western Front, rather than on the Eastern Front and in the Ottoman Empire. To many observers it thus seemed that there was no official war between the empire and the Armenian people.

Despite its limitations the ICRC was awarded its first Nobel Peace Prize as an organization in 1917. Red Cross agencies were mentioned in the League of Nations Covenant, such was their prominence because of World War I. In 1929 the ICRC helped to develop a new Geneva Convention that legally protected prisoners of war, as well as revise the 1864 treaty (which had already been revised once in 1906). A pattern was emerging: first, pragmatic action, then legal codification of that humanitarian effort. This had been true from 1859 to 1864, and was again the case from 1914 through 1929.

During the years between the two world wars (1919–1939) the ICRC laid the foundations for later important developments. The ICRC was active in the Spanish Civil War of the 1930s, which contributed over time to the further development of international humanitarian law for internal armed conflict, often called civil war. The ICRC was also active in East Africa when Benito Mussolini's Italy invaded Abyssinia, present-day Ethiopia, setting the stage for the ICRC's long involvement in African affairs. In addition, it was involved in Russia's civil war, although the 1917 revolution led to very chilly relations between the new Soviet authorities and the ICRC. The ICRC was not only based in capitalist Switzerland, but also had a leadership hardly sympathetic to communism. The organization also undertook its first visits to political or security prisoners outside situations of war—in Hungary in 1918. The ICRC was much less involved in some other conflicts, for example, in East Asia in the 1930s when Japan invaded China.

Another mark against the ICRC was its failure to speak out when fascist Italy not only bombed clearly marked Red Cross medical vehicles and field hospitals in Abyssinia, but also used poison gas. Being that the ICRC had publicly protested the use of poison gas during World War I, questions arose about double standards and hidden agendas on the part of the organization. Leading ICRC officials like President Gustav Ador were known to have strong anticommunist sentiments. There is speculation that later key ICRC leaders, such as President Max Huber and Carl J. Burkhardt, shared certain views common in Europe at the time—namely, that the fascists, as bad as they might be, were still a barrier against the greater evil of communism. The ICRC's cautious approach toward Mussolini has yet to be definitively explained; other factors might have come into play.

The Revised Vision Debated

During these same interwar years the League of Red Cross Societies was created under the influence of an American Red Cross that had greatly developed during World War I. Once formed, the League (later renamed as the Federation of Red Cross and Red Crescent Societies) often competed with the ICRC for leadership of the international movement. Despite the ICRC's Nobel Peace Prize of 1917, the leadership of the American Red Cross regarded the Committee as too cautious, small, and stodgy to continue to play a central role in international affairs. Moreover, to this group's way of thinking, World War I was supposedly the war to end all wars,

thus removing the need for an ICRC that focused on victims of war, and opening the door to a greater peacetime role for Red Cross actors—like the American Red Cross—that focused on natural disasters and various social programs within the nation. Nevertheless, the ICRC resisted this attempt to minimize or eliminate its role.

The advent of World War II found the ICRC in a very weakened state. The Committee was still very amateurish in its methods and led by individuals who were not always attentive to details or skilled in diplomacy. President Max Huber was in ill health and often away from Geneva. The professional staff was exceedingly small; the Committee relied heavily on the mobilization of volunteers. Despite these problems the ICRC achieved a great deal during World War II, mainly because of a paid staff that was temporarily expanded and the dedicated work of many volunteers. As in World War I, it supervised POW conditions. More so than in the Great War, it provided significant material assistance to devastated civilian populations. For example, working with the Swedish Red Cross and with the cooperation of the British navy, which had established a blockade, it did much for the civilian population in Greece under Nazi occupation. Although its activities were again more developed in the Western theater of military operations than in Asia, it again won a Nobel Peace Prize for its war-time efforts. The ICRC's role in the war, however, was clouded by controversy over whether it had been dynamic enough in responding to the German Holocaust against German Jews and other *untermenchen*, or subhumans, from Berlin's point of view. This controversy merits separate treatment and will be discussed below.

After World War II, as after World War I, there was an effort to transform the ICRC. This time the Swedish Red Cross, rather than the American Red Cross, led the charge. But efforts to internationalize the Committee, and by so doing create greater Swedish influence at the center of the movement, failed to carry the day. Eventually, the dangers of an internationalized but immobilized Committee during the cold war became clear. Moreover, the all-Swiss ICRC demonstrated its capabilities for neutral humanitarianism in places such as Palestine-Israel during the late 1940s and early 1950s, and then in Hungary in 1956 at the time of the Soviet invasion.

The ICRC also played a useful role in developing the four Geneva Conventions of August 12, 1949 for victims of war, still the core of modern international humanitarian law. Again, the pattern was clear: The organization's pragmatic actions from 1939 through 1945 helped shape the further development of international humanitarian law.

The Revised Vision Consolidated

By the 1960s, when the ICRC played a small role in the resolution of the 1962 Cuban Missile Crisis, the Committee had retained its traditional form, and efforts to impose structural reform from the outside eroded. The mono-national makeup of the Committee was seen as providing guarantees of active neutrality in humanitarian work. ICRC statutes, guaranteeing an independent role for the agency, were further reaffirmed by the International Red Cross Conference. (The Conference meets in principle every four years, attended by the ICRC, the Federation, all recognized National Societies, and governments from states that are parties to the Geneva Conventions on the Protection of Victims of War.)

It was the Nigerian civil war (1967–1970) that reopened debates about the effectiveness of the all-Swiss ICRC. In that conflict, covered extensively by the Western communications media, and investigating charges of genocide against the civilian population in secessionist (Biafran) areas, the ICRC seemed to lack strategic vision and defensible policies. In competition with other aid agencies acting to protect civilians in the midst of war, it behaved in ways that, in fact, aided the rebel cause. These policies could not be justified in terms of the rules of the Geneva Conventions. Some of its personnel were insensitive to feelings on the government's side. As a result, a relief plane flying under its aegis was shot down by the federal air force, with loss of life, and the government in Lagos declared its chief delegate persona non grata. The ICRC was, therefore, forced to the sidelines while other humanitarian organizations continued their efforts in that region.

A movement then started to replace neutral Red Cross humanitarianism with a more political kind of humanitarianism that took sides between "good" and "bad" forces. This movement led to the creation of other private aid groups, such as Doctors without Borders and Doctors of the World. For a time they tried to combine work for victims of war with public denunciations of those committing war crimes, crimes against humanity, or genocide. However, in Rwanda in 1994 (discussed below), field-workers from Doctors without Borders had to be absorbed into the ICRC delegation in order to survive. That is, they had to be neutralized. Had they tried to denounce the genocide occurring, they would have been killed by the militant Hutu.

The Nigerian civil war was traumatic for the ICRC, so much so that it set in motion a series of fundamental changes at its headquarters. In the decades that fol-

ICRC compound in Monrovia, Liberia, implores warring factions to avoid civilian casualties. Summer of 2003. [TEUN VOETEN]

lowed the roles of the Committee and its president were reduced, and the role of the professional staff was enhanced. By 2002 the ICRC had a double executive, with the office of director-general, like a prime minister, being responsible for the management of daily affairs. The president became the chief spokesman for the organization to the outside world, although he or she continued to exercise influence on general policy making. The Committee became more like many modern parliaments, mostly reacting to initiatives by the double executive and altering perhaps only 10 percent of what was presented to it. Thus, ICRC policy making and management saw an increased role for professional humanitarians and a diminished role for the mostly "amateur volunteers" serving in the Committee. (Some Committee members were co-opted into that body after retiring from the professional side of the house.) Moreover, from 1990 on the professional staff was internationalized and no longer all-Swiss. Most of this change can be traced back to the amateurish, bumbling performance of the president and Committee during the Nigerian civil war.

Throughout the remaining years of the cold war the ICRC consolidated its position as a major humanitarian actor in conflicts. Starting in 1967 it began a long involvement in the territories taken by Israel in the war of that year, territories which the ICRC regarded as occupied territory under the terms of the Fourth Geneva Convention of 1949. The situation led to various ICRC public statements in keeping with its general policy on public criticism, namely to speak out only when the fate of victims constitutes a major violation of international humanitarian law, the violations are repeated, discreet diplomacy to improve the situation was tried and failed, and any public statement issued is in the interests of victims.

In the 1970s the ICRC played its usual role, developing and then drafting two additional protocols, or additional treaties, to the 1949 Geneva Conventions: the first on international war, the second on internal war. Also noteworthy was the ICRC's extensive work with political or security prisoners, especially in the western hemisphere. Just as the ICRC visited prisoners like Nelson Mandela in South Africa or those incarcerated by the junta ruling Greece from 1967 to 1974, so the ICRC undertook to provide a basic "life insurance policy" to prisoners in South and Central America, even though most of these situations were not regarded by governments as conventional international or internal wars. If a prisoner was considered an "enemy" by

detaining authorities, and an adversarial relationship thus existed, the ICRC attempted to play its traditional role through detention visits. Focusing on conditions rather than the causes of detention, and frequently avoiding legal labels and debates, the ICRC tried to counteract "forced disappearances," summary execution, torture, mistreatment, total isolation from family, and other policies devised by mostly military governments in places such as Chile, Argentina, Paraguay, Uruguay, and El Salvador.

Some of these situations, as in Chile under General Augusto Pinochet, may have been characterized by crimes against humanity, namely, a systematic and broad attack on the civilian population through such measures as generalized torture and/or summary execution. The ICRC avoided such legal judgments and focused instead on the pragmatic improvement of detention conditions. The ICRC was not able to secure the cooperation of Cuba for systematic visits in keeping with its policies: that is, access to all prisoners, private visits, follow-up visits, and improvement in general conditions over time. In places like Peru during the era of Alberto Fujimori, the ICRC suspended its visits because of lack of improvement in the treatment of prisoners.

When Poland was under martial law in the 1980s, the ICRC made its first large scale detention visits to security prisoners in a communist country. The ICRC had visited POWs in the border conflict between China and Vietnam in 1979, but had not been able to visit any prisoners held by North Korea from 1950 until 1953, or North Vietnam from 1947 until 1975.

The cold war years also saw the ICRC consolidate its position as a major relief organization, the Nigerian civil war notwithstanding. In places such as Cambodia and the Thai-Cambodian border during 1979 and immediately thereafter, the ICRC was a major actor, along with the United Nations Children's Fund (UNICEF) and the World Food Program (WFP), in providing nutritional and medical relief to a civilian population, including refugees and internally displaced persons, on a major scale. In Cambodia, virtually destroyed by the genocide and crimes against humanity of the Khmer Rouge (radical agrarian communists), the ICRC teamed with UNICEF to provide the primary conduit for international humanitarian assistance. It managed to cooperate with UN agencies while preserving its independence, neutrality, and impartiality—the three key instrumental principles in its global humanitarianism. The ICRC also carried out a major medical relief operation in Pakistan for victims of the fighting in neighboring Afghanistan during the Soviet invasion and occupation (1979–1989).

The Vision in the Twenty-First Century

In the first decade after the cold war, the ICRC found itself center stage in places like Bosnia (1992–1995) and Somalia (1991–1993). In the former, while continuing its work regarding detainees, it ran the second largest relief operation (second only to that of the UN refugee office). Its overall annual budget at this time was in the neighborhood of $600 million. Caught in the midst of genocide, ethnic cleansing, crimes against humanity, and war crimes, it sought to do what it could for both prisoners and civilians. It failed to prevent the massacre of perhaps some seven to eight thousand Bosnian Muslim males at Srebrenica in the summer of 1995 because Bosnian Serb commanders failed to cooperate. However, it actively compiled records of those killed and missing. The ICRC was unable to prevent forced displacement and actually contributed to ethnic cleansing by helping to move civilians out of harm's way, but did prevent considerable death and deprivation. Its chief delegate was killed when his well-marked vehicle was intentionally attacked. (Six Red Cross workers were also intentionally killed in Chechnya.)

In Somalia the ICRC distinguished itself through its dedicated work in coping with massive malnutrition and starvation in that failed state. Staying on the ground when other agencies pulled out, bringing in journalists to dramatize the plight of the civilian population, and dealing creatively with the violent clan structure of that chaotic country, the ICRC finally teamed with the U.S. military, acting under a UN mandate, to break the back of starvation in the winter of 1992 and 1993. It was the first time in the ICRC's history that the organization agreed to work under the military protection of a state, but such was the only way the massive starvation and rampant banditry then in existence could be addressed.

The ICRC did hire its own private protection forces in Somalia, and accepted the military protection of the UN security force in the Balkans, the United Nations Protection Force (UNPROFOR), to guarantee the safe movement of some released prisoners. In places such as Somalia, Chechnya, or Liberia, the ICRC could no longer rely on the Red Cross emblem as a symbol of neutrality that allowed humanitarian efforts in the midst of conflict. Many of the fighting parties in these places had never heard of the Red Cross or the Geneva Conventions.

In Rwanda in 1994, when militant Hutu unleashed genocidal attacks on Tutsi (as well as attacks on moderate Hutu interested in social accommodation and power sharing), the ICRC stayed in-country and provided what aid and shelter it could. It thus helped about 50,000 Tutsi, at the price of not denouncing the geno-

cide that claimed perhaps 800,000 lives. It tried to make known to the outside world what was transpiring in Rwanda, but without using the term "genocide." At this time important outside actors with the ability to intervene, like the United States, chose not to describe the situation in Rwanda as genocide, in order to avoid the legal obligation, as a party to the 1948 Genocide Convention, to take action to stop it. Whether ICRC's public use of the word "genocide" would have affected policy makers in the United States is an interesting question. But as with other aid agencies in Rwanda, the ICRC could not have passed legal judgment on the nature of the conflict and remained operative inside the country. Militant Hutu had made that very clear. Most ICRC personnel were not harmed by those carrying out genocide, with the exception of some Rwandan female nurses working in conjunction with the ICRC.

Although internal or "deconstructed" conflicts like those in Bosnia and Somalia—or Liberia and the Democratic Congo—garnered much of the ICRC's attention after the cold war, it continued to play its traditional roles in international armed conflicts. In Iraq (1991, 2003), Afghanistan (2001–2002), and the Middle East (since 1967), the organization continued with detention visits, relief to the civilian population, efforts to trace missing persons, and attention to weapons that were indiscriminate and/or caused suffering which exceeded military necessity. Even in these more clearly international armed conflicts, its personnel and facilities were sometimes intentionally attacked, sometimes with loss of life. In places like Iraq in 2003, displaying the Red Cross emblem meant providing a target for attack.

The ICRC joined with other groups and governments to develop the Ottawa treaty (the 1997 Convention of the Prohibition, Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction) banning antipersonnel land mines. In places such as Afghanistan, Cambodia, and Angola in particular, the ICRC had seen the devastating effects of indiscriminate land mines, which continued to kill and maim, mainly civilians, long after combat had subsided. The ICRC was also a strong supporter of the International Criminal Court (ICC; negotiated in 1998 and operational as of 2002), especially because the court's jurisdiction included war crimes, as well as genocide and crimes against humanity. However, with the approval of the international community, the ICRC has refused to allow its personnel to provide information to this and other courts, fearing that such information would interfere with its in-country operations. This right not to testify in court was confirmed by the case law of the UN tribunal for the former Yugoslavia and in the 1998 statute of the International Criminal Court. The ICRC continues to prioritize neutral pragmatic humanitarianism, a form of informal application of the law, while leaving formal legal enforcement to others.

The so-called war on terrorism that the United States began waging after Al Qaeda's terrorist attacks on September 11, 2001, has created special problems for the ICRC. The United States has refused to apply the Geneva Conventions to many prisoners taken in its war on terrorism, which does not always involve a traditional international armed conflict between states. Moreover, the United States has developed a complicated system of detention for such prisoners, holding them without publicity in many places, mostly outside the continental United States and sometimes in foreign countries. Finding these detention centers and securing the cooperation of U.S. authorities have not been easy, especially given the U.S. tendency to hold these prisoners for indefinite duration, in isolation, to extract information from them. On the other side of the conflict, Al Qaeda continues to call for an unlimited, "total" war featuring attacks on civilians and civilian installations, which are violations of international humanitarian law.

Summary: ICRC and Red Cross Humanitarianism

It is therefore clear, even from this brief historical overview, that the ICRC has evolved, from its inception in 1863 to the early twenty-first century, into a major humanitarian actor in world affairs. It has more experience in conducting detention visits with various categories of prisoners than any other worldwide agency. It is one of the four largest relief agencies, the others being the United Nations Refugee Agency (UNHCR), UNICEF, and the WFP. It is a major player in tracing missing persons due to conflict. And it is the "guardian" of international humanitarian law. The latter notion has been expanded to include a focus not just on the legal protection of victims, but also on the legal regulation of means and methods of combat. The ICRC employs about eight hundred workers at its Geneva headquarters and, on average, deploys another twelve hundred people in its field missions, not counting numerous locally recruited staff for administrative and logistical support.

The contemporary ICRC is less amateurish and much more professional than was previously the case. Its scope of action is truly global, as it tries to focus as much attention on victims of conflict in the Democratic Republic of Congo as in Iraq. This is the meaning of impartial humanitarianism toward individuals. The ICRC also attempts to apply the same minimal standards without regard to political ideology. For instance, the humane detention conditions it advocates when deal-

ing with prisoners held by the United States at its detention center in Guantanamo, Cuba, are essentially the same as those the organization has requested for American POWs held captive in North Vietnam or Iraq. This is the meaning of neutrality toward public authorities. The ICRC tries to remain independent from any state, coalition of states, or intergovernmental organization, even though Western liberal democracies provide 85 percent of its budget. (The remaining funds derive from contributions made by national Red Cross and Red Crescent societies, but again mostly in Western nations.)

Controversy over the Holocaust

Still hanging over the head of the ICRC is its record in responding to the Holocaust. Some facts have become clear, although questions remain and the debate continues.

At the outbreak of World War II Swiss federal authorities in Bern wished to ensure that the ICRC in Geneva did not interfere with Swiss national security and other Swiss policies defined in Bern. Swiss authorities therefore established a system of supervision over the ICRC that compromised the organization's independence in major ways. Such supervision was made easy by the fact that at this time it was possible to hold membership in the Committee and also federal office in Bern. The Swiss president in 1942, for example, Philippe Etter, was also a member of the Committee. Moreover, some members of the Committee were sympathetic to whatever Bern might identify as the national interests of the moment. ICRC President Max Huber agreed to supervision by Bern, and influential Committee members such as Carl J. Burckhardt apparently shared many of the views of the governing elite in Bern. Buckhardt was named Swiss Ambassador to France after the war, which showed that he was part of the governing establishment in Bern.

During the early years of World War II it was the policy of Bern to accommodate the Nazis in various ways. (Other European neutrals like Sweden also accommodated the Nazis while German power was ascendant.) Switzerland shared a border with its powerful German neighbor, and some Swiss feared invasion. Moreover, as the war progressed, Switzerland was virtually surrounded by fascist governments. In response it became Germany's banker, converting stolen goods into ready currency. Switzerland also turned back many Jewish refugees, not wanting to draw attention to the Nazi policies responsible for their flight. The Swiss diplomat Paul Ruegger, who became ICRC president after the war, devised the infamous practice of stamping the passports of German Jews with a "J" for *Juden*, so they could be identified and turned back at Swiss and other borders.

The ICRC was aware of the German concentration camps from the 1930s. It made overtures, first through the German Red Cross, to gain access to the camps, but never achieved systematic and meaningful access until the very end of the war. The German Red Cross was thoroughly Nazified and functioned as part of the German totalitarian state. The ICRC never de-recognized the German Red Cross, despite its gross violations of Red Cross principles, which included pseudo-medical experiments on camp inmates. It is fair to label ICRC overtures about the camps as excessively cautious. On the other hand, outside of Germany, in places like Hungary, ICRC delegates in the field were creative and dynamic in helping Jews flee Nazi persecution.

By the summer of 1942 the ICRC had reliable information that the concentration camps had become death camps, as the Nazis implemented a policy of genocide after the Wannasee Conference of January 1942, attended by a high number of German officials. In October 1942, the Committee debated whether or not to issue a public statement deploring both unspecified German policies and certain policies adopted by the Allied nations toward German POWs. This relatively innocuous, vague, and balanced draft statement was shelved by the Committee after Swiss President Etter, supported by Burckhardt and a few other Committee members, spoke out against it. Etter had been alerted to pending events by the supervisory system in place, being warned that a majority of Committee members were prepared to vote in favor of issuing the public statement. Etter and his colleagues in Bern feared that such a statement would antagonize Berlin, although at the meeting where the decision to shelve the draft was made, Etter and his Committee supporters urged continued silence so as to avoid a violation of Red Cross neutrality. ICRC President Huber was absent from this meeting. It later became known that he served on the board of directors of his family's Swiss weapons company that used Nazi slave labor in its German subsidiary. Huber's fundamental values and views remain a source of debate. The ICRC thus never publicly condemned the German policy of genocide. The first line of ICRC defense is as follows. The organization was visiting Allied POWs held by Germany as covered by the 1929 Geneva Convention on that subject, and international humanitarian law did not apply to German concentration camp inmates. So the argument runs, the ICRC did not want to risk German non-cooperation on POW matters for the sake of a controversial public statement about German citizens not covered by international law. The second line of defense is that, given the Nazi

fixation on eradicating Jews and other "undesirables," a public statement would have done no good. This latter argument is persuasive to some, but not all, given that the Nazis continued to devote time, energy, and resources to operating the gas chambers even when on the brink of defeat.

Later ICRC leaders, particularly President Cornelio Sommaruga (1987–1999), adopted the position that the entire Western world had failed to respond adequately to the Holocaust, and the ICRC was part of that failure. He went on to apologize publicly for any possible mistakes that the ICRC might have made regarding the Holocaust. To some, but not all, this line was an effort to "democratize the blame" and avoid any direct responsibility for mistakes.

The historian Michael Beschloss has written that the administration of President Franklin D. Roosevelt failed to measure up to the gravity of the Holocaust by not responding more decisively to Nazi atrocities, and that its record would have been brighter had it done so. Some observers believe the same could be said of the ICRC. Some of these observers think the real problem lay in how the ICRC came to remain silent. For them, a public statement by the then obscure ICRC could hardly have been expected to change the course of the Holocaust. For them, a public statement by the equally silent Vatican would have carried more weight. For them, the real issue was that the ICRC sacrificed its independent humanitarianism on the altar of Swiss national interests as defined in Bern. Thus, the ICRC's silence damaged its reputation for independent, neutral, and impartial humanitarian work, devoid of any "political" or strategic calculation. Some Committee members made this point in October 1942—before deferring to what Bern wanted.

It is now ICRC policy that one cannot be a member of the Committee and also hold most public offices in Switzerland, at either the federal, state, or local level. A headquarters agreement is in place that makes ICRC premises off-limits to Swiss authorities. Given that Swiss authorities are hardly likely to raid ICRC headquarters, this agreement symbolizes the organization's independence. The most recent ICRC presidents, like Sommaruga and Jacob Kellenberger (1999–), even though former Swiss government officials, seem determined not to allow similar intrusions of Swiss national interests to control the deliberations of the Committee. And presumably, present-day Swiss officials will not seek to project similar political considerations onto ICRC affairs, given the damage done to ICRC independence by the events of the 1940s. The contemporary conventional wisdom is that it is in the Swiss national interest to have an independent and neutral ICRC that reflects well on the Swiss nation.

SEE ALSO Humanitarian Law; Nongovernmental Organizations; Wannsee Conference; War Crimes

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David P. Forsythe

International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN), functioning according to its statute, which forms an integral part of the UN Charter. Member states must comply with the decisions of the ICJ, in cases to which they are parties. The ICJ may offer advisory opinions on any legal questions posed by the General Assembly and the Security Council or other organs of the UN and specialized agencies so authorized by the General Assembly on issues arising within the scope of their activities.

The Palace of Peace in The Hague, 1934. Home of the International Court of Justice; site of international conferences. [HULTON-DEUTSCH COLLECTION/CORBIS]

Structure and Jurisdiction

The ICJ is composed of fifteen independent members, who posses the qualifications required in their countries for appointment to the highest judicial offices or are jurisconsults of recognized competence in the field of international law. The General Assembly and Security Council elect all members of the ICJ; no two judges may be nationals of the same state. As a body, they must uphold the main tenets of civilization and represent the principal legal systems. Members of the ICJ are elected for a term of nine years; they may be reelected. If the ICJ bench includes no judge of the nationality of one or both parties to a case, that party (or parties) may choose a legal expert or two as ad hoc judges. Ad hoc judges participate in the decision of the ICJ on complete equality with the court's other members.

Only states may be parties before the ICJ. Its jurisdiction comprises all disputes referred to it by such parties and all matters provided for in treaties and conventions in force. The states who are parties to the present ICJ Statute may recognize as compulsory, and without special agreement in relation to other states accepting the same obligation, the jurisdiction of the ICJ in all legal disputes concerning (1) the interpretation of a treaty; (2) any question of international law; (3) the existence of any fact, which, if established, would constitute a breach of an international obligation; and (4) the nature or extent of the reparation to be made for the breach of that obligation.

The ICJ in deciding international disputes submitted to it applies (1) international conventions, (2) international custom, (3) general principles of law, and (4) the judicial decisions and teachings of the most highly qualified jurists from the states party to such disputes (as subsidiary means for the determination of rules of law). If the parties involved agree, the ICJ can

decide a case on the basis of equity. According to Article 41 of the ICJ Statute, the Court may mandate provisional measures to preserve the respective rights of parties to a dispute. A request for such measures takes priority over all other cases.

Decisions of the ICJ on Genocide and Crimes Against Humanity

In November 1950 the General Assembly questioned the ICJ concerning the position of a state that had included reservations in its signature of the Convention on the Prevention and Punishment of the Crime of Genocide, as some signatories of the Convention objected to these reservations. In its advisory opinion of May 28, 1951, the ICJ determined that even if a convention contains no specific rule on reservations, it does not follow that they are automatically prohibited. In the case of the Genocide Convention, the ICJ found that the drafters had two competing concerns: universal acceptance (which could require permitting reservations) and preserving the normative basis of the treaty (which would require rejecting crippling reservations). The ICJ announced reservations could be permitted provided they do not undermine the object and purpose of the Genocide Convention. Every state was free to decide such matters for itself, whether or not the state formulating a reservation was party to the convention. The disadvantages of such a situation could be remedied by inserting in the convention an article on the use of reservation.

In a case concerning the application of the Genocide Convention, Bosnia and Herzegovina asked the ICJ to intervene against the Federal Republic of Yugoslavia (Serbia and Montenegro; FRY) for alleged violations of the Convention. Immediately after filing its application, Bosnia and Herzegovina requested that the ICJ approve provisional measures to preserve its rights. For its part, the FRY asked for provisional measures, too. After establishing that it did, in fact, have valid or sufficient jurisdiction, on April 8, 1993, the ICJ indicated that the FRY could take certain provisional measures. It further ruled that the FRY and Bosnia and Herzegovina should not pursue any action (in fact, they must ensure that no action is taken) that might aggravate or extend the existing dispute.

On July 27, 1993, Bosnia and Herzegovina asked the ICJ to indicate additional provisional measures. The FRY petitioned the Court to reject the application for such provisional measures, claiming that the Court had no jurisdiction to authorize them. In its order dated September 13, the ICJ reaffirmed the provisional measures it had previously indicated, calling for their immediate and effective implementation.

The ICJ suspended the proceeding to address the seven preliminary objections presented by the government of the FRY concerning the admissibility of the application of Bosnia and Herzegovina and the jurisdiction of the Court to entertain the case. The FRY claimed that (1) the events in Bosnia and Herzegovina constituted a civil war and not an international dispute according to the terms of Article IX of the Genocide Convention, (2) the authority for initiating proceedings derived from a violation of the rules of domestic law, (3) Bosnia and Herzegovina was not a party to the Genocide Convention, (4) the FRY did not exercise any jurisdiction within the region of Bosnia and Herzegovina, and (5) the Convention was not operative between the parties prior to December 14, 1995, and certainly not for events that occurred before March 18, 1993. In sum, the Court lacked jurisdiction.

In its judgment rendered on July 11, 1996, the ICJ rejected the preliminary objections of the FRY, holding that all the conditions necessary for its jurisdiction had been fulfilled. The Court also noted that a legal dispute existed between the parties, and none of the provisions of Article I of the Convention limited the acts contemplated by it to those committed within the framework of a particular type of conflict. The Genocide Convention does not contain any clause, the object or effect of which is, to limit the scope of the jurisdiction of the ICJ.

On July 2, 1999, Croatia presented an application against the FRY for having violated the Genocide Convention.

With its status remaining in some respects uncertain, the FRY was admitted on November 1, 2000, to the UN. In an application submitted April 23, 2001, it asked that the ICJ revise its prior judgment, on the grounds that only with the FRY's admission to the UN was a condition laid down in Article 61 of the ICJ Statute now satisfied. Because it was not a member of the UN before November 1, 2000, Yugoslavia argued, it was not party to the Statute and therefore not a state-party to the Genocide Convention.

The ICJ ruled against the arguments of the FRY. It observed that, under the terms of Article 61, paragraph 1 of its Statute, an application for a revised judgment can be made only when it is based on the discovery of a fact unknown at the time the judgment was rendered. According to the ICJ, "A fact which occurs several years after a judgment has been given is not a 'new' fact within the meaning of Article 61." The admission of the FRY to the UN occured well after the ICJ's 1996 judgment. Thus, the ICJ in its decision of February 3, 2003, found the FRY's application for a revision inadmissible.

It follows that the ICJ has jurisdiction to adjudicate on the claims of genocide.

Another important legal issue concerns nuclear weapons: Is their use, or the threat of use, under any circumstances permitted by international law? In its resolution dated December 15, 1994, the General Assembly posed this very question. In its advisory opinion, the ICJ summarized the cardinal principles of humanitarian law and declared with the smallest possible majority the following:

> It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law. However, in view of the current state of international law and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake.

All members of the Court made declarations, with some offering separate opinions, and dissenters explaining the principles behind their votes. Such reflects the complexity of the present state of international legislation in this field.

SEE ALSO Hiroshima; International Law

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International Criminal Court

The establishment of the International Criminal Court (ICC) was arguably one of the most significant achievements of the twentieth century. The ICC Statute was adopted at a Diplomatic Conference held in Rome during June and July of 1998, and entered into effect on July 1, 2002. With ninety-two state parties, and many more signatories, the ICC has received substantial support from the international community and has begun work in its temporary quarters at The Hague. Yet its ultimate success is uncertain, particularly given the strong U.S. opposition to the Court.

Evolution of the International Criminal Court Statute

In 1899 and 1907 Tsar Nicholas II proposed to the governments of the world that they attend two peace conferences in The Hague. The first resulted in the adoption of three conventions; these related to the peaceful settlement of disputes (which established the Permanent Court of Arbitration), the laws and customs of war on land, and maritime warfare. The second conference, during which construction of the Peace Palace began, concluded successfully with the adoption of thirteen Conventions (three of which revised the 1899 Conventions). These included Convention (IV), Respecting the Laws and Customs of War on Land.

The treaties signed at The Hague were silent as to whether or not particular uses of force were lawful (the *jus ad bellum*). They regulated only the means an actor could employ in achieving his military objectives once the decision to use force had already been made (the *jus in bello*). The two Hague Peace Conferences were met with self-congratulation by the parties involved. However, these feelings quickly dissipated, and by the end of World War I, the "world lay breathless and ashamed" by the devastation of a war characterized by bitter savagery and monstrous slaughter.

This led to the idea that some criminal liability might be imposed for acts of war beyond the pale. Over American objections, the Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties proposed the formation of an international "high tribunal" for the trial of "all enemy persons alleged to have been guilty of offenses against the laws and customs of war and the laws of humanity." After difficult negotiations, Article 227 of the Treaty of Versailles provided for a "special tribunal" that would try the German Emperor, William II of Hohenzollern, for the "supreme offence against international morality and the sanctity of treaties." The trial never occurred, however, as the Netherlands refused to extradite William II.

The idea of an international criminal court was revived after the assassination of King Alexander of Yugoslavia in 1934, and in 1937 a convention was opened for signature on the creation of a court that would try persons accused of offenses established in the Convention for the Prevention and Punishment of Terrorism. Because the proposed court's jurisdiction was so limited and relatively well defined, it avoided many of the

objections that earlier proposals had raised. Nevertheless, the convention was signed by only thirteen nations, and never entered into force.

The Nuremberg and Tokyo Trials

The atrocities of World War II rekindled interest in the establishment of a permanent international criminal court. Although a variety of proposals ensued, the model statutes proposed by jurists gave way to the pressure of political events, and the Charters of the Nuremberg and Tokyo tribunals took their place. Much less weight is generally accorded to the decisions of the International Military Tribunal for the Far East than to those of the IMT at Nuremberg for a variety of reasons, including the perception that the Tokyo proceedings were substantially unfair to many of the defendants. Nuremberg, however, was clearly a watershed event both for the ICC and for international law more generally.

Although the criminal procedures employed by the IMT fell considerably short of modern standards, the trials were generally considered to have been conducted in a manner that was fair to the defendants. It is indisputable, however, that the vanquished were tried by judges representing only the nationalities of the victors, and there is little doubt that the Tribunal was influenced by the political and psychological stress of the war.

In issuing its judgment after nine months of trial, the Tribunal addressed many of the defendants' objections to the Tribunal's jurisdiction and the law it was asked to apply. First, the Tribunal rejected the defendants' arguments based on state sovereignty, holding that individuals, including heads of state, and those acting under orders, could be criminally responsible under international law. Second, the Tribunal affirmed the primacy of international law over national law: "[T]he very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual State." Finally, by holding that individuals may be liable for initiating a war, as well as for the means used in conducting it, the IMT established the wrongfulness of aggression.

The Postwar Period

Nuremberg helped overcome objections to an international criminal court based on sovereignty. But the use of ad hoc or special tribunals raises several problems. First, no matter how "fair" the actual trial proceedings, such tribunals give the impression of arbitrary and selective prosecution. Second, there is the problem of delay. Ad hoc tribunals take time to establish—time during which evidence may be destroyed and additional lives lost. Finally, and perhaps most critically, ad hoc tribunals fail to build the kinds of institutional memory and competence that are the hallmark of a permanent court. Each time prosecutors must be found, staff must be assembled and trained, and judges must be procured who are willing and able to leave their existing commitments, and who may have little or no experience in international criminal law. These problems might not only damage the ad hoc court's ability to conduct an effective prosecution and trial, but could also adversely affect the rights of the accused.

Thus it is not surprising that immediately after World War II, the United Nations considered the establishment of a permanent international criminal court. The subject was raised in connection with the formulation and adoption of the Genocide Convention in 1948. Yet although the Genocide Convention was adopted relatively quickly, efforts to create the international criminal tribunal envisaged in Article VI of the Convention failed. Indeed, the reference to an international penal tribunal found in Article VI had been deleted from earlier drafts, and was restored only after extensive debate.

In a resolution accompanying the adoption of the Genocide Convention, the General Assembly invited the newly established International Law Commission (ILC), along with its work on the codification of international criminal law, to "study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide or other crimes over which jurisdiction will be conferred upon that organ by international conventions." The General Assembly also requested that the Commission consider the possibility that this might be accomplished through the creation of a Criminal Chamber of the International Court of Justice.

Thus instructed, the ILC embarked upon what would prove to be a long and frustrating endeavor. Indeed, it was not until 1989 that the question was actively renewed by the General Assembly, following a Resolution on the subject introduced by a coalition of sixteen Caribbean and Latin American nations led by Trinidad and Tobago.

Adoption of the Rome Statute for the International Criminal Court, July 17, 1998

Following a 1994 report of the International Law Commission on the question of an international court, the General Assembly granted the ILC a mandate to elaborate a draft statute "as a matter of priority." The project gained momentum after the creation of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 by the Security Council. The adoption of the

ICTY's Statute not only suggested that a permanent court was needed, but that governments, including the United States, might be willing to support its establishment, at least under certain circumstances. The creation of the International Criminal Tribunal for Rwanda (ICTR) shortly thereafter suggested the need for an international institution that could address serious violations of international humanitarian law.

The International Law Commission considered two draft statutes for the ICC before finally adopting a 60-article version in 1994. Aware of the politics involved, and perhaps wary of having its work shelved, the Commission took no position on some of the more difficult questions involved in drafting the Statute (such as the definitions of crimes and financing of the Court), and deferred to state sovereignty on other issues (such as jurisdictional regimes and organizational structure.)

The ILC envisaged a Court with jurisdiction over treaty crimes and violations of international humanitarian law, that would act only when cases were submitted to it, and was, in all instances except for Security Council referrals, completely dependent on state consent for its operation. The basic premise upon which the ILC proceeded was that the court should "complement" national prosecutions, rather than replace them, and that it should try only those accused of the most serious violations of international criminal law, in cases in which national trials would not occur, or would be ineffective.

The ILC sent the Draft Statute to the United Nations' General Assembly for consideration, and the General Assembly then established an ad hoc committee, which met twice in 1995 to review the Commission's report. The ad hoc committee, ably chaired by Adriaan Bos, the legal advisor of the Ministry of Foreign Affairs for the Netherlands, rendered its report in late 1995. This report became the basis for the work of the Preparatory Committee established by the General Assembly to consider the Statute. While the Ad Hoc Committee focused on the general question of whether the establishment of the Court was a viable possibility, the Preparatory Committee turned its attention to the text itself. The Preparatory Committee, open to all members of the United Nations as well as members of specialized agencies, was charged with "preparing a widely acceptable consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries." In 1996 and 1997, the Preparatory Committee held six official sessions, each lasting approximately two weeks, and several intersessional sessions. Finally, in April 1998 it issued a consolidated text of a draft Statute for the consideration of the Diplomatic Conference later that summer.

The Diplomatic Conference to consider the April Draft Statute was held in Rome from June 15 to July 17, 1998. Five weeks of difficult negotiations culminated in a 128-article Statute that reflected nearly a century of work. The Court's Statute was adopted after five intense weeks of negotiations in a vote of 120 to 7, with 21 countries abstaining. The United States voted against the Statute, as did six other countries, although because the vote was unrecorded, their identities are not confirmed.

The Jurisdiction of the Court

Under Article 11 of the Statute, the Court's jurisdiction is limited to crimes committed after the Statute enters into force. This precludes the transfer of cases from the ICTY and ICTR to the Court, an option that had been considered earlier in the Statute's negotiation. The geographic scope of the Court's jurisdiction varies depending on the mechanism by which the case comes to the Court. If the Security Council refers the matter, jurisdiction extends to the territory of every state in the world, whether or not the state in question is a party to the Statute. If the matter is referred by a state party or initiated by the Court's prosecutor, however, the Court's jurisdiction is more restricted. In such instances, jurisdiction requires a state's consent and must concern acts committed in the territory of the consenting state, or an accused who is a national of the consenting state. Only natural persons over eighteen years of age may be accused, thereby excluding organizations or states.

The Rome Statute extends the Court's subject matter jurisdiction to four crimes: genocide, crimes against humanity, war crimes, and aggression. A state may opt out of the war crimes jurisdiction of the Court as regards its nationals or crimes committed on its territory for seven years after the Statute enters into force for that state. Further, the Statute does not define aggression. Article 5(2) provides that the Court can exercise jurisdiction over that crime only after the state's parties have defined it.

The ICC's jurisdiction as ultimately constituted is narrower than the jurisdiction originally contemplated by the ILC Draft Statute, which provided that the Court would also be able to hear cases involving specific crime created by treaties, such as terrorism. Recognizing, however, that treaty crimes present serious problems for the international community, and that some countries felt particularly strongly about their inclusion, Resolution E, which was adopted by the Diplomatic Conference in its Final Act, provides that the is-

sues of terrorism and drug crimes should be taken up at a review conference, with a view to their ultimate inclusion in the jurisdiction of the Court.

Lodging a Complaint with the Court

Under the 1994 ILC Draft Statute, only states and the Security Council could lodge complaints with the Court. The Rome Statute, however, also permits the prosecutor to bring cases before the Court on his own initiative. The ILC Draft originally conceived of four separate jurisdictional hurdles that would be prerequisites to the exercise of the Court's jurisdiction in any particular case, and the combination of these four jurisdictional predicates would have rendered the Court powerless over most international crimes, even those of extreme gravity, unless the Security Council referred a matter to the Court. To many observers, this would have been unsatisfactory, for often the Security Council cannot reach agreement as to the proper disposition of a particular situation, and each of the five permanent members has the right to veto action. Moreover, most states are not members of the Council.

The Rome Statute responds to many of these concerns. The Statute requires all states parties to accept the Court's inherent jurisdiction over all crimes in Article 5, subject to the seven year opt-out for war crimes. It does not permit reservations with respect to the Court's jurisdiction over particular offenses. Moreover, it reduces, but in no way eliminates, the power of the Security Council over ongoing proceedings by permitting the Council to interfere only if it adopts a binding decision requesting the Court not to commence an investigation or prosecution, or to defer any proceeding already in progress. Finally, the ILC requirement of a Security Council determination as to aggression is now uncertain.

The Entry into Force of the ICC Statute

In a Resolution annexed to the Statute for the Court, the Diplomatic Conference established a Preparatory Commission (PrepCom II) to continue work on the development of the Court. Like the Preparatory Committee that had prepared the draft Statute, the Preparatory Commission was composed of representatives from states. Indeed, many of the delegates who had represented their governments during the Preparatory Committee meetings and the Diplomatic Conference continued to attend sessions of the Preparatory Commission, which greatly facilitated the PrepCom's work.

Pursuant to the Final Act of the Diplomatic Conference, the Preparatory Commission was charged with drafting the Rules of Procedure and Evidence (RPE); Elements of Crimes; a relationship agreement between the Court and the United Nations; basic principles of the headquarters agreement; financial regulations and rules; an agreement on the privileges and immunities of the Court; a budget for the first financial year; and the rules of procedure for the Court's Assembly of States Parties (ASP) that would ultimately provide the Court's management and oversight.

A deadline of June 30, 2000, was provided for the completion of the Rules of Procedure and Evidence and the Elements of Crimes, but no specific deadline existed for the other documents to be negotiated. The deadline was imposed to ensure that these two important documents would be finalized quickly, so that negotiation of their texts would not jeopardize either the ratification process or the establishment of the Court itself.

The Preparatory Commission held ten sessions from 1999 to 2002 and completed most of the preliminary work required for the establishment of the Court. The Preparatory Commission, like the Diplomatic Conference, was chaired by Ambassador Phillippe Kirsch, of Canada. During the initial sessions, the focus was on completing the Elements of Crimes, Rules of Procedure of Evidence, and beginning discussions on the crime of aggression. These very technical discussions continued during subsequent sessions of the Preparatory Commission as well as intersessional meetings, and ultimately culminated in the adoption of the Elements of Crimes and Rules of Procedure of Evidence (RPE) by consensus. Having completed the Elements and RPE in a timely fashion, the Preparatory Commission then turned its attention, in its sixth session, to the crime of aggression, to the Relationship Agreement between the Court and the United Nations, the Financial Regulations and Rules of the Court, and the Agreement on Privileges and Immunities of the Court.

By the end of 1998, all fifteen member states of the European Union had added their signatures to the Statute, and by March of 1999, seventy-nine states had signed the Statute and one, Senegal, had ratified it. For many states, the ratification process engendered complications unrelated to their general support for (or opposition to) the Court. Many states were required to amend their constitutions to accommodate a variety of legal obstacles: the imposition of life sentences was unconstitutional in some states, presidential immunity had to be waived for others, and for most states, adoption of the implementing legislation that would be required in order to carry out the Statute's obligations was a lengthy process. Many observers stated both privately and publicly that they expected the process to take ten to twenty years. But pressure to ratify the Statute continued to build, through the work of NGOs, the

convening of regional conferences, and the ongoing work of the Preparatory Commission.

By the opening of the seventh session of the Preparatory Commission on February 26, 2001, 139 states had signed the Statute and twenty-nine had ratified it. Thus, although many of PrepCom II's initial agenda items remained, attention began to turn to the practical issues that would soon arise as a result of the Statute's entry into force, including structured contacts with the Netherlands (the host government for the ICC) concerning its preparations for the Court's establishment, and the creation of a "road map" for the coming into force of the Statute.

While the Preparatory Commission continued its work on the ancillary documents, as well as on the ever-present problem of the crime of aggression, NGOs around the world, as well as national and international bar associations, started contemplating the formation of an ICC bar association and attending to the selection of the Court's first judges and prosecutor. The penultimate session of the Preparatory Commission opened on April 8, 2002, with fifty-six states parties to the Statute. To accommodate the wishes of several countries to be considered the 60th state to ratify the Treaty, on April 11, 2002, the United Nations held a ceremony during which ten countries simultaneously deposited instruments of ratification, bringing the total number of state parties to sixty-six, six more than the number required by the Statute for the Treaty's entry into force. The Preparatory Commission also set about finishing its work, so that by the conclusion of its tenth and final session in July 2002, the Assembly of States Parties, which would be assuming the Preparatory Commission's functions, as well as the tasks assigned to it by the ICC Statute, could begin its work. During its first session, the Assembly of States Parties adopted the work of the Preparatory Commission and elected the members of the bureau, including its president, H. R. H. Prince Zeid Ra'ad Zeid Al-Hussein, of Jordan. During its second session, held from February 3 to 7, 2003, the ICC elected its first judges. Candidates from forty-three countries were nominated, and the judges were elected from among those presented. At the end of thirty-three rounds of balloting, eighteen extraordinarily well-qualified judges had been selected, including seven women. A ceremony was held in The Hague during which they were sworn in, pledging to fulfill their duties "honorably, faithfully, impartially, and conscientiously." The judges subsequently elected Canadian Philippe Kirsch as president, and Elizabeth Odio Benito (Costa Rica) and Akua Kuenyehia (Ghana) as vice-presidents.

The selection of the Court's Prosecutor was more problematic, as States endeavored to find a candidate who could be chosen by consensus. Ultimately, a distinguished Argentinian lawyer and law professor was selected, Luis Moreno Ocampo. Moreno Ocampo had established his reputation as a prosecutor during several high profile trials involving leading figures from Argentina's military junta. His nomination was uncontested, and he was installed in The Hague on June 16, 2003.

The United States' Objections to the Court

Although President Clinton and the U.S. Congress expressed general support for the establishment of the ICC, as the opening of the Diplomatic Conference drew near, U.S. negotiators within the administration and other influential political figures and commentators appeared increasingly wary of the Court. Following the Rome Conference, Ambassador David J. Scheffer, head of the U.S. Delegation in Rome, testified before the Senate Foreign Relations Committee and identified several principal objections to the Statute, three of which continued to form the crux of the Bush administration's opposition to the Court. First, Ambassador Scheffer argued "a form of jurisdiction over non-party states was adopted." Second, he complained that the Statute created a prosecutor who could, on his own authority with the consent of two judges, initiate investigations and prosecutions. Finally, he objected that the Statute did not clearly require an affirmative determination by the Security Council prior to bringing a complaint for aggression before the Court.

As a matter of law, the U.S. objections were relatively insubstantial, and most observers felt they could eventually be overcome. On December 31, 2000, the last day the Statute was open for signature, Ambassador Scheffer signed the Rome Statue for the ICC on behalf of the U.S. government. Although President Clinton maintained that his administration still had concerns about "significant flaws" in the treaty, he asserted that the U.S. signed the treaty "to reaffirm our strong support for international accountability," and to "remain engaged in making the ICC International Criminal Court an instrument of impartial and effective justice."

The Clinton policy towards the ICC can be described as an attitude of "cautious engagement," meaning that the United States would stay committed to the Court in principle, but work aggressively to protect American national interests during the negotiating process. The Bush administration, however, rejected this "wait and see" approach to the Treaty in favor of a policy of direct hostility. This reflects the views of Undersecretary John Bolton, an opponent of the Court for

International Criminal Court justices pose with Kofi Annan and Dutch Queen Beatrix in the Hague, Netherlands, in March 2003. The United States was only one of seven nations to vote against the Rome Statute of the International Criminal Court in 1998. [AP/WIDE WORLD PHOTOS]

many years, who has forcefully argued that the Court should be weakened, and ultimately, "wither and collapse, which should be [the U.S.] objective."

This policy led President George W. Bush to sign into law the American Service Members' Protection Act, which, among other things, authorizes the president to use military force to "rescue" any U.S. soldier detained by the ICC at The Hague. The Bush administration has also abandoned all negotiations pertaining to the Court, and has, through the offices of Under Secretary Bolton, written to the secretary-general of the United Nations terminating the effect of U.S. signature of the treaty. The U.S. government has declined to participate in the election of the Court's Judges and Prosecutor, and has negotiated dozens of bilateral immunity (so-called Article 98) agreements with the other countries, requiring them to turn over all U.S. citizens to the United States for prosecution, rather than to the ICC. Finally, the United States has proposed and obtained Security Council Resolutions exempting UN peacekeeping missions from the ICC Statute, despite the strong objections of many allies and the UN secretary-general.

Some observers have suggested that the Bush administration's views may suggest hostility, or at least ambivalence, towards the most fundamental principles of war crimes law. Others opine that the opposition does not stem from any particular feature of the Court or its mission, but from a deep-seated distrust of all international institutions, whatever their mandate. Finally, it may be that the Bush administration's attack on the Court is premised on the belief, expressed in the National Security Strategy Document released by the government in September 2002, that the United States should use its military force preemptively in its own defense, as well as act assertively and militarily to promote U.S. interests in the world. Under this view, it is not only inadvisable for the United States to ratify the Statute, but the Court must be eliminated or disabled to remove it as a potential constraint to the use of U.S. military force.

SEE ALSO Humanitarian Law; International Court of Justice; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; International Law; Nuremberg Trials; Tokyo Trial; War Crimes

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Leila Sadat

International Criminal Tribunal for Rwanda

The United Nations (UN) Security Council created the International Criminal Tribunal for Rwanda (ICTR) in November 1994 to investigate and, when an apparent case exists, prosecute a select number of political, military, and civic officials for their involvement in the Rwandan genocide that took place from April to July 1994. An estimated 500,000 Rwandans, overwhelmingly Tutsi, were killed during this period.

The ICTR plays an important, albeit not exclusive, role in promoting accountability for perpetrators of genocide. The Rwandan government, for its part, has incapacitated more than 80,000 suspects and provisionally released another 30,000. It intends to prosecute these individuals through national trials or traditional dispute resolution (*gacaca*). Approximately 6,500 people have thus far been convicted of genocide-related offenses in Rwandan national courts. A handful of perpetrators have been prosecuted in foreign countries, such as Belgium and Switzerland.

The ICTR is a temporary, or ad hoc, institution that will close down once it completes its work. The initial thinking was that the ICTR would complete its investigative and trial work by 2008, to be followed by the resolution of outstanding appeals. It is unclear whether 2008 remains a realistic end-point.

ICTR judgments clarify important aspects of international law regarding genocide and crimes against humanity. In this regard, they establish a strong foundation for the permanent International Criminal Court (ICC), which came into effect in 2002. ICTR experiences have informed and inspired other ad hoc tribunals to involve the international community in the prosecution of systemic human rights abuses, such as the Special Court for Sierra Leone, the hybrid international/national tribunals in East Timor and extraordinary chambers contemplated for Cambodia. Moreover, the ICTR has helped authenticate a historical record of the violence in Rwanda, has decreed that the violence constituted genocide, has educated the international community, and has offered some vindication for victims. That said, the ICTR also has been subject to criticism for its distance—both physically and psychologically—from Rwanda, the length of its proceedings, the small number of accused in its docket, the mistreatment of witnesses in sexual assault cases, and allegations of financial irregularities involving defense counsel and investigators.

Creation of the ICTR

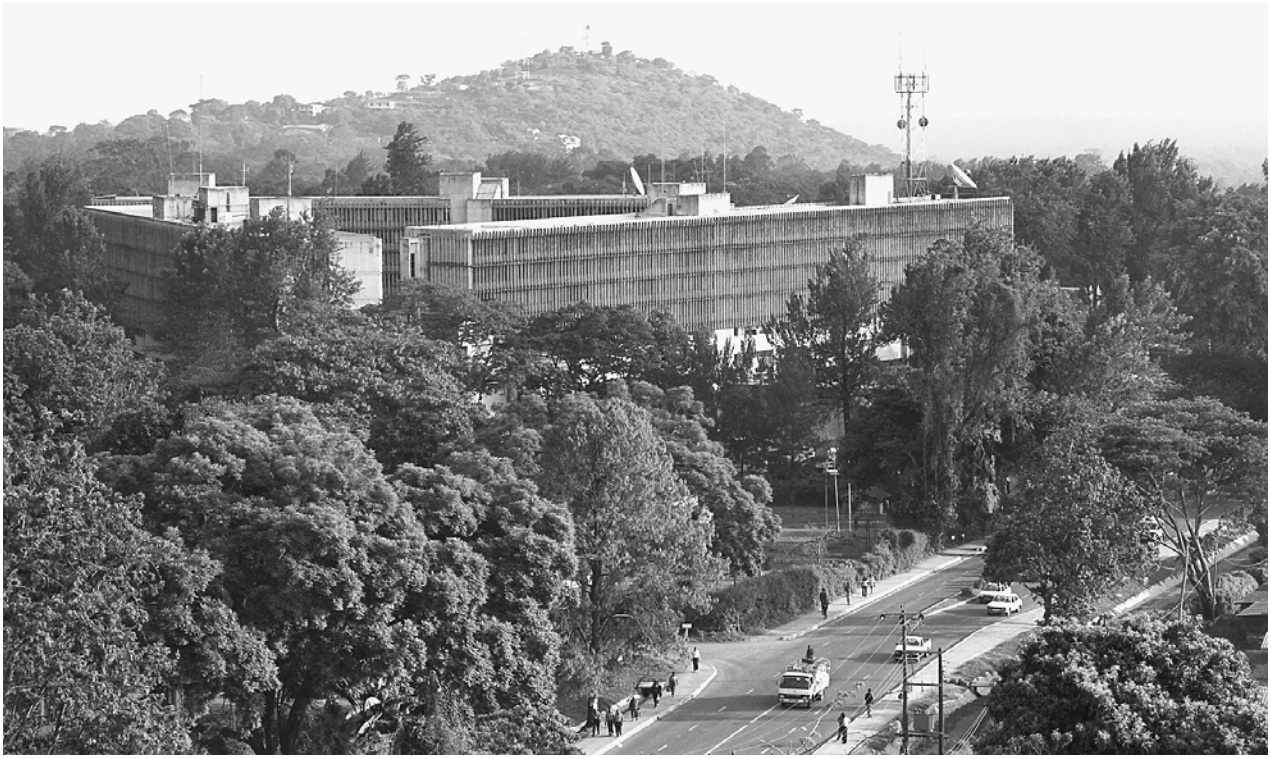
The Security Council, acting under Chapter VII of the UN Charter, created the ICTR by virtue of Resolution 955, adopted on November 8, 1994. Ironically, the only member of the Security Council not to support Resolution 955 was Rwanda, although Rwanda had previously requested that the international community establish a tribunal. Rwanda objected to the limited temporal jurisdiction of the ICTR and the fact the ICTR could not issue the death penalty. On February 22, 1995, the Security Council resolved that the ICTR would be based in Arusha, a city in northern Tanzania. This, too, was of concern to the Rwandan government, as it wished the tribunal to be sited in Rwanda itself.

In Resolution 955 the Security Council recognized reports that "genocide and other systematic, widespread, and flagrant violations of international humanitarian law have been committed in Rwanda." The Security Council determined that this situation rose to the level of a threat to international peace and security. It also affirmed its intention to put an end to these violations and "to take effective measures to bring to justice the persons who are responsible for them."

The ICTR is governed by its statute, which is annexed to Resolution 955. Details regarding the process of ICTR trials and appeals are set out in the ICTR Rules of Procedure and Evidence. These rules were adopted separately by the ICTR judges and have been amended several times since their inception.

Goals

In creating the ICTR, the Security Council affirmed its conviction that the prosecution of persons responsible for serious violations of international humanitarian law in Rwanda would promote a number of goals. The Security Council identified these as: (1) bringing to jus-



The UN Security Council elected not to establish the ICTR in Rwanda, but instead chose the city of Arusha, in neighboring Tanzania. This photo shows the building that houses the tribunal. [LANGEVIN JACQUES/CORBIS SYGMA]

tice those responsible for genocide in Rwanda; (2) contributing to the process of national reconciliation; (3) restoring and maintaining peace in Rwanda and the Great Lakes region of Africa generally; and (4) halting future violations and effectively redressing those violations that have been committed. On a broader level, the Security Council also intended to signal that the international community would not tolerate crimes of genocide—architects of such violence would incur responsibility instead of benefiting from impunity.

In order for the ICTR to fulfill its mandate, the Security Council exhorted that it should receive the assistance of all states. Article 28 of the statute requires states to cooperate with the ICTR in its investigations and prosecutions if a request for assistance or order is issued. Many suspects indicted by the ICTR have been arrested in a variety of African and European countries and been transferred to the ICTR, demonstrating the respect and support foreign national governments exhibit toward the ICTR.

Jurisdiction

Article 1 of the statute provides that the ICTR has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda between January 1, 1994, and December 31, 1994, as well as Rwandan citizens responsible for violations committed in the territory of neighboring states. The jurisdiction of the ICTR is thus circumscribed by territory, citizenship, and time.

The ICTR prosecutes three categories of crimes: genocide (Article 2), crimes against humanity (Article 3), and war crimes (Article 4). The ICTR has issued convictions for each of these crimes.

Article 2 defines genocide in standard fashion: as one of a number of acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial, or religious group. According to Article 2(2), the enumerated acts are: (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; and (e) forcibly transferring children of the group to another group. The ICTR has jurisdiction to prosecute genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide (Article 2[3]).

Article 3 defines crimes against humanity as certain crimes when committed as part of a widespread or

[PAULINE NYIRAMASUHUKO]

Pauline Nyiramasuhuko (b. 1946) had sometimes been known as a success story and a favorite daughter of Butare. She was a social worker who very quickly became the Minister for Family and Women's Affairs and a powerful member of the Habyarimana government in Kigali. At the start of the genocide, in April 1994, she returned to her hometown to organize and direct the local Interahamwe (right-wing Hutu citizen militias). Night and day for three months, she commanded the anti-Tutsi marauders to commit (among other crimes) the rape and torture of Tutsi women. In July 1994 she fled Rwanda. She lived as a fugitive in Kenya for three years until her arrest in Nairobi by international authorities on July 18, 1997. In recent years she has lived at the UN Detention Facility in Arusha. She and her son are being tried, with four other Hutu leaders from Butare, by the ICTR. All are accused of genocide, crimes against humanity, and war crimes. Nyiramasuhuko's trial began in June 2001 and is expected to continue through the beginning of 2005. **PATTI BRECHT**

systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds. Specified crimes include murder; extermination; enslavement; deportation; imprisonment; torture; rape; and political, racial, or religious persecution.

The ICTR has jurisdiction only over individuals (Article 5). Persons incur criminal responsibility if they planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation, or execution of a crime (Article 6[1]). The statute eliminates official immunity, stipulating that the position of any accused person (even a head of state) does not relieve that person of criminal prosecution or mitigate punishment (Article 6[2]). One of the first convictions issued by the ICTR involved Jean Kambanda, the prime minister of Rwanda at the time of the genocide. The fact that the crime was committed "by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof" (Article 6[3]). If a crime was carried out by a subordinate in the chain of command because that subordinate was so ordered, the subordinate is not relieved of individual criminal responsibility, although that fact can be considered in mitigation of punishment.

The ICTR shares concurrent jurisdiction with national courts (Article 8[1]). However, the ICTR can exert primacy over the national courts of all states, including those of Rwanda (Article 8[2]), at any stage of the procedure. The primacy of the ICTR also is buttressed by the overall effect of Article 9 of the statute. This provides, on the one hand, that no person shall be tried before a national court for acts for which he or she has already been tried by the ICTR, but, on the other hand, a person who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the ICTR if one of two conditions applies. These are: (a) the act for which he was tried was characterized as an ordinary crime; or (b) the national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or were not diligently prosecuted.

Structure

The ICTR is composed of three units: Judicial Chambers, the Prosecutor's Office, and the Registry. The ICTR has three Trial Chambers and one Appeals Chamber (Article 10). The Trial Chambers handle the actual trials of the accused and pretrial procedural matters. The Appeals Chamber hears appeals from decisions of the Trial Chambers. Appeals may involve judgments (guilt or innocence) or sentence (the punishment imposed on a convicted person). The Office of the Prosecutor is in charge of investigations and prosecutions. The Registry is responsible for providing overall judicial and administrative support to the chambers and the prosecutor.

The structure of the ICTR is intertwined with that of the International Criminal Tribunal for the Former Yugoslavia (ICTY), which was created in 1993 and to some extent served as a precedent for the ICTR. Although both tribunals operate separate Trial Chambers (the ICTY in The Hague [Netherlands], the ICTR in Arusha), they share common judges in their Appeals Chambers (located in The Hague, although these judges sometimes sit in Arusha as well). Until September 2003 the two tribunals also shared a single chief prosecutor, Carla Del Ponte of Switzerland. That changed when the UN Security Council appointed Hassan Jallow from Gambia as ICTR Chief Prosecutor, with Del Ponte remaining as ICTY Chief Prosecutor.

The three Trial Chambers and the Appeals Chamber are composed of judges elected by the UN General Assembly. The Security Council proposes candidates for election based on a list of nominees submitted by

member states. Nominations must ensure adequate representation of the principal legal systems of the world. ICTR judges are elected for a term of four years, and are eligible for reelection. Judges "shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices" (Article 12). They are to be experienced in criminal law and international law, including international humanitarian law and human rights law.

The full ICTR consists of sixteen permanent judges, no two of whom may be nationals of the same state. This total breaks down as follows: three judges in each of the three Trial Chambers and seven judges in the Appeals Chamber. Five judges of the Appeals Chamber hear each appeal. There also is an option of adding a number of *ad litem* (temporary) judges owing to the workload of the ICTR at any point in time. The permanent judges elect a president from among themselves.

The Office of the Prosecutor acts independently to investigate crimes, prepare charges, and prosecute accused persons. The prosecutor does not receive instructions from any government or from any other source. However, the prosecutor may initiate investigations based on information obtained from governments, UN entities, and both intergovernmental and nongovernmental organizations.

The Registry is responsible for the ICTR's overall administration and management. It is headed by the registrar, who provides judicial and legal support services for the work of the judicial chambers and the prosecution and also serves as the ICTR's channel of communication. The ICTR's working languages are English and French (Article 31).

Trial and Appeal Processes

The trial process begins when the prosecutor investigates allegations against an individual. In this investigative process, the prosecutor has the power to question suspects, victims, and witnesses. The prosecutor may also collect evidence and conduct onsite investigations. If the Prosecutor determines that a prima facie (in other words, apparent) case exists, he or she is to prepare an indictment. It is at this point that a suspect becomes an accused. The indictment contains a concise statement of the facts and the crime(s) alleged against the accused. The indictment then is sent to a judge of the Trial Chamber for review. If this judge is satisfied that a prima facie case has in fact been established by the prosecutor, he shall confirm the indictment (Article 18). If the judge is not satisfied, he is to dismiss the indictment. Once the indictment is confirmed, the judge may, at the request of the prosecutor, "issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial" (Article 18[2]).

A person under confirmed indictment can be taken into the custody of the ICTR. That person is then immediately to be informed of the charges. The accused then enters a plea—guilty or not guilty—and, in the event of a not guilty plea, the trial begins thereafter. Details of the trial proceedings are regulated by Rules of Procedure and Evidence.

Hearings are in public unless exceptional circumstances arise, for instance, when witnesses need to be protected. Testifying in a closed session can provide such protection. Of more than eight hundred witnesses who have testified in ICTR proceedings as of 2004, the majority have required protective measures that permit them to testify anonymously and thereby be safeguarded from reprisals. The ICTR also has established a sophisticated witness protection program.

Accused persons are entitled to procedural rights. Some of these—such as the right to counsel—arise as soon as an individual is a suspect. At trial, an accused is presumed innocent until proven guilty. An accused person also is entitled to the rights set out in Article 20(4) of the statute. These include protection against self-incrimination, as well as rights to be tried without undue delay, to be informed of the charges, to examine witnesses, and to an interpreter. Moreover, accused are free to retain counsel of their own choice. If an accused person is unable to afford counsel, the ICTR is to assign counsel to that person. In such a situation, which frequently has arisen at the ICTR, the accused person can choose from a list of qualified counsel. These legal services are without charge to the accused. The ICTR Appeals Chamber, however, has ruled that the right of an indigent person to be represented by a lawyer free of charge does not imply the right to select counsel (*Prosecutor v. Akayesu,* Appeal Judgment, 2001, para. 61).

After the trial has concluded, the Trial Chamber pronounces judgment. The judges are triers of fact and law; there are no juries. At the same time, the judges impose sentences and penalties. This differs from the procedure in a number of national legal systems, such as the United States, where the sentencing stage begins as a separate process following the issuance of a guilty verdict. However, this tracks the process that obtains in many civil law countries. Judgment is by a majority of judges and delivered in public. The majority provides a reasoned written opinion. Dissenting judges may provide their own opinion.

The accused has a right to appeal the judgment and the sentence. The prosecutor also can appeal (this also

runs counter to the national practice in some states, e.g., the United States, but reflects national practices in many civil law countries and some common law countries such as Canada). However, the Appeals Chamber is empowered only to hear appeals that stem from an error on a question of law that invalidates the decision, or an error of fact that has occasioned a miscarriage of justice. The Appeals Chamber may affirm, reverse, or revise Trial Chambers decisions.

Article 25 of the statute permits an exceptional measure called a *review proceeding.* This is permitted in instances in which "a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision" (Article 25). In such a situation, a convicted person or the prosecutor may submit an application for the judgment to be reviewed.

Article 25 has been successfully invoked by the prosecutor in the case of Jean-Bosco Barayagwiza, the former director of political affairs in the Rwandan Ministry of Foreign Affairs eventually convicted of genocide. Barayagwiza helped set up a radio station whose purpose was to incite anti-Tutsi violence. On November 3, 1999, the Appeals Chamber had quashed the indictment against Barayagwiza and ordered him released owing to the lengthy delays that had occurred during the process of his being brought to justice, which were found to have violated his human rights. One and a half years had elapsed from the time of Barayagwiza's arrest to the time of his actually being charged, and additional delays had subsequently occurred at the pretrial stage. The former prosecutor, Carla Del Ponte, then filed an Article 25 application with the Appeals Chamber for the review of the prior decision to free Barayagwiza. On March 31, 2000, the Appeals Chamber unanimously overturned its previous decision to quash Barayagwiza's indictment (*Prosecutor v. Barayagwiza,* Appeals Chamber, 2000). It found that, although Barayagwiza's rights had been infringed, "new facts" presented to the ICTR for the first time during the request for review diminished the gravity of any rights infringement. For example, it was found that the actual period of pretrial delay was much shorter than previously believed; it was also found that some of the delays faced by Barayagwiza were not the responsibility of the prosecutor. Because of this diminished gravity, the ICTR characterized its previous decision to release Barayagwiza as "disproportionate." Basing itself in "the wholly exceptional circumstances of the case," and the "possible miscarriage of justice" that would arise by releasing Barayagwiza, the ICTR set aside its prior release (*Prosecutor v. Barayagwiza,* Appeals Chamber, 2000, para. 65).

Sentencing

Article 23 limits the punishment that the ICTR can impose to imprisonment. The Trial Chambers do have considerable discretion as to the length of the period of imprisonment. The ICTR has issued a number of life sentences and sentences in the ten to thirty-five–year range. The practice of the ICTR reveals that genocide is sentenced more severely than crimes against humanity or war crimes, even though there is no formalized hierarchy among the various crimes the statute ascribes to the jurisdiction of the ICTR. This comports with the notion, evoked judicially by the ICTR, that genocide is the "crime of crimes" (*Prosecutor v. Serushago,* Sentence, 1999, para. 15; Schabas, 2000, p. 9). Other factors that affect sentencing include the accused's seniority in the command structure, remorse and cooperation, age of the accused and of the victims, and the sheer inhumanity of the crime. In addition to imprisonment, the ICTR "may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners" (Article 23[3]). In practice, this option has not been utilized.

Convicted persons serve their sentences either in Rwanda or in countries that have made agreements with the ICTR to enforce such sentences. Mali, Benin, and Swaziland have signed such agreements.

Budget and Staff

From 2002 to 2003 the UN General Assembly appropriated $177,739,400 (U.S.) for the ICTR. Approximately 800 individuals representing 80 nationalities work for the ICTR.

History of Prosecutions

The ICTR issued its first indictment in late 1995. By early 2004 it had issued approximately seventy indictments, and more than fifty-five indicted individuals were in the custody of the ICTR, either on trial, awaiting trial, or pending appeal.

As of early 2004, the ICTR had convicted twelve individuals, including a number of very senior members of the Rwandan government, civil society, and clergy. Convicted individuals include Jean Kambanda, the Prime Minister of Rwanda during the genocide; Jean-Paul Akayesu and Juvenal Kajelijeli, both local mayors; Georges Rutaganda, a militia leader; Elizaphan Ntakirutimana, a Seventh-Day Adventist pastor, and Georges Ruggiu, a Belgian-born radio journalist whose broadcasts encouraged the setting up of roadblocks and congratulated those who massacred Tutsi at these roadblocks.

Kambanda is the first head of state to have been convicted of genocide, establishing that international

The International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia operate separately, but the Appeals Chambers of both bodies share a panel of judges. Here, three of the justices confer in The Hague, with a UN flag in the background.[LANGEVIN JACQUES/CORBIS SYGMA]

criminal law could apply to the highest authorities. On October 19, 2000, the Appeals Chamber unanimously dismissed Jean Kambanda's appeal against conviction and sentence (*Prosecutor v. Kambanda,* Appeals Chamber, 2000). Kambanda had previously pleaded guilty to six counts of genocide and crimes against humanity (although he subsequently sought to challenge his own guilty plea and demanded a trial), and had been sentenced to life imprisonment by the Trial Chamber on September 4, 1998. As to conviction, Kambanda had argued that his initial guilty plea should be quashed as he allegedly had not been represented by a lawyer of his own choosing, he had been detained in oppressive conditions, and the Trial Chamber had failed to determine that the guilty plea was voluntary, informed, and unequivocal. The Appeals Chamber rejected all of these arguments. In so doing, it drew heavily from its prior decisions in matters involving appeals from the ICTY Trial Chamber, thereby promoting principles of consistency and precedent. As to sentence, the Appeals Chamber dismissed Kambanda's allegations of excessiveness. Although Kambanda's cooperation with the prosecutor was found to be a mitigating factor to be taken into consideration, the "intrinsic gravity" of the crimes and the position of authority Kambanda occupied in Rwanda outweighed any considerations of leniency and justified the imposition of a life sentence (*Prosecutor v. Kambanda,* Appeals Chamber, 2000, paras. 119, 126).

Not all prosecuted individuals are convicted. The ICTR issued its first acquittal in the matter of Ignace Bagilishema, the *bourgmestre* (mayor) of the Mabanza commune, who was accused of seven counts of genocide, crimes against humanity, and war crimes related to the murder of thousands of Tutsi in the Kibuye prefecture (*Prosecutor v. Bagilishema,* Appeals Chamber, 2002). The Trial Chamber held that the prosecutor failed to prove beyond a reasonable doubt that Bagilishema had committed the alleged atrocities. It concluded that the testimony of prosecution witnesses was riddled with inconsistencies and contradictions and thereby failed to establish Bagilishema's individual criminal responsibility (*Prosecutor v. Bagilishema,* Trial Chamber, 2001). The *Bagilishema* case demonstrates

the ICTR's attentiveness to matters of due process and procedural rights, although the acquittal triggered controversy in Rwanda.

Many ministers of the genocidal regime are in ICTR custody, along with senior military commanders, bureaucrats, corporate leaders, clergy, journalists, popular culture icons, and intellectuals. Many of these individuals are being tried jointly. Joined proceedings involve two or more defendants, among whom there is a nexus justifying their being tried together.

For example, on December 3, 2003 the ICTR Trial Chamber issued convictions in the "media case." The media case explores the role, responsibility, and liability of the media in inciting genocide. This case represents the first time since Julius Streicher, the Nazi publisher of the anti-Semitic weekly *Der Stürmer,* appeared before the Nuremberg Tribunal that a group of leading journalists have been similarly charged. Convicted by the ICTR of inciting genocide through the media are Hassan Ngeze (editor of the extremist *Kangura* newspaper), Ferdinand Nahimana (former director of Radio-Télévision Libre des Mille Collines (RTLM), the national broadcaster), and Jean-Bosco Barayagwiza (politician and board member of the RTLM). Ngeze and Nahimana were sentenced to life imprisonment and Barayagwiza to a term of thirty-five years. In its judgment, the ICTR Trial Chamber underscored that "[t]he power of the media to create and destroy fundamental human values comes with great responsibility. Those who control such media are accountable for its consequences." The media case unpacks the interface between international criminal law and freedom of expression. The defense vigorously argued that the impugned communications constituted speech protected by the international right to freedom of expression. The ICTR disagreed. It distinguished "discussion of ethnic consciousness" from "the promotion of ethnic hatred." While the former is protected speech, the latter is not. On the facts, it was found that the exhortations to incite genocide constituted the promotion of ethnic hatred and, hence, unprotected speech.

The prosecutor is charging political leaders jointly in three separate groups. The "Butare group," which consists of six accused, includes Pauline Nyiramasuhuko, the former Minister for Family and Women's Affairs and the first woman to be indicted by an international criminal tribunal (among the charges she faces is inciting rape). Butare is a city in southern Rwanda and the seat of the national university. The second group, known as the Government I group, involves four ministers from the genocidal government, including Edouard Karemera, former Minister of the Interior, and André Rwamakuba, former Minister of Education. The third group, Government II, includes four other ministers from the genocidal government. All defendants in the Government I and II groups face charges of genocide and crimes against humanity based on theories of individual criminal responsibility that include conspiracy and direct and public incitement to commit genocide.

The military trial involves Colonel Théoneste Bagosora, the Director of the Cabinet in the Ministry of Defense, and a number of senior military officials. It examines how the genocide allegedly was planned and implemented at the highest levels of the Rwandan army. Bagosora is alleged to be the military mastermind of the genocide.

Former prosecutor Del Ponte had affirmed an interest in investigating allegations of crimes committed by Tutsi armed forces (the RPA). This is a matter of considerable controversy for the Rwandan government. Thus far, no indictments have been issued against the RPA, notwithstanding allegations that it massacred up to thirty thousand Hutu civilians when it wrested control of the Rwandan state from its genocidal government in 1994.

Contribution to Legal and Political Issues Concerning Genocide

The ICTR shows that those responsible for mass violence can face their day in court. In this sense, the ICTR helps promote accountability for human rights abuses and combat the impunity that, historically, often has inured to the benefit of those who perpetrate such abuses.

However, the ICTR—and legal responses to mass violence more generally—cannot create a culture of human rights on its own. Democratization, power-sharing, social equity, and economic opportunity each are central to transitional justice. Moreover, although the law can promote some justice after tragedy has occurred, it is important to devote resources prospectively to prevent genocide in the first place. In this sense, by creating the ICTR the international community only addressed part of the obligation announced by the 1948 UN Genocide Convention, namely the prevention and punishment of genocide.

For many Rwandans, the international community's response to and effort in preventing the genocide is questionable at best. The international community was not willing to meaningfully invest in armed intervention that may have prevented, or at least mitigated, genocide in Rwanda in the first place. Various independent reports and studies have found the UN (as well as many states) responsible for failing to prevent or end the Rwandan genocide.

The ICTR's most significant contribution is to the development of international criminal law. Its decisions build a jurisprudence that informs the work of other international criminal tribunals, such as the ICTY, other temporary institutions, and prospectively the permanent ICC. National courts in a number of countries have also relied on ICTR decisions when these courts have been called on to adjudicate human rights cases.

Several of the ICTR's decisions highlight these contributions. One of these is the Trial Chamber's groundbreaking 1998 judgment in the *Akayesu* case (subsequently affirmed on appeal), which provided judicial notice that the Rwandan violence was organized, planned, ethnically motivated, and undertaken with the intent to wipe out the Tutsi (the latter element being a prerequisite to genocide). The *Akayesu* judgment marked the first time that an international tribunal ruled that rape and other forms of systematic sexual violence could constitute genocide. Moreover, it provided a progressive definition of rape. Another important example is the Trial and Appeals Chamber's conviction of Clément Kayishema, a former local governmental official, and Obed Ruzindana, a businessman, jointly of genocide and crimes against humanity, and its sentencing them to life imprisonment and twenty-five years imprisonment, respectively, clarifying the law regarding the requirement of the "mental element" (proof of malevolent intent) in the establishment of the crime of genocide, and the type of circumstantial evidence that could establish that mental element (*Prosecutor v. Kayishema,* Appeals Chamber, 2001).

Also significantly, the notion of command responsibility was squarely addressed and expanded in the case of Alfred Musema, the director of a tea factory. Along with other convictions for crimes for which he was directly responsible, Musema was held liable for the acts carried out by the employees of his factory over whom he was found to have legal control, an important extension of the doctrine of superior responsibility outside the military context and into the context of a civilian workplace (*Prosecutor v. Musema,* Trial Chamber, 2000, paras. 141–148). In the *Musema* case, the ICTR also provided interpretive guidance as to what sorts of attacks could constitute crimes against humanity.

Contribution to Postgenocide Rwanda

There is cause to be more circumspect regarding the contribution of the ICTR to postgenocide Rwanda. Many Rwandans are poorly informed of the work of the ICTR. Moreover, many of those aware of the work of the ICTR remain skeptical of the process and results. The justice resulting from the operation of the ICTR is distant from the lives of Rwandans and may inure more to the benefit of the international community than to victims, positive kinds of transition, and justice in Rwanda itself. This provides a valuable lesson: In order for international legal institutions to play catalytic roles, it is best if they resonate with lives lived locally. This signals a need for such institutions to work in harmony with local practices. Moreover, there also is reason to suspect that for many afflicted populations justice may mean something quite different than the narrow retributive justice flowing from criminal trials. In this vein, it is important for international legal interventions to adumbrate a multilayered notion of justice that actively contemplates restorative, indigenous, truth-seeking, and reparative methodologies.

There is evidence the international community is moving toward this pluralist direction, both in terms of the work of the ICTR and also the construction of recent justice initiatives that are more polycentric in focus. There is an emphasis on institutional reform that could make the work of the ICTR more relevant to Rwandans. The ICTR has, in conjunction with Rwandan nongovernmental organizations, launched a victim-oriented restitutionary justice program to provide psychological counseling, physical rehabilitation, reintegration assistance, and legal guidance to genocide survivors. There also is a possibility—as of 2004 unrealized—of locating ICTR proceedings in Kigali, where the ICTR has opened an information center. Such a relocation would invest financial resources and infrastructure into Rwanda itself and thereby facilitate one of the unattained goals of Resolution 955, namely to "strengthen the courts and judicial system of Rwanda" (Resolution 955, 1994, Preamble).

SEE ALSO Arbour, Louise; Del Ponte, Carla; Goldstone, Richard; International Criminal Court; International Criminal Tribunal for the Former Yugoslavia; Rwanda; War Crimes

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International Criminal Tribunal for the Former Yugoslavia

The establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) by the United Nations Security Council in 1993 is one of the most significant contemporary developments for the prevention and punishment of crimes against humanity and genocide. Born out of the horrors of ethnic cleansing in the former Yugoslavia, the ICTY successfully prosecuted perpetrators irrespective of rank and official status, and became the first tribunal to prosecute a sitting head of state, Slobodan Milosevic. Against a long-standing culture of impunity that countenanced the likes of Pol Pot, Idi Amin, and Mengistu, it represented a revolutionary precedent that led to the acceptance and proliferation of other international and mixed courts, national trials, and other accountability mechanisms. As a central element of post-conflict peace-building in former Yugoslavia, it also challenged the conventional wisdom of political "realists," who held that accountability and peace are incompatible. Furthermore, ICTY jurisprudence made significant contributions to the law of crimes against humanity and genocide.

Creation of the ICTY

The unfolding of the atrocities in former Yugoslavia coincided with the end of the cold war and the consequent transformation of international relations. In the new political dispensation, the Soviet-era paralysis of the United Nations was increasingly replaced by cooperation between the five permanent members of the UN Security Council and unprecedented recourse to enforcement measures under Chapter VII of the UN Charter, especially in response to Iraq's invasion of Kuwait in 1990. Equally important was the rapid emergence of democratic governments in Eastern Europe, Latin America, and elsewhere in the world, giving human rights an unprecedented prominence.

In 1992 the Security Council took the unprecedented step of creating a Commission of Experts to investigate humanitarian law violations in the former Yugoslavia. On May 25, 1993, the Council unanimously adopted Resolution 827, pursuant to which it established the ICTY. The Tribunal was created under Chapter VII, which authorizes the Security Council to take enforcement measures binding on all member states of the UN. This was an unprecedented use of Chapter VII enforcement powers, and it directly linked accountability for humanitarian law violations with the maintenance of peace and security. This approach was necessary because Yugoslavia was unwilling to consent to an international criminal jurisdiction, because a treaty mechanism was too time-consuming in view of the need for expeditious action, and because the primary objective of the armed conflict was ethnic cleansing and other atrocities committed against civilians.

The ICTY Statute is a relatively complex instrument that had to express developments in contempo-

Bosnian Serbs sit behind their defense lawyers prior to a session at the International Criminal Tribunal for the Former Yugoslavia in The Hague, May 11, 1998. [AP/WIDE WORLD PHOTOS]

rary international humanitarian law that had evolved over the half-century since the Nuremberg trials. It also had to elaborate the composition and powers of a unique independent judicial organ created by the Security Council. Under the statute, the subject-matter jurisdiction of the ICTY is based on norms that had been fully established as a part of customary international law. Articles 2 and 3 of the statute define war crimes, including violations of the 1949 Geneva Conventions and the 1907 Hague Regulations respectively. Article 4 reproduces the definition of genocide as contained in the 1948 Genocide Convention, and Article 5 defines crimes against humanity based on the Charter of the International Military Tribunal at Nuremberg. Article 7(1) defines the basis for the attribution of individual criminal responsibility, encompassing persons who "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime" recognized under the statute. Article 7(2) expressly rejects any form of immunity for international crimes, stipulating that "[t]he official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment." Furthermore, Article 7(3) codifies the doctrine of command responsibility, providing that crimes committed by subordinates may be attributed to their superior "if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof." Conversely, Article 7(4) provides that superior orders shall not relieve a subordinate of criminal responsibility, though it may be considered in mitigation of punishment.

Article 8 restricts the jurisdiction of the ICTY to the territory of the former Yugoslavia, and limits the ICTY to consideration of crimes beginning on January 1, 1991, coinciding with the early stages of Yugoslavia's disintegration. There is however, no outer temporal limit to jurisdiction. Article 9 provides that the ICTY and national courts enjoy concurrent jurisdiction, but that the ICTY shall have primacy, it can request national courts to defer investigations and prosecutions to the

ICTY. Article 10 provides, however, that the principle of double jeopardy must also be respected, which means that a person may not be tried before the ICTY for crimes already tried before a national court, unless the earlier proceedings were not impartial or independent, or were designed to shield the accused from criminal responsibility, or otherwise not diligently prosecuted.

The ICTY was initially composed of a prosecutor, the registry, three trial chambers with three judges each, and an appeals chamber with five judges that also serves the International Criminal Tribunal for Rwanda (ICTR). Since its early days, additional judges have been added to the tribunal. Unlike the Nuremberg Tribunal, the ICTY cannot rely on an army of occupation to conduct the investigation or to apprehend accused persons. Thus, Article 29 provides that UN member states are under an obligation to render judicial cooperation to the ICTY. Specifically, they are obliged to "comply without undue delay with any request for assistance or an order issued by a Trial Chamber" in matters such as the identification and location of persons, the taking of testimony and the production of evidence, the service of documents, the arrest or detention of persons, and the surrender or the transfer of an accused to the ICTY. Such extensive powers derive from the binding character of Chapter VII enforcement measures, and are unprecedented in the history of international tribunals.

The ICTY was created by the Security Council, which also prepared a list of potential judges. The judges were then elected by the UN General Assembly. Furthermore, the General Assembly is responsible for reviewing and approving the ICTY's budget. Although the ICTY is a subsidiary judicial organ of the Security Council, the Council has no power to interfere in judicial matters such as prosecutorial decisions or trials. The ICTY Statute and its rules of procedure and evidence contain numerous procedural safeguards to ensure the independence and impartiality of the tribunal, and to guarantee the rights of the accused to a fair trial.

The first chief prosecutor, South African Constitutional Court judge Richard Goldstone, was appointed in July 1994. In the early days, the Office of the Prosecutor (OTP) was understaffed and inexperienced; investigators and prosecutors who were familiar only with domestic law enforcement wasted scarce resources investigating low-ranking perpetrators for the direct commission of crimes such as murder, rather than focusing on leadership targets.

During Judge Goldstone's tenure, the ICTY's prospects for arrest were meager because the war was still raging, and even after the conclusion of a peace agreement, the prosecutor had to rely on reluctant peacekeeping forces or local police to arrest and surrender indictees. In contrast with the Nazi leaders who were put on trial at Nuremberg, the first defendant before the ICTY was a low-ranking Bosnian Serb, Dusko Tadić, who was captured haphazardly while visiting relations in Germany. He was accused of torturing and killing civilians at detention camps in Bosnia's Prijedor region. Although he was a relatively low-profile defendant, his trial created the image of a court in action.

In 1996 Judge Goldstone stepped down and a Canadian appellate judge, Louise Arbour, was appointed as the new ICTY prosecutor. Her emphasis was on increasing the overall professional standards and effectiveness of the prosecutor's office. Her major accomplishment was in enhancing international cooperation in obtaining intelligence and executing arrest warrants, particularly with NATO countries. Although peacekeeping forces in the former Yugoslavia were initially reluctant to make arrests, it soon became clear that the leaders responsible for inciting ethnic hatred and violence were an impediment to post-conflict peace- and nation-building. UN peacekeepers began arresting indictees, and the ICTY's fortunes were dramatically changed. The first such arrest was that of Slavko Dokmanović, the mayor of Vukovar during the war, and it was affected by Polish peacekeepers belonging to the UN Transitional Authority in Eastern Slavonia, a Serb-controlled region of Croatia. With the arrest of more and more defendants, Arbour streamlined the work of the prosecutor's office, dropped several indictments against low-ranking perpetrators, and increasingly focused on the "big fish."

The pressure to indict the biggest "fish" of all, Slobodan Milosevic, became particularly intense, and on May 27, 1999, Arbour made public the indictment of Milosevic and four other senior officials for crimes against humanity and war crimes in Kosovo, both in relation to mass expulsions and massacres in certain locales. This move was initially controversial. Some viewed the indictment as an obstacle to a deal with Milosevic, while others criticized the appearance that the ICTY was unduly influenced by NATO countries.

Following intense international pressure, the Serbian government arrested Milosevic and surrendered him to the ICTY in June 2000. In October 2000, Milosevic was indicted for atrocities committed in Bosnia and Croatia. His historic trial began in 2002, consummating the ICTY's remarkable emergence from obscurity. Arbour resigned as prosecutor in 1999, to be replaced by Carla Del Ponte, a Swiss prosecutor renowned at home for prosecuting mobsters. Del Ponte focused heavily on the Milosevic case and on securing

the arrest of other indicted leaders, from both Serbia and Croatia.

By 2003, the final wave of indictments was issued for atrocities committed in the Kosovo conflict. Many were against Serb military officers, but some were also issued against high-ranking members of the Kosovo Liberation Army for atrocities committed against ethnic Serbs in Kosovo. With the success of the ICTY and the mounting costs of time-consuming international trials, the Security Council called upon the prosecutor to complete all investigations by the end of 2004 and for the ICTY to complete trials by the end of 2008. The Council also approved the establishment of war crimes trial chambers in Bosnia and Herzegovina for the prosecution of lower-ranking defendants, in order to alleviate the ICTY's burden. As of early 2004, the ICTY prosecutor was not only responsible for trials of crimes committed in the former Yugoslavia, but also for the International Criminal Tribunal for Rwanda. In August 2003, the Security Council decided that the two spheres of responsibility should be split, and appointed a separate prosecutor for the ICTR.

Jurisprudence and Legal Developments

The jurisprudence of the ICTY has made significant contributions to international law, particularly in honing the definition of crimes against humanity and genocide. In an effort to effectively use its limited resources, ICTY trials were focused on the most serious crimes and on those most responsible for committing them. In practice, this focus was on crimes committed in execution of the ethnic cleansing campaign that amounted to crimes against humanity and, in certain important aspects, genocide. In order to ensure an appearance of impartiality, there were indictments not only against ethnic Serbs, but also against ethnic Croats, Muslims, and Kosovar Albanians. Furthermore, while focusing on those in leadership positions, certain prosecutions focused on issues of particular importance, such as the systematic use of rape as a weapon of war, and the destruction of cultural property. This prosecutorial strategy influenced and shaped the jurisprudence of the ICTY.

Jurisdiction

The first ICTY trial was the case of *Prosecutor v. Dusko Tadić*. This trial involved significant pronouncements on international humanitarian law, but the case is best known for its jurisprudence on the jurisdiction of the ICTY. Tadić challenged the legality of the ICTY's establishment, both on the grounds that it was beyond the powers of the UN Security Council, and because it was not a court established by law, insofar as the Council was not a legislative body. Appeals chamber president Antonio Cassese heard these arguments, and held that the establishment of a judicial organ was a valid exercise of the powers of the Security Council, in accordance with Chapter VII of the Charter of the United Nations. He also found that the ICTY was duly established by law in the international context because its standards conformed with the rule of law, there being no analogue to a legislature in the UN system. The appeals chamber also rejected challenges to the primacy of ICTY over national courts, based on the overriding interest of the international community in the repression of serious humanitarian law violations.

Enforcement Powers

The leading case dealing with the ICTY's enforcement powers and the corresponding obligation of states to render judicial assistance is *Prosecutor v. Blaškić*. The case revolves around the refusal of the Croatian government to comply with orders for the production of evidence issued by an ICTY Trial Chamber. The Appeals Chamber held that Article 29 of the ICTY Statute obliged states to comply with ICTY orders, and that Chapter VII of the UN Charter was sufficient to assert the authority of ICTY to issue such orders. The Appeals Chamber also held that the failure of a state to comply with orders of the court could result in a charge of noncompliance against the state (or its agent), which could then be turned over to the UN Security Council for further action.

Arrest Powers

The arrest powers of the ICTY are found in Articles 19, 20, and 29 of the tribunal's statute, and in Rules 54 through 59 of the rules of procedure and evidence. Rule 55 obligates states to execute arrest warrants. The most significant cases on arrest powers were *Prosecutor v. Slavko Dokmanović* and *Prosecutor v. Dragan Nikolić*, respectively. In both cases, the defendants alleged that they had been arrested through either abduction or duplicity (in legal terms, the charge is called "irregular rendition"). The defendants argued that the nature of their arrests should preclude the ICTY from exercizing jurisdiction over them.

At least one of the arrests had, in fact, involved subterfuge. In Dokmanović's case, he was arrested after having been tricked getting into a vehicle that he thought was going to take him to a meeting. In this case, the trial chamber made a distinction between "luring" and "forcible abduction," and held that the former (which is what was done to Dokmanović) was acceptable, whereas the latter might provide grounds for a dismissal in future cases. Dokmanović was not permitted to appeal this decision. (Dokmanović's trial was

later terminated because the defendant committed suicide).

Nikolić, whose motion was heard six years after Dokmanović's, was subject to a much more straightforward adbuction by "persons unknown" from the territory of the Federal Republic of Yugoslavia, and subsequently turned over to the ICTY. He based his appeal against his arrest on the grounds that the sovereignty of the Federal Republic of Yugoslavia was violated by his abduction, and that his rights were violated in a manner sufficiently serious to warrant discontinuance of proceedings. The Appeals Chamber held that state sovereignty does not generally outweigh the interests of bringing to justice a person accused of a universally condemned crime, especially when the state itself does not protest. Moreover, it found that, given the exceptional gravity of the crimes for which Nikolić was accused, a human rights violation perpetrated during his arrest must be very serious to justify discontinuance of proceedings.

Crimes Against Humanity

The definition of crimes against humanity found in Article 5 of the ICTY Statute is based on the Nuremberg Charter, but it incorporates enumerated acts such as imprisonment, torture, and rape, which were not included in the charter. Furthermore, while the Charter required that crimes against humanity be linked to an international armed conflict, the ICTY Statute also includes internal armed conflicts. This issue came up in the *Tadić* case. The defendant maintained that prosecution of crimes against humanity in the former Yugoslavia deviated from customary international law because the conflict was not international in character, as required by the Nuremberg Charter. Being that there was no existing law extending jurisdiction to the ICTY, the defense argued, there could be no legitimate charge of criminal action. The Appeals Chamber rejected this submission, however, commenting that customary law had evolved in the years since Nuremberg, and stating that the need for a connection to international armed conflict was no longer required. In fact, it argued that customary law might recognize crimes against humanity in the absence of any conflict at all.

This precedent helped persuade the drafters of the Rome Statute of the International Criminal Court to omit a requirement of a connection with armed conflict in the definition of crimes against humanity under its Article 7. Thus, under contemporary international law, atrocities committed outside the context of armed conflict also qualify as crimes against humanity, and this has resulted in a significant expansion of the protection afforded by this norm.

According to the ICTY, a crime against humanity is committed when an enumerated offence is committed as part of a widespread or systematic attack directed against a civilian population. ICTY jurisprudence has elaborated upon what is meant by a "widespread or systematic" attack. In *Tadić,* the Trial Chamber held that this requirement is inferred from the term "population," which indicates a significantly numerous victim group. While it does not necessitate that the entire population of a given state must be targeted, it does refer to collective crimes rather than single or isolated acts.

A finding either that the acts were committed on a large scale (widespread), or were repeatedly carried out pursuant to a pattern or plan (systematic), is sufficient to meet the requirement that they be committed against a population. It is the large number of victims, the exceptional gravity of the acts, and their commission as part of a deliberate attack against a civilian population, which elevate the acts from ordinary domestic crimes such as murder to crimes against humanity, and thus a matter of collective international concern. ICTY jurisprudence has also expanded the definition of potential victim groups vulnerable to crimes against humanity. This is done through its interpretation of the requirement that attacks must be "directed against any civilian population." In the Vukovar Kupreškić cases, the ICTY held that the definition of "civilian" is sufficiently broad to include prisoners of war or other noncombatants.

ICTY jurisprudence has also affirmed that crimes against humanity may be committed by people who are not agents of any state, thus broadening the ambit of possible perpetrators to include insurgents and terrorists. This definition was adopted in Article 7 of the Rome Statute, which requires that an attack be "pursuant to or in furtherance of a State or organizational policy."

Crimes against humanity also require a so-called mental element, which has to do with the intent of the perpetrators. For an act to be termed a crime against humanity, the perpetrator must not only meet the requisite criminal intent of the offence, but he must also have knowledge, constructive or actual, of the widespread or systematic attack on a civilian population. This requirement ensures that the crime is committed as part of a mass atrocity, and not a random crime that is unconnected to the policy of attacking civilians. ICTY jurisprudence has held that this requirement does not necessitate that the accused know all the precise details of the policy or even be identified with the principle perpetrators, but merely that he be aware of the risk that his act forms part of the attack.

ICTY jurisprudence has also developed definitions of the enumerated offences included under the rubric of crimes against humanity. These include extermination, enslavement, forced deportation, arbitrary imprisonment, torture, rape, persecution on political, racial, or religious grounds, and other inhumane acts. In addition, it has further sharpened the definition of genocide itself.

The definition of the crime of extermination was developed in the *Krstić* case, wherein the Trial Chamber noted that extermination was a crime very similar to genocide because it involves mass killings. Unlike genocide, however, extermination "may be retained when the crime is directed against an entire group of individuals even though no discriminatory intent nor intention to destroy the group as such on national, ethnical, racial or religious grounds" is present. Nonetheless, the crime had to be directed against a particular, targeted population, and there must have been a calculated intent to destroy a significant number of that targeted group's members. In one of the Foča rape cases, *Prosecutor v. Kunarac et al*, the Trial Chamber similarly contributed to the definition of the elements that make up the crime of enslavement. It held, that the criminal act consisted of assuming the right of ownership over another human being, and that the mental element of the crime consisted of intentionally exercising the powers of ownership. This included restricting the victim's autonomy, curtailing his freedom of choice and movement. The victim is not permitted consent or the exercise of free will. This curtailment of the victim's autonomy can be achieved in many ways. Threats, captivity, physical coercion, and deception, are but four such ways. Even psychological pressure is recognized as a means of enslavement. Enslavement also entails exploitation, sometimes (but not necessarily always) involving financial or other types of gain for the perpetrator. Forced labor is an element of enslavement, even if the victim is nominally remunerated for his or her efforts. Important to note is that simple imprisonment, without exploitation, can not constitute enslavement.

The ICTY Statute lists deportation as a crime against humanity, but goes on to specify that such deportation must be achieved under coercion. According to the statute, deportation is the "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law." In the *Krstić* case, deportation was distinguished from forcible transfer. Deportation requires a population transfer beyond state borders, whereas forcible transfer involves internal population displacements. Both types of forced population movements were nonetheless recognized as crimes against humanity under customary law. The Trial Chamber in *Krstić* found that deportations or forcible transfers must be compulsory. In other words, they must be driven by force or threats or coercion which go beyond a fear of discrimination, and that there be no lawful reason for ordering the transfer, such as for the protection of the population from hostilities.

An ICTY Trial Chamber first defined imprisonment as a crime against humanity in *Prosecutor v. Dario Kordić* and in *Prosecutor v. Mario Čerkez.* However, such imprisonment must be arbitrary, without the due process of law. Further, it must be directed at a civilian population, and the imprisonment must be part of a larger, systematic attack on that population. ICTY jurisprudence also redressed a long-standing omission in humanitarian law, because prior to its rulings, a clear, explicit definition of torture had yet to be formulated. The leading ICTY case on torture is *Prosecutor v. Anto Furundžija,* as elaborated by *Prosecutor v. Kunarac et al*. In the *Furundžija* case, the Trial Chamber borrowed legal concepts from the human rights law of torture. Ultimately, the Trial Chamber determined that torture:

(i) consists of the infliction, by act or omission, of severe pain or suffering, whether physical or mental; in addition

(ii) this act or omission must be intentional;

(iii) it must aim at obtaining information or a confession, or at punishing, intimidating, humiliating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person;

(iv) it must be linked to an armed conflict;

(v) at least one of the persons involved in the torture process must be a public official or must at any rate act in a non-private capacity, e.g. as a de facto organ of a state or any other authority-wielding entity.

When the ICTY was established, there was also no clear definition for rape under humanitarian or indeed, customary international law. Thus, the ICTY was required to define it more precisely when difficult cases came up. Borrowing from legal systems around the world, the Trial Chamber in *Furundžija* held that rape is the coerced sexual penetration of a victim (vaginally or anally), whether by the perpetrator's penis or by some other object, or the penetration of the victim's mouth by the perpetrator's penis. Coercion could involve force or the threat of force, and the coercion might be imposed on the victim or on a third party. The Trial Chamber added that

> [I]nternational criminal rules punish not only rape but also any serious sexual assault falling

After the NATO-led liberation of Kosovo, FBI forensics teams descend upon Kosovo to collect evidence of war crimes committed by Serbian forces against Kosovars. The evidence will be used in the International Criminal Tribunal for the Former Yugoslavia. [TEUN VOETEN]

> short of actual penetration. It would seem that the prohibition embraces all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim's dignity. As both these categories of acts are criminalised in international law, the distinction between them is one that is primarily material for the purposes of sentencing.

In a later case, *Prosecutor v. Kunarac et al.*, an ICTY Trial Chamber expanded the second element of the crime to encompass situations in which the threshold of force may not be met, but where consent is not freely given as a result of the complainant's free will. In *Prosecutor v. Kupreškić*, the ICTY drew on Nuremberg jurisprudence to clarify the definition of persecution, and set out its conclusions in the *Prosecutor v. Tadić* judgment. It defined persecution as a form of discrimination on the grounds of race, religion, or political opinion that is intended to be, and results in, an infringement of an individual's fundamental rights. In *Prosecutor v. Kupreskić,* the court determined what actions or omissions could amount to persecution. Drawing on various human rights instruments, the Trial Chamber defined persecution as

> [T]he gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5. In determining whether particular acts constitute persecution, the Trial Chamber wishes to reiterate that acts of persecution must be evaluated not in isolation but in context, by looking at their cumulative effect. Although individual acts may not be inhumane, their overall consequences must offend humanity in such a way that they may be termed "inhumane". This delimitation also suffices to satisfy the principle of legality, as inhumane acts are clearly proscribed by the Statute. . . . In sum, a charge of persecution must contain the following elements:
>
> (a) those elements required for all crimes against humanity under the Statute;

(b) a gross or blatant denial of a fundamental right reaching the same level of gravity as the other acts prohibited under Article 5;

(c) discriminatory grounds.

Room for Further Evolution

The ICTY included a non-specific category of offenses, styled "other inhumane acts" as residual provision that allows for the inclusion by analogy of inhumane acts not enumerated. This was done to ensure that acts of similar gravity do not go unpunished simply because they are not expressly contemplated. This however, raises problems of legal principle. The concept of *nullem crimen sine lege* requires that there can be no crime if no law exists prohibiting an act. This, in turn, requires that crimes be exhaustively defined in order to be prosecutable. The Trial Chamber in *Prosecutor v. Kupreskic* discussed this problem and noted that, by drawing on various provisions of international human rights law, such as the Universal Declaration of Human Rights and the two UN Covenants for Human Rights,

> it is possible to identify a set of basic rights appertaining to human beings, the infringement of which may amount, depending on the accompanying circumstances, to a crime against humanity. Thus, for example, serious forms of cruel or degrading treatment of persons belonging to a particular ethnic, religious, political or racial group, or serious widespread or systematic manifestations of cruel or humiliating or degrading treatment with a discriminatory or persecutory intent no doubt amount to crimes against humanity.

Once the legal parameters for determining the content of the category of "inhumane acts" are identified, the trial chamber held, resort may be had to comparing their similarity to other crimes against humanity to determine if they are of comparable gravity.

Genocide

The definition of *genocide* in the ICTY Statute is identical to that in the Genocide Convention. Of great significance in determining that an act of genocide has been committed is the mental element of the crime. This requires a finding of a special intent, in which the perpetrator desires to bring about the outcome of destroying, in whole or in part. a national, ethnical, racial or religious group, in addition to the criminal intent required by the enumerated offence. ICTY jurisprudence has elaborated on the threshold of the special intent that must be demonstrated in a charge of genocide. Two particularly noteworthy cases are the *Prosecutor v. Goran Jelisić* case and *Prosecutor v. Radislav* appeal. Goran Jelisić was a detention camp leader who styled himself a "Serbian Adolf" and who had "gone to Brčko to kill Muslims." Despite compelling evidence of genocidal intent, the Trial Chamber acquitted Jelisić of genocide on the grounds that

> the acts of Goran Jelisić are not the physical expression of an affirmed resolve to destroy in whole or in part a group as such. All things considered, the Prosecutor has not established beyond all reasonable doubt that genocide was committed in Brcko during the period covered by the indictment. Furthermore, the behavior of the accused appears to indicate that, although he obviously singled out Muslims, he killed arbitrarily rather than with the clear intention to destroy a group.

The Trial Chamber seemed to create an extremely high threshold for an individual committing genocide, because it is not satisfied even if the defendant was clearly driven to kill and did kill large numbers of a particular religious group. However, the Appeals Chamber held that the Trial Chamber had erred in terminating the trial on the genocide count, and that a reasonable trier of fact may have found Jelisić guilty of genocide on the evidence presented. It noted that occasional displays of randomness in the killings are not sufficient to negate the inference of intent evidenced by a relentless campaign to destroy the group. Notwithstanding this conclusion, the Appeals Chamber declined to remand the matter back to trial for a proper hearing on the genocide count, on the ground of public interest. Jelisić had pleaded guilty to crimes against humanity and war crimes for the same murders and was already sentenced to forty years' imprisonment, a probable life sentence. Judge Wald's partial dissent suggested that the decision may have reflected the view that convicting such a low level offender of genocide would diminish this "crime of crimes" and create a problematic precedent.

The Krstić appeal also explored the evidentiary threshold for the special intent of genocide, along with elaborating on the definition of aiding and abetting genocide. Major-General Krstić was charged with genocide for his part in the perpetration of the Srebrenica massacre, in which about seven thousand Bosnian Muslim men from the Srebrenica enclave were systematically separated from the rest of the population, transported to remote areas, and executed over the course of several days. The Appeals Chamber overturned the verdict and substituted a conviction of aiding and abetting genocide, an offence not taken from the genocide provisions of the Statute, but rather from the article providing individual criminal responsibility for persons participating in the commission of crimes under the Statute. The genocide conviction of Krstić, the chamber noted, rested on circumstantial evidence that could

only demonstrate that the accused had knowledge of the killings and was aware of the intent of others to commit genocide. The Appeals Chamber held that this evidence could not be used to infer that Krstić possessed a genocidal intent, and thus he should not have been convicted as a principal perpetrator. Nonetheless, the Chamber held that his knowledge of the killings, and his allowing the use of personnel under his command, did meet the threshold of aiding and abetting genocide, a lesser offense.

The elements of genocide require that a national, ethnical, racial or religious group be targeted for destruction. The Trial Chamber in *Krstić* considered the definition of *group,* and found that what constitutes a group is a subjective and contextual determination, one criterion being the stigmatization of the group by the perpetrators. The *Krstić* trial judgement, supplemented by the Appeals Chamber, also considered the definition of *part of a group* in the requisite intention "to destroy in whole or in part." It held that genocide could be perpetrated against a highly localized *part of a group,* as exemplified by the Muslim population of Srebrenica, which formed part of the protected group of all Bosnian Muslims. On this question, the Chamber held,

> the killing of all members of the part of a group located within a small geographical area, although resulting in a lesser number of victims, would qualify as genocide if carried out with the intent to destroy the part of the group as such located in this small geographical area.

The Appeals Chamber affirmed that the "part" must be "substantial," as "[t]he aim of the Genocide Convention is to prevent the intentional destruction of entire human groups, [thus] the part targeted must be significant enough to have an impact on the group as a whole." But beyond considerations of numeric importance, if a specific part of a group were essential to the survival of the group, the Chamber held that such a part could be found to be substantial, and thus meet the definition of *part of a group.* The Appeals Chamber noted that the population of the Bosnian Muslims of Srebrenica was crucial to their continued presence in the region, and indeed, their fate would be "emblematic of that of all Bosnian Muslims."

The case against Krstić also considered whether the killing of only the men of Srebrenica could be held to manifest an intention to destroy a part of the protected group, the Muslims of Bosnia. The Trial Chamber noted that the massacre of the men of Srebrenica was being perpetrated at the same time that the remainder of the Muslim population was being ethnically cleansed out of Srebrenica. It concluded that the community's physical survival was jeopardized by these atrocities and, therefore, these acts together could properly be held to constitute the intent to destroy part of group:

> The Bosnian Serb forces could not have failed to know, by the time they decided to kill all the men, that this selective destruction of the group would have a lasting impact upon the entire group. Their death precluded any effective attempt by the Bosnian Muslims to recapture the territory. Furthermore, the Bosnian Serb forces had to be aware of the catastrophic impact that the disappearance of two or three generations of men would have on the survival of a traditionally patriarchal society, an impact the Chamber has previously described in detail. The Bosnian Serb forces knew, by the time they decided to kill all of the military aged men, that the combination of those killings with the forcible transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica.

The material element of genocide requires that one or more acts be committed which are enumerated in the definition, namely, killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; or forcibly transferring children of the group to another group. On several occasions, the ICTY has considered whether ethnic cleansing alone—that is, the forcible expulsion of the members of a protected group—meets the material threshold of genocide. The appeal in the *Krstić* case confirmed that forcible transfer in and of itself does not constitute a genocidal act. However, it may be relied upon, with evidence of enumerated acts targeting the group, to infer a genocidal intent.

According to the findings of the ICTY, for a charge of genocide to be apt, the killing or causing of serious bodily or mental harm to members of a group must be intentional, but they need not be premeditated. The ICTY has also held that, with regard to causing bodily or mental harm, the harm need not be permanent and irremediable harm, but it must result in a "grave and long-term disadvantage to a person's ability to lead a normal and constructive life." Such acts could include cruel treatment, torture, rape, and deportation, or, for example, the agony suffered by individuals who survive mass executions.

From its modest beginnings, the ICTY has become an essential element of post-conflict peace-building in the former Yugoslavia. The link between prosecution of leaders responsible for incitement to ethnic hatred and violence, and the emergence of democratic multi-

ethnic institutions that can secure a lasting peace has become increasingly apparent. Beyond abstract human rights considerations, international criminal justice has become an element of enlightened realpolitik. The initially haphazard ICTY precedent was an important catalyst for the resumption of efforts after the Nuremberg Judgement to establish an international criminal justice system. It prepared the path for the ICTR, the Special Court of Sierra Leone and other hybrid tribunals, and encouraged national courts to prosecute international crimes. Most significantly, it expedited and informed the deliberations leading to the adoption of the Rome Statute for the ICC in 1998. Thus, beyond the former Yugoslavia, the ICTY has introduced an accountability paradigm into the mainstream of international relations, challenged a hitherto entrenched culture of impunity, and helped alter the boundaries of power and legitimacy.

SEE ALSO Arbour, Louise; Del Ponte, Carla; Goldstone, Richard; International Criminal Court; International Criminal Tribunal for Rwanda; Milosevic, Slobodan; Yugoslavia; War Crimes

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International Law

International law is the law governing states and other participants in the international community. It is formed largely by agreement among the participants, especially states, to create rules applicable to their affairs and is born out of the necessity to coexist and cooperate.

History

In early human history, large families and tribes exchanged food, concluded alliances, and fought each other often according to a code of conduct. The creation of organized political entities in the eastern part of the Mediterranean Sea, such as Egypt and Babylon, but also on a smaller scale, Greek city-states, resulted in a comparable system, in more organized forms. In the absence of a central authority, rules governing such relations had a contractual nature, developing a real legal system based on treaties. In ancient India and in China, during certain periods, political units also created and applied law governing their mutual relations.

The Roman Empire was born of treaties between Rome and cities in the neighboring area and then developed into a network of legal relations with other peoples. Later, however, Rome affirmed the ambition to

govern the other states that it no longer considered as its equals. It also developed the idea of a *jus gentium,* a body of law designed to govern the treatment of aliens subject to Roman rule and the relations between Roman citizens and aliens, thus a legal system that was based on its domination.

Approximately three hundred years after the fall of the Roman Empire, distinct kingdoms emerged in Europe in the eighth century. Relations between private persons became progressively more frequent and needed the creation of norms to ensure personal security. This evolution led to the development of generally accepted rules between state entities that affirmed their exclusive power over the territory they dominated. In other words they proclaimed their sovereignty. Scholars of the sixteenth and seventeenth centuries, especially Spanish precursors and later the Dutch jurist Hugo Grotius, systematized the generally applied rules and elaborated a broad theory of law to govern the relations between states in times of peace and war. In 1648 the Peace Treaties of Westphalia (1648) ending the Thirty Year's War, which devastated the center of Europe, established a real international system that was progressively reinforced. Indeed, citizens of different countries cooperated in a growing number of fields, and states recognized their needs by exercising protection over them. In the nineteenth century, after the Napoleonic wars, the Final Act of the Congress of Vienna in 1815 reorganized Europe, establishing rules for diplomatic relations and recognizing that sovereign states had common concerns in matters such as navigation on international rivers.

This essentially European system expanded progressively to the Americas and to other parts of the world. Colonial expansion that provoked competition between European powers also involved the application of international legal rules to other parts of the world, even if it was mainly within the context of relations between colonial powers. By the end of the nineteenth century international law applied to the entire world.

Technological developments in fields such as transportation and communication helped the evolution of international law. World War I was a first step toward globalization and at its end states created the first international political organization in order to maintain peace, the League of Nations. With World War II came the failure of that order that generated hostilities in almost every part of the world. In 1945 the United Nations (UN) Charter created a new organization recognizing the primacy of fundamental values of humanity, such as safeguarding peace and protecting human rights. It also created an elaborate machinery for solving disputes among nations. In the following half-century the UN contributed considerably to the development of international law in different fields, such as the international protection of human rights, the law governing the seas, environmental protection, and the economic development of poor countries.

Definition and Scope

International law is mainly composed of rules adopted by states in the form of treaties, but it also contains customary rules resulting from state practice generally accepted by states and recognized as having a binding character. In addition, general principles of law are considered applicable in the relations between states.

Although international law originally only concerned relations between states as sovereign entities, recently other entities have emerged and been recognized as having a role to play in the international system: international intergovernmental organizations, nongovernmental organizations, businesses, and even individual stakeholders.

Sources of International Law

Traditionally, international law identifies its sources in Article 38(1) of the Statute of the International Court of Justice. Although applying only to the court, Article 38 represents the authoritative listing of processes that are deemed capable of creating rules binding on states. It sets out, in order, general or specialized international conventions (i.e. treaties), international custom as evidence of a general practice accepted as law, general principles of law recognized by civilized nations, and, as subsidiary means, international judicial decisions and doctrine. This enumeration is the accepted minimum, but many scholars contend that it does not reflect either the current international practice or the diverse activities that can contribute to the development of a new rule of law. In particular, it omits all texts, other than treaties, that are adopted by international organizations, although they play more than a nominal role in the formation of international law in general and especially in human rights law and humanitarian law.

Treaty Law

According to the Vienna Convention on the Law of Treaties of May 23, 1969, generally accepted as the expression of international law related to treaties, a treaty is an international agreement concluded between states in written form and governed by international law, whether embodied in a single text or in two or more related texts and whatever its particular designation. The last words reflect the variety of terms used for designating a treaty: convention, charter, agreement, covenant, protocol, general act, exchange of letters or notes.

The essential criterion of a treaty, whatever its title, is the will of the states to commit themselves. Thus, the often used term the *contracting parties* designates the states that intend to be bound by a specific treaty. Every state possesses the capacity to conclude treaties.

The consent of a state to be bound by a treaty is expressed by the signature of its duly authorized representative or by the exchange of the text(s) constituting a treaty. As a general rule, treaties that have a major impact on the domestic legislation of the contracting parties are submitted for the approval or ratification of national authorities such as the heads of state of the contracting parties, or of their legislative organ, or both. When the treaty provides for it, states that did not sign the original agreement can become parties by accession.

Unless the treaty prohibits it, contracting parties may make reservations. A reservation is a unilateral statement made by a state, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty, in their application to that state. Nevertheless, as stated by the International Court of Justice in its advisory opinion related to the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (May 28, 1951), the object and purpose of a convention can limit the freedom of a state to make reservations. The intention of the treaty's authors to have as many states as possible participate must be balanced by ensuring that the very objective of the treaty is not undermined or destroyed.

One of the fundamental principles of international law is that every treaty in force is binding on the parties to it and must be performed by them in good faith. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. In principle, a treaty has no retroactive effects, unless a different intention surfaces from it or is otherwise established. It shall be interpreted in good faith in accordance with the ordinary meaning given to its terms and in light of its objective and purpose. A treaty generally does not create either obligations or rights for states that are not parties to it without their consent; however, rules of customary international law in a treaty will have independent force of law.

A treaty may be amended by agreement between its parties. The termination of a treaty or the withdrawal of a party may take place in conformity with the provisions of the treaty concerning its termination or by consent of all parties. If the treaty contains no provision regarding its termination and does not allow for denunciation or withdrawal, it in principle cannot be denounced.

International law contains various rules that may invalidate certain agreements, making their provisions have no legal force. Treaties, for instance, can be invalidated if an error led to a state's consent to be bound by it or the state has been induced by fraud to conclude a treaty. An additional factor that can result in the invalidity of a treaty is the corruption or coercion of a representative of a state. A much discussed principle is that of *jus cogens*, according to which a treaty is void if at the time of its conclusion it conflicts with a peremptory norm of general international law. Such a norm of general international law must be accepted and recognized by the international community of states as a norm from which no deviation is permitted. Although no treaty has identified any norm as one of *jus cogens*, there is general agreement that the prohibition of genocide is such a norm. This means that any treaty to commit genocide would be void.

Treaties can be bilateral if only two states conclude them, or multilateral. The number of the contracting parties to multilateral agreements may be very high. Several conventions with a worldwide scope, such as the Convention on Biological Diversity of 1992, are binding on almost all the 189 member states of the UN. The Convention on the Rights of the Child has been accepted by all but two states (the United States and Somalia). The Convention against Genocide has 133 parties as of September 2003.

Treaties may include different parts. Their text generally starts with a list of the contracting parties followed by a preamble that in itself has no binding character but explains the reasons why contracting states accept the obligations imposed by the treaty. The main part of the treaty is divided into articles that sometimes constitute chapters. The technical provisions frequently form one or several annexes to the treaty. They have the same binding character as the main text, but often they can be more easily modified.

A growing proportion of treaties only establish the principles of cooperation between contracting parties and are instead completed at the time of their adoption with additional treaties, generally called additional protocols or simply protocols. The European Convention on Human Rights has thirteen protocols, adopted between 1952 and 2003. Despite the links protocols generally have with the main treaty, legally they are independent from it and the whole of such texts can be considered as a treaty system creating a special regime.

During the last half of the twentieth century a fundamental characteristic of treaties was modified. In conformity with the traditional contracts approach originating with Roman law, treaties were as a rule based on reciprocity. This means the contracting states

had to offer advantages equivalent to those that they received from the other contracting parties. The emergence and universal recognition of values common to humanity, such as maintaining peace, protecting human rights, and safeguarding the environment, promoted the drafting and adoption of treaties that include no reciprocity. Thus by virtue of such treaties, the contracting states accept obligations without any direct and immediate counterpart. Such obligations include respecting fundamental rights and freedoms of all persons under the treaty's jurisdiction, protecting biological diversity, and respecting international norms prohibiting the production and use of certain substances or weapons. International conventions prohibiting and punishing genocide and crimes against humanity fall into this category.

Other sources of international law

A large number and wide variety of international legal rules are generated by means other than the explicit consent of states expressed in treaties. Customary law was for centuries the main source of international laws, but essential parts of it, such as the rules governing international treaties themselves, the rules of diplomatic and consular relations, the law of the sea, and a portion of the rules related to international watercourses, have been transformed into treaty rules by the codification process that is much encouraged by the UN. At the same time rules repeated in a significant number of treaties, such as the principle of prevention and the precautionary approach in treaties related to environmental protection, may be considered as having become rules of customary law with a scope much larger than the treaties that include them. A good example is the Martens Clause, repeated or referred to in most treaties related to armed conflicts. According to it, in cases not covered by international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

In addition, resolutions and recommendations adopted by international institutions or conferences, which formally are not binding on the states that participated in their elaboration, the so-called soft law, can be considered in certain cases as creating customary law when state practice supports it.

Other sources of international law that are not based on the consent of states also play a certain role in interstate relations. When they decide disputes involving states, judicial institutions—whether national or international—cannot avoid applying general principles of law, such as good faith, the prohibition of abuse of rights, rules concerning evidence, and other procedural rules. In addition, equity may inspire such decisions, but most often reference to equity needs the consent of the states who are parties to a dispute.

States

Until the middle of the twentieth century it was generally held that only states could have rights and duties in international law. They were thus the only subjects of international law who could create the rules of international law (see above) and have official relations with others on equal footing. As persons of international law, they had to possess a defined territory, a permanent population, and an effective government.

Exclusive control over a territory, or sovereignty, is the essence of a state. It means that the state may adopt and enforce laws within that territory and prohibit foreign governments from exercising any authority in its area. Such exclusive jurisdiction has as its corollary the obligation to protect within the territory the rights of other states and to apply the rules of international law. The territory of a state is defined by borders that separate it from other areas. Within the territory, which includes the air space above the land and the earth beneath it, the state is united under a common legal system. Territory also includes a part of the sea adjacent to the coast up to twelve miles out. A state exercises territorial jurisdiction over all people present on its territory, even if they are not its citizens.

A state also requires a permanent population, the human basis of the existence of a state. Who belongs to the state's population is determined by the rules on nationality that the state itself promulgates, in its discretion. The most common ways in which nationality is conferred on a person are by birth, marriage, adoption or legitimization, and naturalization. When a territory is transferred from one state to another, the population of the transferred territory normally acquires the nationality of the annexing state. There are no legal requirements regarding the ethnic, linguistic, historical, cultural, or religious homogeneity of the population of a state. Issues related to lack of homogeneity of the population, such as the rights of minorities and indigenous peoples, are not relevant as criteria to determine the existence of a state. The size of the population and its territory may be very small: Micro-states with areas less than 500 square miles and populations under 100,000, such as Andorra, Grenada, Liechtenstein, Monaco, Antigua, and Barbuda, are considered states. A state exercises personal jurisdiction over its nationals, as well as over the ships and aircraft flying its flag when abroad.

A government's effective control of territory and population is the third core element that brings togeth-

er the other two into a state. Internally, the existence of a government implies the capacity to establish and maintain a legal order, including respect for international law. Externally, it means the ability to act autonomously on the international level in relations with other states and to become a member of international organizations. The requirement of effective control over territory is, however, not always strictly applied. A state does not cease to exist when it cannot temporarily exercise its authority because its territory is occupied by foreign armed forces or when it is temporarily deprived of an effective government as a result of civil war or similar upheavals. In any case, in principle, international law is indifferent to the internal political structure of a state. A government must only establish itself in fact; the choice of government is a domestic matter to be determined by individual states. International law does not generally delve into the question of whether the population recognizes the legitimacy of the government in power, although this has been changing in recent years with an increasing emphasis on fair elections and democratic institutions.

The notion of effective government is linked with the idea of independence, often termed *state sovereignty*. Indeed, a government is considered a real one in international law if it is free of direct orders from and control by other governments. International law however, does not investigate the possibility that a state may exist under the direction of another state, as long as a state appears to perform the functions that independent states normally do.

International intergovernmental organizations

The first international organization was created in 1815 for ensuring the freedom of navigation on the river Rhine. Since 1865 with the establishment of the International Telegraphic (present-day Telecommunications) Union and 1874 with the founding of the Universal Postal Union, international organizations have proliferated. After World War I the League of Nations, the first universal institution with a political character, had the task of maintaining peace and intergovernmental cooperation. Since the end of World War II the UN has sought to ensure a more developed form of collective security. Its Charter attempted to provide it with means of action, including the power to discuss any question having an impact on international relations and to act when peace is at stake. States also created independent but related specialized agencies for ensuring cooperation between governments in a number of fields, such as food and agriculture, health, science, education and culture, meteorology, and civil aviation.

During the period following the adoption of the UN Charter states of different regions created organizations with a more limited territorial scope but broad aims, functions and powers: the Organization of American States, Council of Europe, and Organization of African Unity. These three regional organizations also established special systems for the protection of human rights in their respective areas. In addition, specialized organizations for regional cooperation have been instituted for specific purposes, such as defense (the North Atlantic Treaty Organization, otherwise known as NATO) or the economy (the OECD or European Free Trade Association). Altogether there are approximately five hundred international organizations created by states. Most of them are of a traditional nature; they are in essence based on intergovernmental cooperation. Their institutions generally include an assembly with deliberating power, one or more restricted branches for acting in the name of the organization, and a secretariat. Only rarely do states give an organ or organization power to adopt decisions that legally bind their members. The UN Security Council is an example of an international organ that does have such power.

A new type of international organization created a higher level of cooperation, and the term *integration* is often used to designate it. It implies the transfer of sovereignty from member states to the regional level. The European Union is the most developed model for such organizations. It includes branches composed of persons who are not government representatives, and it can make binding decisions that have a direct legal effect on individuals and companies. Decisions may be taken by a majority vote and the compliance of member states in meeting their obligations is subject to judicial review.

Whatever their legal status might be, it is recognized that intergovernmental organizations have a legal presence in international law, at least as far as their functions require such a status. This means that they can conclude international treaties among themselves or with states, receive and send diplomatic representatives, and enjoy immunities granted to states and state representatives.

Nongovernmental Organizations

Private international organizations, such as Amnesty International, the Human Rights Watch, or Doctors without Borders, play an active role in international affairs. They are generally called nongovernmental organizations (NGOs) because they are not established by a government or by an agreement between states. Instead their members are private citizens and they are usually created as non-profit corporations under the law of a particular state, such as England for Amnesty International. International NGOs have proliferated

considerably during the past few decades and are engaged in a broad variety of different areas, ranging from the legal and judicial field, the social and economic domain, human rights and humanitarian relief, women's and children's rights, education, and environmental protection. In the field of international business important NGOs include the International Chamber of Commerce (ICC), the International Air Transport Association (IATA), and international federations of trade unions and employers. All are incorporated under the law of a particular state, with the possibility of creating substructures in other states. There are no standards governing the establishment and status of international NGOs, and this may cause problems because national laws differ from one country to another.

Intergovernmental organizations may agree to grant NGOs a certain consulting or observer status and thereby a limited international standing, but this does not make them directly governed by international law.

The role of NGOs in the international legal system is an informal one, although their representatives may be included in national delegations that participate in international conferences or meetings of intergovernmental bodies. In practice NGOs have four categories of function. They can propose to governments initiatives related to international cooperation. They can participate in law making, by providing the information and expertise intergovernmental bodies need to draft treaties or resolutions. In some cases NGOs attend meetings of contracting states that discuss compliance with multilateral treaties. Finally, they can inform the public of state or interstate activities and of their results or failures, if necessary by organizing campaigns, and thus exercise in this way an influence on governmental policy. Thereby, if NGOs are not subjects of international law, they can be in some situations very effective, especially those recognized as having a high moral standing.

Individuals and companies

Early international law encompassed individuals in three basic ways. First, states had the right to protect their nationals abroad against the misconduct of foreign authorities, invoking the international responsibility of the territorial state, provided such authorities were acting on behalf of the state. Protecting states could and did ask for remedies. That procedure is called *diplomatic protection*. It may be exercised only by states, under conditions established by international law. Both international responsibility and reparation belong to the sphere of interstate relations. Second, international law also recognized the immunity and privileges of certain categories of individuals representing a foreign state: heads of state, diplomats, and special envoys on mission in a foreign country. Finally, in times of armed conflict prisoners of war, the wounded, and the sick as well as civilian populations were protected by the rules of international humanitarian law. As a result, doctrine generally held that states were the direct participants (subjects) in the international legal system and they could regulate or protect individuals who were not direct participants but could be the object of state regulation or action.

Modern international law first directly recognized individuals when certain acts were deemed criminal as attacks on international society. Initially, piracy and then slave-trading were outlawed. After World War I those responsible for breaches of international obligations related to armed conflicts were personally accused of war crimes; some of the accused were even condemned to death. After the war the creation of the International Labour Organization called for the implicit recognition of certain rights later called economic and social rights. The UN Charter and Universal Declaration of Human Rights proclaimed in 1948 recognized the fundamental rights of individuals. Conventions with a general scope as well as in specific fields, both at a worldwide level and within regional frameworks, further developed such norms. Recent evolution further developed norms concerning the direct criminal responsibility of individuals under international law.

Present international law thus directly recognizes the rights to individuals and imposes certain duties on them. In terms of rights some of the conventions protecting human rights allow individuals and victims of violations of protected rights to submit their case to specific international jurisdictions. Different nonjudicial systems were also developed to remedy such violations, especially within the framework of the UN. In terms of duties, following the example of the Nuremberg and Tokyo tribunals that judged and condemned the German and Japanese perpetrators of crimes against humanity committed during World War II, international criminal jurisdictions have multiplied. First, they were created for crimes committed in specific areas, such as the former Yugoslavia and Rwanda. Finally, a convention adopted in Rome on July 17, 1998, established a permanent International Criminal Court.

Companies and especially multinational ones may hold more economic and political power than many states, especially within the context of economic globalization. Still, states do not accept them on legally equal footing. As such, they generally do not benefit from the protection of human rights and as a rule they are not criminally responsible before international tribunals. States and international bodies have tried to

find a compromise by establishing partnerships with corporations and by formulating codes of conduct of a recommended nature.

In summary, states do not recognize individuals, NGOs, and companies as equal subjects of international law or even as having, like intergovernmental organizations, a specific international legal status corresponding to their functions. Nonetheless, they exercise a real influence on the behavior of states in areas such as economy and policy, especially within the context of sustainable development and globalization. Referred to as the *international civil society*, they are, however, progressively accepted as important players in international relations.

Some historians and observers take a further step and, given the growing number and expanding complexity of economic and other relations, use the term stakeholders to include all those who are concerned with a particular legal situation. If no one has so far suggested that international law should recognize the new category in legal terms, states as well as international bodies increasingly accept their existence and potential role in the international field.

Ethnic Minorities and Indigenous Peoples

The status and protection of ethnic, linguistic, or cultural minorities in international law emerged in Europe after World War I. After World War II certain rights were granted to such groups, but states were reluctant to take steps that might increase the danger of claims to independence and secession. Owing to efforts made by international bodies such as the UN General Assembly and the Council of Europe, progress was made toward the better protection of minority rights. Such rights are most often conceived of as a category of human rights, to be exercised by the individual belonging to a minority, rather than as rights attributed to a collective entity or group.

Indigenous peoples were virtually unmentioned in international law several decades ago. Although historically important differences may exist between such groups and minorities, from a legal perspective the distinction is not easy to make. International conferences and institutions, however, progressively proclaim and recognize the rights of indigenous and local communities. The question of the international legal standing of indigenous groups is, in fact, a question of the specific rights attributed to them by states. They are not subjects of international law, but actors contributing to the formation of international rules of law.

In conclusion, it may be stated that international law is undergoing a transformation, progressively recognizing the role and place of nonstate actors and the need to implement norms protecting fundamental values, such as peace, human rights, and the environment.

SEE ALSO Crimes Against Humanity; Humanitarian Intervention; Humanitarian Law; Human Rights; International Court of Justice; United Nations; War Crimes

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Alexandre Kiss

International Law Commission

The International Law Commission (ILC) is a specialized body of experts that is subordinate to the General Assembly of the United Nations. Its mandate is to codify and progressively develop international law. The international law concerning genocide and crimes against

humanity has benefited from the commission's attention. Since its creation, the ILC has been responsible for the preparation of several important documents, including the Draft Statute of the International Criminal Court, the Code of Crimes Against the Peace and Security of Mankind, the formulation of principles recognized in the Charter of the Nuremberg Tribunal, and the Articles on State Responsibility.

The ILC was established by the UN General Assembly in 1947, in accordance with its authority under Article 13(1) of the Charter of the United Nations. There was no direct ancestor of the ILC in the League of Nations system, although attempts had been made to convene expert meetings with a view to codifying international law. The ILC held its first session in 1949, and since then has met annually for several weeks. It is composed of thirty-four experts with recognized competence in international law. The experts are distinguished academics or diplomats, for the most part, rather than delegates from specific countries. Each expert acts in his individual capacity.

Over the years, the ILC's program of work, which is established in consultation with the General Assembly, has included a wide range of international law issues. Among the topics it has addressed are the treatment of aliens, the law of the high seas, diplomatic and consular immunities, and the law governing international treaties including the issue of reservations. At its very first session, the ILC decided not to consider the codification of the laws and customs of war. The Swiss Government and the International Committee of the Red Cross had taken the lead in organizing activity that, in August 1949, resulted in the adoption of the Geneva Conventions on the protection of persons in armed conflict. Several ILC members considered it inappropriate that a United Nations body study the laws of war, given the commitment in the Charter of the United Nations to prohibit the use of force.

One of the first topics assigned by the General Assembly to the ILC was the formulation of the principles of international law recognized in the Charter of the Nuremberg Tribunal. The Trial of the Major War Criminals, held in Nuremberg in 1945 and 1946, had been set up by the four Allied powers (France, the United States, the United Kingdom, and the USSR) in accordance with a treaty adopted at London in August 1945 known as the London Charter or the Charter of the Nuremberg Tribunal. The ILC considered that the principles recognized by the Charter of the Nuremberg Tribunal, and by the final judgment of the Tribunal of September 30 to October 1, 1946, were already recognized as properly forming a part of international law, given their endorsement in December 1946 by General Assembly Resolution 95(I). In 1950 the ILC adopted its formulation of seven principles. These included individual criminal responsibility for crimes under international law, with liability attaching to heads of state or government and to accomplices; a rejection of the defense based on following a superior's orders; the right to a fair trial; and an acknowledgment of the definitions of three categories of international crime, including crimes against humanity.

A year later, in 1948, the ILC was given responsibility for a study of the desirability and possibility of establishing an international criminal court. The issue arose in the context of drafting the Convention for the Prevention and Punishment of the Crime of Genocide. The countries involved in drafting the Genocide Convention rejected the concept of universal jurisdiction out of concern for politically motivated prosecutions in the context of the emerging cold war. Instead, Article VI of the Convention said that the crime of genocide would be prosecuted by the courts of the state where the crime took place—an unlikely scenario—or by "such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."

The ILC gave the matter of an international court some preliminary consideration in 1949. Then the General Assembly set up a specialized committee, which prepared a draft statute. In 1954 the General Assembly decided to postpone further work on the concept of an international criminal court until a satisfactory definition of the crime of aggression had been agree to. That activity was to take two decades until, in 1974, the General Assembly adopted a resolution providing a definition of aggression. The effect, for the ILC, was to suspend work on the subject of an international criminal court.

The ILC did not resume its study of the international criminal court until 1990, following yet another resolution of the General Assembly. The ILC worked quickly, setting up a working group in 1992 and assigning James Crawford as its special rapporteur on the subject. A proposed draft statute was considered by the ILC at its 1993 session. It was circulated to governments for their comments. A revised version, taking into account this consultation, was adopted by the ILC in 1994 and promptly submitted to the General Assembly. The important work of the ILC provided the General Assembly with a framework for discussions, and much of the text proposed by the ILC survived in the final version of the Rome Statute of the International Criminal Court (ICC), which was adopted in July 1998.

Another major contribution by the ILC is its Code of Crimes Against the Peace and Security of Mankind. This idea was originally conceived in 1947 and was related to the mandate of formulating the Nuremberg Principles. The great interest in international criminal law generated by the post–World War II prosecutions evolved into an effort at codifying the international crimes. Lack of an accepted definition prior to the Nuremberg prosecutions had vexed those who had established the tribunal and provided arguments to the defendants, who claimed they were victims of ex post facto criminal legislation. This brought into sharp relief the importance of codifying this emerging area of law by an authoritative body, and the International Law Commission was the logical choice.

The ILC completed its first draft of the Code of Crimes in 1951. It did not follow the Nuremberg definitions exactly. It agreed to confine the scope of the code to offences with a political element that endangered international peace and security. Accordingly, it did not address such issues as piracy, trafficking in persons and in dangerous drugs, slavery, counterfeiting, and damage to submarine cables, although in the past these had fallen within the ambit of international criminal prosecution. The 1951 draft was submitted to governments for comments and then revised in 1954, when it was submitted to the General Assembly. As it had done with the international criminal court project, the General Assembly decided to suspend work on the codes, pending elaboration of a definition of aggression.

Work only resumed on the code in the late 1970s. Over the next decade and a half, the ILC gave detailed consideration to the definitions of the crimes of genocide and crimes against humanity. It also examined issues of substantive criminal law related to the prosecution of these crimes, including the nature of complicity and other forms of criminal participation, and the admissibility of defences such as superior orders and various immunities. This detailed work resulted, in 1991, in a draft of the code, which was submitted to governments for their comments. A few years later, the ILC returned again to the code, adopting its definitive version in 1996.

When the International Criminal Tribunal for the Former Yugoslavia (ICTY) began its activities, it drew on the work of the ILC in international criminal law for guidance. A judgment of the International Criminal Tribunal for the Former Yugoslavia described the code in the following terms:

> [A]n authoritative international instrument which, depending upon the specific question at issue, may (i) constitute evidence of customary law, or (ii) shed light on customary rules which are of uncertain contents or are in the process of formation, or, at the very least, (iii) be indicative of the legal views of eminently qualified publicists representing the major legal systems of the world.

In another case, the ICTY referred to the work of the commission in order to distinguish between the crime of genocide and that of extermination, which is a punishable act falling within the rubric of crimes against humanity.

Similarly, the ILC materials on the code provided theoretical guidance for debates at the Rome Conference at which the Statute of the International Criminal Court was adopted. There was a major conceptual difference, however, in the version of the Statute of the International Criminal Court adopted at Rome and the 1994 draft of the ILC. The commission had viewed the proposed court as an organ that fit neatly within the system of the United Nations Charter, especially as concerned the Security Council. The ILC's proposal was for a court subordinate to the Security Council, essentially similar to the ad hoc tribunal that the Council had established in 1993 for the former Yugoslavia. In the course of political debate about the nature of the court that took place under the auspices of the General Assembly between 1994 and 1998, the court became progressively detached from the domination and control of the Security Council. The Rome Statute authorizes the International Criminal Court to prosecute cases at the initiation of an independent prosecutor, an idea rejected by the ILC. Furthermore, it subjects any decision by the Security Council to suspend prosecution to much more rigorous process than had been imagined by the ILC.

The ILC has also addressed issues related to genocide and crimes against humanity in other contexts, notably in the course of its preparation of the draft Articles on State Responsibility. The Genocide Convention of 1948 appears to contemplate genocide as both an individual crime, capable of being committed by physical persons, and as a breach of international law, committed by states. In fact, on several occasions, one state has sued another before the International Court of Justice for violations of the Genocide Convention, although a final judgment has yet to be rendered in any of these cases. In its draft Articles, adopted in 2000, the ILC agreed to treat genocide and related crimes as "internationally wrongful acts" rather than as "state crimes," which was a controversial concept on which it could reach no consensus.

The various draft instruments adopted by the ILC, the reports of its rapporteurs, and the debates and pro-

ceedings of its annual meetings provide students of international crimes with a rich resource. These materials have been widely drawn upon by lawyers and judges at the international courts, as well as by academic lawyers. The contribution of the ILC to the codification and development of international law relating to the repression of genocide and crimes against humanity is both immense and invaluable.

SEE ALSO Code of Crimes against the Peace and Security of Mankind; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; International Law; Nuremberg Laws; Responsibility, State

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Investigation

Telford Taylor, a Nuremberg proceedings prosecutor, observed in his Final Report that the issue of genocide and crimes against humanity and their investigation "was far bigger and far more difficult of solution than anyone had anticipated." The experience of more recent cases, and particularly the UN ad hoc tribunals, has confirmed that investigating crimes of this kind is far more complex a duty than the public opinion and the policymakers may think when the call for justice is made. The investigation of these crimes raises hard questions of method at different levels, from epistemology and cognitive psychology, to forensic sciences and resource management. The hardest investigative challenges are not related to the criminal act as such, which is often a blatant and notorious phenomenon, but to the questions on specific intent and individual responsibility, particularly for those suspects at higher levels of authority.

Photographers watch as International War Crimes Tribunal investigators gather evidence at a mass grave site near Srebrenica, on April 3, 1996.[AP/WIDE WORLD PHOTOS]

Early precedents of investigations date back to the sixteenth century with Bartolomé de Las Casas, who documented crimes committed by the Spanish conquerors on the American population. He based these writings on his field research, as well as on numerous affidavits and documentary evidence. De las Casas invoked "the congregation of the faithful" to stop these offenses, much in the way that contemporary human rights reports conclude with appeals to the "international community." Historical chronicles and accounts from the victimized communities show different forms of investigation carried out between the seventeenth and the twentieth centuries, for example, in the cases

of mass violence against the Jewish and Moors from Spain, and against Christian subjects in Japan.

The work of the International Commission to Inquire into the Causes and Conduct of the Balkan Wars did pioneering work in the twentieth century. In 1914 they published a thorough investigative report comprising numerous interviews, pictures and detailed maps, and reached the conclusion that the Balkan leaders and not the peoples were "the real culprits in this long list of executions, assassinations, drownings, burnings massacres and atrocities furnished by our report."

World War I also gave rise to a number of investigative initiatives in the form of official commissions of enquiry, criminal investigations and research literature. Most significantly, in 1918, the Ottoman authorities established two commissions to investigate the massacres of Armenians, one parliamentary and another one administrative. The latter had powers to search and seize documents, interview witnesses and arrest suspects. After two months of work this commission recommended criminal prosecutions and forwarded the evidence to the judicial authorities. This led to an indictment by the Ottoman Procuror General against the Ittihad leaders for "the massacre and destruction of the Armenians," and to their subsequent conviction.

The crimes committed in World War II led to far greater developments on both national and international, judicial and academic investigations of international crimes, which in turn inspired renewed interest on this matter beginning in the early 1990s. A definite methodology of investigations does not seem plausible because of the variety of criminal offences and scenarios, but review of the investigative experiences does suggest the following ten key areas.

Opportunity Structure

The success of the investigations depends on a structure of opportunity determined by a range of social, political and operational factors. While international crimes are typically the result of a complex web of organizations and complicities, to investigate and prosecute them requires a complex array of contributions; in other words, where international crimes are concerned, it takes a network to fight a network.

Taylor observed how the initial support for the Nuremberg proceedings had declined sharply by 1948 as a result of the "waning interest on the part of the general public and the shift in the focus of public attention resulting from international events and circumstances." For this reason, the courts were obliged to accelerate the proceedings and reduce the number of cases. The UN ad hoc tribunals have faced very similar problems fifty years later, having to adjust their schedule to varying levels of political and financial support. The scope of attention and support of the societies and institutions that sponsor the investigations is always limited, and dependent on changing trends and priorities. A thorough assessment of the resulting opportunity structures is essential for the success of the investigations.

Inquisitorial Temptation

A certain tendency to downgrade the presumption of innocence of the accused is common to the investigations of international crimes, due to the gravity of the crime and the expectations created by the proceedings. In an atmosphere of public outcry the temptation may arise to assume that, as was suggested in the Demjanjuk case, "the cost of allowing the real Ivan to go free by far outweighs the cost of convicting an innocent man" (Wagenaar, 1988). Demjanjuk was actually wrongly accused and convicted of being "Ivan the Terrible," the officer in charge of the gas chamber of Treblinka. He is a paramount example of investigative and judicial mistake concerning a case of genocide.

Such an approach would amount to a return to the classic doctrine that justified lowering the standards of proof in cases of atrocious crimes, by the maxim *in atrocissimis leviores conjecturae sufficiunt et licet iudice iura transgredi* ("in very atrocious crimes light assumptions suffice and it is licit for the judge to transgrede the law"). This approach was already dismissed by C. Beccaria in the eighteenth century as a "cruel imbecility," and contrary to the modern principles of due process.

Deviations from investigative objectivity may emerge in the following aspects of a case: selective choice of the matter by extrajudicial criteria; prejudice suspect-driven (as oppose to offence-driven); investigation design followed by a bias of corroboration (as opposed to objective testing of allegations by both corroboration and falsification); speculative focus on the intentions rather than the actions of the suspect; emphasis on the suffering of the victims while overlooking the individual responsibility of the suspect; and use of vague charges and liability concepts.

Feelings of outrage and demands for swift action provoked by mass violence are understandable among victims as well as among the general public. However, investigators need to rise above such a pressing atmosphere and conduct their work with strict objectivity and respect for the guarantees of the accused, beginning with the presumption of innocence. As it was observed of the miscarriage of the Demjanjuk case: "the fact that the charge involves the murder of 850,000 in-

nocent people does not justify a reduction of the standards of meticulousness that in other circumstances would be accepted as a normal requirement" (Wagenaar, 1988). To the contrary, the gravity of the case only increases the responsibility of the investigating officer and demands the highest standards of objectivity.

A Multidisciplinary Approach

Investigations of international crimes require an approach that can integrate various fields of knowledge, from forensics to social sciences and information technology. Conventional investigative techniques are not sufficient because of the distinctive features of the matter, which make it essentially different from the investigation of common crime. This contradiction surfaced in the investigations for the Tokyo trials, when FBI agents were assigned to the prosecution in the belief that their expertise would meet the challenges of the investigation. However, these agents lacked background knowledge on Japanese society and institutions, and thus were unable to understand the role of the suspects, and ended up asking them for basic information.

The Office of Special Investigations (OSI) of the U.S. Department of Justice (focused on Holocaust investigations) initially relied on police officers, only to replace them progressively with historians through the 1980s. Similarly, the National Investigations Team for War Crimes of the Netherlands abandoned the original plan of 1998 to have a staff of police officers, after realizing that experts with advanced training and proper contextual knowledge were indispensable. Nevertheless, important contributions have originated in the domain of domestic investigations the fields of forensic sciences and criminal analysis, providing key physical evidence and mastering large volumes of data with advanced technological tools.

Mutual support between criminal proceedings and social research has been the rule in every major investigation of international crimes. The Armenian genocide had among its initial reporters historian A. J. Toynbee, whereas subsequent historiography on the issue has relied substantially on judicial records. The first historiographic wave on the Holocaust in the 1950s and 1960s (Ritlinger, Hilberg, Poliakov and others) used the evidence and findings of the Nuremberg trials. Those authors in turn were utilized by the interrogators of Eichmann and contributed themselves as witnesses for a number of trials. This tradition of cooperation has continued with different national commissions, as well as in the United Nations ad hoc tribunals, who utilized a number of historians and social scientists in their investigation teams. Descriptive statistics, based on medical records or victim statements, have been utilized to measure the volume and profiles of victimization, since the Crimean War (1854–1855) and World War I, up to the Guatemala and Peru Truth Commissions, ICTY (International Criminal Tribunal for the Former Yugoslavia) and the victimization of children in Uganda.

Concerning nonjudicial reporting, there is a whole field of research comprising reports by human rights organizations, Ombudsman offices, state supervision organs, immigration agencies, and parliamentary or truth commissions. The works of these bodies of enquiry may anticipate and enable criminal investigations, as happened in the cases of the Armenian genocide, Nuremberg (preceded by the UN War Crimes Commission), the Argentinean juntas trial (CONADEP, National Commission on the Disappearance of Person), ICTY (UN Commission of Experts), Guatemala (UN Commission for Historical Clarification and Commission for the Recovery of Historical Memory), and East Timor (Commission of Inquiry and International Committee of Inquiry). The contributions of nongovernmental organizations are particularly important, as they often pioneer the investigative effort and manage to achieve remarkable results with limited resources.

Intelligence agencies have also made investigative contributions, when appropriately instructed to this effect. Antecedents are known since the reports of British military intelligence on the massacres of Armenians. A case in point is the contribution to the Nuremberg proceedings of the Research and Analysis Branch of the U.S. Office of Strategic Studies. The investigations related to the former Yugoslavia have also been assisted by a number of intelligence agencies, such as the Bosnian Agency for Information and Documentation.

Last but not least, local expertise is indispensable in interpreting the relevant information in its authentic social context. In the Nuremberg investigations this expertise was integrated through a number of analysts familiar with the German society and institutions (notably F. Neuman, Chief of Analysis). International tribunals have taken different approaches on this matter; while the prosecutor of the ICTY was reluctant to integrate local officers for reasons of impartiality and security, the prosecutor of the SCSL (Special Court Sierra Leone) has relied on national investigators acquainted with the relevant society and conflict.

Disregard Simplistic Explanations

The easiest and most impressionistic explanations of international crimes need to be discarded: the criminal usually is not a psychopath, command structures are never perfect, and the crimes are not the mere result of ideology or a flawlessly planned course of action. Un-

A Canadian forensics expert brushes off a bone found at a mass grave site in Vlastica, Kosovo, on June 30, 1999. Thirteen victims, killed in the end of April during the NATO bombing campaign, were found in this bulldozed house. [AP/WIDE WORLD PHOTOS]

fortunately for the investigating officer, the events are usually much more difficult to explain and prove than in other cases. The criminals, particularly at the leadership level, tend to be "terribly and terrifyingly normal" (as Hannah Arendt said of Eichmann). Ideology may be one of the criminogenic factors, but it is rarely a decisive one. Command structures are fluid phenomena with frequent anomalies that "cannot be understood in isolation" (in the words of M. van Creveld), which obliges one to employ a complex contextual analysis of their de facto functioning. And no matter how much prosecutors like reductionist conspiracy theories, waves of violence over extended periods of time are most often the result of complex decision-making processes, conflicting interests, and unexpected factors. For investigative success, it is best to discard simplistic conceptions, and to face the complexity of these phenomena with the appropriate human and material resources.

The Centrality of Analysis

The tension between operations (collecting evidence) and analysis (evaluating and integrating it) is inherent to any criminal investigation and evolves around the basic question of "do we have enough evidence?" which can only be addressed through systematic analysis of what has been collected. This then typically prompts the question "Do we use our limited time and resources to analyze or to collect?"

The imagination of the lay audience may be captured by the picture of an investigation led by an operational strike force moving hurriedly to the scene of the crime to seize the evidence and deliver a "tough" and prompt response. In reality, an operations-led model tends to cause lack of focus and a certain evidentiary hypertrophy, a situation where there is more information than is manageable, of lower quality than is needed. The alternative is an analysis-led model, where the purpose of analysis is not just to support field operations, but rather to design and guide a focused collection process.

Experience indicates that systematic analysis must be central for a successful and cost-efficient investigative cycle. Some surveys of agencies investigating non-organized crime suggests an average ratio of one analyst to twelve investigators, while the Office of the Prosecutor of the ICTY reached a ratio close to one analyst to two investigators, and the relative weight of analysis is intended to be even greater for the ICC investigations.

Focus on Specific Intent and Contextual Elements

The legal definitions of genocide and crimes against humanity include elements that operate as qualifiers of gravity and restrictors to limit international jurisdictional intervention to extraordinarily offensive crimes. These are mainly the specific intent (for genocide) and the requirement of widespread or systematic commission and civilian condition of the victims (for crimes against humanity). Such elements are the hallmark of these international crimes, and usually the most difficult ones to investigate and to prove.

The specific intent of genocide is rarely manifested explicitly, and international jurisprudence has acknowledged that it can be inferred from the material events and circumstantial indicia. Concerning the elements specific to crimes against humanity, systematicity refers to aspects of organization and modus operandi, as well as to the functionality of the crime vis-à-vis predetermined objectives. The widespread requirement is essentially a matter of scale, for which there is no clear quantitative threshold; however some parameters can be inferred from international jurisprudence.

There is an ontological issue in proving the widespread scale, in that it requires ascertaining if a series of events do in fact constitute a single coherent entity, or if they are instead multiple autonomous entities. Objective answers to these aspects draw on crime pattern analysis, which is the set of analytical techniques utilized to identify significant correlations among large series of events (including systematic categorizations and statistics).

Documentary Evidence

Reasons of probative value (quality and reliability of the evidence) procedural economy (easier and faster to handle) and security (to reduce the exposure of witnesses) advise prioritizing documentary evidence. In cases of criminal orders and related records, documents may be the *corpus delicti* itself, the instrument that materialized the crime and ultimate proof of its commission (as Vahakn N. Dadrian has observed regarding the documentary records of the Armenian genocide).

In Nuremberg, prosecutor Robert Jackson planned from the beginning to rest his case on documentary evidence and gave instructions to gather "documents such as military or political orders, instructions, or declarations of policy which may serve to connect high personalities with the actual commission of crimes." The Nuremberg judgment stated explicitly the importance of documentary evidence and quoted a whole range of original Nazi documents, from Hitler's *Mein Kampf* to different orders for the killing of prisoners and civilians. Compared to Nuremberg, in the Tokyo Trials documentary evidence was less significant because Japanese forces were more successful in the destruction of their documents. Similarly, documentary evidence was remarkably more relevant to ICTY than to ICTR (International Criminal Tribunal for Rwanda).

At the litigation stage the authenticity of the documents is often an issue in contest. The U.S. OSI in the 1980s systematically used Nazi archival records from various states. When confronted with evidence originating from the USSR, the accused often alleged that documents had been manipulated by the KGB and made necessary the use of different forensic methods to test their authenticity (generally with positive results). Similar allegations have been made in the hearings of the ICTY regarding documents tendered by the prosecutor, who most often has succeeded at proving their authenticity through testimony of the analysts who collected them and through evidence of their internal and contextual consistency.

Witnesses and Evidence Sampling

Witnesses are the soul of the proceedings. Without them the human suffering that originated the whole judicial effort could not be appreciated. Nevertheless, difficult decisions need to be made to limit and select the number of witnesses that can be considered, for pragmatic reasons related to limited court-time and resources, security, and the problems of secondary victimization and witness fatigue. It is best to anticipate these constraints from the beginning of the investigation, in order to optimize the choice of witnesses, and to focus on the most significant ones.

Such selection calls for careful design, in a way similar to the techniques of sampling in social empirical research, so that a subset of evidence can provide a valid representation of the whole universe to be proved. In the case of the Argentinean junta trials, prosecutor L. Moreno (who was in charge of investigations in 1984 and in 2003 was appointed the first ICC prosecutor) choose 700 individual cases from the National Commission on the Disappeared (CONADEP) data with the aim of representing a scope of several thousands of victims of "all armies, of all periods, and the whole country." Typically, at the litigation stage the defense will try to challenge the validity of the sample, arguing that the evidence in question is not representative, but rather anomalous or exceptional, which highlights the need for strict methodology and objectivity in the process of choosing the witnesses.

The Importance of Insider and International Witnesses

Experience indicates that insiders and internationals are among the most valuable witnesses. The former are important because of their ability to establish the intimate de facto functioning of the criminal apparatus, and the latter because of the panoramic knowledge of criminal patterns and their enhanced credibility (particularly before international judges).

Insiders were already considered in the Ottoman investigations. There was, for example, General Vehib, who gave testimony on the assassination of some two thousand Armenians and his knowledge about a broader scheme of extermination. International witnesses have been used in many cases, from the missionaries that testified in Tokyo about "the rape of Shanghai," to numerous similar witnesses that have appeared before the chambers of the ICTY and ICTR (including field workers of NGOs and international organizations, journalists and peacekeepers). Often the testimony of these witnesses is supported by the reports that they produced at the relevant time (a technique already utilized in the Tokyo Trials and greatly exploited before the ad hoc tribunals). However, some organizations are reluctant to authorize the testimony of their officers for reasons of confidentiality and security.

Interviewing an insider or a suspect is a particularly difficult task, and often one with controversial results. In Nuremberg Nazi officers were initially interrogated with a highly formal and confrontational approach, conducted by attorneys through interpreters. This was soon replaced with a friendly and informal approach trusted to a team of native speakers who interacted with the interviewees in German, which proved more effective. In the case of R. Hoss (the Auschwitz commander), the officers that conducted his first interrogation in Poland were convinced of his sincerity, while subsequent research proved that they had failed to distance themselves sufficiently from the interviewee, and Hoss had been fairly truthful concerning the crime as such, but had lied systematically concerning his own role.

The interrogation of Eichmann was conducted by a German-born person, who communicated with the accused in German and was assisted by a team of officers from all the different countries relevant to the case. Initially they encountered a very common problem in this type of interviews, which was that the interviewee was more well-versed in the subject than they were, and hence was in a position to control the exchange.

Some historians have observed that the interrogators imposed some preconceptions on the Nazi organizations, through a series of leading questions that prevented more objective findings. In the case of General M. Carmel, his denial of any responsibility concerning massacres and mass expulsion of Palestinians in 1948 was disproved years later when the researcher who interviewed him (Benny Morris) could gain access to the relevant documentary evidence.

The cases above exemplify the problems of cognitive control, leading questions, and language issues, as well as the untrustworthy behavior of the suspects, that are all too common in every investigation and the international tribunals have faced in numerous occasions. The solutions typically result from a measure of teamwork to master the broad and complex issues at stake. In this way, investigators can establish a distance from the interviewee, and prevent any bias caused by empathy, confronting the interviewee as much as possible with documentary evidence, and keeping a literal record of the statement, to assure utmost accuracy and to be able to confront the source.

Security Needs

Most often international crimes are caused by powerful organizations that may remain active and will have an interest in sabotaging the investigations through means of intimidation or outright attack. For this reason, the requirements of security for the witnesses, the investigating personnel and the evidence need to be anticipated and duly handled. Witnesses are likely to ask for protective measures as a pre-condition to collaborate, in which case the investigating officer has to first of all not promise or create unrealistic expectations beyond the available means, and then assess carefully the merits of such request, because protection measures are always subject to constraints of procedure and resources.

Witness protection programs have developed since the 1980s, most typically for insiders in cases of organized crime, in Italy (for the mafia "pentiti"), the United States, and other countries. Similar programs have been established by the UN ad hoc tribunals, also focused often on insiders or particularly vulnerable witnesses. In Colombia the national witness protection program devotes much of its work to cases related to armed groups. In one notorious case in 2001, a former member of a paramilitary group was located and killed in spite of being under the strictest level of protection granted by the national prosecutor. Measures to protect the identity of the witnesses during proceedings have been used frequently, among others, by the ad hoc tribunals, and war crimes cases in Colombia but, as a matter of due process, they will need to be reconciled with the rights of the accused to know the identity of the accusing witnesses.

SEE ALSO Evidence; Forensics; International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Mass Graves; Nongovernmental Organizations; War Crimes; World War I Peace Treaties

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Iran

The turbulent history of modern Iran begins with the fall the Qajar dynasty's traditional polity in 1925, followed by the westernizing policies of Reza Shah and Muhammad Reza Shah, who ruled until the Islamic revolution in 1979. The revolution introduced a new ruler, Ayatollah Khomeini, who created an Islamic republic that was a hybrid of tradition and modernity.

The Qajar Shahs had ruled autocratically in a traditional Iran where due process of law was unknown and punishment was swift, involving physical torment and at times violent death. Hardly anyone was sentenced to prison. Torture was a part of the process by which the guilt of the accused was established. With the arrival of European-style "modernity," the Pahlavi dynasty adopted new policies. Reza Shah, who ruled from 1926 to 1941, created a centralized administration, a standing army, a police force for cities, and a gendarmerie for the countryside. In the absence of legal safeguards, however, these paraphernalia of a modern state were abusive of the rights of citizens.

The state built prisons and created the category of political prisoners. The new elite who employed Western-designed instruments of power without much hesitation, were much more distrustful of Western-style safeguards such as constitutional limits of authority, representative assemblies, individual liberties, and due process of law. The Shah felt comfortable with adopting Western instruments of power for he did not see them as a cultural imposition much different from what was known in the past. Their safeguards, however, were rejected as Western cultural intrusions. The same selective borrowings in the interests of those who wield power have continued under the Ayatollahs into the twenty-first century.

Under Reza Shah, the number of political prisoners was small, although a few men were murdered for political reasons. However, political and economic abuses of the modernizing elite generated resentment among the country's relatively small, modern middle class. Thus emerged a counter elite of nationalistic and populist persuasions. The ensuing political confrontations did not create an evolutionary process toward a more democratic state. Instead, they increasingly engendered political violence. As the severity of the challenge increased, so did the use of torture and execution. At the beginning of this process under Reza Shah, the confrontations lacked the intensity that they later assumed under his son, Mohammad Reza Shah. The latter's rule, in turn, appears far less violent when compared with what awaited the people under the Ayatollahs. There seems to be a correlation between the increasing commitment to conflicting ideologies and the escalating level of violence.

Faced with the state's forceful modernization of educational norms and the Westernization of the public space (e.g., the removal of the veil), traditionalist Shiite clerics offered some resistance. This was put down with little killing and a relatively minimal use of torture. When a group of Marxists arose in 1938 to present a secular challenge, the state charged them with antistate sedition. None of them was executed, and after the initial harsh interrogations, accompanied by the use of physical pressure, the prisoners settled into routine, monotonous prison life. Iranian prisons lacked the brutalities that were associated with military dictatorships throughout the Third World in the second half of the twentieth century. The regime did not torture its imprisoned opponents. In the words of historian Ervand Abrahamian, the regime "was more interested in keeping subjects passive and outwardly obedient than in mobilizing them and boring holes into their minds. Reza Shah had created a military monarchy—not an ideologically charged autocracy" (1999, p. 41).

After Reza Shah's abdication in 1941, the country experienced a period of political openness, during which the influential leftist Tudeh Party ("Masses" party) was formed. The CIA induced a coup in 1953 that brought the almost-deposed Mohammad Reza Shah back to Iran, but which also ended the period of openness, forfeiting the possibility of a gradual democratic process. The leftists were prosecuted without due process of law and were subjected to torture. Overall, whatever mistreatments and physical abuses the nationalists and leftists experienced from 1953 to 1958, these proved to be only a dress rehearsal for the array of state-sanctioned tortures that were imposed in the 1970s.

Both Mohammad Reza Shah and his opponents became increasingly ideological. The Shah's new doctri-

In Washington, D.C., in the fall of 1978, demonstrators oppose the U.S. government's backing of Mohammed Reza Pahlavi, Shah of Iran. The hoods conceal their identities from SAVAK, the Iranian intelligence agency that had strong ties to the CIA. [**OWEN FRANKEN/CORBIS**]

naire drive to recreate the greatness of ancient Persia moved him far away from the liberal tendencies of modernization theory and into the intolerant impulses of single-party authoritarianism. Across the deepening ideological divide of the 1970s, the apparently overconfident Shah faced a new generation of leftist activists whose political leanings were enmeshed in the rising tide of revolutionary movements throughout the Third World. Young and inexperienced, these activists announced their arrival on the political scene with a marked militancy in the mid-1970s, when the Shah's administration was being hailed as a model of progress by his conservative backers in Washington. Nevertheless, the number of dissidents and the range of their activities remained relatively small, compared with what was being seen in some Latin American countries at the time. By the time that the country was going through the seismic political changes that led to the Islamic Republic in 1979, some 400 guerrillas had lost their lives, and hundreds of others were imprisoned and tortured.

The Shah's political police, known by the acronym SAVAK, was designed to strike fear in the hearts of the regime's young opponents. A new generation of torturers creatively honed their craft. It appeared as if SAVAK was deliberately flaunting its brutality. Tehran's Evin Prison symbolized SAVAK's merciless image. It is not clear how much of SAVAK's brutality actually occurred and how much was the result of the deliberately cultivated image of SAVAK violence or the creative allegations of political opponents. In the end, the brutality and the reputation of SAVAK fed upon each other.

Torture was used to extract confessions and recantations. More significantly, torture began to cast a dark shadow over the lives of the leading activists. The torture-induced confessions, broadcast nationally, were meant to break the resolve of the activists and dissuade university students from entering the forbidden political arena. In many cases, however, it had the opposite effect. In this convoluted world, which would outlast the dynasty and continue into the Islamic Republic, having been tortured—and not any independent act of bravery or a prolonged service to political causes—became the arbiter of who would rise as heroes and who would fall into infamy. Dying under torture created real martyrs.

Martyrs' photos adorned the revolutionary banners of the organizations that helped to overthrow the Shah in 1979. In this time of confession and recantation, Evin Prison linked the Shah's regime with that of the Ayatollah's. Interestingly, the man who shaped the prison life under the Ayatollah's regime had been himself a prisoner in Evin during the Shah's rule. When the monarchy was overturned, the prison was quickly emptied of the Shah's opponents and packed instead with high officials who had previously served the monarchy.

The Ayatollah presented his revolutionary state as Islamic and thus unlike any other in modern history. However, in the early years of the consolidation of the Islamic Republic, many of human rights violations had very little to do with Islam, or even with the politicized clerics' reading of it. The politically shrewd mullahs moved aggressively to eliminate any real or imagined challenges to the legitimacy of the newly established state. Their actions corresponded with the revolutionary patterns that had been created by totalitarian states elsewhere in the world. The mullahs merely added their own Islamic terminology to rationalize actions whose motivations lay in the realities of the contemporary nation–state in the context of an illiberal political culture. For political prisoners who crowded the prisons in the 1980s, the judiciary was characterized by the absence of justice, Islamic or otherwise.

Summary executions are the signature of all revolutionary states, as are torture-induced confessions and repentance. The tactics used by the Ayatollah's mullahs to extract information and to break the resolve of political prisoners were thus almost identical to those used by other revolutionary states, from the Stalinist Soviet Union, to the U.S.–supported juntas in Latin American countries during the cold war. The Islamic Republic's ideological fervor, however, was matched by an unprecedented intensification of executions and torture, and in their wake, many came to absolve the Shah of his own unsavory record, which paled in comparison.

The young activists who opposed Ayatollah Khomeini were ill-prepared for what awaited them in prison. They based their expectations on their own experiences in the Shah's prisons, or on what they had heard from previous generations of political prisoners. The Shah's tactics of repression offered no realistic measure of what followed with the rise of Ayatollah Khomeini to power, however. By 1985, approximately thirteen thousand individuals who politically opposed the Ayatollah had been executed.

In a creative interpretation of medieval Islamic laws, the clerics found a way to justify torture as Islamic *Taʿzir* ("discretionary punishment" in Shiʾite jurisprudence). A prisoner who "lied" to interrogators could receive *Taʿzir* of as many as seventy-four lashes until the "truth" was extracted. Many well-known individuals of all ideological persuasions were displayed on national television giving "voluntary interviews": confessing, recanting, denouncing their past political associations, and praising the Ayatollah as the "Leader of the Islamic Revolution." In these broadcasts, the mullahs far out-performed the showmanship of the Shah's SAVAK. By extracting formal recantations, the clerics intended to show that God was on their side, and that history, with its teleological direction and ultimate destiny, had vindicated them. Captives were forced to deliver a version of history that rendered them, prior to their repentance and return to Islam, as the essence of all evils, ancient and modern.

Thousands of rank and file activists whose "interviews" had no additional propaganda value, were nonetheless subjected to a crude combination of physical torture, psychological pressure, Islamic "teachings," and public confession, all aimed at remolding their thoughts and conscience. The Islamic Republic added a new term with clear religious undertones to Iran's prison lexicon: *Tawaban* (singular *tawab*) were prisoners who had recanted. In fact, the clerics wished to turn the entire secular population of Iran into *tawaban*. The result was a severe violation of the right of political prisoners to freedom of thought, conscience, and religion, as well as the freedom to hold opinions without interference.

Prior to his death, Ayatollah Khomeini's crowning achievement was the prison massacre of 1988, unique in the annals of the country's brutalities. For reasons not entirely clear, the Ayatollah decided to dissolve the category of "political prisoners" by dispatching them to death or setting them free. The political prisoners faced an inquisition that had no proper judicial task other than inquiring about their thoughts on Islam and the central institution of the Islamic Republic. No consideration was given to the prisoners' alleged crimes or to the sentences under which they had been serving since the early 1980s. Instead, the inquisitors passed judgment on the prisoners' apostasy. Each prisoner was asked, "Are you Muslim, and do you perform your daily prayers." The prisoners understood the true meaning of the question: "Will you renounce your conscience and live?" Many held fast to their beliefs, and were hung the same day.

In the prisons, the prosecutors asked those who had confirmed their faith in Islam to prove it by performing the required daily prayers. If they refused, they would receive twenty lashes for each of the daily five sets of prayers—a total of one hundred lashes every twenty-four hours. Both male and female prisoners

were subject to this daily regimen of whippings. One judge told the prisoners that the punishment for a female infidel was death under prolonged whipping. In fact, however, the clerics treated women differently from men. Men were considered responsible for their apostasy and had to be killed. Women, on the other hand, were not believed to be competent enough to take total responsibility for their actions, so the clerics would punish them with imprisonment until they repented. Thus, one misogynist rule saved many women's lives. Female members of the Mojahedin—an anti-clerical Islamic organization—were not so fortunate. They were executed for continuing to support their exiled leaders.

In contrast to the early years of the Ayatollah's regime, the executioners stopped publishing the body counts for their daily activities in 1988. An official veil of secrecy shrouded the ongoing massacre, and the rulers denied that mass killings continued to take place inside the prisons. Many scholars accept the estimate of 4,500 to 5,000 dead for the entire country that year, although some have alleged that the figure was much higher—as many as 10,000 to 12,000. Opposition publications abroad, however, claimed a national death toll of 30,000.

Like human rights violators in other ideological states, the Islamic rulers of Iran engaged in extrajudicial activities. Scores of intellectuals and journalists were killed in this fashion. From 1990 onward, these crimes were committed by members of the shadowy groups who either worked for or were loosely associated with the Intelligence Ministry. These extrajudicial actions made a mockery of the due process of law, even when considered in terms of purely Islamic, or *shari'ah*, law. Because of this, the Intelligence Ministry tried very hard to conceal its murderous, extra-judicial actions from the public. Even the reformist president, Khatami, elected in 1997, was unable to put an end to these activities, although the intelligence officials became more circumspect.

Although there were similarities between the Islamic Republic and more secular authoritarian regimes in their use of violence and repression, there were also major differences that created new patterns of human rights violations. These differences originated from the invocation of *shari'ah*, or rather from the much larger and loosely structured cultural habits and norms derivative of the *shari'ah* paradigm. One major new category of human rights violations resulted from the reimposition of Islamic punishments such as flogging, amputation, and stoning to death of adulterers and common criminals.

The Ayatollah's revolution was Islamic, and the majority of its victims were Muslim Iranians, but non-Muslim Iranians suffered repression and persecution unlike any in modern Iranian history. Iran's Islamic tradition recognizes followers of three monotheistic religions—Zoroastrianism, Judaism, and Christianity (Armenians, Assyrians, and Chaldeans)—as people of the book. The Islamic Constitution recognizes them, as "the only religious minorities who, within the limits of the law, are free to perform their religious rites and ceremonies and to act according to their own canon in matters of personal affairs and religious education." To put it differently, they are free to perform their religious rites and ceremonies, but only within the limits of Islamic *shari'ah*. Nonetheless, discrimination against non-Muslim people of the book became blatant. A majority of each community saw no future for themselves in Iran and left.

The largest religious community in Iran was not named in the constitution, however. This was the Bahā'ī, whose faith was never recognized in Iran, its troubled birthplace. Because Bahā'ī were assumed to have been Muslims before accepting their "false" revelation, the Iranian Bahā'īs were considered to be apostates. By omitting them from constitutional recognition, the clerics' hoped to destroy the conditions needed for their survival as a community with a distinct religious identity. They attacked Bahá'ís on all possible grounds and in all spheres of public life, from elementary education to professional occupations, from marriage ceremonies to cemeteries. More than 200 of their leaders were murdered. Although many fled the country, the community endured and survived the harshest years of the 1980s.

By the beginning of the twenty-first century, Iran had already defeated Islamic fundamentalism. A majority of the people were patiently waiting for a nonviolent institutional and legal transformation that would allow the young population to experience personal freedoms and a measure of democracy. The regime lost its Islamic mooring and its institutions completed with each other. The land of ancient Persia had lost the imperial, monarchic facade that was once a source of national pride.

SEE ALSO Bahā'ī; Kurds

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Reza Afshari

Iraq

Iraq has experienced a turbulent history during the twentieth and early twenty-first centuries, during which the country has witnessed invasions, military occupations, independence, violent regime changes, war, genocide, and gross human rights violations. Iraq's record on human rights abuses, war crimes, crimes against humanity, and genocide during this period has been among the most abysmal throughout the Arab world and the regions of southwest Asia. This was true especially after the seizure of power by the Ba'th Party in 1968, and the subsequent totalitarian regime of Saddam Hussein from 1979 to 2003. The significance of this fact looms large not only for Middle Eastern history but for global history as well.

Ba'th Party Rule

Most of the gross violations of human rights and dignity committed in modern Iraq were perpetrated when the Arab Socialist Renaissance (Arabic: Ba'th) Party was in power. The Ba'th was a pan-Arab nationalist party founded in Syria in the mid-1940s, whose message soon spread to other Arab countries in the Fertile Crescent, including Iraq. Its slogans were "Unity, Freedom, Socialism" and "One Arab Motherland, with an Eternal Mission." Ba'thism was dedicated to effecting Arab unity, fighting imperialism and Zionism, and achieving domestic social justice. Its vision of a non-Marxist, "Arab" type of socialism, national unity, and ethnic destiny represented a type of Middle Eastern fascism, something certainly magnified by the leadership cults established in the two repressive regimes it eventually established: in Syria since 1963, and in Iraq briefly in 1963 and thereafter from 1968 to 2003. These two Ba'thist regimes—ironically, considering their advocacy of pan-Arab unity, bitter rivals—pursued a highly nationalistic pan-Arab ideology in countries that, although largely Arab, contained significant numbers of non-Arabs.

Iraq has long been the abode of a number of ethnic and religious groups. The southern half of the country has been home to Arabs who practice the Shi'ite branch of Islam. Although Shi'ites are a small minority in the wider Islamic world, they constituted 60 percent of the population of Iraq by the end of the twentieth century. Central Iraq hosts Arabs practicing the Sunni branch of Islam, approximately 20 percent of the population. Although fewer in number than the Shi'ite Arabs, regimes based in Baghdad that have held political sway in the region for centuries have always been led by Sunnis. Northern Iraq has long had a particularly heterogeneous population. In addition to Sunni Arabs, the mountainous northern regions feature a large number of Kurds. Between 15 and 20 percent of the population, Kurds are Sunni Muslims who are ethnically and linguistically distinct from Arabs. Other religious and ethnic groups in the north include small numbers of Kurdish Shi'ites and Yezidis, Assyrian Christians, and Turkoman. Iraq also counts among its residents small populations of Chaldean Christians (Assyrian Catholics), Sabeans, and Armenian Christians. Iraq was home to an ancient Jewish community for millennia as well, although the vast majority emigrated from 1950 to 1951.

Saddam Hussein (1937–) was the main figure behind the 1968 Ba'thist coup in Iraq, and formally added the presidency to his party leadership portfolio in July 1979. He immediately gave an indication of his brutal methods of maintaining his absolute rule by purging and executing a number of leading Ba'thists whom he considered rivals. For the next two decades Saddam reduced the Ba'th Party to an instrument of his personal rule and used the myriad intelligence forces he oversaw to intimidate and eliminate rivals and anyone else he deemed a threat, including entire categories of people. Thousands were arrested, executed, or simply disappeared from 1979 to 2003. Beyond this, Saddam's regime practiced ethnic genocide against the Kurds, tried to "Arabize" the northern region around Kirkuk, and directed whole-scale oppression against Shi'ite Arabs. Estimates as high as 300,000 have been proposed for the number of persons killed by Saddam's regime. Beyond that, Saddam exported his brutality when Iraqi forces committed war crimes and/or crimes against humanity during the Iran–Iraq war of 1980 to 1988, and the occupation of Kuwait of 1990 to 1991.

The Kurdish Genocide

No one specific group suffered more under Saddam's rule than the Kurds. The Iraqi state began armed action against Kurdish nationalists in 1961, before the Ba'th came to power. The bulk of the fighting against the insurrection, which lasted until 1975 and flared up again thereafter, however, came while the Ba'th was in power. In July 1983, the regime arrested 8,000 males from the Barzani family, which has produced the leading figures in the Kurdish national movement over the decades. They were deported to southern Iraq and presumably murdered. In the spring of 1987, as Iraqi fortunes were improving in the long Iran–Iraq war of 1980 to 1988,

Halabja, 1988. Kurd victims of Iraq gas attack. [AP/WIDE WORLD PHOTOS]

Iraqi forces launched a renewed offensive against the Kurds, who had been supported by Iran at various periods during the insurrection. The government created "forbidden areas" in the north to deny sanctuary to Kurdish *peshmerga*s (fighters; literally, "those who face death"). Large-scale deportations removed thousands of villagers. At least 700 villages were demolished. Any human or animal remaining in the "forbidden areas" was subject to death. It was during this campaign that the first documented Iraqi uses of chemical weapons inside Iraq occurred. The first incident was an attack on a Kurdish political party headquarters in Zewa Shkan on April 15, 1987, followed the next day by chemical strikes in the villages of Balisan and Shaykh Wasan.

Yet it was the Ba'thist regime's 1988 Anfal campaign against the Kurds that rose to the level of genocide according to international observers. Taking its name from a chapter entitled "Anfal" (Arabic: "spoils") in the Koran, Anfal was a massive counterinsurgency campaign following up on the similar efforts of 1987. It once again sought to deny large portions of Kurdistan to the *peshmerga*s by deporting and/or killing the areas' inhabitants and destroying their villages. Anfal consisted of eight military offensives launched between February 23 and September 6, 1988 as the Iran–Iraq war was concluding. Although it was dependent on state institutions for its execution, the campaign was a Ba'th Party operation. The person responsible for supervising the genocide, below Saddam Hussein himself, was his cousin and party stalwart, Ali Hasan al-Majid (1941–). Decree No. 160 of March 29, 1987 placed all state and party apparatuses in the north under al-Majid, secretary of the Ba'th Party's Northern Bureau Command, for the purpose of carrying out the Anfal campaign. This included the military, military intelligence, general intelligence, Popular Army, and pro-regime Kurdish *jahsh* militia. Most of the Anfal campaigns were undertaken by army units subsumed under al-Majid's command: the Iraqi army's First Corps, based at Kirkuk, commanded by Lieutenant General Sultan

Hashim Ahmad al-Jabburi Ta'i (1944?–), and the Fifth Corps based at Irbil, commanded by Brigadier General Yunis Muhammad al-Zarib. When the fifth Anfal that began in May stalled, the Office of the President ordered operations renewed—indicating Saddam's personal involvement in the execution of the campaign. According to Human Rights Watch, a total of 115 Iraqis may have had criminal responsibility for the genocide.

The ethnic dimensions of the Anfal campaign were clear. It was preceded by a national census held on October 17, 1987. All persons in Iraq were required to register themselves according to ethnicity, either "Arab" or "Kurd." Those refusing to "return to the national ranks" and be counted, which in effect meant those Kurds living in areas under *peshmerga* control who did not participate, were classified as "deserters." Thereafter, entire areas deemed outside the "national ranks" and containing "deserters" were designated "forbidden areas" and subject to "collective measures." These measures included military sweeps through the areas, followed by mass deportations and the demolition of villages. Any person or animal thereafter found in a "forbidden area" was to be killed. Many Kurdish males rounded up in the operations were later taken away, shot, and buried in mass graves by uniformed execution squads. It is surmised that these squads were made up of party members, among others.

By September 6, 1988, when the government declared an amnesty, an estimated 2,000 Kurdish villages had been depopulated and destroyed, although some figures are higher. Conservative estimates place the death toll at 50,000, but most put the count higher, in the range of 100,000 to 182,000. Ali Hasan al-Majid himself later suggested that "no more" than 100,000 Kurds were killed. Mines were sown in many destroyed localities to prevent reinhabitation. Middle East Watch also has determined that Iraqi forces attacked at least sixty villages with chemical weapons during Anfal. The worst and most famous massacre occurred in a town, not a village: the March 16, 1988 chemical attack on Halabja. Somewhere between 3,200 and 5,000 Kurds were killed there with mustard gas (a blistering agent) and Sarin (a nerve agent).

The memory of Anfal prompted the flight of hundreds of thousands of Kurds into the mountains after the failed Kurdish uprising of March 1991, and drew calls for global action. UN Security Council Resolution 688 condemned the "repression" of the Kurds and other Iraqis on April 5, 1991. On April 10 the United States created a "no fly zone" north of the 36th parallel, forbidding Iraqi military aircraft from operating there. The "safe haven" for the Kurds announced by the United States seven days later eventually turned into what was called the Kurdish Autonomous Zone, protected by United States and other troops, in which a Kurdish Regional Government began functioning in July 1992.

Persecution of the Shi'ites and Marsh Arabs

Although ostensibly a secular party, the Ba'th Party in Iraq long drew its support from, and based its rule on, the country's Sunni Arab population, just as had previous regimes in the country. The Shi'ite community was subject to persecution. In July 1974, the regime arrested dozens of Shi'ite clerics and executed five of them. The oppression worsened during Iraq's long war with Shi'ite Iran. The government expelled between 350,000 and 500,000 Shi'ites to Iran in the 1980s because of their alleged Iranian origin; approximately 50,000 other men were arrested, many of whom simply disappeared. The Shi'ite uprising of March 1991 was brutally suppressed and led to even more extreme measures. Mosques and seminaries were closed. Leading Shi'ite clerics like Ayatullah Muhammad Sadiq al-Sadr (1933–1999), Ayatullah Murtada al-Burujerdi (1931–1998), and Ayatullah Mirza Ali al-Gharawi (1930–1998) were later assassinated as well, almost certainly by Ba'thist agents. Security Council Resolution 688 of 1991 condemned the attacks on the Shi'ites as well as those against the Kurds. The United States, Britain, and France later began enforcing another "no fly zone" over Iraq south of the 32nd parallel (later expanded to the area south of the 33rd parallel.

In addition, the government moved against the Shi'ite Marsh Arabs and the unique ecosystem where they lived in south-central Iraq. These Arabs, called the Ma'dan, numbered some 250,000 in 1991. They lived in the marshlands between the Tigris and Euphrates rivers, the Middle East's largest wetlands area. In addition to forced imprisonment, killings, and disappearances, the Ma'dan faced forced deportations from the marshlands into government-built settlements. Only 40,000 remained in their ancestral lands by the late 1990s.

The government also initiated a massive program to drain the marshes. A document later captured entitled "Plan of Action for the Marshes," dated January 30, 1989, refers to an earlier 1987 plan approved by Saddam himself—another indication of the dictator's personal involvement in these crimes. While claiming it was implementing earlier plans to reclaim land that dated to 1953, the government undoubtedly was trying to deny shelter to antiregime Shi'ite guerrillas and army deserters that the marshes had provided. The UN Environmental Program has estimated that 90 percent of the marshes had been destroyed by the late 1990s, constituting a major international ecological disaster.

War Crimes in the Iran–Iraq War and in Kuwait

Saddam ordered the Iraqi army to attack Iran in September 1980, precipitating the twentieth century's longest conventional war. Iraq used chemical weapons against the numerically stronger Iranian forces throughout the war, in violation of the 1899 Hague Declaration IV, 1907 Hague Convention IV, and 1925 Geneva Protocol. (Iran responded with its own chemical attacks, but on a smaller scale than Iraq.) The United Nations launched an investigation, and the Security Council condemned the use of chemical weapons in the fighting, without specifying by whom, in March 1984, and again in September 1988.

Iraqi forces carried out a number of war crimes against Kuwaitis during their occupation of Kuwait from August 1990 to March 1991, including torture, rape, killings, looting, theft of cultural property, executions, and disappearances. An estimated 1,000 Kuwaitis were killed during the occupation, and an additional 600 remain unaccounted for after having been taken away by retreating Iraqi forces. A 1992 U.S. Defense Department study found Iraq guilty of sixteen violations of the laws of war during the occupation of Kuwait and the subsequent Gulf War. The Kuwaiti government also compiled extensive documentation on Iraqi war crimes.

Prosecution

United States and British forces invaded Iraq in March 2003 and Saddam's rule in Baghdad quickly collapsed. United States forces began rounding up high-ranking Iraqis suspected of war crimes, genocide, and crimes against humanity. They captured Ali Hasan al-Majid on August 19, 2003. Saddam himself evaded arrest until December 14, 2003. Saddam and eleven others, including al-Majid, former Deputy Prime Minister Tariq Aziz (1936–), and former Vice President Taha Yasin Ramadan al-Jazrawi (1938–), were arraigned before an investigative judge of the Iraqi Special Tribunal for Crimes Against Humanity on July 1, 2004. Lieutenant General and former Defense Minister Sultan Hashim Ahmad al-Jabburi Ta'i, commander of the army's First Corps during Anfal, were also captured by coalition forces and could stand trial in the future.

Conclusion

Iraq under Saddam Hussein and the Ba'th represented the most brutal and totalitarian regime anywhere in the Middle East during the last decades of the twentieth century, as well as one of the worst such regimes anywhere on earth. The scope and scale of the human rights abuses, war crimes, crimes against humanity, and genocide committed by the Ba'thist regime were rivaled only by the fastidious bureaucratic measures and records used to execute and document them, as well as by the megalomaniacal ego of Saddam Hussein himself. His downfall not only opened a new chapter in Iraq's history but paved the way for what likely will be the most sensational human rights trial of the early twenty-first century.

SEE ALSO Gas; Kurds; Saddam Hussein; Safe Zones

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Michael R. Fischbach

Irian Jaya see West Papua, Indonesia (Irian Jaya).

Irving, David, Libel Trial of

On January 11, 2000, a libel trial opened in the British High Court. The plaintiff was David Irving, a British author of more than twenty books on World War II and Nazi Germany and its leadership. The defendants were the American academic Deborah Lipstadt and her publisher, Penguin Books. In *Denying the Holocaust* (1993), Lipstadt provides a comprehensive overview of the multifaceted phenomenon of Holocaust denial, the attempt to deny that the Nazis planned and carried out the systematic murder of six million Jews and others. She identifies Irving as "one of the most dangerous

spokesman for Holocaust denial" (1993, p. 181). She further charges that "familiar with historical evidence, he bends it until it conforms with his ideological leanings and political agenda" (1993, p. 181). In 1996 Lipstadt was one of many who successfully lobbied against the publication of Irving's biography of Joseph Goebbels, the Nazi minister of propaganda. The publisher, St. Martin's Press, ended up pulping all printed copies of the book. Irving was enraged and decided to take revenge by bringing suit against Lipstadt, claiming not only that her description of Irving had been libelous, but also that she was pursuing a "sustained, malicious, vigorous, well-funded and reckless world-wide campaign of personal defamation" (van Pelt, 2002, p. 64).

Irving's involvement with Holocaust deniers came in the wake of the publication of *Hitler's War* (1977), in which he argues that although the Holocaust, as generally understood, occurred, Hitler had neither real or direct responsibility for what happened nor knowledge about it. This thesis attracted the attention of hard-core deniers such as Robert Faurisson in France and Ernst Zündel, a German residing in Canada. Both recognized that the denial of the Holocaust, or *revisionism* as they called it, suffered from the fact that no historian had ever endorsed its position. They saw an opportunity to bring the well-known Irving to their cause. In 1988 they succeeded.

That same year Zündel went on trial in Toronto for publishing material that, among other issues, denied the existence of gas chambers at Auschwitz to murder human beings. In defense of this charge, Zündel recruited on the advice of Faurisson, a consultant on the design of execution facilities in the United States, Fred Leuchter. He was subsequently dispatched to Auschwitz, where he took some samples from various parts of the architectural remains of Auschwitz and analyzed them for the presence of residual cyanide. Leuchter then authored a report in which he stated that there had never been any gas chambers at Auschwitz.

The judge in the Zündel trial declared the report inadmissible, citing Leuchter's lack of relevant expertise, but Irving, who had been asked to testify on Zündel's behalf, endorsed Leuchter's conclusions in court. In fact, he was so enthusiastic about the report that he became its publisher in the United Kingdom, describing it in his foreword as unchallengeable.

Irving became a Holocaust denier, conducting as he called it a "one-man intifada" (van Pelt, 2002, p. 64) against the official history of the Holocaust. The essence of his campaign was that the Holocaust, symbolized by Auschwitz, is a lie deployed by Jews to blackmail the German people into paying vast sums in reparations to supposed victims of the Holocaust. In a revised edition of *Hitler's War* (1991), all traces of the Holocaust disappeared. Whereas in the 1977 edition Irving had characterized Auschwitz as a monstrous killing machine, according to the 1991 edition it was a mere slave labor camp. Irving commented that readers would "not find one line on the Holocaust. Why dignify something with even one footnote that has not happened?" (van Pelt, 2002, p. 54). In a lecture given that same year he stated, "I don't see any reason to be tasteful about Auschwitz. It's baloney. It's a legend. . . .I say quite tastelessly in fact that more people died on the back seat of Edward Kennedy's car in Chappaquiddick than ever died in a gas chamber in Auschwitz" (van Pelt, 2002, p. 1f). The once respected author became a rabble-rousing speaker at gatherings of the extreme right. Accused and convicted in both German and French courts, Irving turned into a pariah of the historical community.

Through his libel action, Irving hoped to regain his standing and provide Holocaust denial respectability as a revisionist view of the past. British law made this seem possible, as the burden of proof was on the defendants, and not him. The defense, led by Anthony Julius and Richard Rampton, focused on exposing Irving as a falsifier of the truth who had used invention, misquotation, suppression, distortion, manipulation, and mistranslation to achieve his objective. Irving's historiography, and not the existence of the Holocaust, was central. The defendants therefore engaged four historians (Richard Evans, Christopher Browning, Peter Longerich, and Robert Jan van Pelt) to issue reports on the case's central issues. Evans considered Irving's historiography in general, and Browning the evidence of mass killings by the Nazi mobile killing groups (Einsatzgruppen), which Irving claimed had not operated under Berlin's direct control. Longerich examined the decision-making process, showing that Hitler in fact played a central role, and van Pelt the evidence at Auschwitz, and the scientific and historical absurdity of the arguments advanced by Faurisson, Leuchter, and others.

The defense also engaged a political scientist, Hajo Funke, who traced Irving's connections with neofascist and neo-Nazi groups, white supremacist organizations, and Holocaust deniers. By revealing his deep involvement with the extreme right and his profound anti-Semitism, the defense hoped to show Irving's motivation in resorting to lies, distortions, misrepresentations, and deceptions in pursuit of his exoneration of Hitler and his denial of the Holocaust.

Irving decided not to engage a barrister, and represented himself in person. This undoubtedly increased the excitement of the proceedings. Deliberately choos-

ing to cast himself in the role of the lone David against the seemingly mighty "Golipstadt," represented by a phalanx of lawyers and experts, Irving only engaged one expert witness—an evolutionary psychologist named Kevin MacDonald who has theorized that Jews are to be blamed for anti-Semitism. As Lipstadt's lawyers considered MacDonald's theories as irrelevant to the case, they decided not to cross-examine him, correctly assuming that the judge would ignore whatever MacDonald would have to say during his evidence-in-chief.

The libel trial lasted some thirty-three days, and involved many heated exchanges between Irving and Rampton, and Irving's long cross-examinations of the defense's expert witnesses. Many visitors attended the trial; it was also widely covered by the British and international press. The impact of such media attention were the mistaken impressions that the Holocaust was on trial—a clear distortion of the fact that Lipstadt and Penguin were the defendants—or that Irving himself was on trial—a reflection of the effective defense strategy that had transformed the de jure plaintiff Irving into the de facto defendant.

On April 12, 2000, Justice Charles Gray ruled for the defendants in pronouncing Irving a falsifier of history, a right-wing pro-Nazi polemicist, an anti-Semite, and a racist. He also ordered Irving to pay the defendants' legal costs, which exceeded 2 million pounds. Many who had feared that a victory for Irving would give Holocaust denial certain legitimacy were relieved. Israel's Prime Minister Barak declared the outcome of the trial to be a "victory of the free world against the dark forces seeking to obliterate the memory of the lowest point humanity ever reached." In its lead article, *The Independent* noted that "the cogency of the testimony presented by the defense" had vindicated "the great liberal principle, enunciated by John Stuart Mill, of the marketplace of ideas in which false coin is tested and replaced by true." *The Guardian* agreed: "Other jurisdictions make denying the Holocaust a crime. After this case, we can rely on empiricism and the sheer weight of evidence" (van Pelt, 2002, p. xf).

SEE ALSO Auschwitz; Denial

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Robert Jan van Pelt

Izetbegović, Alija

[AUGUST 8, 1925–OCTOBER 19, 2003]
Bosnian Muslim and political leader in the post-independence Bosnia and Herzegovinian government

Alija Izetbegović was a Bosnian Muslim born on August 8, 1925 in Bosanski Šamac, a town in northern Bosnia, in what was then the Kingdom of Serbs, Croats and Slovenes. He died on October 19, 2003, in an independent Bosnia and Herzegovina (Bosnia), a state whose creation and survival he did as much as anybody to bring about. However, the Bosnia in which he died was so divided that he would have had extreme difficulty returning to his birthplace, had he so wished. The town of his birth is located in the so-called Republika Srpska, one of two entities into which the country is split, and which is dominated by Serbs.

Izetbegović was jailed twice in communist Yugoslavia for subversion, for three years in the 1940s and five years in the 1980s. His 1980s imprisonment resulted from the publication of his main political statement, the *Islamic Declaration* originally published in 1970. The government found his viewpoint extremist and dangerous, as in declarations such as: "There can be no peace or co-existence between the Islamic faith and non-Islamic institutions. . . . Islamic renewal cannot be . . . successfully continued and concluded without a political revolution." In 1990 Izetbegović helped create and subsequently led the *Stranka demokratske akcije* (Party of Democratic Action) or SDA, a political party that exclusively represented the narrow ethnic interests of Bosnia's Muslims and whose candidates campaigned behind the slogan "In our land with our faith."

As first Yugoslavia and then Bosnia disintegrated, Izetbegović found himself in an increasingly difficult situation and feared for the very survival of Bosnia's Muslims. Together with Macedonia's President Kiro Gligorov, he tabled eleventh-hour proposals in June 1991 to head off Slovene and Croatian independence declarations and worked to keep Yugoslavia together. Memorably, he compared the choice between Franjo

Tudjman's Croatia and Slobodan Milosevic's Serbia to one between a brain tumor and leukemia. As conflict loomed, he became increasingly unsure of himself and seemingly was unable to prepare for war.

The defense of Sarajevo after the outbreak of fighting in April 1992 was initially organized by the city's criminal gangs. In 1998, six years after the events, the Sarajevo investigative weekly *Dani* published details of crimes allegedly committed by one of the gang leaders, Mušan Topalović-Caco, whom Izetbegović personally knew from prison and who was who was killed in October 1993. The report charged that "Caco" had eliminated Serbs from parts of Sarajevo, revelations which incurred Izetbegović's enduring wrath.

Izetbegović became president of Bosnia at the end of 1990, while Bosnia was still a republic of the Socialist Federal Republic of Yugoslavia. This was an office that he should have shared in rotation with other members of the Bosnian presidency, but because war erupted in Bosnia in April 1992, he became the first sole president of an independent Bosnia and is remembered as the country's beleaguered wartime leader. He was elected chairman of Bosnia's presidency in the first postwar elections in 1996, stepping down before the second postwar elections two years later. He retired from politics in 2001.

In the immediate aftermath of his death, Izetbegović was hailed internationally as a statesman for his efforts to keep Bosnia and Herzegovina together. He was also deeply loved and respected by Bosnian Muslims, who called him "dedo" ("grandpa"). By contrast, the Croats and Serbs of Bosnia and Herzegovina generally despised him. The International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague revealed that it had been investigating him for war crimes. The investigation was aborted with his premature death.

Izetbegović's detractors accused him of bearing responsibility for the deaths of Serbs in Sarajevo at the hands of criminal gangs; of bearing responsibility for atrocities committed by Bosnian Muslims against Croats and Serbs in detention camps such as that at Čelebići; and of bearing responsibility for atrocities committed by the Bosnian Army against Croats and Serbs, especially during its advance in summer and autumn 1995. He was even accused of shelling his own people to generate maximum media sympathy for their plight in order to encourage international intervention. In the absence of a thorough ICTY investigation, no definitive judgment can be made about the allegations against Izetbegović, although his relationship with Mušan Topalović-Caco is a matter of record. Given the logistical difficulties that Izetbegović faced simply in communicating with his lieutenants around Bosnia during the war, it would be almost impossible to link him personally to any individual atrocity committed against Croats and Serbs. Nonetheless, he failed to make any public effort to curb the actions of overzealous Bosnian Muslims. He also failed to take international concerns about Muslim excesses seriously, justifying them by the scale of the atrocities that were committed against Bosnian Muslims by Serbs and to a lesser extent by Croats.

The charge that Izetbegović shelled his own people, came from both his enemies and various UN officials. Lewis MacKenzie, the first UN general from Canada to arrive in Sarajevo in 1992, and Michael Rose, the British general who commanded UN operations in Bosnia in 1994, went on record with the accusation both at the time and later. At the time, the international presence in Sarajevo was unable to determine what happened during the so-called "bread queue massacre" in 1992 (one instance where Izetbegović was alleged to have shelled his own people). Moreover, UN investigations of the "marketplace massacres" of 1994 and 1995 were inconclusive. Most analysts, however, give Izetbegović the benefit of the doubt and assume that, given the great number of shells being fired into Sarajevo by the Bosnian Serbs, some were bound to have killed large numbers of civilians.

The Western countries that belatedly intervened militarily in Bosnia in August 1995 wished to see Izetbegović as a moderate who stood for the preservation of a multi-ethnic state, being that they effectively intervened on his side. However, all that can be said for sure is that Izetbegović was a complex individual and a devout Muslim whose primary concern in the run-up to and during the war was the preservation of his own people.

SEE ALSO Bosnia and Herzegovina; Croatia, Independent State of; Ethnic Cleansing; Rape

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Chris Bennett

Jackson, Robert

[FEBRUARY 13, 1892–OCTOBER 9, 1954]
United States Chief Prosecutor at the Nuremberg Trial

Robert H. Jackson was born on a small farm in Pennsylvania. Although his legal education consisted of only one year at Albany Law School in upstate New York, Jackson's legal career included key positions in President Franklin D. Roosevelt's administration. In 1934 he was nominated as general counsel of the Bureau of International Revenue. In 1936 he became assistant attorney general in charge of tax matters and in 1938 solicitor general; in 1940 he was promoted to attorney general. In 1941 Jackson was appointed to the United States Supreme Court.

On May 2, 1945, President Harry S. Truman named Jackson as the Chief of Counsel for the United States in prosecuting the principal Axis war criminals. Jackson's primary views on the charges to be leveled against the defendants were presented to Truman in a report that the White House released on June 6, 1945. They were essentially based on a plan the War Department had prepared in the fall of 1944. Jackson outlined the following three categories of crimes that the defendants would be asked to account for:

- Atrocities and offenses against persons or property constituting violations of international law, including the laws, rules, and customs of land and naval warfare;
- Atrocities and offenses, including atrocities and persecutions on racial or religious grounds, committed since 1933;
- Invasions of other countries and initiation of wars of aggression in violation of international law or treaties. (The Nuremberg Case, 1971, 13)

The latter charge Jackson regarded as central to the entire conception of the trial. "It is high time," he wrote to the president, "that we act on the juridical principle that aggressive war-making is illegal and criminal" (The Nuremberg Case, 1971, p. 15). Jackson also insisted on proving that the Nazis had planned to conquer all of Europe and to dominate the world. "Our case against the major defendants is concerned with the Nazi master plan, not with individual barbarities and perversions which occurred independently of any central plan." Jackson also stressed the need "to establish the criminal character of several voluntary organizations which have played a cruel and controlling part in subjugating first the German people and then their neighbors." If in the main trial an organization was found to be criminal, he continued, "the second stage will be to identify and try before military tribunals individual members not already personally convicted in the principal case." Jackson knew that this plan introduced some far-reaching legal innovations, but he believed that "we must not permit it to be complicated or obscured by sterile legalisms developed in the age of imperialism to make war respectable." Jackson's first challenge, however, was to convince British, Soviet, and French jurists who met shortly after the end of the war in London for the International Conference on Military Trials, to accept the U.S. plan. Formulating a joint Allied policy was a complicated undertaking because of the need to overcome differences between the common law (in the United States and United Kingdom) and the

U.S. Chief Prosecutor Robert Jackson opposing a defense motion to sever the case against Gustav Krupp von Bohlen from the 1945 Nuremberg Tribunal. Although Krupp, a German industrialist and weapons manufacturer, had benefited from slave labor provided by the Nazis, he never stood trial due to failing health.[BETTMANN/CORBIS]

continental legal systems (in France and the Soviet Union). The negotiations began on June 26, 1945, and dragged on for almost six weeks; they were characterized by tension and distrust, especially between Jackson and his Soviet counterpart, Major General Ion T. Nikitchenko.

Jackson, who had no experience in negotiating with the Soviets, wrongly believed that the prospects for a quick agreement on protocol were good. Instead, he had to face attacks on the central pillars of the U.S. plan. Annoyed by the prolonged nature of the negotiations, Jackson did not regard cooperation with the Soviets as imperative, and even contemplated the option that each nation would try its own prisoners by its own procedures, applying the international agreement as to definition of crimes. However, he was compelled to regard such a course as only a last resort as he was well aware of the importance Washington attributed at the time to cooperation with the Soviets in general.

The most controversial aspect of the U.S. proposal was the issue of prosecuting conspiracy. Although the British sided on this innovation with the Americans, the Soviets and French firmly attacked it, arguing that the focus should be on the criminal acts themselves. Jackson, however, was a strong supporter of the conspiracy theory, which he saw as designed to tie the whole trial together. Both the Soviets and French also had difficulties with the U.S. concept of indicting several principal Nazi organizations. While regarding them as criminal groups, they believed that organizations could not be tried. They were further concerned about convicting individuals only by association. Soviet and French jurists also challenged Jackson's insistence on indicting aggressive war as a crime. A different kind of dispute arose over the site of the trial when the Soviets insisted on Berlin, situated in the Soviet zone of occupation. The agreement that was eventually signed on August 8, 1945, by the heads of the four delegations "for the prosecution and punishment of the major war criminals of the European Axis" and outlining the Charter of the International Military Tribunal may be regarded as a success for Jackson, not only because it created a legal framework for the trial and defined international crimes, but also because it had the U.S. plan

at its core and the trial was to be conducted at Nuremberg, in the American zone of occupation.

The process of preparing the American team for the trial exposed some of Jackson's weaknesses, especially that of being a poor administrator. However, when he rose on November 21, 1945, to deliver the opening statement for the prosecution, Jackson's rhetorical skills as well as his passion, determination, and vision gave his speech the legal, public, moral, and historical importance the event required. A large part of his speech was devoted to proving the conspiracy charge. He stated,

> It is my purpose to open the case, particularly under Count One of the Indictment, and to deal with the Common Plan or conspiracy to achieve ends possible only by resort to Crimes against Peace, War Crimes, and Crimes against Humanity. My emphasis will not be on individual barbarities and perversions which may have occurred independently of any central plan. . . .Nor will I now dwell on the activity of individual defendants except as it may contribute to exposition of the common plan (The Nuremberg Case, 1971, p. 37).

Well aware of the historical importance of the trial, Jackson predicted that "the record on which we judge these defendants today is the record on which history will judge us tomorrow." Recognizing possible criticism that the trial could be described as "victor's justice," Jackson explained:

> Unfortunately, the nature of these crimes is such that both prosecution and judgment must be by victor nations over vanquished foes. The world-wide scope of the aggressions carried out by these men has left but few real neutrals. Either the victors must judge the vanquished or we must leave the defeated to judge themselves.

The defendants, Jackson stressed, "do have a fair opportunity to defend themselves—a favor which these men, when in power, rarely extended to their fellow countrymen."

Jackson expected the Nuremberg Trial to serve as a landmark in future international relations and international law, particularly as a deterrent force on statesmen. He was realistic enough to recognize the weakness of juridical action to prevent future wars, but still believed that "the ultimate step in avoiding periodic wars, which are inevitable in a system of international lawlessness, is to make statesmen responsible to law." The trial, Jackson told the judges, "is part of the great effort to make the peace more secure." His concern with the future no less than with the conviction of the twenty-two defendants and his expectation that

Robert Jackson, Chief Prosecutor for the United States at the Nuremberg Trials. From Jackson's famous closing statement: "Having sneaked through the portals of power, the Nazis slammed the gate in the face of all others who might also aspire to enter. Since the law was what the Nazis said it was, every form of opposition was rooted out, and every dissenting voice throttled."

the trial would be a milestone for coming generations also came to the fore in his closing address on July 26, 1946: "If we cannot eliminate the causes and prevent the repetition of these barbaric events, it is not an irresponsible prophecy to say that this twentieth century may yet succeed in bringing the doom of civilization."

As the chief architect of the Nuremberg Trial, Jackson was pleased with the results, even though not all of his and his colleagues' legal arguments had been accepted at the prosecutorial level and were reflected in the formal charges. The tribunal had declared, he wrote with much satisfaction in his final report to the president on October, 7, 1946, that

> To prepare, incite, or wage a war of aggression, or to conspire with others to do so, is a crime against international society, and that to persecute, oppress, or do violence to individuals or minorities on political, racial, or religious grounds in connection with such a war, or to exterminate, enslave, or deport civilian populations, is an international crime, and that for the commission of such crimes individuals are responsible (The Nuremberg Case, 1971, XV).

Jackson, who regarded the Nuremberg Trial as the most important and interesting experience of his life and expected its outcome to guide and influence future international law, would have undoubtedly viewed with much satisfaction not only the verdicts but also the 1948 United Nations (UN) Convention on Genocide and Universal Declaration of Human Rights, as well as, some forty-eight years after his death, the establishment of the International Criminal Court (ICC) in 2002. All may be seen as direct descendants of the Nuremberg Charter and Trial.

SEE ALSO Göring, Hermann; Lemkin, Raphael; London Charter; Morgenthau, Henry; Nuremberg Trials; United Nations War Crimes Commission; War Crimes

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Arieh J. Kochavi

Japan

It is well known that Japan committed atrocities during World War II. In the 1990s, however, these crimes and related prewar and wartime policies began to be viewed in a new light, as forms of genocide. This characterization of Japan's behavior was controversial, and was challenged for specific historical, political, and conceptual reasons.

For decades, Japan had been virtually absent from postwar discourses on genocide, which gave primacy to the Nazi holocaust as a phenomenon of modernity centered in Europe. This changed in the 1990s, with the rise of new global concerns with restitution and the negotiation of historical injustices. Asian citizens and their governments, in particular China, began to demand official apologies and compensation for Japanese war crimes committed against them. At the end of the twentieth century, the creation of historical knowledge about Japanese genocide and crimes against humanity engaged previously silent or silenced witnesses, changing political constituents in Asia, as well as feminist and postmodern paradigm shifts both in academic and popular discourse. Japanese people asserted themselves not only as perpetrators, but more clearly as victims of crimes against humanity, including the indiscriminate firebombing of Japanese cities by the United States in the spring of 1945, and especially the August 1945 atomic bombings of Hiroshima and Nagasaki, which claimed hundreds of thousands of civilian lives. Meanwhile, many Koreans asserted multiple sources of victimization, first by Japanese colonial policies, and then by U.S. bombing campaigns, and even by the Allied war crimes tribunal, which convicted Korean and Taiwanese guards of prisoners-of-war camps as Japanese war criminals.

These multiple claims for public recognition and justice rendered previous attempts to define and punish Japan's crimes against peace and humanity inadequate, and ended the enduring silences that they inaugurated. The Tokyo War Crimes Trial (1946–1948), Japan's counterpart to the Nuremberg Trials in Germany, left controversial legacies that became embedded in the cold war structures of international and domestic political relations. The failure of this trial to pursue Emperor Hirohito's war responsibility, the tacit cover-up of Japan's large-scale biological warfare experiments, and the neglect of crimes committed against women in war came to light. This, in turn, led to the public investigation of these issues, albeit belatedly, at a time when the right of individuals (rather than nation-states) to hold states liable for crimes committed against them could no longer be ignored.

For decades after the war, the South Korean, Chinese, Southeast Asian, and Pacific victims of Japanese war atrocities were recognized neither by the Japanese nor by their home governments. The need for newly formed nation-states to find their own niches within the harsh divisions of the cold war world called not for honest reconciliation, but for the ability to move on. In the 1990s, however, an emerging Asian regionalism conferred upon China the ability to wield considerable economic muscle, raised the possibility of a reunified Korea, and led to Japan's expected—yet feared—political leadership in the region.

The 1990s brought shifting international relations, combined with changes in public culture, which acquired an unprecedented global reach through new forms of non-governmental and cross-national organizing. In addition, communications advances enabled the political viability of diasporas and contributed to a widely shared sensibility for the need to address not only contemporary but historical injustices. In Asia, the combination of unresolved and overlapping legacies of Western imperialism, Asian modern nation-building, Japanese colonialism, and World War II inspired people to address larger questions concerning the global history of genocide and crimes against humanity. A

Chinese prisoners being buried alive by their Japanese captors outside the city of Nanking, during the infamous "Rape of Nanking." [BETTMANN/CORBIS]

survey of Japan's early modern history reveals instances of religious persecution, forced ethnic assimilation, and protracted crimes against humanity committed by military forces as well as bureaucracies, but few qualify as genocide in the strict sense of premeditated and systematic annihilation of a defined population.

Early Modern Eradication of Religious Institutions

Japan has historically accommodated different religious traditions, with few instances of faith-based persecutions. Attempted genocide of religious groups, when it occurred, was limited to specific military, economic, and social policies in the course of political unification between 1570 and 1640. Oda Nobunaga (1834–1582) emerged as Japan's first unifier at the end of the civil war period. His success was due, in part, to eradicating the Ishiyama Honganji and Enryakuji Buddhist establishments at Mt. Hiei in the 1570s, whose huge landholdings, economic independence, and substantial military power stood in the way of political unification. Between September 30 and October 8, 1571, Nobunaga burned the entire Enryakuji complex and its hundreds of subtemples on Mt. Hiei to the ground. His troops went on to kill the temple community to the last man, woman, and child—an estimated 3,000–4,000 priests and laity. The destruction of the Honganji, in contrast, took ten years (1570–1580) and claimed more than 40,000 lives, in part because the considerable power of the Honganji rested on the control of local populations rather than on territory. Although Nobunaga clearly targeted selected religious establishments, his rationale for eliminating the temples had little to do with faith-based religious intolerance.

The notorious persecution of Christian missionaries and Japanese converts under Nobunaga's succes-

sors, Toyotomi Hideyoshi (1534 to 1582), Tokugawa Ieyasu (1543–1616) and Tokugawa Iemitsu (1604–1651), must also be understood primarily in political and economic rather than religious terms. Jesuit missionaries were initially not only tolerated, but even welcomed by local rulers in Kyushu, who benefited from the lucrative Portuguese trade in Chinese silk in the 1570s and 1580s. Hideyoshi, Japan's second unifier, abruptly turned against the Jesuits for two reasons: domestic political competition from converted Christian *daimyō* (local lords), and the importation of international power struggles to Japan with the arrival of Spanish friars as well as Dutch and English traders, all of whom competed with one another and with the Portuguese Jesuits. Beginning in July 1587, Hideyoshi and his successors issued periodic decrees expelling all missionaries from Japan. These decrees were at first lightly enforced. Later, more vicious means were used to secure compliance. The first crucifixion took the lives of of twenty-six Christians, nine foreign missionaries, and seventeen Japanese laymen. This took place in Nagasaki in 1597, at the peak of Christianity's expansion, which had achieved an estimated 300,000 converts. Between 1622 and 1633, Tokugawa Iemitsu ordered 131 Christians to be executed in public spectacles witnessed by tens of thousands, in conjunction with elaborate torture methods and rituals of recantation to force public apostasy. By 1637, the shogun's genocidal policies against the Christian community became intertwined with the last substantial mobilization of military forces in the Tokugawa era (1603–1868). This action was taken in order to put down a peasant rebellion against taxation in Shimabara, near Nagasaki, which had taken on Christian overtones. In April 1638 37,000 peasants and unemployed samurai, some of them Christian converts, were massacred in the final battle. This marks the official end of the Christian community in Japan and the inauguration of the Tokugawa shogunate's "policy of seclusion," under which all foreign relations were tightly controlled. With the regime change in 1868, an estimated 30,000 "hidden Christians" came forth to revive the church in Japan.

Aggressive Assimilation of Ethnic Groups under Meiji Nation-Building

Japanese employed different discriminatory policies towards its ethnic minorities, who were located at the country's geographical margins (Hokkaido in the north and Okinawa in the south). Once again, domestic and international political pressures converged, this time in the context of establishing a modern nation-state. The Ainu, who comprised the indigenous population of northeastern Honshu, Hokkaido, and the adjacent islands (the Kurils and southern Sakhalin), began to be recognized as a distinct ethnic group only in the sixteenth century. At that time, the Tokugawa shogunate designated Hokkaido a buffer zone vis-à-vis Northeast Asian areas with which the Ainu had once formed an autonomous trading region. This was accomplished by the gradual conversion of much of the Ainu hunting and gathering economy into forced dependency on Japanese contract-fishing. An unintended outcome of this policy was the introduction of new diseases such as smallpox, which reached epidemic proportions in the eighteenth and nineteenth centuries. Yet it was the Meiji state's perceived need to secure Hokkaido as Japanese territory against Russian interests that underlay its aggressive policy of assimilation through deculturation. Begun in 1871, and institutionalized by the Hokkaido Former Natives Protection Act of 1899, the Meiji colonization project systematically eliminated the Ainu language, religion, customs (i.e., tattooing and wearing earrings), and lifestyles. Land redistribution, often accompanied by forced relocation, made Ainu into impoverished agriculturists indentured to Japanese immigrant landowners. The Ainu were classified as imperial subjects, whose decreasing numbers distinguished them in public discourse as a "dying race." From approximately 80,000 in the early eighteenth century, the Ainu population had decreased to 16,000 by 1873, accounting for 14.63 percent of the total population in Hokkaido. By 1939, they constituted only 0.54 percent of Hokkaido's population, even though the actual number of Ainu, now heavily intermarried with Japanese, remained about the same. In the later decades of the twentieth century, an Ainu ethnopolitical movement began to address this historical treatment. The adoption of the Ainu New Law in 1984 marks the viability of the movement, which recognizes the genocidal quality of Japanese policy towards the Ainu and forges links with a worldwide indigenous peoples' movement.

Okinawa was likewise coercively assimilated into the Meiji state, beginning in the 1870s, in an effort to remove any territorial ambiguity with China. The last Okinawan king, Sho Tai, was forced into exile in Tokyo in 1879, leaving the people deeply divided in their response to Japanese assimilationist policies. Initial efforts to suppress Okinawan cultural and religious practices and simultaneously to impose language standardization and public reverence to the Japanese emperor were only moderately successful. After Japan's victory against China in 1895, however, Okinawans themselves decided to voluntarily assimilate with Japan. Thereafter, Okinawans struggled to be recognized as full Japanese citizens, rather than as a colonized ethnic group. Unlike heavily developed Hokkaido, Okinawa was to remain an economic backwater, useful for exploitation through over-taxation but other-

The violent and widespread destruction of Nanking, China—often referred to as the "Rape of Nanking"—followed the city's capture on December 29, 1937, by forces of the Japanese Imperial Army. [AP/WIDE WORLD PHOTOS]

wise expendable. In the first decades of the twentieth century, poverty and discrimination drove tens of thousands of Okinawans to emigrate to Hawaii, South America, and the Philippines. Another 32,000 found work in the factories of mainland Japan's cities. At the end of World War II, in the Battle of Okinawa, the deadliest conflict of the Pacific Theater, an estimated 130,000–140,000 Okinawan civilians (more than one-fourth of the population) perished at the hands of both American and Japanese soldiers. After the war, the United States occupied Okinawa for twenty years longer than it did mainland Japan. Okinawa hosts three quarters of the United States' military bases in Japan, even though it comprises one percent of the Japanese landmass.

Crimes against Humanity Committed under Colonialism and War

Japan modernized its first colonies, Taiwan (1895–1945) and Korea (1910–1945) in order to exploit them for its own imperialist purposes. As the price for maintaining the empire rose, and as local resistance against the colonizers sharpened, Japanese rule became increasingly more oppressive and genocidal, especially in Korea after 1939. The classification of Japanese crimes against the civilian Korean population is complicated by the fact that the Japanese colonizers used existing social divisions in Korea to turn the people against one another. Between forty and fifty percent of the National Military Police, which enforced Japanese colonial policies and punished resistance, were Korean. Japan's colonial policy vested exclusive authority over the military, judiciary, legislature, and civil administration in the Government-General of Korea, which was directly responsible to the Japanese emperor. All political organizations, the media, and the education system were suppressed and replaced by organs of the colonial government, although a lively—albeit heavily censored—Korean public sphere did develop in the 1920s and 1930s.

Organized resistance against Japanese colonial rule in Taiwan, Korea, and Manchuria was met by violent

crackdowns and claimed thousands of lives. The Korean Independence Movement, which began on March 1, 1919, left between 553 (Japanese official count) and 7,500 (Korean nationalist sources) dead. Japanese forces employed such methods as locking protesters into a church and burning it down. In Tokyo, after the 1923 Great Kanto Earthquake, more than 6,000 resident Koreans were killed by local authorities and mobs because they were suspected of having set fires. Resistance was fiercest in Korea, and stood in some reciprocal relation to the particular harshness with which the Japanese enforced their assimilation policies. After 1939, when Japan mobilized for total war in Asia and the Pacific, the use of the Korean language was prohibited and all Koreans were forced to adopt Japanese names and worship regularly at Shinto shrines.

The colonies' economic exploitation took on criminal if not exactly genocidal dimensions. In the 1910s and 1920s, the Korean economy was restructured in order to meet Japan's rice shortages. This caused huge social dislocations, as large landholders profited from land reallocations and small farmers were forced into tenancy or emigration to Manchuria or Japan. By 1931, 57 percent of Korea's total rice production was exported to Japan. Concurrently, the Korean emigrant population in Manchuria swelled from a few hundred to 700,000, and to 270,000 in Japan. After 1939, all imperial subjects, Japanese and colonized alike, became subject to the National General Mobilization Law. For 1.2 million Koreans, this meant performing forced labor in Japan and, later, forced military service. By the end of the war, Koreans constituted one-third of Japan's industrial labor force, of which 136,000 worked in mines under abominable conditions. Recruitment took place through labor mobilization offices located in local Korean police stations. These were usually staffed by Koreans, and targeted mostly the poor and disadvantaged. After the beginning of war with China in 1937, at least 41,000 Chinese forced laborers were brought to Japan. Many of these were confined to camps run by Japanese business firms. One such company was Kajima Construction, in Hanaoka in northern Honshu, where an abortive uprising in June 1945 resulted in a massacre of hundreds of Chinese.

The Japanese state also organized the sexual exploitation of young women and girls after 1932, in the so-called military comfort women system. This policy resulted in their multiple victimization as women, colonial subjects, Asians, and objects of sexual conquest for Japanese soldiers throughout the protracted and increasingly vicious war. About eighty percent of an estimated 80,000 to 100,000 military comfort women were Koreans, recruited from poverty-stricken rural areas recruited by labor brokers who employed deception, intimidation, violence, and outright kidnapping as procurement methods. Japan's Ministries of Home Affairs, Foreign Affairs, and War were all involved in creating and administering this system by ordering the establishment of hundreds of comfort stations, first in China and later in conquered areas of Southeast Asia and the Pacific Islands. Senior staff officers of each army oversaw the movement of women, expanded their recruitment to local women, including 300 Dutch women in Indonesia, and issued strict hygiene and venereal disease–control laws. The use of these stations by Japanese soldiers, however, was voluntary. Officially designed to prevent large-scale rape of local populations, the comfort stations were themselves places of constant rape, with or without minimal pay, and left tens of thousands of women either dead or physically and mentally scarred for life.

In part, the comfort women system was instituted as a response to the extreme brutality exhibited by Japanese forces on the Chinese mainland. The most atrocious example of this occurred in the weeks after the fall of the Chinese nationalist capital Nanking in December 1937. Between 40,000 and 300,000 Chinese men, women, and children died in the so-called Nanking Massacre. They were raped, mutilated, burned alive, drowned, or otherwise slaughtered by Japanese troops on an indiscriminate killing and looting rampage. The international media reported on the killings at the time, and Matsui Iwane, the general in charge of the Japanese troops, was convicted as a Class A war criminal in Tokyo and hanged in December 1948. Nonetheless, the massacre was not thoroughly investigated, either in court or by historians, until the 1990s. Since then, it has been used as a central tool in the politics of memory both within Japan and between Japan, China, and the Chinese-American community.

In contrast, Japan's secret biological and chemical warfare research program, led by Shiro Ishii of Unit 731, was deliberately covered up both by the Japanese and, later, by the U.S. occupation forces. The Japanese troops burned all of Unit 731's facilities to the ground in the last days of the war. The United States, eager to acquire the Unit's research data for American military use, continued the cover-up by refusing to prosecute the facility's personnel.

General Ishii, who has been compared to the Nazi Doctor Mengele, officially directed the Guandong Army's Anti-Epidemic Water Supply Unit from his facility in Pingfan near the Manchurian city of Harbin, but he also secretly masterminded Japan's efforts to become the world's leader in the production of biological weapons. Under his direction, thousands of Chinese,

[YAMASHITA CASE]

General Tomoyuki Yamashita was the commanding general of the Japanese Imperial Army in the Philippine Islands during the unsuccessful defense of the islands against the invading Allies under Douglas MacArthur. He was the Japanese Military Governor of the islands from October 9, 1944, until his surrender to the Allies on September 3, 1945. Forces under Yamashita's command and control allegedly committed atrocities (including murder, torture, rape, and arson) against the civilian population of the islands (and others), resulting in the deaths of tens of thousands of people.

Following his surrender, Yamashita was tried for war crimes by the American Military Commission in the Far East, starting on October 29, 1945. Specifically, Yamashita was charged with culpability in connection with 123 counts of war crimes, including the murder and brutal mistreatment of more than 36,500 Filipino civilians and U.S. prisoners of war, hundreds of rapes, and the arbitrary destruction of private property. During the course of the trial, the military commission, consisting of five U.S. officers having the rank of general, heard 286 witnesses and saw 423 documents that were admitted into evidence. The prosecution argued that Yamashita had to have known that these high crimes were being committed, and it was adduced that the large number and widespread occurrence of the crimes suggested that they were planned and deliberate, and were carried out under a central command. Yamashita denied any knowledge of these crimes, and argued that his tactical situation at the time (which included a shutdown in his communications with his subordinate field commanders) and the fact that his army was retreating from the advancing Allied forces precluded his knowledge of the crimes taking place.

Although the military commission found that, although it concurred that Yamashita had experienced real communications difficulties owing to geographic and military contingencies, these difficulties were not the barriers to awareness of what was going on that General Yamashita contended they were. Moreover, the commission concluded that, due to the scope and scale of the crimes his forces had committed, the accused had to have known of the crimes. Consequently, on December 7, 1945, the military commission found Yamashita guilty of war crimes and sentenced him to death by hanging.

In the several decades that have followed, legal and historical analysts have often misunderstood and misstated the findings of the military commission. Many analysts have advanced the notion that the military commission in the Yamashita case imposed the legal doctrine of strict liability on military commanders—that is, military superiors may be found guilty if it can be established that they must have known that crimes against civilian (or prisoner of war) populations were being committed and failed to either halt such crimes or punish the perpetrators. This is not an accurate interpretation. Rather, the case stands for the proposition that commanders have an affirmative duty to take such measures as are within the commanders' powers, and appropriate in the circumstances, to wage war within the boundaries prescribed by international humanitarian law. These measures require commanders to exercise control over subordinates and to obtain the information that enables them to determine what is occurring in their areas of responsibility. The commander who disregards these duties has committed a violation of the law of war.

On appeal, the Yamashita case was argued before the U.S. Supreme Court, on January 7, 1946, and on February 4, 1946, the Supreme Court upheld the military commission's trial decision. (See *In re Yamashita,* 327 U.S. 1 [1946].) General MacArthur approved the findings of the military commission on February 7, 1946, and Yamashita was executed on February 23, 1946. **DARYL MUNDIS**

Korean, and Russian prisoners-of-war, along with local civilians (including women and children) were infected with a wide range of diseases such as plague, typhoid, smallpox, and frostbite, and some were even dissected alive. By the end of the war, at least ten such "death factories" existed from Manchuria to Singapore. Although the use of biological weapons in combat did not become common practice, germ warfare was directed against civilian populations in China's Zhejiang province in 1940, and an estimated 36,000 civilians died from the plague and other diseases in Manchuria in the aftermath of Japan's defeat, after retreating troops released scores of infected animals into the countryside.

At the end of World War II, there was overwhelming evidence of Japanese crimes against humanity committed against Asian populations conquered under the pretense of liberating Asia from Western imperialists. Nevertheless, the Allied war crimes trials paid more heed to the maltreatment of Allied prisoners of war, which had captured the public imagination since the 1942 Bataan Death March in the Philippines. In defiance of war conventions, the Japanese mobilized Asian and Allied prisoners as forced laborers for war-related projects—as many as 60,000 alone died building the Burma-Thailand railroad—and often refused to grant them adequate food and shelter. The average percent-

age of deaths in prisoner of war camps was thus staggeringly high compared to camps in the European theater. By recent calculations, out of about one million captives, well over one-third died. In the 1990s, a number of forced-labor survivors filed lawsuits in Japanese and American courts against Japanese companies such as Mitsui, Mitsubishi, Kajima, and Nippon Steel to demand compensation for their wartime labor. Others, including former comfort women and victims of biological warfare research, filed suits directly against the Japanese government. Between 1977 and 2002, seventy compensation cases were brought to court, many of them still unresolved.

SEE ALSO China; Death March; Ethnocide; Medical Experimentation; Nuclear Weapons; Rape; Tokyo Trial; Women, Violence against

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Franziska Seraphim

Jehovah's Witnesses

The Jehovah's Witness movement was founded in the United States in the late nineteenth century. From there the movement spread to Europe, and in Germany it came face to face with the demands of the Third Reich for total allegiance to National Socialism. The result was a bitter and heroic conflict as Witnesses refused to yield to a regime they perceived as evil.

Jehovah's Witnesses believe that humans are living in the last days of a world where Satan rules, and that at the end they will join with the forces of good to defeat Satan and his troops. God, whom the Witnesses address as Jehovah, will then establish his kingdom of peace and plenty on earth. In the meantime, Jehovah's Witnesses spread knowledge of Jehovah and his plans through door-to-door missionary work.

With a strong belief in family and personal ethics, Witnesses see themselves as citizen of God's kingdom and soldiers in his army. Thus, they will not bear arms, vote, belong to a political party, or swear on oath. They are therefore not able to offer allegiance to a state or regime that demands total obedience and loyalty from its citizens.

In democracies Witnesses are generally tolerated, but in repressive regimes they are not. Under the Third Reich the Witnesses stood out from the two hundred other minority Christian groups that the Gestapo investigated as posing a special danger to National Socialism. Their survival as a group and as individuals could have been negotiated in return for total, public obedience, but Witnesses, because of their religious beliefs, chose not to compromise.

As a result, members were rounded up and imprisoned. Jehovah's Witnesses were among the first groups to be transported to concentration camps and later death camps throughout the Reich. They were the special focus of torture and ridicule by prison and camp guards. Witnesses lost their civil rights, families were separated, and some of their children were taken away to be brought up in Nazi homes. Nevertheless, their public meetings and door-to-door missionary work continued.

Witnesses could buy their freedom from prison or a camp by signing a paper denying their faith. Very few opted to do this. The majority continued to preach and pray, and cling to their convictions within the confines of prisons and camps. Many survivors of the Holocaust recounted stories of Witnesses' courage, their willingness to share meager rations, and their ability to support each other.

Deaths from torture and disease, and a great deal of suffering, occurred among Witnesses in the camps,

but their suicide rate was low. Their beliefs afforded them a framework by which they might understand the reasons for the seemingly mindless horror of the camps. To their way of thinking, the Holocaust was Satan's work and the role of Witnesses was clear: to bear witness to Jehovah in the midst of so much destruction. Witnesses not only kept their faith, but also made converts. When the camps were liberated at the end of World War II, there were more Jehovah's Witnesses freed than had entered them.

Jehovah's Witnesses have continued to face persecution in a number of totalitarian regimes around the world, for example, in Malawi where the religion was banned in 1967, and its members suffered the destruction of their property and brutal physical attacks. The atrocities and ban persisted until international pressure forced the government to restore human rights. In 1993 the ban was lifted, and by 1995 the Witnesses were fully and openly operating once again in Malawi. Nonetheless, Witnesses continue to be harassed and imprisoned in a number of nation-states.

SEE ALSO Persecution; Religious Groups

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Christine E. King

Kalimantan

Instances of mass murder and gross human rights violations in Kalimantan, Indonesia and the processes underlying them are multiple and complex. Government authorities have always placed a greater value on the island's vast natural resources than on its sparse population, whose exceedingly diverse indigenous peoples have been reduced to the collective label Dayak. State-building on the island by central government authorities predates the New Order regime (1966–1998). But it was not until 1966, when General Suharto assumed the presidency, that a government based in Jakarta and backed by Western allies acquired sufficient financial and governmental capacities to penetrate the island systematically. In late 1967, such state intrusion into the province of West Kalimantan instigated horrific bloodshed. Suharto's military officers, in an effort to wipe out a local communist rebellion, used indigenous "warrior" Dayaks to expunge ethnic Chinese from the region's heartland. Thousands were killed, and tens of thousands were forced to relocate to coastal urban locales where they could be controlled, monitored, and governed.

On the heels of this counterinsurgency campaign, New Order authorities enacted a series of policies with ethnocidal implications for Dayak peoples. Foremost was land dispossession, which was facilitated by the rapacious extraction of natural resources. The mega-scale forestry concessions held by foreign and Jakarta-based companies ran roughshod over traditionally held, indigenous lands. Soon thereafter vast tracts of land, for which Dayaks were given little to no compensation, were converted into palm oil plantations. These land-clearing practices significantly contributed to the island's massive forest fires during the period 1982 to 1993 and in 1997. Experts have calculated the consequent economic ruin, let alone the social costs, to total hundreds of millions of dollars. Meanwhile, the denuding of hills due to deforestation has silted rivers and killed once abundant fish supplies, thereby further threatening rural livelihoods.

State authorities also forced "backward" and "primitive" Dayaks, whose beliefs were belittled as mere superstitions, to convert to Islam or Christianity. Putatively, this was done to insulate these communities from communist influences. Meanwhile, to inculcate feelings of loyalty to the Indonesian Republic and to assimilate Dayaks into mainstream society, compulsory state education prohibited the teaching of local languages and histories.

Similarly destructive to Dayak cultural identity and welfare was the transfer by Suharto's regime of hundreds of thousands of families from overcrowded Java (951 people per sq. km. according to a 1999 estimate) to a number of sparsely populated outer islands, including Kalimantan (21 people per sq. km.). Known as transmigration, this program precipitated significant demographic changes—for instance, the increased Islamization of the island.

Abundantly funded by the World Bank and other international donors, transmigration has contributed to the general marginalization and attendant frustrations of Dayaks. They justifiably fear becoming minorities in their homeland. Despite the transmigration program's

many ills, however, it cannot be held exclusively to blame for Kalimantan's infamous anti-migrant riots of the late 1990s.

The origins of this form of communal violence anticipate the arrival of transmigrants under the New Order, although the international community and media did not take notice of the bloodletting until the massive episodes of 1997 and 1999. In West Kalimantan, Dayaks and migrant Madurese (from East Java) first came to blows in late 1967 and early 1968 over lands from which the Chinese had been expelled. Minor, intermittent riots continued in this same area. Authorities, however, did not earmark the province as an official transmigrant destination until 1973. Madurese also rarely participated in such government-sponsored programs. Instead, they have migrated in large part on their own, a phenomenon known as spontaneous migration. Furthermore, early resettlement sites were located in areas unaffected by this periodic bloodletting. Finally, the dynamics of transmigration can hardly explain the first major Dayak-Madurese clash in the neighboring province of Central Kalimantan in early 2001. This riot led to the thorough expulsion of tens of thousands of Madurese from the province.

More informed accounts for the violence point to local political reasons. Here, attempts of local Dayak elites to capture lucrative gains from Indonesia's decentralization program were pivotal. Enacted in the post-Suharto state, decentralization transfers substantial financial and administrative authority to the regional governments. It thus represents a treasure trove for the elites who control local bureaucracies and legal and illegal economic networks and activities. Fortunately, South and East Kalimantan provinces, areas also home to transmigration sites, have remained free of similar instances of collective violence.

SEE ALSO Indigenous Peoples; Indonesia

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Jamie S. Davidson

Kalmyks

The Kalmyks, traditionally Mahayana Buddhist pastoral nomads, originated as an offshoot of the Mongols. They moved into the southern Volga Steppe region in the 1660s. Strong under Khan Aiuka (1669–1724), they allied with Peter the Great who used them as a buffer against possible Persian invasion.

Subsequently, the tsarist government "divided and ruled," and a continuing influx of peasants severely hampered the Kalmyk pastoral-nomadic life. Despairing and desperate, in 1771 they attempted a coordinated flight back to their ancestral home, Dzungaria. Weather prevented the Kalmyks on the western bank from leaving, but both groups residing on the eastern bank fled eastward. It was at this point that the first genocide occurred. The harsh winter killed many, but Bashir units sent by the tsarist government massacred many more. Perhaps only a quarter of the fleeing Kalmyks reached Dzungaria. There the Ching government annihilated large numbers and forcibly dispersed the remainder into cultural oblivion among other pastoral nomadic groups.

In the nineteenth-century the poverty and demographic decline of the Kalmyks began to worry the Russian government. These circumstances threatened the Kalmyks' continued ability to provide a significant share of the cavalry mount for the Russian army. Also, low population density would leave the Kalmyk region of the northwest Caspian littoral open to Turkish invasion from the south. In the 1880s and 1890s the tsarist government improved education and health conditions, and the Kalmyk population started to recover.

The eventual Russian revolution impacted the Kalmyks. Some fought with the White Army and then fled to Serbia. The communists established the Kalmyk Autonomous Oblast in 1920; it became the Kalmyk Autonomous Soviet Socialist Republic (ASSR) in 1935, with its capital at Elista. A devastating blow, a de facto second genocide, came with Joseph Stalin's enforced collectivization during the 1920s; violence and starvation killed many.

In World War II numerous Kalmyk soldiers fought in the Red Army; some received the highest military decorations. However, in the summer of 1942, when the Nazis occupied Kalmykia, some local Kalmyks, and others from Nazi-occupied Serbia, sided with the Nazis as a way to throw off the communist yoke. The Soviets reconquered the Kalmyk ASSR in December 1942. Stalin declared all Kalmyks Nazi collaborators and ordered them deported. In December 1943 boxcars carried the total population of the Kalmyk ASSR, including communists and Komsomols, to prison camps in Siberia and Central Asia. This was the third great Kalmyk genocide—about half survived.

In his Secret Speech to the Communist Party in February 1956, Soviet Premier Nikita Khrushchev de-

nounced this forcible exile of the Kalmyks and that of the Karachai, Chechen, Ingush, and Balkhars from elsewhere. However, only after international pressure were some Kalmyks finally allowed to return home in 1957. Although traumatized by their forced exile into Gulag, the returnees started over in their reconstituted homeland.

After the Soviet Union broke up in 1991, the Republic of Kalmykia became federated within Russia. Twenty-first-century Kalmyks realize that, while the genocide perpetrated from 1944 through 1957 failed, much cultural destruction occurred, and economic globalization and other pressures could lead to ethnocide. Therefore, both in Kalmykia and within overseas communities of Kalmyks, including several in New Jersey, leaders seek to preserve and revitalize the Kalmyk language and key parts of the culture.

SEE ALSO Cossacks; Union of Soviet Socialist Republics

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Karadzic, Radovan

[JUNE 19, 1945–]

Leader of the Serbian Democratic Party (SDS); became first president of the Republika Srpska in 1992 but was forced to flee office after being charged with genocide, crimes against humanity, and violations of the laws of war for his involvement in ethnic cleansing against non-Serbs during the years 1990 to 1995

Radovan Karadzic was born to Vuk and Jovanka Karadzic on June 19, 1945, in the village of Petnjica, in Montenegro. In 1960 Karadzic moved to Sarajevo to study medicine. During the 1960s, Karadzic married his Ljiljana Zelen, and became involved in politics. In 1971, he received a medical degree in psychiatry from the University of Sarajevo. From the 1970s to the late 1980s, Karadzic worked as a psychiatrist in Kosevo Hospital in Sarajevo, as a team psychiatrist for the Sarajevo and Red Star soccer teams, and at the Vozdovac Health Center in Belgrade.

Rise to Political Power

In 1990, in the Socialist Republic of Bosnia and Herzegovina, Karadzic cofounded the party of the Bosnian Serbs, Srpska Demokratska Stranka (SDS), and became its first president. The SDS was formed to challenge nationalist Muslim and Croat parties in the November 1990 multi-party elections, and won 72 of the 240 Assembly seats. The mission of the SDS was to form a unified Serbian state, or Greater Serbia, by linking Serb-occupied parts of Bosnia and Herzegovina and Croatia with Serbia. Karadzic declared a large portion of the territory of Bosnia and Herzegovina as exclusively Serbian. However, large numbers of Bosnian Muslims and Croats already resided in these territories. The SDS mission, therefore, included a policy of ethnic cleansing to eliminate non-Serb populations in these areas. In order to implement such a policy, the SDS needed to convince the Bosnian Serb population that preemptive action against non-Serbs was critical for self-preservation.

In 1990, Karadzic and the SDS began saturating the Bosnian Serb population with nationalist propaganda. Karadzic, following the lead of Serbian President Slobodan Milosevic, gained control over airwaves and publications. SDS-influenced media sources manipulated and falsified news reports, creating the perception of intense and ancient hatreds between the Serbs, Croats, and Muslims. Bosnian Serbs became fearful of oppression and extinction at the hands of Bosnian Muslims and Croats. This ethnic fear and hatred set the stage for the SDS to finalize plans for ethnic cleansing. In late 1991, the SDS worked with the Yugoslav National Army (JNA) to arm civilian Bosnian Serbs.

On March 27, 1992, Bosnian Serb leaders approved a Constitution for the Serbian Republic of Bosnia and Herzegovina, later known as the Republika Srpska. On April 6, 1992, the European Community officially recognized the Serbian Republic. On May 12, 1992, the Bosnian Serb Assembly created the Bosnian Serb Army (BSA), comprised of JNA forces that were citizens of Bosnia and Herzegovina. On the same day, Karadzic became the President of the three-member Presidency of Republika Srpska, and Supreme Commander of the BSA. General Ratko Mladic became Commander of the BSA, directly subordinate to President Karadzic. On December 17, 1992, Karadzic was elected sole President of Republika Srpska.

The Ethnic Cleansing Program

In late March 1992, while the politicians were drafting the new constitution, Bosnian Serb forces seized control of municipalities in eastern and northwestern Bosnia by committing executions, sexual violence, torture, and destruction of property. Thousands of Bosnian Muslims and Croats were transported to SDS-established detention facilities where many were tor-

tured, raped, and killed. The systematic terror provoked thousands of Bosnian Muslims to flee to the Srebrenica region, where the United Nations had established a safe zone. On July 6, 1995, Bosnian Serb forces, acting on orders from Karadzic, shelled the safe area. Between July 11 and July 18, 1995, Bosnian Serb forces entered the zone and executed thousands of Bosnian Muslims. From April 5, 1992, to November 30, 1995, Bosnian Serb forces also engaged in a prolonged attack on Sarajevo. Forty-four months of daily shelling and sniping by Bosnian Serb forces wounded and killed thousands of citizens. Following NATO air strikes in late May 1995, Bosnian Serb forces detained over two hundred United Nations peacekeepers and observers as hostages in Pale and Sarajevo to prevent further air strikes.

On July 25, 1995, the International Criminal Tribunal for the Former Yugoslavia (ICTY) indicted Karadzic and Mladic for crimes of genocide, crimes against humanity, and violations of the laws or customs of war. An amended indictment against Karadzic, confirmed on May 31, 2000, charged him, on the basis of individual and superior criminal responsibility, for crimes committed in connection with ethnic cleansing, the attacks on Sarajevo and Srebrenica, and the taking of hostages. Karadzic was charged with two counts of genocide, five counts of crimes against humanity, three counts of violations against the laws or customs of war, and one count of grave breaches of the Geneva Convention. On July 19, 1996, Karadzic resigned as president of Republika Srpska and as president of the SDS. He went into hiding and remains a fugitive.

SEE ALSO Bosnia and Herzegovina; Croatia, Independent State of; Ethnic Cleansing; Humanitarian Intervention; Incitement; Massacres; Mass Graves; Memorials and Monuments; Memory; Mladic, Ratko; Nationalism; Peacekeeping; Propaganda; Refugees; Safe Zones; Srebrenica; Superior (or Command) Responsibility; Yugoslavia

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Laura E. Bishop

Katyn

The mass execution of twenty thousand Polish POWs by the Soviet security police (the NKVD) is one of the most notorious atrocities of World War II. Stalin and the politburo authorized the executions on March 5, 1940, following their receipt of a memorandum from Lavrenti Beria, the head of the NKVD. Beria reported that NKVD prisons held a large number of Polish army, police, and intelligence officers who were unremittingly hostile to the Soviet system, engaged in anti-Soviet agitation within the camps, and eager to escape and to participate in counterrevolutionary activities. Because these prisoners were all "hardened and uncompromising enemies of Soviet authority," Beria recommended they should all be indicted by a special tribunal of the NKVD, and then shot.

According to NKVD records there were 21,857 such executions during March and April of 1940. Most of the victims were Polish officer POWs who had been captured by the Soviets when the Red Army invaded Eastern Poland in September 1939. The executions took place at a number of locations in Russia and the Ukraine; most famously in the Katyn Forest near Smolensk.

By the standards of Stalin's Russia, these executions were not a particularly large-scale affair. Indeed, they formed part of a much larger process of political and ethnic cleansing occurring in Western Belorussia and Western Ukraine from 1939 to 1941. These territories had been lost to Poland as a result of the Soviet-Polish war (1920–1921). Following their reconquest by the Red Army, however, these disputed territories, were brutally and bloodily incorporated into the Soviet system. In the process, hundreds of thousands of people were persecuted, uprooted, dispossessed, deported, imprisoned, and/or executed. Among the many victims were the families of the Polish POWs who were executed at Katyn and elsewhere. These families were rounded up by the NKVD and deported to Kazakhstan, in Soviet Central Asia.

The Polish officers who were held as POWs, together with other "bourgeois" elements among Polish

captives, were incarcerated in special NKVD camps that were designed to isolate them from the imprisoned rank and file of Poland's armed forces. Initially, the aim was to educate them into being passive, if not good, citizens of the new Soviet order in Eastern Poland. The prisoners were bombarded with propaganda for many months and forced to take part in lectures, discussions, and other events extolling the virtues of the Soviet system. It was the pathetic failure of the NKVD's indoctrination program that led Beria to propose execution as the solution to the problem of what to do with these POWs.

The timing of the executions was probably prompted by a number of circumstances connected to the Soviet-Finnish war (winter, 1939–1940). The Soviets feared that an Anglo-French intervention in that conflict would encourage resistance activities in the POW camps and might even forge links with escaping prisoners. It is possible, too, that Beria wanted to clear the way for an anticipated batch of Finnish POWs. But most important was the fact that Beria's proposal to Stalin in March 1940 was fully in accord with the established Stalinist practice of physically eliminating those who were considered to be the worst class and ideological enemies of the Soviet regime.

In the 1930s Stalin had presided over the imprisonment, deportation and execution of millions of Soviet citizens, so it is unlikely that he dwelt long on this particular decision. But the murder of the Polish POWs turned out to be by far the most troublesome and embarrassing of Stalin's atrocities.

The problem was that after the German invasion of Russia in June 1941, Stalin found himself in alliance with his erstwhile Polish enemies. In July 1941, a treaty of alliance was signed with the Polish government in exile in London, and Stalin subsequently agreed to an amnesty for all Polish detainees in the Soviet Union. Hundreds of thousands of Poles were released from Soviet prison camps during 1941 and 1942, many of whom joined a Polish army that later fought in North Africa and Italy. It soon became apparent to the Polish authorities that a large number of officers and officials remained missing—in particular from three camps: Kozelsk in the Smolensk region; Starobelsk in Eastern Ukraine, and Ostashkov in northern Russia. Stalin was personally pressed on a number of occasions to explain the whereabouts of these disappeared POWs. He feigned ignorance and suggested they had somehow left the country.

The truth finally began to emerge in April 1943, when the Germans, who occupied the Smolensk area, announced the discovery of a mass grave of Polish POWs at Katyn. Moscow immediately denied all responsibility and blamed the Germans for the massacre. The Polish government in exile, however, had long been convinced of Soviet culpability, and it supported calls for an independent inquiry into the murders. The Soviets retaliated by severing diplomatic relations with the London-based, exiled government. Later in the war Stalin established his own Polish provisional government.

February 8, 1952—Katyn Forest, Poland: Mass grave of some of Polish soldiers with some of the investigators looking over bodies. [BETTMANN/CORBIS]

When Smolensk was recaptured by the Red Army in January 1944, the Soviets established a special commission to conduct a forensic examination of the Katyn massacre site. The commission, headed by Academician N. N. Burdenko, chief surgeon of the Red Army, concluded that the POW camps had been overrun by the Germans and that the shootings had been carried out in the autumn of 1941. In light of the record of German atrocities on the Eastern Front, this was not an implausible scenario. The commission's verdict was largely accepted by Allied public opinion.

Given the wartime grand alliance between Britain, the United States, and the Soviet Union, it was highly

expedient for the Western governments to blame the Germans too, notwithstanding suspicions that the Soviets were the guilty party. But after the war, doubts grew about the authenticity of the medical evidence and about witness testimony presented by the Soviet commission of enquiry. Polish émigré organizations, in particular, waged a long campaign to expose the truth about the crime of Katyn. In 1952 a U.S. congressional committee concluded that the NKVD had conducted the massacre. This was very much a cold war verdict, but most independent observers also agreed that the Soviets were responsible for the murders. Questions remained, however, about the precise circumstances in which the massacre took place. Were the killings a panic measure in the face of German invasion in 1941? Was this a local action by the NKVD, acting on its own initiative rather than on orders from Moscow? How much did Stalin and the Soviet leadership know about the murders?

It was Mikhail Gorbachev's campaign for *glasnost* (openness) in the Soviet Union that led to the final resolution of these questions. The reforming Soviet leader was committed to the view that there should be no blank spots in Soviet history, and in October 1990, Gorbachev handed a over number of archival documents to the Polish government. These demonstrated beyond any doubt that the NKVD had carried out the killings. Gorbachev's initiative was partly the result of the discovery in June 1990 of the mass graves of the executed POWs from the Ostashkov and Starobelsk camps. Gorbachev had not, however, made public any of the politburo documents detailing the role of Stalin and the Soviet leadership in the decision-making process leading to the murders at Katyn and elsewhere. That task was carried out by Russian President Boris Yeltsin in October 1992. These revelations led to an extensive discussion in post-Soviet Russia of the Katyn affair.

SEE ALSO Massacres; Stalin, Joseph

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Geoffrey Roberts

Khmel'nyts'kyi, Bohdan see Chmielnicki, Bogdan.

Khmer Rouge

Cambodia's Prince Norodom Sihanouk coined the term *Khmer Rouge* in the 1960s to describe his country's then heterogeneous, communist-led dissidents, with whom he allied after his 1970 overthrow. More precisely, he called them *Khmers rouges* in French, *khmaer krahom* in Khmer, both meaning "Khmer Reds." In 1975, the Khmer Rouge leadership, secretly headed by Pol Pot, took power, pushed the Prince aside, and established the Democratic Kampuchea regime (DK).

Origins

Cambodian communism first emerged in 1930 as part of a multinational anti-French independence movement, the Indochina Communist Party (ICP), which extended throughout what was then French Indochina. In 1951, the Vietnamese communist leader, Ho Chi Minh, separated the ICP into national branches. In Cambodia, the ICP set up the Khmer People's Revolutionary Party (KPRP). Its members, especially former Buddhist monks, led the nationwide Khmer Issarak ("independence") movement. They adopted for its flag a silhouette of the medieval temple of Angkor Wat: five towers on a red background. A faction of the movement made early use of the name "Democratic Kampuchea." An anti-KPRP group flew a flag with a three-towered Angkor motif which would later become the emblem of the DK regime. Members of another anti-communist splinter group perpetrated portentous racial massacres, targeting minority Vietnamese residents in 1949 and Cham Muslims in 1952. A Cambodian student in Paris named Saloth Sar, then calling himself the "Original Khmer," returned home in 1953 and served briefly in the communist-led Issarak ranks. He later assumed the *nom de guerre* "Pol Pot."

The First Indochina War ended with the 1954 Vietnamese victory over the French at Dien Bien Phu. The Geneva settlement brought Cambodia full independence under Prince Sihanouk, who soon adopted a foreign policy of cold war neutrality. That was, in part, an accommodation to the communists' internal challenge, implicitly acknowledging both the their role in the independence war and their potential to disrupt a

Cambodian troops dispassionately carry off the bodies of the dead. It has been estimated the Khmer Rouge annihilated some two million victims in their Killing Fields between 1975 and 1979. [AP/WIDE WORLD PHOTOS]

more pro–United States regime. Neutrality also served an international strategy to keep Cambodia out of the escalating conflict in neighboring Vietnam.

The Changing of the Vanguard

Radicals of both the left and the right, dissatisfied with Sihanouk's domestic and foreign policies, had to bide their time, head for the hills, or leave for Vietnam or Thailand. Half of Cambodia's Issarak veterans took up exile in Hanoi. Most of the remaining grassroots leftists were either mollified by Sihanouk's neutrality, jailed by his police, or disappeared, like the underground Cambodian communist leader, Tou Samouth, who was mysteriously killed in 1962. At that point a group of younger, Paris-educated militants headed by Saloth Sar, Ieng Sary, and Son Sen quickly assumed top leadership positions within the debilitated KPRP. Of these, only Sar had previously been a member of the three-person Standing Committee of the party's Central Committee; in 1960 he had been named No. 3, ranking third in that three-person body. Now, however, Saloth Sar and Ieng Sary ranked first and third in an expanded Standing Committee of five members. Former students occupied the first, third, fifth, sixth, and eleventh ranks in the Central Committee of twelve.

With the support of ICP veteran Nuon Chea, who became Sar's second in command, the younger cohort now dominated both the Standing Committee and the Central Committee, referring to themselves as the "Party Center" (*mocchim paks*). Technically this was a codeword for the Central Committee, but henceforth, the latter rarely if ever met. Quietly abandoning their teaching jobs in the capital for rural redoubts, the party's new leadership launched it onto the offensive, changing its name to the Communist Party of Kampuchea (CPK) in 1966.

The veteran party leaders had been from rural and Buddhist backgrounds, and were pro-Vietnamese though relatively moderate. However, they were mostly replaced by younger, urban, French-educated, anti-Vietnamese extremists headed by "the Original Khmer," Pol Pot. Ieng Sary and Son Sen were both Khmer Krom, natives of Vietnam's Mekong Delta, and were resentful of the Vietnamese majority there. From the jungles of Cambodia's remote northeast, these new

CPK leaders planned an armed rebellion against Sihanouk's independent regime, ignoring his neutral nationalism and labeling him a U.S. puppet. Sihanouk sensed the threat and cracked down on all leftists, driving above-ground moderates into the arms of the younger militants who were leading the CPK. Sihanouk began denouncing other "Khmers Rouges," especially three prominent elected politicians: Khieu Samphan, Hou Yuon, and Hu Nim. In 1967, they too joined the rural underground.

Accompanying them into clandestine opposition came a new generation of disgruntled youth who had benefited from Sihanouk's rapid post-independence expansion of educational opportunities, but had failed to secure commensurate employment in a fragile economy that grew in the period spanning 1963 to 1965 and remained plagued by corruption. Young rural schoolteachers and students soon comprised the bulk of "Khmer Rouge" cadres.

War, 1967–1975

In 1967, the CPK Center launched a limited insurgency, which provoked repression by the Cambodian Army. Sihanouk's regime was also unable to handle the Vietnam War's impacts on Cambodia, from plunging national revenues to the politically explosive presence of Vietnamese communist troop sanctuaries. General Lon Nol overthrew Prince Sihanouk on March 18, 1970, and allied Cambodia with the United States. From his exile in Beijing, the Sihanouk quickly joined forces with the Khmer Rouge insurgents, led by Pol Pot's shadowy CPK Center. Lon Nol's army massacred thousands of the country's ethnic Vietnamese residents, driving 300,000 more to flee to Vietnam. This set a precedent for later "ethnic cleansing" by the CPK Center, which began attacking its Vietnamese-communist military allies in September 1970.

Both sides in the Vietnam conflict treated Cambodia as a theater of their ground and air war. United States aerial bombardments of Cambodia's border areas, begun in March 1969, escalated across the country until August 1973. American aircraft dropped over half a million tons of bombs on rural Cambodia, killing over 100,000 peasants and driving many survivors into the insurgent ranks.

This triggered a second wave of Khmer Rouge rural recruitment. On May 2, l973, the Directorate of Operations of the U.S. Central Intelligence Agency reported the results of its investigations in Kandal province:

1. Khmer Insurgent (KI [Khmer Rouge]) cadre have begun an intensified proselyting [*sic*] campaign among ethnic Cambodian residents in the area of Chrouy Snao, Kaoh Thom district, Kandal province, Cambodia, in an effort to recruit young men and women for KI military organizations. They are using damage caused by B-52 strikes as the main theme of their propaganda. The cadre tell the people that the Government of Lon Nol has requested the airstrikes and is responsible for the damage and the "suffering of innocent villagers" in order to keep himself in power. The only way to stop "the massive destruction of the country" is to remove Lon Nol and return Prince Sihanouk to power. The proselyting [*sic*] cadres tell the people that the quickest way to accomplish this is to strengthen KI forces so they will be able to defeat Lon Nol and stop the bombing.
2. This approach has resulted in the successful recruitment of a number of young men for KI forces. Residents around Chrouy Snao say that the propaganda campaign has been effective with refugees and in areas of Kaoh Thom and Leuk Dek districts which have been subject to B-52 strikes.

CPK internecine purges also accelerated during the U.S. bombardment. Portending the genocide to come, and while secretly, systematically killing off nearly all one thousand Khmer Issarak communist returnees from Hanoi, in 1973 and 1974 the Center stepped up CPK violence against ethnic Vietnamese civilians. It also purged and killed ethnic Thai and other minority members of the CPK's Western and Northeast Zone committees, banned an allied group of ethnic Cham Muslim revolutionaries in the East, and instigated severe repression of Muslim communities. Other victims of the Center included its former Sihanoukist allies, moderate local communists, and more independent Marxists such as Hou Yuon, a popular Paris-educated intellectual who had differed with Pol Pot. Yuon was marginalized, then murdered in 1975. The Center sponsored the CPK Southwest and Northern Zone military commanders, Chhit Choeun (alias "Mok") and Ke Pauk, in their purges of suspected rivals and opponents there. CPK moderates were concentrated in the Eastern Zone, where regional differences remained evident as late as 1977.

The U.S. Congress ended the American bombardment on August 15, 1973. The opposing Cambodian armies fought out the last two years of the war, with continuing large-scale U.S. military assistance to Lon Nol's Republican forces based in the cities, and sporadic Vietnamese aid to the Khmer Rouge dominating the rural areas, which the CPK termed its "bases" (*moultanh*).

Victory

On April 17, 1975, Khmer Rouge armies entered Phnom Penh. The new state was formally re-named

Democratic Kampuchea (DK) the following January. CPK Secretary-General Pol Pot headed the regime as DK's Prime Minister. He and the other members of the CPK Center who moved into the capital comprised the regime's effective national leadership. They included the CPK Standing Committee members Nuon Chea (Deputy CPK Secretary), Vorn Vet, Ieng Sary, and Son Sen (hierarchically ranked three, five, and eight, respectively) who served as Deputy Prime Ministers for the Economy, Foreign Affairs, and Defense. Also among the leadership was Khieu Samphan, who ranked number nine and served as DK's head of state. In the rural Zones, in concert with the Center, Southwest, and Northern military chiefs Mok (who ranked seventh in the Standing Committee hierarchy) and Ke Pauk (ranking thirteenth still outside the Standing Committee, but a member of the CPK Central Committee) gained increasing power as they consolidated the CPK's victory, executed its enemies, and purged its regional administrations. Mok and Pauk later became National Chief and Deputy Chief of the army's General Staff. Two other CPK Standing Committee members, So Phim and Moul Sambath (numbers four and six in the hierarchy), ran the Eastern and Northwest Zones, but held no comparable national posts.

Immediately upon victory, the CPK labeled the two million conquered urban dwellers "new people" (*neak thmei*), driving them in all directions from the capital and other cities. It forcibly settled townspeople among the rural "base people" (*neak moultanh*) who had lived in the countryside during the 1970–1975 war, and put them to work in agricultural labor camps without wages, rights, or free time. Before the rice harvest of late 1975, the CPK Center again rounded up 800,000 of these urban deportees from various regions and dispatched them to the Northwest Zone, doubling its population. Tens of thousands died of starvation there during 1976, while the regime began exporting rice. Meanwhile, the CPK hunted down, rounded up, and killed thousands of Lon Nol's defeated Khmer Republic officials, army officers, and increasingly, soldiers, schoolteachers, and alleged "pacification agents" (*santec sampoan*) who, in most cases, had merely protested the repression or just the rigorous living conditions imposed on them. By early 1979, approximately 650,000 people, or one quarter of the "new" Khmer, died from execution, starvation, overwork, disease, and denial of medical care.

The Khmer Rouge revolution had won initial support among the peasant "base people," but they, too, were rewarded with a life of unpaid collective labor. The CPK regime prohibited rights to land, freedom of religion, and family life. Meals were served in plantation-style communal mess halls. Couples were separated, and youths were drafted into the workforce, army, or militia. Many peasant children were trained to spy on their parents, and to kill suspected "enemies" such as former city dwellers, "CIA" and "KGB agents," recalcitrants, and alleged malingerers. In 1976 and 1977, the CPK Center and its security apparatus, the *Santebal*, supported by Mok's and Pauk's divisions, conducted massive new purges of the Northwest and Northern Zone CPK administrations, arresting and killing tens of thousands of peasants who were related to the purged local officials. Starvation and repression escalated nationwide in 1977 and especially in 1978. By early 1979, 675,000 Khmer "base people" (15% of the *neak moultanh*) had perished from execution or other causes like starvation, for which CPK policies were responsible.

Pol Pot claimed to be "four to ten years ahead" of other Asian communist states, adding: "We have no model in building up our new society." This disguised the Maoism in the CPK's call for a "Super Great Leap Forward," the influence of Stalinism, and even that of the French revolution, which DK copied by introducing a ten-day working week (with one-day weekends). The CPK exported agricultural and forest products, including rare tropical fauna, to China in return for its massive military assistance program. In all, imposing these policies by force caused the deaths of 1.7 million Cambodians.

The Center charged that local and national veteran communists, who were more moderate and favored "a system of plenty" over the DK regime's policies, with being corrupted by "a little prosperity," neglectful of ideology, and "taken to pieces" by material things. Its Santebal purged and killed prominent national-level communists like Keo Meas in 1976, Hu Nim in 1977, and So Phim, Moul Sambath, and even Vorn Vet in 1978, all the while asserting increasingly tight control of Zone and Region committees. By 1978 the Santebal had executed over half the members of the CPK Central Committee, accusing most of involvement in fantastic plots hatched by a hostile new troika: "the CIA, the KGB, and the Vietnamese." Deuch, the commandant of the Santebal's central prison, "S-21" or Tuol Sleng, incarcerated and executed 14,000 Khmer Rouge members and others, leaving only seven survivors.

Genocide

The Center's severe repression of the majority Khmer rural population and its Stalin-like massive purge of the party were accompanied by intensified violence against ethnic minorities, even among the "base people," escalating the patterns of 1973–1975. In mid-1975, the new CPK regime expelled from Cambodia more than

A Khmer Rouge soldier waves his pistol and yells orders in Phnom Penh, Cambodia, on April 17, 1975, as the capital fell to communist forces. [AP/WIDE WORLD PHOTOS]

100,000 Vietnamese residents. In the next four years, more than half of the nation's ethnic Chinese, 250,000 people, perished in the Cambodian countryside, the greatest tragedy ever to befall Southeast Asia's Chinese diaspora. In late 1975, the CPK ferociously repressed a Cham Muslim rebellion along the Mekong River. Pol Pot then ordered the deportation of 150,000 Chams living on the east bank of the Mekong, and their forced dispersal throughout the Northern and Northwest Zones. In November 1975, a Khmer Rouge official in the Eastern Zone complained to Pol Pot of his inability to implement "the dispersal strategy according to the decision that you, Brother, had discussed with us." Officials in the Northern Zone, he complained, "absolutely refused to accept Islamic people," preferring "only pure Khmer people." Santebal communications, available through the Documentation Center of Cambodia, show that Northern Zone leader Ke Pauk sent a message to Pol Pot two months later, in which he listed "enemies" such as "Islamic people." Deportations of Chams began again in 1976, and by early 1979, approximately 100,000 of the country's 1975 Cham population of 250,000 had been killed or worked to death. The 10,000 ethnic Vietnamese remaining in the country were all hunted down and murdered in 1977 and 1978. Oral evidence suggests that the ethnic Thai and Lao minorities were also subjected to genocidal persecution.

Meanwhile the Khmer Buddhist monks were decimated in a nationwide CPK campaign to repress "reactionary religion," banned by DK's 1976 Constitution. A Center document stated in September 1975: "Monks have disappeared from 90 to 95 percent . . . Monasteries . . . are largely abandoned . . . the cultural base must be uprooted." Of a total of 2,680 monks in a sample of 8 of Cambodia's 3,000 monasteries in 1975, only 70 monks were found to have survived to 1979. If this toll could be extrapolated to the other monasteries, as few as 2,000 of the country's 70,000 Buddhist monks may have survived. That constitutes a prima facie case of genocide of a religious group.

Rebellion and Vietnamese Intervention

Most of the CPK's victims came from the majority Khmer population, and the major resistance it faced was in the East. From late 1976, accelerating the purges

of regional administrations, the Santebal and Center army units subjected all five regions of the Eastern Zone to concerted waves of arrests and massacres of local CPK officials and soldiers. These reached a crescendo on May 10, 1978, when Phnom Penh Radio broadcast a call not only to "exterminate the 50 million Vietnamese" but also to "purify the masses of the people" of Cambodia. Khmer Rouge officers in the Eastern Zone mutinied two weeks later. Pol Pot's divisions were unable to crush them quickly. One and one-half million easterners were now branded as "Khmer bodies with Vietnamese minds" (*kbal yuon khluon khmaer*). Center forces massacred between 100,000 and 250,000 people in six months. Of the 1.7 million dead in less than four years of CPK rule, more than 500,000 had been deliberately murdered.

The Eastern Zone rebels, led by Heng Samrin and Chea Sim, fought back for several months before retreating across the Vietnamese border, where they requested aid and joined earlier Khmer Rouge rebels and defectors like Hun Sen. Hanoi was ready to intervene. Beginning in early 1977, Phnom Penh had mounted brutal cross-border attacks on Thailand, Laos, and especially Vietnam, slaughtering thousands of both Vietnamese and Khmer Krom there. On December 25, 1978, 150,000 Vietnamese troops launched a multipronged assault and took the Cambodian capital on January 7, 1979. They drove the CPK forces, including Pol Pot and most Center leaders, to the Thai border.

The dissident Khmer Rouge commanders established a new communist-led regime in Phnom Penh. Former regimental officer Hun Sen, who had defected to Vietnam in mid-1977, became Foreign Minister. Promoted to Prime Minister in 1985, he began a limited liberalization which accelerated in 1989. After UN-organized elections in 1993, Hun Sen became Second Prime Minister in a coalition with Sihanoukist party leader Prince Norodom Ranariddh. But Pol Pot's 10,000-strong rump Khmer Rouge army, revived during the 1980s by international assistance and enjoying sanctuary in Thailand, posed a continuing threat on the northwestern border.

The Khmer Rouge movement finally began to unravel in August 1996. First, in return for a "pardon," Ieng Sary defected to the Cambodian government with the military units under his command. Other Khmer Rouge leaders sought similar treatment from Phnom Penh. In June 1997, fearing further betrayal, Pol Pot murdered Son Sen. In the jungle of northern Cambodia, as the last military forces loyal to Pol Pot evacuated their headquarters, they drove their trucks over the bodies of Son Sen, his wife Yun Yat—the former DK minister of culture—and a dozen family members. Mok turned in pursuit, arrested Pol Pot, and subjected him to a show trial in the jungle. But in March 1998, Pauk led a new mutiny against Mok and defected to the government. Pol Pot died the next month. Then, in December 1998, Nuon Chea and Khieu Samphan abandoned Mok and surrendered to the Cambodian government. They said they were now "sorry" for the crimes they had perpetrated. In 1999, the Cambodian army captured Mok and arrested the former Center security chief, Deuch. As of May 2004, they remained in jail awaiting trial.

SEE ALSO Cambodia; Ethnic Cleansing; Khmer Rouge Prisons and Mass Graves; Khmer Rouge Victim Numbers, Estimating; Pol Pot

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Ben Kiernan

Khmer Rouge Prisons and Mass Graves

"They say that dead men tell no tales," but in fact they do. Many stories have been told by investigators unearthing mass graves in the Balkans, Central America, and elsewhere. Information gathered from mass graves

can help resolve disputes about the nature of communal or international conflict, and shed light on historical facts. With modern forensic science, mass graves yield evidence that can be used to prosecute war crimes and other violations of international humanitarian law. Mass graves may even help to relieve the anguish of families whose loved ones disappeared in a time of war. In Cambodia mass graves dating to Cambodia's 1975 to 1979 revolution have told all these tales, and more.

The Communist Party of Kampuchea, popularly known as the Khmer Rouge, led Cambodia's revolution. It was one of the most violent revolutions of the twentieth century. Demographers estimate that two million or more lives were lost in the four years that the Khmer Rouge ruled Cambodia, from a population of around seven million before the uprising. This scale of violence earned Cambodia a dubious title, the Killing Fields.

Between 1995 and 2003 researchers from the Documentation Center of Cambodia identified 19,471 mass graves at 348 sites located throughout the country. Investigators believe that these mass graves contained the remains of more than 1.1 million victims of execution. Virtually all these mass graves were located within 2 kilometers of what the Khmer Rouge euphemistically called security offices, but which might more accurately be labeled extermination centers. More than 185 such extermination centers have been discovered. At most of these sites witnesses have testified that the mass graves were created during the years the Khmer Rouge held power, and that the victims were detained in the so-called security offices prior to their execution. Although the Documentation Center's figures are only estimates, it is clear that whatever the actual numbers may be, they are large.

Senior Khmer Rouge officials have attempted to explain the existence of the mass graves by asserting that they were created by Vietnamese spies who had infiltrated the revolution. However, the uniform distribution of the mass graves throughout populated areas of the country casts doubt on this claim. More tellingly, senior Khmer Rouge officials are contradicted by many lower-level Khmer Rouge cadre who have testified that they carried out the executions at the mass grave sites on the orders of senior officials within the Khmer Rouge organization.

The vast number of mass graves in Cambodia, along with their uniform distribution, are in and of themselves legally probative facts. In order for acts such as murder to qualify as a crime against humanity, the acts must be mass and systematic. Some twenty thousand mass graves distributed relatively evenly across Cambodia clearly meet these criteria.

Forensic work at the Documentation Center of Cambodia has demonstrated that the individuals interred in the mass graves were not merely soldiers killed in combat nor victims of nonviolent causes of death such as disease or starvation. Many of the remains—bones of men, women, and children—exhibit evidence of trauma, including blunt force trauma, sharp force trauma, and gunshot wounds. This physical evidence confirms the testimony of former Khmer Rouge who have described in detail the methods they used to execute their victims.

The Cambodian People's Party (CPP) has ruled Cambodia since the 1979 overthrow of the Khmer Rouge regime. The CPP has systematically exploited the mass graves as a mechanism to aggregate political support ever since they came to power. Memorials created at many mass grave sites are the locations for annual national observances: the Day of Liberation on January 7th, marking the ouster of the Khmer Rouge regime, and the Day of Hatred on May 20th, intended to remind the population of their suffering under the Khmer Rouge, as well as the ruling party's claim that it delivered Cambodia's people from that suffering.

Many ordinary Cambodians have come to view the mass graves not as a focus of political activity, but rather as a locus for ancestor veneration. With some two million people missing and presumed dead after the Khmer Rouge regime, Cambodian traditions of ancestor veneration were severely challenged. Cambodians consequently adapted traditional ceremonies for paying respect to their dead, and commonly perform these rituals with the remains of anonymous victims at genocide memorials serving as a proxy for missing relatives.

In one variation of this practice, at Wat Skoun in Kampong Cham Province, a genocide memorial now contains only femurs and tibia exhumed from nearby mass graves. The crania were gradually consumed as religious officials permitted bereaved families to claim one exhumed skull for each missing relative. Those skulls were then used to represent lost loved ones, allowing families to perform ritual cremation and thereby possess symbolic remains with which they can conduct Buddhist ceremonies for their dead.

Although Cambodia's thousands of mass graves are thus seen by the country's ruling elite as rich in political symbolism, and by the country's ordinary citizens as rich in religious symbolism, the mass graves also convey historical facts crucial for any process of legal accountability. Whether or not the Killing Fields will be found to constitute genocide or crimes against humanity in a court of law depends in significant measure on how that court understands the origin and nature of Cambodia's mass graves.

SEE ALSO Anthropology, Cultural; Archaeology; Cambodia; Forensics; Khmer Rouge; Statistical Analysis

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Craig Etcheson

Khmer Rouge Victim Numbers, Estimating

There are at least four possible approaches to determining the number of people killed in a given instance of genocide or other crimes against humanity. The best estimate of such fatalities is possible if the perpetrators have kept accurate records, but this seems rare. A second approach requires the investigation of mass graves, either by taking an actual count of exhumed bodies, or making an estimate based on the number and the sizes of the graves. A third approach is the demographic analysis of census data or other population data. A fourth approach involves interviewing survivors of the violence about fatalities in their families, followed, in most cases, by a statistical extrapolation from the results of the interviews. The advantages and disadvantages of each approach can be understood by reference to the case of Cambodia, where all of these methods have been applied.

One of the first attempts to gauge the magnitude of the Cambodian genocide was a project undertaken by the People's Republic of Kampuchea, which took control of the country when the Khmer Rouge fell from power. In a four-year project, the "Research Committee on Pol Pot's Genocidal Regime" conducted survivor interviews, along with mass grave exhumation and analysis, to come up with the figure of 3.316 million dead during the Khmer Rouge period (1975–1979). Later analysts have questioned the methodology used in making this estimate, arguing that its results were likely inflated by the double counting of some victims—for example, a victim reported as killed by a family member may have been counted again when the body was exhumed from a mass grave—along with an underestimate of net migration.

Another early effort at estimating the magnitude of the Khmer Rouge genocide was published in 1980 by the U.S. Central Intelligence Agency (CIA), which employed demographic analysis. The CIA began with Cambodia's 1962 census, then used subjective reports to estimate trends in fertility, mortality, and migration through 1979. The agency calculated that Cambodia's population had declined by somewhere between 1.2 and 1.8 million during the Khmer Rouge regime. Numerous assumptions underlying this analysis have been criticized, particularly its conclusion that the number of rural dwellers increased marginally between 1975 and 1979. Later analysts determined that there was significant excess mortality among the peasant population, and by implication, a relatively higher overall death toll.

More recent demographic analyses have taken advantage of post-genocide population data to refine the CIA's estimate. Based on data collected through a Cambodian administrative census conducted in 1980, Judith Bannister and Paige Johnson calculated a population loss between 1975 and 1979 of 1.8 million. In their 1993 report, they concluded that 1.05 million of these deaths were excess mortality. Patrick Heuveline employed birth cohort data derived from the 1993 electoral register to determine that the most likely figure for excess mortality during the Khmer Rouge regime was 2.2 million, also concluding that about half of these deaths, or 1.1 million, were from violent causes, primarily execution. All of the well-understood weaknesses of census and other population data are imported into such analyses, particularly with methodologically unsound censuses such as the 1980 count. This inherent propensity for error is further magnified by the assumptions made to compensate for missing data, such as fertility rates.

Interview and survey data have also been used to construct estimates of the death toll during the Khmer Rouge genocide. Ben Kiernan launched one of the first such efforts, interviewing some 500 subjects in 1979 and 1980, and extrapolating his findings to the national population for an estimate of 1.5 million deaths. He later refined his estimate to 1.671 million. Similarly, Steve Heder surveyed more than 1,000 Cambodian subjects, concluding that there were approximately 1.7 million deaths under the Khmer Rouge, with a death rate of 33 percent among urban Cambodians, 25 percent among rural Cambodians, and 50 percent among Sino-Khmer. A more systematic interview project was conducted by Marek Sliwinski between 1989 and 1991, with some 1,300 respondents. His data yielded an esti-

A Cambodian man observes skulls of Khmer Rouge victims on display at the Toul Sleng genocide museum, a former Khmer Rouge prison center in Phnom Penh. [AP/WIDE WORLD PHOTOS]

mate of 1.84 to 1.87 million excess deaths during the Khmer Rouge regime. It is notable that these three interview approaches yielded very similar results, ranging from 1.5 to about 1.9 million. Nonetheless, this method entails numerous potential sources of error. It is difficult to construct a representative and random sample of subjects. Moreover, this method also depends on estimates of pre- and post-genocide populations, which are typically unreliable. This method does, however, have the advantage that it can be carried out by a single investigator, relatively soon after the genocide has been halted.

A hard count of victim remains is yet another potential approach. Such a project has been underway at the Documentation Center of Cambodia since 1995. The effort involves mapping mass graves and estimating of the number of victims contained therein. As of May 2003, the Documentation Center had identified 19,471 mass graves, which were believed to contain the remains of an estimated 1.1 million victims of Khmer Rouge execution. Interestingly, this matches Heuveline's estimate of the number of deaths from violent causes, even though Heuveline reached his figure by a very different method. An advantage of the hard count method is that it is primarily empirical, and does not rely on overall population estimates. Nonetheless, error can be introduced from several sources, such as the method used to estimate the contents of graves. The possibility of faulty witness testimony regarding the origin of mass graves is also a problem. Finally, the hard count method cannot necessarily distinguish between excess mortality due to execution and deaths due to other causes, such as starvation, disease, and exhaustion.

The use of perpetrator records to determine the magnitude of a genocide has rarely, if ever, been implemented, because of the problem of gaps in record-keeping. For example, at most of the 167 Khmer Rouge extermination sites identified in Cambodia, no contemporaneous records appear to have survived, if indeed they were maintained in the first place. Even at the most meticulously documented Khmer Rouge extermination center, Tuol Sleng Prison, gaps in the records have resulted in death toll estimates ranging from a low of 15,000 to a high of more than 20,000, quite a high degree of uncertainty. Obvious questions about the integrity of data produced by perpetrators also increases doubts about the reliability of this method.

The challenges apparent in all these varying approaches to estimating the magnitude of genocide or crimes against humanity suggest that analysts should approach this task with a certain degree of humility. Public records such as birth and death registers are typically among the first casualties during instances of extreme socio-political upheaval. This problem is often compounded by unreliable population data prior to and in the immediate aftermath of the crisis. Humans are notoriously unreliable as witnesses, and plumbing the depths of mass graves is a labor intensive, uncertain undertaking. The optimal approach may be to pursue all these methods—hard count, demographic analysis, and interview data—and, mindful of the pitfalls of each, triangulate the results into a range of estimates. In the Cambodian case, this range is from 1.7 million to 2.2 million, with the more recent and methodologically sophisticated efforts tending to produce results in the upper end of that range.

SEE ALSO Cambodia; Khmer Rouge; Khmer Rouge Prisons and Mass Graves; Pol Pot; Statistical Analysis

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Craig Etcheson

King Leopold II and the Congo

The European colonization of Africa was one of the greatest and swiftest conquests in human history. In 1870 roughly 80 percent of Africa south of the Sahara Desert was governed by indigenous kings, chiefs, and other rulers. By 1910 nearly this entire huge expanse had become European colonies or land, like South Africa, controlled by white settlers. The bloodiest single episode in Africa's colonization took place in the center of the continent in the large territory, known as the Congo.

For centuries African slave dealers had raided parts of this area, selling their captives to American and European captains who sailed Africa's west coast, and to traders who took slaves to the Arab world from the continent's east coast. But heat, tropical diseases, and the huge rapids near the mouth of the Congo River on the Atlantic had long kept the Congo's interior a mystery to Europeans. From 1874 through 1877 the British explorer and journalist Henry Morton Stanley (1841–1904) crossed Africa from east to west. For much of the journey he floated down the river, mapping its course for the first time and noting the many tributaries that, it turned out, comprised a network of navigable waterways more than 7,000 miles long.

Although Stanley is best known as the man who found Livingstone, his trip across the Congo basin was the greater feat of exploration and had far more impact on history. As he headed back to England, Stanley was assiduously courted by King Leopold II of Belgium. Leopold (1835–1909) had ascended to the throne in 1865. A man of great charm, intelligence, ruthlessness, and greed, he was openly frustrated with inheriting the throne of such a small country, and in doing so at a time in history when European kings were rapidly losing power to elected parliaments. He had long wanted a colonial empire, and in Stanley he saw someone who could secure it for him. The Belgian cabinet of the day was not interested in colonies. But for Leopold this posed no problem; he would acquire his own.

In 1879 Stanley returned to the Congo as Leopold's agent. He built outposts and a road around the river's rapids and, using small steamboats, he traveled up and down the great river and its tributaries. Combining gift-giving with a show of military force, he persuaded hundreds of illiterate African chiefs, most of whom had little idea of the terms of the agreement to which they were ostensibly acceding, to sign away their land to the king.

Stanley made his way back to Europe with a sheaf of signed treaties in 1884. Meanwhile, Leopold had already begun the job of persuading first the United

Nsala, of the district of Wala, looking at the severed hand and foot of his five-year-old daughter, a victim of the Anglo-Belgian India Rubber Company (A.B.I.R.) militia. [ANTI-SLAVERY INTERNATIONAL]

States and then all the major nations of Europe to recognize his claim. A master of public relations who portrayed himself as a great philanthropist, the king orchestrated successful lobbying campaigns in one country after another. He made further progress toward realizing his objective at a diplomatic conference in Berlin in 1884 and 1885 that the major European powers attended. In 1885 he proclaimed the existence of the misnamed *État Indépendant du Congo,* or, as it was known in English, the Congo Free State, with himself the King-Sovereign. In later years he sometimes referred to himself as the Congo's proprietor. It was the world's only major colony owned by one man.

Equipped with repeating rifles, cannons, and machine guns and fighting against Africans with only spears or antiquated muskets, King Leopold's 19,000-man army (black conscripts under white officers) gradually took control of the vast territory. From the start the regime was founded on forced labor. Hundreds of thousands of Africans were put to work as porters to carry the white men's goods, as cutters of the wood needed to fire steamboat boilers, and as laborers of all kinds. In the early years the main commodity Leopold sought was ivory. Joseph Conrad, who spent six months in the Congo in 1890, draws a memorable portrait of this rapacious trade in his novel *Heart of Darkness.*

The Rubber Boom

In the early 1890s, however, a larger source of wealth suddenly loomed. The invention of the inflatable bicycle tire, followed soon by that of the automobile tire, triggered an enormous boom in rubber. Throughout the world's tropics people rushed to establish rubber plantations. But new rubber trees often require fifteen years of growth before they can be tapped. During that window of time those who profited were the people

[THE KING'S ENEMIES]

King Leopold II's rule over the Congo met fierce resistance. In the far south, for example, a chief named Mulume Niama led warriors of the Sanga people in a rebellion that killed one of the king's officers. State troops pursued them, trapping Mulume Niama and his soldiers in a large cave. They refused to surrender, and when troops finally entered the cave three months later, they found 178 bodies. Nzansu, a chief in the region near the great Congo River rapids, led rebels who killed a hated colonial official and pillaged several state posts, although they carefully spared the homes of nearby Swedish missionaries. Nzansu's men fought on sporadically for five years more, and no record of his fate exists.

In addition, Leopold's regime faced resistance from within his own conscript army, whose soldiers sometimes found a common cause with the rebel groups they were supposed to pursue. The largest mutiny involved three thousand troops and an equal number of auxiliaries and porters, and continued for three years. "The rebels displayed a courage worthy of a better cause," (Flament et al., 1952, p. 417) acknowledged the army's official history—which, remarkably, devoted fully one-quarter of its pages to the various campaigns against mutineers within the army's own ranks.

The king also faced enemies of another sort. To curry diplomatic favor, he allowed several hundred Protestant missionaries into the Congo. Most made no protest, but some were outraged at the brutal forced labor system. In articles in church magazines and in speeches throughout the United States and Europe on visits home, they described what they saw: Africans whipped to death, rivers full of corpses, and piles of severed hands—a detail that quickly seared itself on the world's imagination. Army officers often demanded of their men a severed hand from each rebel killed in battle.

E. V. Sjöblom of Sweden was one of the first and most outspoken missionaries in the Congo. Alice Harris, a British Baptist, took photographs of the atrocities she witnessed. William Morrison, a white man, and William Sheppard, the first black missionary in the Congo, were Presbyterians from Virginia whose acts of witness so infuriated Congo colonial authorities that they put the men on trial for libel.

Leopold's most formidable enemy surfaced in Europe. A British shipping company had the monopoly on all cargo traffic between the Congo and Belgium, and every few weeks it sent to the port of Antwerp a young junior official, Edmund Dene Morel, to supervise the unloading of a ship arriving from Africa. Morel, in his mid-twenties at the time, noticed that when his company's ships arrived from the Congo, they were filled to the hatch with enormously valuable cargoes of rubber and ivory. When the ships turned around and steamed back to Africa, however, they carried no merchandise in exchange. Nothing was being sent to the Congo to pay for the goods flowing to Europe. Instead, the ships carried soldiers, and large quantities of firearms and ammunition. Standing on the dock, Morel realized that he had uncovered irrefutable proof that a forced labor system was in operation 4,000 miles away.

Morel soon quit his job and in short order turned himself into the greatest British investigative journalist of his time. For a dozen years, from 1901 to 1913, working sometimes fourteen to sixteen hours a day, he devoted his formidable energy and skill to putting the story of forced labor in King Leopold's Congo on the world's front pages. In Britain he founded the Congo Reform Association, and affiliated groups sprang up in the United States and other countries. He wrote three books on the Congo, several dozen pamphlets, and hundreds of newspaper articles, making much use of eyewitness testimony from the missionaries. He traveled throughout Britain speaking to large audiences and was adept at recruiting bishops, well-known writers, and other luminaries to join him on the lecture platform. More than one thousand mass meetings to protest slave labor in the Congo were held, mostly in Britain and the United States, but also in Europe and as far away as Australia and New Zealand.

After Morel orchestrated a protest resolution by the British Parliament, the government, in response, asked its representative in the Congo to investigate his charges. The British consul, an Irishman named Roger Casement, later famous as an Irish patriot, took the assignment seriously. Renting a missionary steamboat, he spent more than three months traveling in the interior. He produced an excoriating, detailed report, complete with sworn testimony from witnesses, which is in many ways a model for the reports produced by contemporary organizations like Amnesty International or Human Rights Watch.

who owned land where rubber grew wild. No one owned more land like this than King Leopold II, for equatorial rain forest, dotted with wild rubber vines, comprised half of his Congo state.

The king's colonial officials quickly set up a brutal but effective system for harvesting wild rubber. A detachment of soldiers would march into an African village and seize the women as hostages. To secure their

wives' release, the men would have to disperse into the rain forest to collect the sap of wild rubber vines. As the vines near a village were often drained dry, the men would sometimes have to walk for days to find areas where they could gather their monthly quota of rubber. As rubber prices soared, so did the quotas. Discipline was harsh; reluctant military conscripts, disobedient porters, and villagers who failed to gather enough rubber all fell victim to the notorious *chicotte,* a whip made of sun-dried hippopotamus hide with razor-sharp edges. A hundred lashes of the chicotte, a not infrequent punishment, could be fatal. Army officers and colonial officials earned bonuses based on the amount of rubber collected in areas under their control. These were an incentive for ruthless, devastating plunder.

Many women hostages were raped and a significant number starved to death. Male rubber gatherers often died from exhaustion. And under such circumstances people tended to stop having children, so the birthrate plummeted as a result. With most able-bodied adults prisoners or forced laborers for several weeks out of each month, villages had few people who could plant and harvest food, or go hunting or fishing, and famine soon spread. Furthermore, huge, uncounted numbers of Congolese fled the forced labor regime, but the only refuge to which they could escape was the depths of the rain forest, where there was little food and no shelter; travelers would discover their bones years later. Tens, possibly hundreds, of thousands of Africans also died in two decades' worth of unsuccessful uprisings against the king's regime.

An even greater toll was taken by disease: various lung and intestinal diseases, tuberculosis, smallpox, and, above all, sleeping sickness. The great population movements caused by the colonial regime brought these illnesses into areas where people had not built up an immunity to them, and many would have died even under a government far less brutal than Leopold's. However, disease of any kind always takes a far greater toll on a traumatized, half-starving population, with many people already in flight as refugees.

In two ways the Congo's rubber boom had lasting impact beyond the territory itself. First, the system of exploitation established there became a model for colonial rule in other parts of central Africa. Many of the surrounding colonies also had rain forests rich in wild rubber—Portuguese-controlled northern Angola, the Cameroons under the Germans, and the French Congo, part of French Equatorial Africa, across the Congo River. Seeing what profits Leopold was reaping from forced labor, officials in these colonies soon adopted exactly the same system—including women hostages, forced male labor, and the chicotte—with equally fatal consequences.

The events in King Leopold's Congo also rippled beyond its borders in a more positive way: They gave birth to the twentieth century's first great international human rights movement (see sidebar). The movement, in fact, eventually forced Leopold to relinquish his private ownership of the Congo to the Belgian state in 1908. By that point he had made a huge profit from the territory, conservatively estimated as the equivalent of more than $1.1 billion in early twenty-first century terms.

The Toll

In the newly christened Belgian Congo, however, the forced labor system did not immediately end. It was too lucrative, for the price of rubber was still high. Eventually, the price fell and wild rubber supplies began to run out, but by that time World War I had begun, and large numbers of Africans were forced to become porters, carrying supplies for Belgian military campaigns against Germany's African colonies. Forced labor remained a major part of the Congo's economy for many years after the war. Starting in the early 1920s, however, the system became considerably less draconian, mainly because colonial officials realized that otherwise they would soon have no labor force left.

"We run the risk of someday seeing our native population collapse and disappear," declared the permanent committee of the National Colonial Congress of Belgium in 1924, "so that we will find ourselves confronted with a kind of desert" (Hoornaert and Louwers, 1924, p. 101).

Between the time that Leopold started to assume control of the Congo (around 1880) and when the forced labor system became less severe (after 1920), what happened could not, by strict definition, be called genocide, for there was no deliberate attempt to wipe out all members of one particular ethnic group. But the slashing of the territory's population—through a combination of disease, famine, slave labor, suppression of rebellions, and diminished birthrate—indisputably occurred on a genocidal scale.

In estimating situations without the benefit of complete census data, demographers are more confident speaking of percentages than absolute numbers. Using a wide variety of local and church sources, Jan Vansina, professor emeritus of history and anthropology at the University of Wisconsin and the leading ethnographer of Congo basin peoples, calculates that the Congo's population dropped by some 50 percent during this period, an estimate with which other modern scholars concur. Interestingly, a longtime high colonial

official, Major Charles C. Liebrechts, made the same estimate in 1920. Shocked by recent local census statistics that showed less than one child per woman, the official *Commission Instituteé pour la Protection des Indigènes* made a similar reckoning in 1919. Its report that year to the Belgian king mostly focused on disease, but stressed that forced labor for rubber and other products "subjects the natives to conditions of life which are an obstacle to their increase" and warned that this situation, plus "a lack of concern about devastating plagues ancient and modern, an absolute ignorance of people's normal lives [and] a license and immorality detrimental to the development of the race," had reached "the point of threatening even the existence of certain Congolese peoples" and could completely depopulate the entire region (Bulletin Officiel, 1920, pp. 657, 660, 662). Writing in the same year, R. P. Van Wing, a Belgian Jesuit missionary, estimated that the population of the Bakongo people, one of the territory's largest ethnic groups, had been reduced by two-thirds.

Obtaining more precise statistics is difficult, for in 1908 King Leopold ordered the archives of his Congo state burned. But numerous surviving records from the rubber-bearing land in the adjoining French Congo, which closely followed the model of the Leopoldian forced labor system, also suggest a population loss there of around 50 percent. If the estimates from varied sources of a 50 percent toll in King Leopold's Congo are correct, how many people does this mean? In 1924 the first territory-wide census, when adjusted for undercounting, placed the number of colony inhabitants at some ten million. If that figure is accurate and it represents 50 percent of what the population had been in 1880, this would suggest a loss of 10 million people.

Some writers, almost entirely in Belgium, claim that such estimates are exaggerated. But other scholars use even higher numbers. Although neither figure is well-documented, Hannah Arendt's seminal *The Origins of Totalitarianism* cites an estimated minimum population loss of 11.5 million, and a Congolese historian writing in 1998, Isidore Ndaywel è Nziem, estimates the loss at roughly 13 million. Humankind will never know even the approximate toll with any certainty, but beyond any doubt what happened in the Congo was one of the great catastrophes of modern times.

SEE ALSO Slavery, Historical

[GEORGE WASHINGTON WILLIAMS]

Virtually no information about the true nature of King Leopold's Congo reached the outside world until the arrival there, in 1890, of an enterprising visitor named George Washington Williams. He was a veteran of the American Civil War, a historian, a Baptist minister, a lawyer, and the first black member of the Ohio state legislature. Wearing one of his many hats, that of a journalist, Williams expected to see the paradise of enlightened rule that Leopold had described to him in Brussels. Instead, he found what he called "the Siberia of the African Continent." Almost the only early visitor to interview Africans about their experience of the regime, he took extensive notes, and, a thousand miles up the Congo River, wrote one of the greatest documents in human rights literature, an open letter to King Leopold that is one of the important landmarks in human rights literature. Published in many American and European newspapers, it was the first comprehensive, detailed indictment of the regime and its slave labor system. Sadly, Williams, only forty-one years old, died of tuberculosis on his way home from Africa, but not before writing several additional denunciations of what he had seen in the Congo. In one of them, a letter to the U.S. Secretary of State, he used a phrase that was not commonly heard again until the Nuremberg trials more than fifty years later. Leopold II, Williams declared, was guilty of "crimes against humanity."

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Adam Hochschild

Kosovo

Kosovo was ineluctably tied to Serbia at the Battle of Kosovo Polje in 1389, wherein the victorious Muslim Turks left the dead for blackbirds to scavenge, according to Serbian folklore. Kosovo was then etched in Serbian ethno-religious consciousness as a place of Serbian torment and sacrifice, ushering in five hundred years of Turkish domination. The Battle of Kosovo marked the end of the Serbian empire. The Turks conquered Albania by 1468, but although most Albanians converted to Islam, they maintained their separate ethnic identity.

Ottoman rule was ending by 1878. Serbia, Montenegro, Greece, and Bulgaria amassed troops and finally succeeded in driving out the Ottoman forces in the Balkan Wars (1912–1913). The geographical extent of Albania was reduced at the behest of France and Russia, leaving more than half of the total Albanian population outside the borders of the diminished state, and placing the area of Kosovo within Serbia. The Serbian victors massacred entire Albanian villages, looting and burning anything that remained. European press reports estimated that Serbs killed 25,000 Albanians.

From the end of the Balkan Wars to World War II, Albanians lived under Serb domination. Their language was suppressed, their land confiscated, and their mosques were turned into stables, all part of an overt Serb policy designed to pressure Muslim Albanians to leave Kosovo. The cycle of revanchism (revenge-based conflict) continued when a part of Kosovo was united with Albania by Italian fascists during World War II and Albanian Nazi collaborators expelled an estimated forty thousand Serbs.

A postwar Constitution, adopted in 1946, defined Yugoslavia as a federal state of six sovereign republics. Kosovo was granted autonomy, allowing it to have representatives in the federal legislature yet keeping its internal affairs under Serbian control. In 1948, Yugoslavia broke away from Stalin's Russia, a move that pitted the Albanian Kosovars against the country of Albania, which was staunchly pro-Russian. Yugoslav and Albanian border guards clashed along the Albanian border, and the Yugoslav secret police intensified its persecution of ethnic Albanians in Kosovo. As Serbs persecuted Albanian-Kosovars, the Kosovars harassed Serbs in turn.

Demographic studies from 1979 show that Albanian Kosovars had the highest population growth rate in Europe, especially in rural areas. Increasing numbers of young ethnic Albanians were under the age of 25 and unemployed, fueling dissent. When the President of Yugoslavia, Croat-born Marshall Tito, allowed an Albanian-language university to be established in Kosovo, it became the center of Albanian national identity. Following Tito's death in 1980, students demonstrated for better living conditions in 1981, inspiring construction and factory workers to take to the streets in protest throughout Kosovo.

Retribution was immediate and harsh. The Yugoslav army was sent to Kosovo, killing Albanians and arresting people for "verbal crimes," for which substantial prison sentences were imposed. The press, local governments, and schools were purged of the Albanians who held such jobs (most such employees were Serbs). At the same time, approximately 30,000 Serbs left Kosovo (according to Yugoslav government estimates), ostensibly because of Albanian retaliation. Critics, however, have suggested that the Serbs left for economic reasons. The Yugoslav government economic policy toward Kosovo was one of resource extraction. Wealth, in the form of minerals, was siphoned out of Kosovo for the benefit of the other republics, with very little ever coming back to the impoverished area.

In the mid-1980s Serb-Kosovars complained to the Yugoslav government that the escalating ethnic Albanian birthrate constituted a willful plot against the Serbs. Ethnic Albanian women stopped going to government-run hospitals to have babies, fearing that Serb doctors would kill their babies to reduce the birthrate. In 1987,

Djakovica, Kosovo, 1999. Caskets and portraits of the dead. Both Serbs and Albanians had for centuries regarded Kosovo as their own historical space. The predictable result was that the two sides embarked on cycles of violent attacks, followed by cycles of violent reprisals. Here, Kosovar Albanians mourn friends and loved ones killed by Serb forces. [TEUN VOETEN]

Slobodan Milosevic attended a meeting in Kosovo during which a raucous crowd of Serbs tried to push their way in. Milosevic commanded the police to let "his" Serbs through, establishing himself as the savior of Serbs outside the borders of Serbia. Critics allege that the event was arranged in advance. After Milosevic was elected President of Serbia in 1990, Albanian police officers in Kosovo were suspended from their jobs and replaced with 2,500 Serb policemen imported from Belgrade.

In the spring of 1990, thousands of Albanian schoolchildren became sick and were hospitalized, and it was rumored that Serbs had poisoned them. When Albanian parents attacked Serb property in response, Milosevic immediately transferred another 25,000 police to the area. Serb police were allowed to keep Albanians in jail for three days without charges, and to imprison anyone for up to two months if they had been charged with insulting the "patriotic feelings" of Serbs. The conflict in Kosovo and the Serb annexation of the province in 1987 led to concerns in the other republics that Serbia was intending to transform Yugoslavia into "Greater Serbia." However, the pattern of revanchism in response to the mounting human rights abuses was broken when Albanians turned to passive resistance, following the model of non-violence espoused by Mahatma Gandhi.

The Serb war against Bosnia from 1992 to 1995 worsened the situation for Albanians in Kosovo. This time, Albanians suffered from the anti-Muslim fervor of Serbs and the hardships resulting from the economic sanctions imposed by the United Nations in response to the war. The Bosnian war ended with the negotiation of the Dayton Accords in 1995, but Kosovo was left out of the discussion. Disappointed Kosovars watched Western diplomats congratulate Milosevic on his peacemaking efforts. Albanian Kosovars continued their practice of passive resistance until 1997, when the country of Albania collapsed into chaos and Kosovo was flooded with weapons from across the border. The ethnic majority, Albanian Kosovars, now had access to weapons, a serious concern for the Serbs. Suspected members of the newly formed Kosovo Liberation Army were arrested and charged with "hostile association," a charge that was never denied.

Some observers compared the bombing of Kosovo with the earlier Russian onslaught against Grozny, depicted here. The latter was an exercise in ethnic cleansing, far from any attempt to come to the aid of a brutalized people. [TEUN VOETEN]

A Serb policeman was murdered in 1998, prompting a police attack on a village in which one hundred Albanians were killed. Further massacres of Albanians continued to fuel the mobilization of the Kosovo Liberation Army. As Muslim refugees streamed into Albania, Serbs lined the borders with landmines. An estimated 270,000 Albanians fled to the hills of Kosovo. In the fall of 1998, NATO authorized air strikes against Serb military targets and Milosevic agreed to withdraw his troops. By the winter of 1998, however, the United States was proclaiming that Serbs were committing "crimes against humanity" in Kosovo.

Negotiations to offset the looming humanitarian disaster and end the alleged Serb crimes were fashioned in Rambouillet, France, in early 1999. The peace plan proposed by the United Nations was rejected by both Serbs and Albanian Kosovars. The political blueprint called for NATO troops to be placed in Kosovo to oversee peace and protect the combatants from each other, but Serbia rejected the presence of foreign troops on its soil. A United Nations force, similar to the peacekeepers in Bosnia might have been accepted, but the West insisted on a NATO force. The ostensible reason for this insistence was that the West wanted to avoid a replay situation that occurred in Bosnia. There, the peacekeepers were forced to stand by idly and watch Bosnian women and children be killed. For their part, the Kosovo Liberation Army (KLA) refused to comply with the Rambouillet mandate that they disarm. There had been too many instances in Bosnia, they argued, where Muslims disarmed and put themselves under the protection of the United Nations, only to be murdered by Serbs. This had occurred in Srebenica in 1995, when approximately seven thousand boys and old men were murdered by Serbs while in a United Nations designated safe-haven.

With the negotiations stalled, Serbia sent 40,000 troops to the border of Kosovo, exploiting the break in diplomacy to further what appeared to be preparations for an all-out occupation of Kosovo. Fearing a blood bath, knowing the far superior military strength of the Serb army, and with knowledge of the atrocities committed in Bosnia, the Albanians agreed to the stipulations of the Rambouillet treaty. Hundreds of thousands of ethnic Albanians were hiding in the winter hills, thousands more were displaced, and over 2,000 civilians had been killed. The KLA signed the treaty. NATO threatened Serbia with bombing if it refused to sign, but

NATO had made such threats before, and the powers in Belgrade had no reason to believe action would be taken against them this time. Despite the NATO rhetoric, they refused.

NATO began bombing strategic targets in Kosovo on March 24, 1999, in response to Serbia's "Operation Horseshoe." Fanning out into the region in a pattern that took on the shape of a horseshoe, Serb soldiers went village-to-village, killing and burning, forcing those who could to run for their lives. To many, it looked as if the NATO bombings caused the extraordinary events that followed. Within three days of the bombing, 25,000 Albanian Kosovars were fleeing in terror. Within weeks 800,000 were fleeing. Serbian border guards took their identification papers and money, destroying any proof they ever existed.

Televised satellite technology yielded pictures of mass graves. Serbs then moved the remains and burned their victims, leaving the victims' families with no way of knowing what had happened to their missing relatives. A common means of disposal was to throw bodies into a well or water supply, rendering the water undrinkable. Cultural monuments and Islamic religious sites were destroyed. Reports estimated that up to 20,000 rapes and sexual assaults were committed against Albanian women. Albanian residents in Mitrovica were expelled, their houses and mosques burned, and women were sexually assaulted during attacks beginning on March 25, 1999. Albanians in other areas, most notably Pristine, were also expelled or killed, and women here, too, were sexually assaulted.

By May 20, 1999, one-third of the Albanian population had been expelled from Kosovo. The refugee crisis overwhelmed Macedonia and Albania, threatening to undermine the weak economies of both countries and flood the rest of Europe with refugees and asylum seekers from Kosovo. The International Criminal Tribunal for the Former Yugoslavia, convened to prosecute war crimes in Bosnia, indicted Milosevic for crimes against humanity in Kosovo on May 27, 1999, and NATO escalated its air strikes. With questionable legality, NATO bombed the capital of Serbia, Belgrade, accidentally including in its targets a maternity hospital and the Chinese embassy. On June 2, 1999, Milosevic capitulated to the terms of NATO, and within ten days, Serb troops began pulling out of Kosovo. Between mid-June, when the NATO troops were deployed, and mid-August, 1999, more than 755,000 Kosovars returned to Kosovo.

The situation was reversed for the Serbs. There were an estimated 20,000 Serbs in Pristina, Kosovo, before the NATO bombing. By mid-August, the United Nations High Commission of Refugees reported only 2,000 Serbs left in the capital city, and increasingly violent attacks on the Serb population by Albanian Kosovars were on the rise. Albanian Kosovars used the same tactics that Serbs had used against them, forcing Serbs to sign over their property and possessions and leave. Nearly 200,000 Serb refugees from Kosovo fled into Serbia and Montenegro as the Albanian-Kosovars returned. Again, the departure was abrupt and fearful. The United Nations and NATO asserted their presence in the area, providing the appearance of protection for the now targeted Serbs. Nonetheless, tensions between ethnic Serbs and Albanian erupted into violent conflict again in Kosovo in March 2004. Albanian violence against Serbs was especially pronounced in areas where the International Criminal Tribunal for the Former Yugoslavia had documented atrocities committed against Albanians, especially around the areas of Mitrovica and Pristina, Kosovo. The violence in March 2004 left nineteen dead. Serbian Orthodox monasteries were demolished, and Serb houses and property were burned and destroyed. Intense debate regarding the partition of Kosovo from Serbia and Serbs from Albanian Kosovars was given new immediacy, but all sides were entrenched in their oppositional positions.

The trial of Milosevic by the International Criminal Tribunal for the Former Yugoslavia commenced on October 29, 2001, in which he was charged with genocide, crimes against humanity, murder, and persecution (including command responsibility for the sexual assaults on Kosovo Albanian women and the wanton destruction of religious sites) in Kosovo. The prosecution rested its case in February 2004, with the United Nations allowing the defense, judgment, and appeals processes to extend through 2010. The legacy of ethnic cleansing touched everyone throughout the former Yugoslavia. Thousands of Roma (Gypsy) who lived in Kosovo and the surrounding areas remained homeless and have been overlooked by the judicial process. For the Kosovars—both Albanian and Serb—history and experience have provided no solid template for establishing peace.

SEE ALSO Ethnic Cleansing; International Criminal Tribunal for the Former Yugoslavia; Milosevic, Slobodan; Nationalism; Peacekeeping; Prevention; Rape; Reconciliation; Safe Zones

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Kathleen Z. Young

Kristallnacht

According to a 1938 report published by the organization called Reíchsueriretung der Juden, Kristallnacht, the action launched against the Jews within the Reich (then consisting of Germany and Austria), was a historical turning point. "Crystal Night" refers to the tons of shattered window glass after Jewish-owned businesses and homes were destroyed. A document issued by Joachim von Ribbentrop's Foreign Ministry on January 25, 1939 to all German diplomatic and consular services, provided the justification for the Kristallnacht action. Under the title, "The Jewish Question, a Factor in Our Foreign Policy," it stated

> It is not by chance that 1938, the year of our destiny, saw the realization of our plan for Greater Germany as well as a major step towards the solution of the Jewish problem. . . . This disease in the body of our people had to be eradicated first before the Great German Reich could assemble its forces to overcome the will of the world.

Months earlier, in November 1937, Adolf Hitler had told his followers that "the determination to secure the safety and the expansion of the racial community implied such risks" as the use of force and of war if necessary. Since Hitler's rise to power in January 1933, he had successfully crushed his opponents at home, excluded and isolated the Jews of Germany and Austria, rearmed and proceeded with the military occupation of the Rhineland despite the provisions of the Versailles Treaty of 1919.

The unwillingness of Germany's neighbors (notably France and the United Kingdom), to challenge Hitler all but guaranteed his success. Hitler also supported Franco's military putsch against the Spanish Republic, and annexed neighboring Austria. These actions created a flood of Jewish refugees seeking safety in other European nations and in the United States. In July 1938, U.S. President Franklin Delano Roosevelt convened an international summit to urge the delegates from thirty-two attending nations to open their borders to the refugees. This meeting, known as the Evian Conference, failed dismally. Instead, Polish and Hungarian observers requested that they, too, be relieved of their Jews.

When France and Britain signed the Munich Agreements in September 1938 and abandoned their Czech ally to Hitler's advance, they gave free rein to Hitler's territorial demands. With this, the situation in Europe passed what Berthold Brecht called Hitler's "resistable ascent." Hitler continued in his aggressive policies, including his treatment of the Jews. He was encouraged further when France's Premier Edouard Daladier, representing the Evian Intergovernment Committee, declared in a memorandum to the Ribbentrop ministry that "none of the States (members of the Committee) would dispute the absolute right of the German government to take with regard to certain of its citizens such measures as are within its own sovereign powers."

Such was the context in which the Jews were terrorized into emigrating. In October 1938 they were driven out of the recently annexed Sudetenland and on the nights of October 29 approximately 17,000 Jews were expelled from Germany to the Polish border. Berlin did this in anticipation of Warsaw's decision to revoke Polish passports if their bearers had lived abroad for more than five years. On November 3, 1938, Herschel Grynszpân, a young Polish Jewish refugee living in hiding at his uncle's home in Paris, received a postcard from his sister informing him that his family, settled in Hanover since 1911, had been expelled and were now confined, penniless, in the Polish border village of Zbazsyn. The next day the Yiddish newspaper, *Pariser Haint,* published a detailed account of the inhumane conditions of this act of massive deportation.

After forty-eight hours of feverish agitation, Grynszpân came to a decision. On Monday morning, November 7, 1938, he purchased a gun and went to the German Embassy in Paris. He gained entry by saying he had to deliver an important document, but once inside he fired five shots at the Third Secretary, Ernst vom Rath, the only diplomat then present. Badly hurt, vom Rath was taken to a neighboring clinic. The embassy porters handed Grynszpân over to the French police. He offered no resistance. Hitler heard of the attempt against vom Rath that same evening, and dispatched his personal physician to the embassy official's bedside. A few days later, on November 9, Hitler learned that vom Rath had died of his wounds. In response, he gave his chief propagandist, Joseph Goebbels, permission to launch a pogrom against the Jews of the Third Reich.

Grynszpân's attempt against the life of a representative of the Third Reich was by no means the first one.

On the "Night of Broken Glass" in November 1938, Nazi-orchestrated riots erupted in Germany and Austria. Angry mobs vandalized and ransacked some 7,500 Jewish businesses and an incalculable number of homes. [BETTMANN/CORBIS]

In February 1936, a young Jewish student named David Frankfurter had shot down the leader of Swiss Nazis, Wilhelm Gustloff, in Davos, Switzerland. At the time Hitler had vetoed reprisals against Jews, for fear of international reactions that might compromise his military plan (the reoccupation of the Rhineland) or disqualify Berlin as the host site for the Olympic games to be held in July of that year. By then, however, Hitler was far more confident. His goal now was to make Germany *Judenrein* ("Free of Jews").

Although the pogrom that Goebbels set in motion on the night of November 9, 1938 was later hailed as a "spontaneous wave of righteous indignation," the *Sturm Abteilung* (SA, "storm trooper unit") and the *Schutzstaffel* (SS, "protective corps") were actually in charge of the violent action. Their mission was explicit: preserve Aryan property, isolate the main Jewish institutions and seize their archives before they were destroyed, and arrest approximately 30,000 Jewish men (later to be herded into concentration camps); such were the duties of the SA and the SS, according to the instructions issued by Goebbels, Reinhard Heydrich, Obergruppenfuehrer of the SS, and the chief of the Gestapo in Berlin.

The reports of Nazi leaders, diplomats, journalists stationed in the Reich, and victims who succeeded in emigrating before October 1941 give only approximate results of the Kristallnacht pogrom: dozens of suicides—among them a young couple in Stuttgart and their two little boys (one two-year-old and another who was only a few months old). A report from the Chief Judge of the Nazi Party's Supreme Court mentioned 91 dead and 36 injured, and went on to condemn those Nazi participants who raped Jews during Kristallnacht—for "defiling the race." No less than 267 synagogues and places of worship as well as 7,500 shops not

yet "Aryanized" (taken over from Jewish owners) and hundreds of dwellings were looted and smashed.

In the evening of November 10, Goebbels officially called a halt to the pogrom. Reichsmarschall Hermann Wilhelm Göring, who was in charge of making decisions for the whole Reich, now enacted new laws intended, he claimed, "to harmonize the solution of the Jewish problem to its logical outcome." He chaired a meeting November 12, 1938 at the Air Ministry for senior ministers, the chiefs of police and security, and other influential Nazis and announced his new policies. Jews were now required to pay a million mark fine; their property (already registered according to a 1938 law) was to be confiscated, and their assets exchanged for government bonds. Compensation for property losses paid to them by insurance companies was also confiscated by the State.

Beginning on January 1, 1939, Jews were barred from conducting business or visiting public places except those designated for them. A Reich Central Office for Jewish Emigration was created in Germany modeled on one that Adolf Eichmann had established in Austria. Jewish associations were ordered to disband and their property was transferred to the Central Organization of German Jews, which was now under the authority of the Reichssicherheitshauptamt (RSHA; Nazi Department of Security). The issue of forcing Jews to wear special identifying insignia and herding them into ghettos was discussed, but the idea was shelved for the moment, because Göring believed that ghettoization would be achieved naturally as the Jews grew increasingly destitute.

Despite the international indignation aroused by the scope and the violence of Kristallnacht, democratic countries were not inclined to open their borders to the victims. On November 11, 1938, Switzerland signed an agreement with Germany, promising to prohibit German Jews from entering Swiss territory. The countries of Scandinavia suggested settling the Jews outside Europe. British Prime Minister Neville Chamberlain agreed under pressure to allow 500 Jewish refugees per week into Britain, but he also blocked their entry into Palestine.

The French Premier, Daladier, was on delicate ground, because he had reached an accommodation with Germany and was set to sign a treaty of friendship and cooperation on December 6, of 1938. Complaining that France had already admitted many Jews (at that time, approximately 30,000), he offered to take in a few more as long as doing so would not jeopardize France's rapprochement with Germany. In front of more than 200 journalists, U.S. President Roosevelt recalled his ambassador to Germany "for consultation." This, however, was a hollow gesture, for Roosevelt had no intention of taking retaliatory measures against Hitler. American Jewish organizations suggested that he authorize an increase in the immigration quotas for European Jews—even if only temporarily—but he declined to do so.

A few days later, on November 23, the *New York Times* published the translation of an article that had appeared in *Das Schwarze Korps,* an SS publication known for its extreme anti-Jewish policy: "At this stage of development we must therefore face the hard necessity of exterminating the Jewish underworld in the same manner in which in this state of order we exterminate criminals generally: by fire and by the sword."

Grynszpân, whose act of anger and grief against the German embassy in France provided the excuse for Kristallnacht, disappeared from history after being handed over by Vichy government to the Germans. The pogrom that ensued, however, was indeed a turning point in the official Nazi policy on Jews. Unfortunately, the Third Reich's threat to exterminate all Jews, openly declared by the SS on November 23, 1938, was ignored by France, England, and the United States, as was Hitler's own threat, two months later, to exterminate all the Jews of Europe.

SEE ALSO Goebbels, Joseph; Göring, Hermann; Heydrich, Reinhard; Himmler, Heinrich; Hitler, Adolf; Holocaust

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Rita Thalmann

Kulaks

Kulak, in Russian, means a "fist." When used for rich peasants, it alludes to their alleged fist-like hold on

their poorer brethren. Vladimir Lenin saw the kulak as a "village bourgeoisie" that would be crushed by a socialist revolution. This was achieved during Joseph Stalin's "revolution from the top" that mandated collectivization and dekulakization.

When the Bolsheviks assumed power, peasants made up 85 percent of Russia's population. Peasants were tied to village communes that practiced the joint ownership of land with periodical redistribution for individual exploitation. The 1906 Stolypin reforms encouraged peasants to establish separate farms, but eleven years later communes were still the norm in Russia. Only in Ukraine and other non-Russian regions did individual farming prevail. Most peasants remained poor, but many made a decent living and some even became wealthy. The kulaks were rich enough to hire farm help and lease out agricultural machinery. Less than a tenth of the peasant population belonged to this group. There were significantly more middle peasants whose holdings made them economically self-sufficient. More numerous than the other two groups combined were the poor peasants. They could not support their families with the earnings from their meager farms, and often they had to supplement their income with outside employment.

During the Russian civil war, the reconquest of break-away non-Russian republics, and the struggle with interventionist forces, kulaks became a target for the Bolshevik policy of "war communism" or the requisitioning of foodstuffs for and by the armies and urban population. Meanwhile, incited by socialist agitators, poor peasants began to seize land and farm implements from their richer neighbors. Some kulaks were killed, others fled, and still others lost some or all of their holdings. Their numbers dwindled to less than half of what they had been before the revolution. The poor peasants improved their situation by appropriating land and other property from large landowners. Eventually, the middle peasants outnumbered the other two groups combined. Their numbers and economic importance assured them a certain tolerance on the part of the Soviet state. However, the position of the middle peasant remained ambiguous: While not an enemy like the kulak, he or she was also not a fellow proletarian like the poor peasant. The middle peasant could only be an "ally" and a temporary one at that.

The New Economic Policy adopted in 1921 put socialized agriculture on hold and encouraged private farming. In 1925 the leading spokesman for the right, Nikolai Bukharin, urged the Russian Communist Party to adopt a pro-peasant policy with an "enrich yourselves" slogan. The kulaks won a temporary reprieve, but in ideological terms they remained class enemies. The revival of Soviet agriculture after the famine of 1921 through 1923 benefited the peasants although it did little for Stalin's ambitions. Peasants now consumed more of what they grew and this left little for export, the main source of capital for industrialization. Stalin intended to reorganize all of agriculture into large estates, the so-called state farms (*sovkhozy*) and collective farms (*kolkhozy*). All peasants would eventually be included in these two systems, particularly the second one. Collectivization would achieve the regime's ideological, economic, political, and social goals: socialized agriculture, direct access to cereals for export, the elimination of the village bourgeoisie, and Party control over the peasantry. Collectivization meant the destruction of the kulaks as a class and thus the elimination of peasant elites that could oppose the regime.

The difficulties in grain procurement experienced in 1927 prompted the government to return to a policy of requisitions. Facing exorbitant taxes and other repressive measures, many well-off farmers sold inventory and livestock, liquidated their land, and moved to industrial centers. This was called "self-dekulakization." Stalin announced an all-out, state-enforced policy of dekulakization on December 27, 1929. The following month the Party and state machinery was set in motion, under the watchful eyes of Viacheslav Molotov and other Party leaders, to prepare plans for full-scale dekulakization and deportation. Quotas were worked out for each region, and it was stipulated that the number of kulak households was not to exceed 3 to 5 percent in grain-producing areas and 2 to 3 percent in non-grain-producing areas. In regions selected for wholesale collectivization, kulak property was to be confiscated and its owners driven out.

Kulaks were divided into three categories. The OGPU (political police) drew up lists of the most dangerous counterrevolutionary activists for inclusion in the first category. The heads of these households were to be arrested and executed or sent to a concentration camp, and the rest of the family would be deported outside the region. The second category, picked by local authorities, included large-scale exploiters and the active opponents of collectivization. These enemies of the state would also be exiled outside the region, but together with their families. The least anti-Soviet kulaks formed the third category; they would be resettled in their own region, but given land of inferior quality and not allowed to join the collective farms.

Two waves of dekulakization—the first during the winter and spring of 1930, and the second a year later—netted about 1,800,000 individuals; over the course of the next two years another 400,000 were added. Two-thirds of these kulaks were deported to

Northern Russia, Siberia, the Urals, and Kazakhstan; the rest were resettled in their own regions. Between 30 and 40 percent were children, and there were also significant numbers of the elderly. Each family of deportees (on average, five members) was allowed to take a thousand pounds of property, including a two-month supply of food, and 500 rubles. In reality most families lacked adequate food and proper winter clothing. Mortality was high, especially among children and the elderly, in the convoys and places of resettlement.

After the first year of state-run dekulakization, kulaks no longer played a role in the economy. However, class criteria were not rigorously applied to determine who was a kulak. Quotas for dekulakization established by higher authorities were often met at the local level by including middle and even poor peasants. The latter could also be dekulakized for having a kulak mentality, betrayed by their opposition to collectivization. "Kulak" thus became a catch-word for all those whom Stalin's regime considered alien and hostile to the new socialist order: It came to include village priests, village intelligentsia, former members of the Russian White Army, and the anti-Russian national armies. Abuse was widespread, and even families of Red Army personnel and industrial workers were swept up in the fray.

Stalin's dekulakization program had a national dimension. The 400,000 peasants deported from Ukraine were among the most dynamic and nationally minded peoples in the Ukrainian countryside. Their loss to Ukraine had dire consequences. Simultaneously, deportees from Russia were transported to Ukraine (3,500 families arrived in 1930–1931 from Soviet Asia). This policy continued during and after the famine of 1932 and 1933. As a result, the number of ethnic Ukrainians in the peasant population of the Ukrainian republic dropped from 89 percent in 1926 to 71 percent in 1939.

The reaction of the Soviet population toward dekulakization was not uniform. It was mainly positive among the urban and rural proletariat. Some 25,000 so-called activists, mostly Russian city workers, were mobilized and sent to the countryside, where they were joined by the village poor, to help the state and party functionaries carry out collectivization and dekulakization. The kulak property confiscated up to July 1, 1930, and transferred to the collectives was enormous. Its value, taking into account the entire Soviet Union, has been calculated at 175,000,000 rubles, but some historians believe that the more accurate value was two or three times greater. A poor peasant might profit as well from the kulak's misery: take a family's house and farm tools, and join the collective enriched by them. Many poor peasants were enticed by these possibilities, or other more noble if misguided convictions, and gave their support to the authorities in helping to eliminate the kulaks.

Nonetheless, many middle and even poor peasants, especially those who did not want to join the collectives themselves, joined their richer neighbors in opposing dekulakization, seen as part and parcel of collectivization. There were village demonstrations, often organized and led by women. In some cases uprisings arose with hundreds of participants. Such rebellions sometimes lasted for weeks until they were crushed by the army. Historians have calculated that over seven thousand such mass disturbances occurred in 1930 alone. Poorly armed and deprived of any qualified leadership, these uprisings could not succeed; repression inevitably followed. Ringleaders were shot or sent to concentration camps, and the rest of the "rebels" joined the kulaks in those locales where the latter had been deported.

SEE ALSO Lenin, Vladimir; Stalin, Joseph; Ukraine (Famine); Union of Soviet Socialist Republics

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Roman Serbyn

Kuper, Leo

[NOVEMBER 24, 1908–MAY 23, 1994]
Genocide scholar and activist

Leo Kuper's concern with the prevention of genocide was that of an academic and an activist. His pioneering scholarship influenced the development of a distinctive interdisciplinary field of genocide studies. He also worked to create public awareness on the nature of genocide that would lead to very early warnings and action to prevent, suppress, or punish it.

Kuper was born in Johannesburg, South Africa. He received his B.A. and L.L.B. from Witwatersrand University, graduating in 1931. Kuper then practiced law

until 1940, defending human rights victims and representing one of the first interracial trade unions. During World War II he served as an intelligence officer in the Eighth Army.

In 1947 Kuper completed his M.A. in sociology at the University of North Carolina and soon thereafter became a lecturer at the University of Birmingham in England, where he earned a doctorate in sociology. He returned to South Africa in 1952, serving as a professor of sociology at the University of Natal, and remained there until 1961. At the 1960 World Congress of Sociology, Kuper presented a paper that outlined hypothetically a sociologist's recommendations on how best to increase racial tension in South Africa, and went on to show that the policies of the National Party government could be regarded as their very implementation. This exercise of the sociological imagination engendered considerable interest in his work.

Two of Kuper's studies on South African society, *Passive Resistance in South Africa* (1957) and *An African Bourgeoisie* (1965), were banned by the government. When racial tests were imposed on universities, Kuper wrote a satire on the newly segregated universities, *College Brew* (1960), and reluctantly decided to leave his country. In 1961 he accepted an appointment as a professor of sociology at the University of California at Los Angeles, where he remained until his retirement in 1976.

In California, Kuper developed a sustained interest in genocide. Given his background, it is no surprise that Kuper's interest was both academic and practical, and his writing both analytical and prescriptive. Concerned with the international community's approach to genocide, Kuper attended sessions of the United Nations (UN) Commission on Human Rights as a delegate of the accredited human rights organization, the Minority Rights Group (MRG). This experience provided an exposure to member states that informed his later thinking on genocide.

Kuper published three works on genocide in the early 1980s: *Genocide: Its Political Use in the Twentieth Century* (1981), regarded as his most important work; *International Action against Genocide* (1982); and *The Prevention of Genocide* (1985). Kuper's academic work on genocide returned him to his legal roots and thrust him into the arena of international relations, as he described how states pursued their own interests, even when supposedly acting on behalf of humankind. His comments on the drafting of the 1948 UN Genocide Convention, based on a reading of the negotiations leading to it, are particularly telling. He concluded that diplomats negotiated a treaty that was ambiguous, weak, and lacking a guardian that might preserve its integrity within the UN system.

Kuper also studied genocides that occurred before and after the Genocide Convention's entry into force, analyzing risk factors and preventive measures. He concluded that "the sovereign territorial state claims, as an integral part of its sovereignty, the right to commit genocide, or engage in genocidal massacres, against peoples under its rule, and that the United Nations, for all practical purposes, defends this right" (1982, p. 161). Kuper recognized the UN Secretary-General's role in making intercessions and the humanitarian relief that the UN provided for refugees from genocide. However, he also demonstrated how the UN often stood by, acceding to states' claims to territorial integrity or to the enforcement of law and order, while genocide unfolded beneath its gaze.

Kuper made a number of suggestions for preventing genocide. He suggested that the UN devise an early warning system, drawing on the impartial observations of potential genocides linked with procedures to raise the alarm that could monitor situations and undertake initial preventive measures. Nongovernmental organizations (NGOs) could enlist sympathetic states to press the UN and delinquent governments. Informed public opinion could develop emergency campaigns to avert the genocide. Should the genocide escalate, then all possible means should be employed to suppress it. This would include the normal range of bilateral and intergovernmental measures, including UN Security Council sanctions. In addition, Kuper advocated a resort to forceful humanitarian intervention by states together or alone in extreme circumstances.

His study of genocide completed, Kuper sought to apply his findings to its prevention. In 1985, with the help of fellow sociologist Lord Young of Dartington, he established International Alert in Los Angeles and London to alert decision makers and public opinion to the advent of genocide. He was also a founding member of the International Council of the Institute on the Holocaust and Genocide, which had similar aims.

Kuper died on May 23, 1994. His final weeks saw South Africa's peaceful transition to democracy, a vision Kuper had maintained throughout apartheid's worst hours. Those weeks also witnessed the start of the genocide in Rwanda, a tragic vindication of all that Kuper had argued for in the field of genocide prevention.

SEE ALSO Holocaust

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Bernard F. Hamilton

Kurds

The Kurds are often referred to as the world's largest non-state nation. The population is estimated at between 25 to 35 million, which makes them the fourth-largest ethnic group in the Middle East, outnumbered only by Arabs, Turks, and Persians. The majority live in Kurdistan, a borderless homeland whose territory is divided among the neighboring countries of Turkey, Iran, Iraq, and Syria. Some Kurdish populations are scattered throughout western and central Asia and, since the 1960s, can also be found in Europe, North America, Australia, New Zealand, and other countries.

The territory's rich natural resources have supported nomadic populations practicing animal husbandry, as well as rural and urban economies rooted in agriculture, long-distance trade, and regional markets. According to historical and archeological evidence, the region was the site of the world's earliest agrarian societies, cities, and states, all of which coexisted uneasily in a web of antagonisms that were rooted in cleavages based on class, empire, ethnicity, religion, race, and gender.

Although the Kurds appear to be an indigenous people of Western Asia, living largely astride the Zagros Mountains, their territory was home to numerous other civilizations and peoples, as well. Most of these (except for Assyrians, Armenians, and Jews) are now extinct or have been assimilated into the Kurdish population. The landscape is full of relics of monumental construction projects ranging from ancient irrigation networks to bridges and citadels, side by side with evidence of the ongoing destruction of life and property through conquest, wars, massacres, and forced population movements.

Pre-Modern States

We have more knowledge about the Kurds in the years following the conquest of the region by Islamic armies in the seventh century. Kurdistan lay very close to Baghdad, the capital of the Islamic caliphate. It was the site of incessant wars among the armies of the caliphs, as well as governors, Kurdish rulers, and conquerors coming from as far as the Roman empire in the west and Mongolia in the east. Although the conflicts were primary over land, taxes, and the recruitment of military service from the population, ethnic and religious differences also provided justifications for conquest and subjugation. Unrestrained violence, including atrocities against both civilians and combatants was widespread, and was aimed, in part, at intimidating the adversary and the population into submission. To give one example, the army of Adhud al-Dawla, ruler of the Buwayhid dynasty centered in Baghdad, besieged the Hakkari Kurds in 980, forced them into surrender on a promise of sparing their lives, but then crucified them and left their bodies hanging along 15 miles of roadside near Mosul.

Several factors helped to reshape the ethnic composition of Western Asia. For one, the Oghuz Turks arrived in the region from the Asian steppes in the eleventh century. Also important was the formation of the Seljuk dynasty (11th through 13th centuries) and Turkoman dynasties (Aq Qoyunlu and Qara Qoyunlu), which were followed by the fall of the caliphate in 1258 in the wake of the Mongol invasion. According to historian Vladimir Minorsky, "the Kurdish element was exhausting itself" in these unceasing wars. It is during this period, however, that the Kurds emerge as a distinct people, their territory becomes identified by outsiders as Kurdistan, and Kurdish statehood emerges in the form of mini-states and principalities.

Some of the indigenous populations of Kurdistan include the Armenians, Assyrians (Christians), and Kurds (mostly Muslims). There are also other goups, such as the Yezidis, who are followers of minority religions, as well as scattered minorities such as the Jews. These peoples survived the intensive colonization of the region by Turkic (Oghuz, Turkoman, Ottoman) and Mongol nomadic and tribal peoples from central Asia. The homogenizing force of centuries of conversion, forcible population movements, and massacres was offset by the inability of feudal states to centralize power and therefore assimilate their conquered peoples of the region into the language, culture and religion of the conquerors. Equally important in preventing the total annihilation of the indigenous populations was the labor-intensive nature of feudal agrarian production. Without a sizeable productive labor force, the fertile lands of Armenia, Azerbaijan, Kurdistan, and Mesopotamia could not sustain elaborate state structures. Although some Kurdish territories were Turkicized due to conquest and the violent elimination of Kurdish ruling families (especially by the Aq Qoyunlu dynasty, 1378–1508), as well as by massacres and deportations, some Kurdish mini-states were, nonetheless, gaining ground.

Present-day map of Turkey, Iran, Syria, and Iraq—countries where oppressed Kurds with long ancestral roots continue to reside. [XNR PRODUCTIONS, INC. BERKSHIRE PUBLISHING GROUP]

By the early sixteenth century, Western Asia was under the rule of two rival Turkish dynasties, the Ottomans and Safavids, which in 1639 drew their borders along the Zagros mountain range. Armenia and Kurdistan were thus divided, and the region experienced intermittent wars. The two empires pursued a policy of administrative centralization by removing hereditary Kurdish principalities. However, the Kurdish mini-states benefitted from the rivalry between the dynasties, and some survived until the mid-nineteenth century. Shah Abbas I (1588–1626), was suspicious of the loyalty of the Kurdish rulers of principalities of Biradost and Mukriyan. He supervised and personally participated in the massacres of the rulers and their subjects (1610–1611), and resettled Turkish tribes in their territory. He deported another 15,000 Kurds from another region of Kurdistan to northeastern Iran. An eyewitness to the mass killings, the Shah's official chronicler Eskandar Monshi Torkman, whose *History of Shah Abbas the Great* was translated into English in 1971, detailed with pride the "general massacre" of the Mukri Kurds and noted that the shah's "fury and wrath" could not be allayed "but by shedding the blood of those unfortunate ones" and that the "slicing of men" and the "enslavement of women and girls . . . had been inscribed on the annals of time by destination." He labeled the Kurds as "base-born," "human beings of savage disposition," and "impious."

The Modern Nation-State

In the mid-nineteenth century, Ottoman Turkey and Iran began adopting a more European style of administrative and military centralization. The two states used their armies to overthrow the six remaining Kurdish principalities, and extended their direct rule over all parts of Kurdistan. With the emergence of modern style nation-states in Iran (after the Constitutional Revolution of 1906 to 1911) and Ottoman Turkey (especially after the 1908 Young Turk revolution), the Kurds were incorporated into the state as citizens rather than a distinct people enjoying the right to self-rule. Feudal and tribal relations continued to prevail in the predominantly rural society of Kurdistan, but Kurdish nationalist ideas began to appear in the poetry and journalism of the last decade of the nineteenth century.

World War I turned Kurdistan into a battlefield between the Ottomans, Russians, Iranians, and British. The Ottoman government committed genocide against

Kurdish women work fertile fields in the Azerbaijan region of Iran, 1968. Iran's recent Islamic governments have continued the "Persianization" policies of earlier regimes, seeking to eliminate the Kurdish language and culture. [ROGER WOOD/CORBIS]

Armenians and Assyrians in 1915, and forcibly transferred some 700,000 Kurds to Western Turkey in 1917. At the same time, the tsarist Russian army conducted massacres of the Kurds in Sauj Bulagh in 1915 (now Mahabad, Iran), Rawandiz (Iraq), Khanaqin (Iran) and throughout the eastern parts of Kurdistan. As in previous wars, both armies committed crimes against humanity, including enslavement, murder, extermination, rape, sexual slavery, sexual violence, persecution. They also engaged in such war crimes as willful killing, inhuman treatment, unlawful deportation and transfer, attacking civilians, pillaging, and cruel treatment. The Russian army also committed gendercide—the killing of adolescent and adult males—in the massacre of Sauj Bulagh, and carried away some 400 women and girls for abuse. Armenian and Assyrian militias participated in the Russian massacres, and some Kurdish tribal, feudal, and religious leaders acted as accomplices in the genocide of Armenians and Assyrians. At the same time, many Kurds sheltered Armenian victims, and Assyrians helped starving Kurds.

The dismantling of the Ottoman empire in World War I led to the division of its Kurdish region and the incorporation of that territory into the newly created states of Iraq (under British occupation and mandate, 1918–1932), Syria (under French occupation and mandate, 1918–1946), and Turkey (Republic of Turkey since 1923). The formation of these modern nation-states entailed the forced assimilation of the Kurds into the official or dominant national languages and cultures: Turkish (Turkey), Persian (Iran), and Arabic (Syria, and, in a more limited scope, Iraq). In Turkey and Iran, in particular, the political power of religious, tribal, and feudal leaders was uprooted. State violence was the principal means of integration and assimilation. According to historian Mark Levene, (Ottoman) Turkey had turned Eastern Anatolia, which includes Armenia and Kurdistan, into a "zone of genocide" from 1878 to 1923. This "zone" has persisted into the twenty-first century.

Kurdish resistance to assimilation was diverse and extensive, including a series of armed revolts in Turkey (1921, 1925, 1927–1931, 1937–1938), Iran (1920–early 1930s), and Iraq (early 1920s, 1940s). These revolts were led, often jointly, by heads of religious orders (*sheikhs*) and feudal and tribal chiefs (*aghast*) as well as an emerging group of nationalist intelligentsia, political activists, and deserting army officers, who were mostly urban and secular. The repression of these revolts was most brutal in Turkey and Iran.

The region was not a theater of war in World War II, except for the northern part of Iranian Kurdistan, which was occupied by the Soviet Union from 1941 to 1946. After the war the four countries acceded or ratified the 1949 Geneva Conventions (Turkey, 1954; Iran, 1957; Iraq, 1956; Syria, 1953) and its 1977 Additional Protocols.

Turkey

The intent to commit genocide is inscribed, explicitly, in Turkey's Law No. 2510 of 1934, which stipulated the transfer of non-Turks to Turkish speaking regions, where they would not be allowed to form more than 5 percent of the population. This law provided for the depopulation of non-Turkish villages and towns, resettlement of Turks in non-Turkish areas, and other assimilationist projects, such as the establishing of boarding schools, which were intended to turn non-Turkish children into monolingual Turkish speakers. The law was applied a year later in the wake of Law No. 2884, which decreed the systematic turkification of the Dersim region, renamed as Tunceli, through military control, boarding schools, the banning of the Kurdish language and culture, changing place names, and deportation.

This forced turkification project led to the Dersim uprising, which the army and the air force brutally suppressed from 1937 to 1938, and the repression of which some researchers consider to be an act of genocide. The

Turkish Republic considered popular uprisings to be reactionary and religious opposition to the civilizing and westernizing policies of the Turkish nation-state. The Kurds were branded as tribal, uncivilized, illiterate, primitive, backward, dirty, and ignorant. Any expression of Kurdish identity was treated as a crime against the "indivisibility of the Turkish nation" and "territorial integrity" of Turkey.

Dersim was the last uprising until the armed resistance of 1984–1999, led by Kurdistan Workers Party (PKK, in Kurdish acronyms). Nonetheless, various governments continued Turkification through the deliberate elimination of Kurdish as a spoken and written language, and through ethnocide—eliminating Kurdish culture and ethnic identity. The use of the Kurdish language, music, dance, dress, personal and geographic names, and even listening to broadcasting and recorded music were all criminalized by the Turkish state.

Because of Turkey's aspirations to full membership in the European Union, the parliament acceded to pressure and legalized the private use of spoken Kurdish in 1991. A decade later the parliament removed some of the constitutional and legal restrictions on the language. However, linguistic genocide continues to be the official state policy.

During its repression of the PKK, which it labeled counterinsurgency operations, Turkey declared a state of emergency in parts of its southeastern (Kurdish) territory. According to the Human Rights Watch Turkey committed "gross violation of its international commitments to respect the laws of war" (1995, p. 7). This included forced displacements, indiscriminate shootings, summary executions, and disguising the identity of perpetrators, as well as violations of international law, including summary execution, torture, forcible displacement of civilians, pillage, destruction of villages, failure to care for civilians displaced by government forces, injury of civilians, destruction of civilian property, inhumane and degrading treatment, kidnaping of civilians to act as porters and as human shields against attack, disappearances, life-threatening conditions of detention and inadequate medical attention leading to death. The Human Rights Watch also noted that the United States, Turkey's close ally and its major weapons supplier, was deeply implicated, and, much like NATO, chose to "downplay Turkish violations for strategic reasons" (1995, p. 13). It also charged that the PKK, which was not party to the Geneva Protocols, also engaged in "substantial violations of the laws of war," including "summary executions, indiscriminate fire and the intentional targeting of non-combatants" (1995, pp. 12–13).

Kurdish homestead, Lake Rezaiyeh, Azerbaijan region of Iran. [ROGER WOOD/CORBIS]

During the operations, according to a Turkish parliamentary commission, the armed forces displaced 378,335 villagers while destroying or evacuating 3,428 rural settlements (905 villages and 2,523 hamlets) from the mid-1980s to 1997. These figures are generally treated as underestimations. The Turkish security forces further destroyed the infrastructure of rural life in the Kurdish region, and thus threatened the survival of the Kurds as a distinct people. Other crimes included systematic sexual violence against women in custody.

Iran

Especially under Reza Shah Pahlavi (1925–1941), Iran undertook a policy of forcible Persianization of the Kurds through linguicide and ethnocide as well as war, killing, jail, and deportations. As early as 1923, speaking Kurdish had been banned in schools and other state institutions, and by the mid-1930s, a total ban on the language and culture was imposed. Under the Pahlavi dynasty (1925–1979), crimes against humanity and war crimes were committed in military operations against the Kurds. The Islamic regime that followed the Shahs continued the persianization policy, although on a more limited scale. During its suppression of Kurdish autonomists, which began once it came to power, the government committed crimes against humanity including murder, extermination, imprisonment, and torture, and war crimes such as wilful killing, inhuman treatment, appropriation of property, denying a fair trial, unlawful deportation and transfer, attacking civil-

ians, execution without due process, and attacking undefended places.

Iraq

Iraq was the only country, other than the Soviet Union, where the existence of the Kurds was recognized and the Kurdish language was allowed limited use in primary education, local administration, and the mass media. However, Iraq did institute a policy of containing Kurdish nationalism through arabization. The government committed crimes against humanity and war crimes during the long conflict with Kurdish autonomists, which raged intermittently from 1961 to the 1990s. During the first Ba'ath regime's offensive against the Kurds in 1963, the Mongolian People's Republic asked the UN General Assembly to discuss "the policy of genocide carried out by the government of the Republic of Iraq against the Kurdish people," and the Soviet Union referred the case to the Economic and Social Council. Mongolia later withdrew the request, and the Economic and Social Security Council refused to consider the Soviet request.

The second Ba'ath regime (1968–2003) constructed a cordon sanitaire along its northern borders with Iran and Turkey by destroying hundreds of Kurdish villages soon after the defeat of the Kurdish armed resistance in 1975. In 1983 it killed all the adolescent and adult males of Barzani Kurds, numbering about 8,000. In addition, during its war with Iran (1980–1988), in violation of the 1925 Geneva Protocol, the regime used chemical weapons against both the Iranians and Iraqi Kurds who lived in a number of settlements, including the town of Halabja (March 16, 1988). Moreover, the oil-rich Kirkuk region was arabized by forcibly uprooting Kurds from the city and villages. The 1988 campaign of mass murder, code-named Operation *Anfal* ("spoils" of war, also the title of a chapter in the Koran), is widely considered a genocide. According to a 1993 report by the Human Rights Watch, it entailed the killing of more than 100,000 Kurds, the disappearance of tens of thousands of noncombatants, the destruction of 4,006 villages (according to Kurdistan Regional Government), the forced displacement of hundreds of thousands of villagers, the arbitrary arrest and jailing of thousands of women, children, and the elderly under conditions of extreme deprivation, and the destruction of rural life.

Syria

Although the Kurds of Syria have not engaged in armed conflict with the state, they were targeted for ethnic cleansing beginning in the early 1960s. Some 120,000 Kurds were stripped of Syrian citizenship. According to a 1991 report by the Middle East Watch, the Syrian government planned for the depopulation of Kurdish regions by creating an "Arab belt" along the Turkish border, evicting peasants from 332 villages, and replacing them with Arab settlers.

Soviet Union and Caucasia

Although the Kurdish communities of Soviet Caucasia and Turkmenistan enjoyed cultural and linguistic rights, thousands of Caucasian Kurds were subjected to two waves of forced deportation to the Central Asian republics of Kazakhstan, Kirgizia, and Uzbekistan in 1937 and 1944. During the disintegration of the Soviet Union, the Muslim Kurdish populations of Armenia and Nagorny-Karabakh were largely displaced in the course of the war between Armenia and Azerbaijan between 1990 and 1994, when, according to the Human Rights Watch, both countries "systematically violated the most basic rule of international humanitarian law."

Prevention, Education, and Political-Judicial Reform

Since ancient times, mass killing and related crimes have been a permanent feature of life in the region. Modern genocide in Kurdistan is distinguished from earlier crimes by its rootedness in the nation–state and its nationalist ideology, which safeguards the territorial integrity of the homeland.

While there is little progress in reversing state politics, citizens, both Kurds and non-Kurds, have taken significant steps toward recognizing, documenting, and resisting genocide in literary words, academic research, conferences, film, and journalism. Much remains to be done, however, toward legal-political reform, promoting genocide education, and monitoring early warning signs of impending crimes.

SEE ALSO Ethnocide; Gas; Iran; Iraq; Linguistic Genocide

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Amir Hassanpour

Labor Camps, Nazi

Most people can conjure up a particular set of images when they think of labor camps under the Third Reich; usually, they picture emaciated prisoners in striped uniforms, performing heavy manual labor and subject to frequent beatings from sadistic SS guards. There is an essential truth to those images, in that they accurately reflect the experiences of many thousands of people. At the same time, however, the term *labor camp* can be deceptive. On the one hand, the Germans classified a great many places of detention as forced labor camps (*Zwangsarbeitslager*), but the term tells us little about conditions, which often differed radically from camp to camp. On the other hand, forced labor was a central part of life in most camps and ghettos, with or without the label. In fact, by the last years of the war, forced labor was ubiquitous in Germany, and some knowledge of the system is essential to an understanding of the Third Reich.

The National Socialists used forced labor from the very start of their rule, in the so-called wild camps that local authorities and party members established throughout the country in the first months of 1933. Later the Schutzstaffel (SS) gained control of such places and established a more rigidly controlled system of concentration camps (*Konzentrationslager*), which they modeled on their first camp at Dachau. Here, too, labor was at the center of the prisoners' existence. The Nazis saw work as having two complementary functions: as punishment and—for those whom the Nazis deemed suitable to exist in German society, either as citizens or so-called inferior foreign laborers—as a means of instilling proper discipline and socially acceptable behavior. Eventually, the SS would establish over twenty main concentration camps at places such as Buchenwald, Sachsenhausen, Flossenbürg, and Mauthausen. At Auschwitz, another such site, they eventually combined a work camp with an industrialized killing center. Moreover, especially in the last two years of the war, the main camps spawned nearly one thousand subcamps (*Aussenlager* or *Nebenlager*), each of which provided labor for some local work site. By this time the SS had in mind not just punishment and socialization, but also financial gain for the organization and cheap labor for its construction and resettlement programs, as well as a simultaneous benefit for Germany's war effort in many instances.

Concentration camp prisoners were, however, usually the last choice when German labor managers sought workers. Some time before such purportedly criminal elements came into use, the Germans began importing foreign labor from territories they had occupied. In some cases, especially in western Europe and (before September 1939) in Poland, the initial drive was to recruit volunteers who would go to Germany and work under relatively normal conditions. But in other cases, especially in the east after the war began, racism and perceived military necessity eventually led the German authorities to simply round up civilians, ship them back to the homeland, and parcel them out to forced labor camps. No one has yet determined the number of such camps with any accuracy, but the best available estimate is that there were at least three thousand. They operated under the control of many different agencies, ranging from private firms and local labor

In the 1930s the Nazis primarily used forced labor camps for punishment, and as a means of instilling discipline and "socially acceptable" behavior. Here, German political prisoners await transport to a nearby labor camp in Land Niedersachsen (West Saxony). [CORBIS]

boards to state work organizations such as the *Deutsche Arbeitsfront,* the *Organisation Todt,* and the *Generalbevollmächtigten für den Arbeitseinsatz.*

Along with the prisoners in the concentration camps, their subcamps, and the forced labor camps, inmates in many other kinds of detention facilities also had to work. The German armed forces allowed prisoners of war to be used in war production, in violation of the Geneva Convention. The military also turned tens of thousands of Soviet prisoners over to the SS, which worked many of them to death. The SS ran its own forced labor facilities, outside its system of concentration camps, where it put Jews and other undesirables to work on specific projects, such as building major roads in the occupied east. The inhabitants of ghettos often found themselves called up for forced labor of one kind or another; in fact, the Germans eventually reclassified many ghettos as forced labor camps. Prisoners in civilian police detention camps, troubled German youths, and even ethnic Germans waiting for resettlement in conquered territory had to work. The numbers of all these facilities ran into the thousands. And finally, the SS even operated nearly two hundred so-called *Arbeitserziehungslager,* work education camps, where they sent both German and foreign laborers who had violated work rules in their regular jobs or forced labor assignments. A little hard work under SS supervision, it was thought, would teach them a lesson—and if the laborers failed in their eight-week stints there, they often went on to concentration camps.

Forced laborers' experiences varied tremendously within and between camps, because of differences in the kinds of labor they performed, in their individual status, and in the camps' administrative systems. These variables literally meant the difference between life and death for thousands of people.

The Germans employed prisoners in nearly every imaginable kind of work. Some did hard manual labor, much of it dangerous. Prisoners worked in mines and quarries, where the backbreaking nature of the work, plus factors such as stone dust, accidents, and other hardships of life in the camps quickly destroyed their health. Others worked in construction, demolition,

Prisoners in a German Labor Camp. [CORBIS]

rubble clearance, or even bomb disposal, which entailed similar hazards. Some did agricultural work, which, although hard, offered opportunities to steal (or organize, as the prisoners put it) extra food. Some worked inside at manufacturing jobs, where the work was somewhat less physically exhausting. There were also prisoners working in a wide variety of small businesses, governmental offices, and even church facilities. The fortunate ones worked in offices, laundries, laboratories, or other places requiring skilled labor, where they could conserve their strength and sometimes organize items to trade for additional food or protection.

The prisoners' experiences also differed because of their status, in at least three respects. The most important factor was the basic category to which a prisoner belonged. Prisoners of war (POWs) from the United States and Great Britain were perhaps the most fortunate, in general, partly because the Germans treated them better than most other prisoners, and partly because they often received Red Cross food parcels that kept them from starving. Soviet POWs, on the other hand, were near the bottom of the Germans' hierarchy of perceived worth. They received some of the hardest jobs, the worst shelter, and the least amount of food; millions of them died. Likewise, among the foreign forced laborers, those from western nations did better than those from the east. The concentration camp inmates were among the worst off, but even in this instance, there was a definite hierarchy, with career criminals or political prisoners at the top, often holding camp offices, and Jews at the bottom. The second factor revolved around each prisoner's skills set; someone who knew chemistry, or who could type or repair complex machinery, might be assigned a relatively easy job. And the third factor concerned connections. Prisoners of particular nationalities or common political persuasions often stuck together and helped one another. Individuals, meanwhile, especially if they were good at organizing, could curry favor with prison leaders and guards. Corruption was rampant, and it worked in favor of some prisoners and to the detriment of others.

The camp administration was important because it directly controlled the conditions under which the prisoners lived and worked. The amount and kind of food, the quality of the clothing, opportunities to bathe, the type and pace of the work, and the attitudes of individual guards could all vary significantly. In some camps one authority would control the camp itself, while another, usually a business, controlled the working conditions. There are examples of workplaces in which the civilian foremen let their charges get some extra sleep, or in which civilian coworkers would smuggle in extra food. In other places a business's overseers could be every bit as cruel as any SS guard. Similarly, prisoner accommodations could consist of anything from a hole in the ground, to a stable or workshop with straw on the floor for bedding, to (albeit rarely) a relatively clean, warm barracks with individual cots and blankets.

Whatever the degrees of difference, however, most prisoners shared some common experiences. On the most basic level they lost their freedom; to their employers they were usually a resource to be used more or less efficiently, not people whose welfare or wishes were at all important for their own sake. Work shifts typically lasted twelve hours per day, six or seven days per week. Discipline was often arbitrary and brutal. The food decreased in both quality and quantity as the war went on; many prisoners existed at or below subsistence level. Clothing was usually inadequate in cold weather, and the prisoners often lacked the wherewithal to wash either themselves or their clothes. All in all, their existence was a miserable one, until death or advancing Allied armies released them.

SEE ALSO Compensation; Gulag; Historical Injusticies; Holocaust; Stalin, Joseph

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Geoffrey P. Megargee

Language

Practices of genocide and crimes against humanity emerge from and depend upon a language of genocide and crimes against humanity. Language itself is inseparable from power, and language can facilitate the most violent exercise of power against a people. Linguistic violence directed against a people leads to physical violence against a people. In genocide, such linguistic violence is institutionally sanctioned, and the ensuing physical violence is lethal and aims to be total.

The meanings of terms within semiological systems are based upon the oppositions among the signs. A non-linguistic example is the use of red, yellow, and green lights in traffic signals. In relation to classifications of peoples, many social groups use binary oppositions of an "us-them" type, such as Greeks and barbarians, freedom fighters and terrorists, and culture bearers and culture destroyers. The last example enters the realm of the language of genocide. In a 1988 article, "Language and Genocide," Berel Lang has shown the close connection between this language and the slaughter of millions in the Holocaust. Practices of genocide and crimes against humanity begin with a classification that divides people into two groups, one viewed positively and the other as subhuman or unworthy of existence. The use of condemnatory terms prepares a social group to practice atrocities and is used to perpetuate these atrocities throughout their duration.

Since the 1960s, Anglo-American theory has been strongly influenced by the work of John Austin, particularly his 1962 book, *How to Do Things with Words*. This approach often describes one set of language statements in terms of speech acts. A speech-act of language, for example, can be used to distinguish peoples who speak different languages. Such a speech-act can go beyond merely differentiating to also judging, such as designating Tutsis as "*inyenzi*" (a slang epithet meaning cockroaches) in the years preceding the 1994 genocide in Rwanda. A similar effect is achieved by Nazi references to Jews as "bacillus," and even by neo-

Nazi calls to "kill faggots" beyond the million "queers" massacred by Hitler until all homosexual "scum" are "wiped out." Raphael Lemkin's coinage of the term *genocide* in 1943 can also be considered a speech act when it carries a condemnatory tone against and a branding of perpetrators of a practice that aims to kill an entire people. Lemkin suggested *ethnocide* as another term with the same meaning. Language, however, often relies on euphemisms that mask the reality of persecution, such as using "ethnic cleansing," instead of "ethnocide," to describe slaughters and forcible relocation like the ones that occurred in Bosnia in the 1990s.

Since the 1920s, continental theory, following the lead of Ferdinand de Saussure's 1916 Course in General Linguistics, distinguishes between the established sign system (*la langue*) and speaking (*la parole*). The established sign system reigns (synchronic immutability), but over time speaking alters that system (diachronic change). Persons with political power can speak in distinctive ways that become part of the official language, which shapes how citizens think and behave.

Beyond primarily referring to killing of an entire people, genocide is used in at least two other colloquial senses, namely, in reference to linguistic genocide and genocidal weapons. The usage differs from the strictly legal meaning of genocide. By suppressing or even eliminating the language of a people, linguistic genocide destroys a culture but it does not necessarily lead to the slaughter of a people. By contrast, "genocidal" weapons, such as strategic nuclear weapons targeted against cities, are intended to achieve the large-scale or even total killing of a people, although this slaughter could occur within an entire nation rather than being directed against a specific type of people. In principle, although not yet in fact, beyond nuclear weapons, some other weapons of mass destruction, especially biological ones, could be genocidal. However, one characteristic of such weapons is the prospect that their use may not be controllable and could therefore inflict death on the perpetrator along with the intended victims.

In showing the connection of language and power, Friedrich Nietzsche went so far as to say, in his 1887 *Genealogy of Morals,* that the "right of bestowing names" is a fundamental expression of political power. Governments that seek absolute power over the groups they control use language as a principal support, because they believe that by changing terminology and definitions they can alter the ways individuals and groups think and act. In 1991, in his book *Totalitarian Language: Orwell's Newspeak and Its Nazi and Communist Antecedents,* John Wesley Young reports that even in the extremes of totalitarian language found in Nazi concentration camps and the Soviet gulags, significant numbers of individuals avoided being fully brainwashed by constructing alternative words and discourses that eluded the understanding of their oppressors. Nevertheless, the one who controls the politics of definition controls the political agenda, and the step from the linguistic dehumanization of a people to their slaughter is rather small. So one important step in the prevention of genocide is the elimination of the names that are used in the perpetration of genocide. However, writing in 1999 on "The Language of War and Peace," William Gay has noted that the elimination of such names may be necessary, but it is not sufficient to achieve the desired results, and may result in a situation that is more like negative peace (the mere absence of war) than positive peace (the presence of justice as well). In this case the difference is between a temporary suspension of name-calling that does not remove the prejudicial attitudes that lie behind it and a permanent removal of any intent or desire to eradicate a people and the achievement of a genuine embracing of the appropriate diversity among peoples.

SEE ALSO Hate Speech; Lemkin, Raphael; Linguistic Genocide; Propaganda

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William Gay

Lemkin, Raphael

[JUNE 24, 1900–AUGUST 28, 1959]

Leader of efforts to make genocide an international crime

His gravestone, at Mount Hebron Cemetery in New York City, declares Raphael Lemkin to be the "Father of the Genocide Treaty" although in his unpublished autobiography Lemkin characterized himself as a "totally unofficial man." In fact, whether as a member of an official delegation or as a private individual, Lemkin single-mindedly pursued a lifelong agenda to establish international protection for minorities. He coined the word *genocide.* He worked on the Nuremberg indictments and prevailed until genocide was added to the charge sheet. He analyzed the regulations of the Nazi

occupiers and in *Axis Rule in Occupied Europe* (1944) concluded that they were aimed at the destruction of the essential foundations of minority groups. He then lobbied successfully for the adoption and entry into force of the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide. In short, Lemkin demonstrated how an individual could bring about profound changes in human rights.

Lemkin was born to Jewish parents in Bezwodene, Poland. His parents were tenant farmers and, until the age of thirteen, he was educated by his mother and tutors. A brilliant linguist, Lemkin initially studied philology at the University of Lwow, but in 1921 switched to law following the trial of the assassin of Talaat Pasha, an Ottoman minister regarded as responsible for the extermination of over a million Armenians in World War I. Lemkin felt passionately about the massacres and argued with his law professor that such actions should be viewed as crimes against international law. The professor asserted that no law could interfere with the actions of a sovereign state, but Lemkin insisted that state sovereignty encompassed activities directed toward the well-being of its citizens and did not extend to their mass killing. Resolving this question was to become Lemkin's lifelong vocation.

After his graduation Lemkin was appointed deputy prosecutor at Warsaw District Court. In 1933, still concerned with international law, he submitted a paper on criminal law to a conference sponsored by the League of Nations in Madrid; the paper called for "the destruction of national, religious and racial groups" to be regarded as "an international crime alongside of piracy, slavery and drug smuggling." Lemkin proposed two new international crimes: *barbarism,* which he referred to as the extermination of human collectivities, and *vandalism,* which he defined as the malicious destruction of works of art and culture. Two German jurists walked out of the conference and his proposals were shelved. His own government, which was seeking a policy of conciliation toward Hitler, opposed him. Lemkin left public service for private practice and continued to attend conferences on international criminal law, once engaging in a heated debate with delegates from Nazi Germany.

Following the invasion of Poland by Soviet and German armies, Lemkin escaped to Sweden, where he lectured at Stockholm University. There, he persuaded associates to collect the decrees associated with German occupation. From these documents he deduced that Hitler's *Neu Ordnung* (New Order) was nothing less than the coordinated extermination of nations and ethnic groups, either by destroying them or assimilating their identity by Germanizing groups perceived to be related by blood to Germans. Variations among the protein rations in Nazi-dominated territory illustrate this. Germans received 97 percent, the Dutch 95 percent, the French 71 percent, the Greeks 38 percent, and the Jews 20 percent.

As a lawyer, Lemkin recognized the significance of official documents for an understanding of policy, but it was his extensive knowledge of the oppression of minorities that enabled him to believe the unbelievable and reach the conclusion he did. The results of his work were published in *Axis Rule in Occupied Europe,* three years after his arrival with other refugees in the United States, in 1941. The term *genocide* first appeared in that book; it is derived from the Greek *genos* (species) and the Latin *cide* (killing). Lemkin devised it because he wanted to use a word that, unlike the terms barbarity and vandalism, which he employed in 1933, had no other meaning. He defined genocide as "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves" (1944, p. 79).

Soon after arriving in the United States to lecture at Duke University, Lemkin got in touch with the Judge Advocate General's office at the War Department. He became a consultant at the Board of Economic Warfare and in 1945 was appointed legal advisor to the United States Chief Prosecutor at the Nuremberg trials, Robert Jackson. In September 1945 Lemkin traveled to London, and on October 18 he witnessed the first use of the term genocide in an official document, when he succeeded in having the charge of genocide added as Count 3 of the indictment against the twenty-four Nazi leaders on trial. Lemkin was disappointed by the Nuremberg judgments, which, although making an indirect reference to genocide, failed to convict anyone of the crime.

Dissatisfied with the limited precedent set by the Nuremberg verdict, Lemkin turned his attention to the newly established UN. He persuaded delegates from Cuba, India, and Panama to propose a resolution declaring genocide a crime under international law. No longer in good health and saddened by the news that of his many relatives, only his brother's family had survived the Holocaust, Lemkin lobbied tirelessly. He used his linguistic skills to research and draft supportive statements for thirty different ambassadors. The resolution was adopted unanimously in 1946. Lemkin argued in the *American Journal of International Law* (1947) that, by asserting that genocide was an international crime and a matter of international concern, the 1946 declaration had established "the right of intervention on behalf of minorities slated for destruction" (p. 146).

Then UN Secretary-General Trygve Lie asked Lemkin to help prepare a draft of the Genocide Convention. The drafting was completed by Lemkin, Henri Donnedieu de Vabres, and Vespasian V. Pella during April and May 1947. Lemkin sought to exclude political groups from the draft, fearing that international disagreement on this would imperil the treaty. Having resigned his consultancy at the War Department to concentrate on the task, Lemkin set about lobbying for the treaty, scraping together funds to attend the General Assembly session in Paris. There, Lemkin experienced further setbacks. He encountered considerable objections to the draft article on cultural genocide. Lemkin saw cultural patterns, such as language, traditions, and monuments, as the shrine of a nation, and had tried to protect them in 1933 with his proposed international crime of vandalism. Rather than jeopardize the treaty, he accepted defeat. Lemkin had also assumed that states would accept the need for an international criminal tribunal with compulsory jurisdiction when a nation failed to investigate or prosecute genocide. He was surprised to find states agreeing that such a tribunal would only be binding on those states which accepted its jurisdiction.

Lemkin was additionally alarmed by other measures his opponents had inserted in the text of the treaty, so-called Trojan horses. He viewed Article XIV, which limited the duration of the Convention to ten years from its entering into force and then successive periods of five years, as one such measure. Another was Article XVI, which permitted a state to request a treaty revision at any time and empowered the UN General Assembly to determine the response to such a request. Despite these concerns, Lemkin took pleasure in seeing the Convention adopted by fifty-five votes, with none opposing, on December 9, 1948. Journalists discovered him hours after the meeting had adjourned still seated in the chamber, with tears flowing down his cheeks. Lemkin called the treaty an epitaph on his mother's grave.

Lemkin was repeatedly nominated for the Nobel Peace Prize during the 1950s. He went on to teach at Yale and Rutgers, and continued to lobby states to ratify the Genocide Convention. By October 1950 the Convention had twenty-four ratifications, four more than the twenty required for it to come into force. At the time of his death, in August 1959 following a heart attack, the treaty had some sixty signatories.

SEE ALSO Convention on the Prevention and Punishment of Genocide; Genocide; Language; Nuremberg Trials

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Bernard F. Hamilton

Lenin, Vladimir

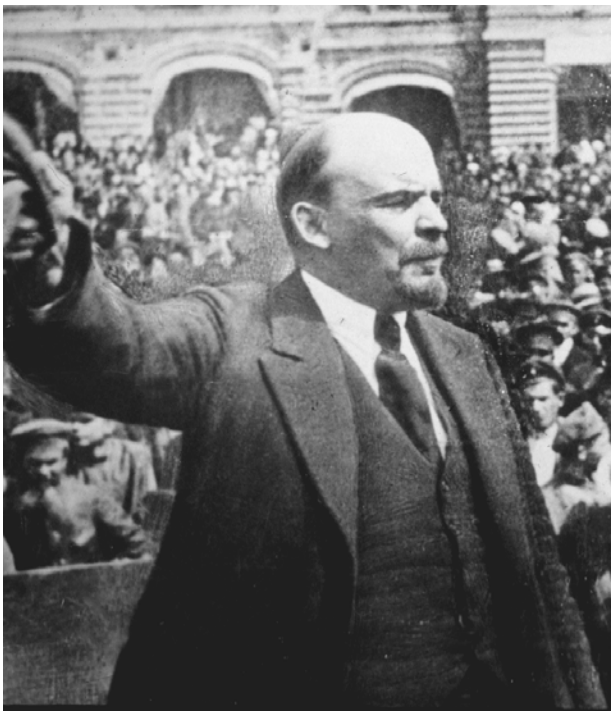
[APRIL 10, 1870–JANUARY 21, 1924]

Russian revolutionary, leader of the Bolshevik (later Communist) Party, and first ruler of the Union of Soviet Socialist Republics.

Vladimir Lenin was born Vladimir Ilich Ulianov and assumed the pseudonym of Lenin in 1900. His father was a school inspector in the central Russian town of Simbirsk, where Lenin was born on April 10, 1870. His older brother, Alexander, was executed in 1887 for his involvement in a failed assassination attempt on the life of Tsar Alexander the Third. Lenin's initial involvement in politics reflected his loyalty to the memory of his dead brother and his devotion to the ideals of equality and justice.

Lenin studied and then briefly practiced law before devoting himself to the revolutionary socialist doctrine of Marxism, beginning in 1893. Lenin married a fellow revolutionary, Nadezhda Krupskaia, after being sentenced in 1895 to his first period of internal exile. On the run from tsarist authorities, Lenin played little part in the unsuccessful 1905 revolution, and from 1907 to 1917 he lived outside of Russia. In 1903 Lenin assumed the leadership of the Bolsheviks, initially one of two factions of the Russian Social Democratic Labor Party, which was founded in 1898 (the other faction was called the Mensheviks, of which Leon Trotsky was an important leader). Lenin devoted his time to party organization duties and writing in an effort to win control over and give direction to the splintered left-wing opposition to the tsar.

Lenin was so appalled when Europe's socialists supported their countries' participation in World War I that he rejected the label of social democracy and adopted the term *communist,* in its place. The new name was a reference to the failed revolutionary government of the Paris Commune of 1871.



A victorious Lenin greets his supporters. After the Bolshevik Revolution of 1917, and during the ensuing war and famine, Lenin demonstrated a chilling disregard for the sufferings of his fellow countrymen. [GETTY IMAGES]

In 1917 Lenin was living in exile in Switzerland. He was as surprised as nearly everyone else by the sudden and total collapse of the tsarist government in March of that year, but quickly made plans to return home. The German government, seeing an opportunity to add to the chaos in Russia, allowed Lenin to travel on its railway back to Russia, and Lenin arrived there in April 1917. In that month he published his April Thesis, which virtually declared war on the Russian Provisional Government, the liberal but unelected ruling body that had taken over from the tsar. Lenin's genius lay in riding a wave of mounting discontent directed at this provisional government, which foolishly launched a new military offensive, failed to hold elections, and delayed crucial land reform.

At the fall of the tsarist government, the Russian population numbered more than 150 million people, but Lenin's Bolshevik Party boasted only twenty thousand members. Within six months of his return from exile, however, Lenin had greatly expanded his base of support and was in a position to bid for power. With the aid of the former Menshevik, Leon Trotsky, the Bolsheviks won control of the Petrograd garrison and on October 25, 1917, Lenin seized power from the enfeebled Provisional Government.

Lenin shrewdly justified his violent seizure of power as merely a transfer of authority to the soviets, the popular councils elected by workers and soldiers that sprang up everywhere after the fall of the tsar. Lenin declared the formation of a Soviet government, withdrew Russia from World War I, and invited the peasants to take charge of the land that had formerly belonged to the nobles, state, and church. At the same time, Lenin's government quickly moved to shut down opposition political parties and to censor the press, introduced conscription for the Red Army, and requisitioned grain from the peasants in order to fight the bloody Russian Civil War of 1918–1920. In January 1918, Lenin closed down the Constituent Assembly after the Bolsheviks won only 24 percent of the popular vote. In 1918, Lenin renamed the Bolshevik Party as the Communist Party.

The Cheka, the Russian acronym for the Extraordinary Commission for the Struggle against Counter-Revolution and Sabotage, was established on December 7, 1917, as the government's instrument of terror in its fight against political enemies. When Lenin was badly injured in a failed assassination attempt on August 30, 1918, his government quickly responded with the September 5, 1918, announcement of a policy of Red Terror that would take the form of arrests, imprisonments, and murders, triggering a civil war. Historian Richard Pipes has estimated that the Russian Civil War claimed two million combat deaths, two million deaths from epidemics, and five million deaths from famine. Another two million or more, mostly drawn from the better-educated classes, fled in the face of the violence. Their departure drained the country of its already small pool of experienced leaders, managers, and entrepreneurs. The final death toll of the Russian Civil War exceeded the eight million deaths of World War I.

Lenin believed that socialism was irreversible, and he admired the revolutionary spirit of the Russian working class, but he despaired of its economic and cultural backwardness. Karl Marx had predicted that socialism would triumph first in an advanced capitalist country like Britain or Germany, but Lenin hoped to lead the way and believed that the establishment of a Soviet government in Russia would inspire similar revolutions elsewhere in Europe. In August 1920, Lenin urged the Red Army to move rapidly to occupy Poland as a first stage in an attack upon the postwar settlement established by the Treaty of Versailles. For Lenin Russia was no more and no less than a staging post on the road to world revolution.

When the Red Army proved unable to defeat Poland and Communism failed to inspire a successful revolution in Germany, Lenin, retreated to a more cau-

tious set of policies. In 1921 he initiated the New Economic Policy (NEP). Peasants were subjected to minimum taxation and allowed to trade their surpluses, whereas the government maintained its control of large industry and foreign trade. In December 1922, Lenin renamed his revolutionary state as the Union of Soviet Socialist Republics. Meanwhile, working-class protestors who demanded greater democracy, such as the Kronstadt mutineers in 1921, were brutally suppressed. The same fate awaited dissident factions within the Bolshevik Party, which were banned at the Tenth Party Congress of 1921. Before Lenin's death in 1924, the Soviet Union's first labor camps were set up on the remote Solovetsky Islands, and by the following year the population of these camps reached 6,000 prisoners. Under Stalin, these camps would evolve into the notorious Gulag, through which more than 20 million forced laborers would pass. During Lenin's rule compulsory collective farms never became policy, but he created the system of repression that, under Stalin, would lead not only to collectivization but also the extermination of kulaks (wealthy landholders).

Lenin suffered his first stroke on May 26, 1922, and died of a cerebral hemorrhage on January 21, 1924. Unlike Stalin, Lenin had never encouraged a personality cult. Nevertheless, after his death his body was embalmed and put on public display in Red Square. A cult celebrating the "living Lenin" was encouraged and pressed into service by his successors to add legitimacy to their rule. For sixty years, Russians read a sanitized version of Lenin's life. Documents that portrayed him in an unfavorable light were banned until after the Gorbachev era (1985–1991). For more than sixty years, Russian readers did not know that Lenin was happy to accept money from the German government in 1917 or that he probably ordered the murder of the tsar and the entire royal family in Ekaterinburg on July 16, 1918.

Both during his life and after his death, critical views of Lenin circulated. Bertrand Russell visited the Russian leader in 1920, and came away disturbed by Lenin's seeming indifference to the human suffering and loss that had taken place during the Russian Civil War. Other critics characterized him as an intelligent but humorless and intolerant fanatic. Since the fall of communism, archival documents dating from his rule tend to confirm previously existing impressions of the man and his rule. Nevertheless, historians are still divided over Lenin and his legacy. John Gooding, Roy Medvedev and Neil Harding consider Lenin to have pursued worthy ideals that were grotesquely distorted by the subsequent dictatorship of Stalin. Martin Malia, on the other hand, has argued that it was Lenin's championing of a wildly impractical strain of Marxism that condemned Russia to its failed communist experiment. Pipes has described Lenin as embodying the hubris of Russia's *intelligentsia*, who were willing to sacrifice millions of lives for the sake of their utopian fantasies. According to Pipes, Lenin's system of government was the model whose features were copied not only by Stalin, but also by Benito Mussolini, Adolph Hitler and Mao Tse Tung.

Lenin was a prolific writer. His first essay appeared in 1894 and his collected works amounted to fifty-five volumes. In *What Is To Be Done*, Lenin argued for a strongly centralised party of professional revolutionaries. Critics have found in *What is to be Done* the germ of the idea for a one-party state. *Imperialism the Highest Stage of Capitalism* (1916) argued that finance capital had reached its final irrational phase and a new wave of revolutions was to be expected. *State and Revolution* (1917) is the most utopian of Lenin's writings, in that it hints at the Marxist vision of the good life after capitalism. His last pamphlets, including *Better Fewer But Better* (1923) suggest a less radical Lenin who is ready to accept a more evolutionary political path for the Soviet Union.

Lenin's fanatical commitment to his ideals in the face of immense human suffering must be viewed within the context of the repressive tsarist political system that preceded him and the pointless slaughter that took place throughout Europe during World War I. These events confirmed for Lenin that parliamentary democracy was a sham concealing the horror of war and repression. Abandoning all democratic constraints upon the activities of his revolutionary government, Lenin moved Europe and the world further along the road towards the mass killings of the later twentieth century.

SEE ALSO Gulag; Kulaks; Stalin, Joseph; Union of Soviet Socialist Republics

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Stephen Brown

Lepsius, Johannes

[DECEMBER 15, 1858–FEBRUARY 3, 1926]
German pastor, historical archivist

Johannes Lepsius is widely recognized as one of the most important opponents of the Turkish genocide of Armenians and as an early campaigner for modern concepts of human rights. Lepsius's work among Armenians during World War I, more so than that of any other individual, helped to document genocide and place it on the public agenda.

As a young man, Lepsius trained as a German evangelical church (Lutheran) pastor and became a missionary in Turkey during the mid-1890s. He came to public attention when he traveled in disguise to gather evidence on the Turkish massacres of tens of thousands of Armenians. Lepsius's report on the pogroms, Armenian und Europa (1896, 1897), stirred considerable controversy and significantly affected international relations with the Turkish sultanate. He also helped found the Deutsche Orient Mission to operate orphanages and schools for Armenian children.

New massacres of Armenians began in late 1914 and early 1915. The Young Turk military junta moved secretly and with extraordinary violence to exterminate Armenians. Protestant missionaries deep inside Turkey were among the few outsiders who witnessed the first months of the unfolding genocide. Lepsius compiled eyewitness accounts of the killings and deportations and, at some risk to his life, formally appealed to Turkish authorities to end the deadly deportations of Armenian women and children. The Young Turk war minister, Enver Pasha, refused this request.

Lepsius turned to publicity in an effort to bring pressure on the German government and, though it, the Young Turks. To avoid wartime censorship, in 1916 he privately published and distributed a report on the killings. Lepsius secretly collaborated with then U.S. Ambassador to Turkey, Henry Morgenthau, to document the Armenian genocide for English-speaking audiences.

Later, Lepsius also testified for the defense in the trial of Soghomon Tehlirian, the assassin of Turkish Interior Minister Tal'aat Pasha. Tehlirian was acquitted.

In the first months following the defeat of Germany and Turkey in World War I, the German foreign ministry perpetrated a deception on Lepsius that went undiscovered for the next seventy years. The post-war Turkish government rightly accused Germany of helping to mastermind the Armenian massacres. Germany was already facing allegations of committing atrocities in Europe and sought to avoid responsibility for crimes inside Turkey. For his part, Lepsius was committed to unearthing the most comprehensive record possible of the genocide of Armenians. Thus, he readily agreed to the foreign ministry's offer to let him prepare a series of books based on formerly secret German diplomatic records, beginning with a volume documenting German activities in Turkey and Armenia between 1914 and 1918.

German officials claimed that they were releasing a copy of the complete record to Lepsius, but they actually supplied him with censored versions of dozens of documents in order to conceal German complicity in the killings. In the end, Lepsius's published collection presented unusually frank and detailed evidence of the Young Turks's campaign of genocide, but tended to absolve Germany of any responsibility for those acts. The foreign ministry then used Lepsius's account in publicity and in international negotiations concerning German reparations for war crimes.

Lepsius went on to help prepare further volumes of previously secret German records concerning German-Turkish-Armenian relations. It was not until the 1990s that the ministry's true tactics were clearly documented, when scholars compared the published records with those captured after the fall of Nazi Germany in 1945 and with edited copies discovered in Lepsius's personal archives.

SEE ALSO Armenians in Ottoman Turkey and the Armenian Genocide; Germany; Morgenthau, Henry

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Christopher Simpson

Liberia

The beginnings of Liberia as a modern state are rooted in American circumstances that led to a back-to-Africa movement among a relatively small number of African-Americans, and which was supported by white American sponsors. With multiple motives, some far from charitable, the American Colonization Society launched the Liberian experiment in the early years of

the nineteenth century. Liberia's initial purpose was to serve as a beachhead for the redemption of Africa from its perceived state of degradation. The agencies of this redeeming work were to be, in order of importance, the white man, the westernized black man, and then at the bottom of the heap, the non-westernized African peoples. Much of what became public policy in early Liberia rested on this hierarchical vision of human civilization. Liberia labored under this vision through the rest of the nineteenth century and into the early decades of the twentieth century.

The Rise of President Doe

A paradigm shift occurred at the end of World War II, when Liberia's supporters and its citizens moved from a commitment to their founding mission of civilizing and Christianizing the peoples of Africa and adopted in its place a philosophy of natural rights and its offshoot of democratic governance and respect for fundamental human rights. In a real sense Liberia was in the throes of this shift when the coup d'état of 1980 occurred.

Immediately prior to the coup, during the administration of President William R. Tolbert (1971–1980), a national reform movement was initiated. Tolbert had clear reformist proclivities, but he was not a strong political leader. Challenging Tolbert were several politically progressive groups, notably the Progressive Alliance of Liberia (PAL) and the Movement for Justice in Africa (MOJA). They were perceived as legitimate alternatives to the regime then in power.

There were many confrontations between advocates of change and those who wished to preserve the status quo before the fateful challenge occurred. Then the government announced the possibility of an increase in the price of rice, the country's staple food. The PAL demanded that the price of rice be left unchanged and signaled that, unless the government acceded to its demands, it would call for a mass rally to press its case. When the government replied that the price increase was only under discussion, and refused to grant PAL the necessary demonstration permit, PAL defiantly called for the rally anyway.

An unprecedented clash ensued between a throng of demonstrators and the government's security forces on April 14, 1979. Many of the demonstrators were killed, scores were maimed, and millions of dollars worth of property was destroyed or damaged. The demonstrators were expressing widespread disgust and anger with the entire political system, and voiced their dissatisfaction with the president, who symbolized that system.

The government attempted to put down the dissidents, but its efforts failed because the society was perilously divided, especially within the nation's security forces. The police were prepared to carry out government orders, but military personnel refused to fire into the demonstrators, pointing out that their own children and kinsmen might be in the crowd. Abandoned and insecure, the Tolbert administration sought and received military assistance from President Sekou Touré of Guinea. When Guinean military forces arrived in Liberia, the Liberian military and a great many Liberian civilians were deeply offended.

Liberia map, 1998. [MARYLAND CARTOGRAPHICS]

On April 12, 1980, seventeen enlisted men in the Liberian Army led an attack on the President's mansion under the leadership of Master Sergeant Samuel K. Doe. They assassinated President Tolbert and overthrew his government, creating a new governing body, the People's Redemption Council (PRC), and Doe assumed the interim presidency.

The coupmakers' declaration of intent upon seizing power convinced most observers that the new government would implement progressive policies. They released all political prisoners and invited key figures in the opposition to help them form a new government. A progressive political agenda was announced, and it appeared that Doe and his followers were about to impose significant changes on the country by fiat. Accompanying the expression of intent, however, was a pattern of behavior that belied the stated progressive aims. Military personnel and other regime figures quickly adopted opulent lifestyles, lording it over their subordinates. More ominous still, the new regime began singling out individuals and families that they deemed associates of the deposed Tolbert administration. This development became clearer when, in the weeks following the coup, the PRC suddenly and publicly executed thirteen senior officials of the old regime. The executions touched off an international chorus of outrage and condemnation for this gross violation of rights, as did the apparent targeting of dissident Liberians for execution or persecution.

Regardless of internal and international outcries, these persecutions and secret executions continued. Soon, deadly conflicts sprang up within the PRC itself, as personality differences led to political purges. Several senior PRC members were executed on President Doe's orders. Eventually, Doe found himself in conflict with Commanding General Thomas Quiwonkpa, a popular soldier and a senior member of the PRC. After several bloody encounters between the Doe and Quiwonkpa factions, Quiwonkpa was forced to flee the country.

Fall of the Doe Regime

In 1985 two major events transpired. The first was a purported democratic election. When the people voted against Doe's military regime, the government illegally intervened in the process and reversed the outcome, declaring Doe the winner. The second event was Quiwonkpa's reappearence in Monrovia on November 12, 1985. Upon his return to Liberia, he attempted to lead a coup against Doe and install the candidate who was popularly believed to have won the election. Quiwonkpa's coup attempt failed. Incensed, President Doe carried out a rash of retaliatory killings. Estimates as to the number executed during this period range from 500 to as many as 3,000. The victims were largely drawn from the police, military, and security personnel of Nimba county, which was the home region of Quiwonkpa. The many who were killed were buried in mass graves in Nimba.

The Western media soon created a shorthand for understanding the gathering conflict, blaming the violence as arising from an ethnicity-based conflict between the Krahn (Doe's people) and his Mandingo supporters versus the Dhan and Mano peoples of Nimba County. This was only partially true, however. Doe was in fact lashing out at all opponents, real and imagined, regardless of their ethnic background. As a result, his presidency devolved into a reign of terror.

Doe was inaugurated President of Liberia in January 1986. He soon found it difficult to rule, however. The violence that followed the elections, coupled, in a curious way, with the events that immediately followed his own coup of 1980, engendered covert protest that eventually became open acts of rebellion. By the start of 1989, Liberia became increasingly unsafe.

A fallout in Africa at the end of the cold war was the emergence of the warlord insurgencies threatening to destabilize national governments. On Christmas Eve of 1989, the insurgent leader, Charles Taylor, announced to the Liberian and international media that he was heading an insurgency under the banner of the National Patriotic Front of Liberia (NPFL). His goal was to bring down the Doe regime and end the reign of terror. He set himself the goal of completing the unfinished work of Thomas Quiwonkpa.

Taylor's rebels advanced from the border between Liberia and neighboring Ivory Coast. As they penetrated Nimba County, Doe responded by initiating a scorched earth policy, sending his soldiers to raze whole villages and kill everything that moved. This tactic quickly galvanized the people, first in Nimba County, then in the nation as a whole. As the insurgency gathered momentum, the brutality on both sides was unparalleled in the history of Liberia. The violence was not limited to a clash between armies; tens of thousands of civilians died, and countless others were maimed or otherwise injured by the war.

The extreme violence early in the civil war was a consequence of problems at three levels. First was the inter-ethnic hostility that existed between Doe's Krahn and Mandingo supporters and the remnants of Quiwonkpa's Dahn and Mano followers, who now rallied behind Charles Taylor. Second, the Liberian population was, and is, comprised of a great many other ethnicities, distinguished by language and culture, so no true sense of shared national identity could be called upon to mitigate the violence. Finally, Liberia suffered from international neglect after the Cold War ended and Africa ceased to be viewed as strategically important to the United States, its traditional ally. The result for the Liberian people was that more than 200,000 of Liberia's 2.6 million people were killed, another 800,000 became internally displaced persons, and more than 700,000 fled abroad to live as refugees.

As the rebel groups approached Monrovia in early 1990 and engaged Doe's Armed Forces of Liberia (AFL), the slaughter increased. Some 2,000 Dhan and Mano, mostly women and children, sought refuge at the International Red Cross station in the main Lutheran Church compound in Monrovia. Although the Red Cross insignia were clearly visible, AFL death squads invaded the refuge on the night of July 29, 1990, and massacred the more than 600 people who sheltered there. In the days that followed, the death squads roamed the streets of Monrovia and its environs, attacking any civilians suspected of being sympathetic to the rebels or lukewarm toward Doe's regime.

By mid-1990 Doe's control of the country was limited to the area around the presidential palace. Prince Johnson, leader of the breakaway Independent National Patriotic Front of Liberia (INPF), risked a meeting with Doe at the Barclay Training Center (a military barracks) in Monrovia on August 18, 1990. Doe suggested that Johnson join him in a "native solidarity" alliance against Taylor, who was accused of representing "settler" interests (meaning the interests of descendents of the African Americans who came to the region in the nineteenth century). Johnson declined the offer of alliance and returned to his base on the outskirts of Monrovia.

A few days after this meeting, Doe led a foray into territory held by Johnson's forces in order to visit the leaders of the Economic Community Monitoring Group (ECOMOG), a peacekeeping force that the economic community of West African states (ECOWAS) has created in an effort to help resolve African conflicts. During this foray, however, Doe's entourage was attacked, most were killed, and Doe himself was captured. Badly injured and bleeding from serious leg wounds, he was taken to Prince Johnson's compound. There he was tortured and then left to bleed to death, the whole gruesome episode captured by Johnson's video camera. On September 10, 1990, he died and his naked body was placed on public display.

Taylor's Rise to Power

With Doe's death, the struggle for power intensified. The rival factions headed by Taylor and Johnson now faced a third challenger: a civilian Interim Government of National Unity (IGNU). This entity was the creation of an ECOWAS-sponsored summit meeting held in the Gambia, where the leaders of Liberia's neighbors in West Africa sought ways to end the conflict. Professor Amos Sawyer, a Liberian national, was chosen the head of the IGNU by a representative body of Liberian political and civil leaders.

Two years later, the conflict still raged on. Taylor attempted to seize Monrovia, in October 1992. His self-styled "Operation Octopus" was a bloody military showdown in which he pitted an army of children (their ages ranged from 8 to 15) against the professional soldiers of ECOMOG. Thousands were slain, including five American nuns serving homeless Liberian children. Taylor's coup attempt failed.

By 1996 a coalition government composed of former rebel leaders and civilians had been put in place, but endemic distrust led to a second showdown in Monrovia. Three members of the ruling Council of State, Charles Taylor of the NPFL, Alhaji Kromah of the United Liberation Movement of Liberia, and Wilton Sankawolo, the civilian chair of the Council, attempted to arrest another government minister, Roosevelt Johnson, for allegations of murder. Seven weeks of fighting ensued and, once again, thousands of Liberians—mostly civilians—were killed. This phase of the civil war ended when regional and international peace facilitators decided to hold new elections, in which warlords were permitted to participate. Taylor, according to some observers, won the vote, but other election observers have suggested that many who voted for him did so only out of fear. Taylor promised peace, but he was unable to establish legitimacy for his presidency at either the domestic or international level.

In fact, just as Liberia appeared to be settling down, neighboring Sierra Leone erupted into war, with the May 25, 1997, overthrow of that country's elected government. Taylor had undergone guerilla insurgency training in Libya in the late 1980s alongside Foday Sankoh and other West African dissidents. An informal pact was made between Taylor and Sankoh that they would remain in solidarity as they embarked upon violently changing the political order in the subregion. Sankoh fought with Taylor's NPFL, and when in 1991 Sankoh's RUF appeared on the Sierra Leone scene, a close relationship characterized their leaders. Thus, when the 1997 coup brought Sankoh's Revolutionary United Front (RUF) into power, however briefly, Taylor was prepared to recognize Sankoh's claim to legitimacy and assist his Sierra Leonian ally.

The destabilizing effects of Taylor's support of the RUF were not only felt in Sierra Leone, but throughout much of West Africa. This led the United Nations to order an investigation. The resulting UN Security Council Panel of Experts Report implicated the President of Liberia in the exploitation of Sierra Leone's diamond mines through his ties with the RUF, and of using a portion of the proceeds to keep the RUF supplied with arms. The charges were clearly documented, but Taylor stoutly denied them. Despite his denials, in May 2001 the UN Security Council imposed punitive sanctions on Liberia.

A United Nations peacekeeper from Gambia welcomes a battalion of Bangladesh peacekeepers upon their arrival at Roberts International Airport in Liberia in 2003. [AP/WIDE WORLD PHOTOS]

The End of Taylor's Regime

In 2002 the war in Sierra Leone was largely contained, due to massive international intervention, and democratic elections were held. Sankoh's RUF, now transformed into the Revolutionary United Party (RUP), was roundly defeated. For his part in supporting the RUF, Taylor's government in Liberia was now internationally viewed as a pariah regime. Taylor's troubles, however, had begun three years earlier, when a group of Liberians formed a rebel group called Liberians United For Reconciliation and Democracy (LURD). LURD's stated objective was Taylor's removal from power because of his atrocious human rights record and the impunity that generally characterized his leadership.

LURD stepped up its attacks in early 2003, and a new rebel group, the Movement for Democracy in Liberia (MODEL), made its appearance in March. MODEL quickly gained ascendancy in the southern part of the country, whereas LURD's power was concentrated in the north. In March, LURD's forces opened several fronts, advancing to within a few miles of Monrovia. Tens of thousands of civilians were displaced during the fighting. On June 4 of the same year, Taylor was indicted by the UN sponsored Special Court in Sierra Leone for his complicity in war crimes and crimes against humanity arising from his activities in that country. U.S. President George W. Bush publicly called on Taylor to resign and leave the country, thus increasing the pressure on Taylor's regime.

On July 17, a LURD offensive into the capital resulted in hundreds more killed and displaced persons. International intervention finally produced a respite, as international facilitators set up peace talks in Ghana. Taylor bowed to the pressures on August 11, when he handed power over to his vice president and accepted exile in Nigeria. The peace talks concluded on August 18, and on August 21 a new leader, Gyude Bryant, was chosen to chair an interim government. To maintain the peace, the UN Security Council sent 15,000 peacekeeping troops and set up a rescue operation to help deal with the aftermath of two decades of bloody civil wars.

SEE ALSO Peacekeeping; Sierra Leone

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Daniel Elwood Dunn

Linguistic Genocide

When the United Nations (UN) undertook preparatory work for what became the 1948 International Convention for the Prevention and Punishment of the Crime of Genocide, linguistic genocide as a central aspect of cultural genocide was discussed along with physical genocide as a serious crime against humanity. The ad hoc committee that prepared the Convention specified the following types of acts as examples of cultural genocide in Article III:

> Any deliberate act committed with intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief, such as (1) Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group; and (2) Destroying or preventing the use of libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group.

When the UN General Assembly finally approved the Convention, sixteen member nations voted against Article III covering linguistic and cultural genocide (*Official Records of the General Assembly,* Third Session, Part I, Sixth Committee, 83rd meeting). Among those who "opposed the prohibition of cultural genocide" were Denmark, the United States, and Great Britain. Britain wanted the Convention to be restricted "to the physical extermination of human groups" (Freedman, 1992, p. 89; McKean, 1983, pp. 105–112).

The use of a group's language can be prohibited directly or indirectly. Books in prohibited languages have been burned. Earlier, the use of indigenous and minority groups' languages was often prohibited by physically punishing people, especially children, who used them. Many children, all over the world, have been beaten, left without food, locked in dark places, and forced to drag stones or wear other heavy objects around their necks just for uttering a few words in their own languages in schools. Shame is the tool most frequently used: Schoolchildren speaking a banned language have been made to stand in corners or in front of the class, carry objects showing that they have broken the rules, write a sentence such as "I am an idiot" countless times on a blackboard, or pay fines. In other instances, they have been transformed into traitors and spies, escaping punishment or receiving some small reward if they reveal to their teachers the identity of other children using the forbidden language.

Emphasis on the assimilation of immigrants into the United States led to state laws at the end of the nineteenth and beginning of the twentieth century, such as the 1873 Minnesota law requiring that only English be spoken in the classroom. Nebraska prohibited all teaching of modern foreign languages. During and after World War I other states, including Louisiana, Ohio, and Indiana, prohibited the teaching of German. Bans on teaching foreign languages were successfully challenged in the U.S. Supreme Court in *Meyer v. Nebraska* (262 U.S. 390 [1923]). In the early twenty-first century physical punishment is resorted to less frequently to repress the use of a language. Instead, structural arrangements within a country and economic punishment and rewards are utilized. If the children's own language has no place in the curriculum, if it is not the main language of teaching, and if there are no teachers in daycare centers or schools who are legally allowed to use the children's language, its use in "daily intercourse or in schools" becomes de facto prohibited, and the children are forced to assimilate to a dominant majority or foreign language. Most of this prohibition is more sophisticated than the earlier physical punishment for speaking the mother tongue (Skutnabb-Kangas, 2000).

In addition to the specific definition of linguistic genocide presented above, two of the five definitions of genocide from the present UN Convention (Articles II[b] and II[e]) apply to the contemporary education of most indigenous and minority peoples:

- forcibly transferring children of the group to another group (from Article II[e])
- causing serious bodily or mental harm to members of the group (emphases added) (from Article II[b])

Assimilationist submersion education, in which indigenous and minority children are forced to accept

teaching through the medium of dominant languages, also causes mental harm and often leads its students to using the dominant language with their own children later on. Over a generation or two, the children are linguistically and in other ways forcibly transferred to a dominant group. This happens to millions of speakers of threatened languages all over the world. There are no schools or classes teaching children through the medium of the threatened indigenous or minority languages. The transfer to the majority language-speaking group is thus not voluntary: Alternatives do not exist, and parents do not have enough reliable information about the long-term consequences of the various choices available to them. As a consequence, this is not an issue of "language suicide," even though it might at first seem as if the speakers are themselves abandoning their languages.

It is in a child's best interest to learn the official language of his or her country. But learning new languages, including the dominant languages, should not happen subtractively, but additively, that is, in addition to their own languages. Formal education that is subtractive, that is, education that teaches children something of a dominant language at the cost of their first language, is genocidal. This dominant language often is an old colonial language, spoken only by a small but powerful numerical minority (such has been the case, for example, in many African countries). An educational philosophy claiming that minority children learn the dominant language best if they receive most of their education through it is mistaken; minority children educated mainly through the medium of their own language learn the dominant language better than if they are educated only or primarily in the dominant language.

Though some argue that the absence of any deliberate intention in such acts means that these acts are not in contravention of the Convention, a contrary position suggests that if a state organizes minority education contrary to massive research evidence, so that this education results in serious mental harm and forcible transfer of minority children to a dominant group, such acts must be seen as intentional on the part of the state in the same way as any failure to take into account obvious evidence of harm is culpable.

State policies leading to diminishing numbers of languages may be based on the false premise that monolingualism is normal and natural (even though most countries are multilingual), or more desirable, or, at the very least, more efficient and economical even if such policies waste the talents of its citizens and decrease democratic participation. Others believe the extinction of minority languages is inevitable: Modernization leads to linguistic homogenization and only romantics regret it. However, linguistic diversity and multilingualism enhance creativity and are necessary in knowledge-driven societies where diversity is highly valued. Furthermore, some states regard linguistic human rights as divisive on the rationale that minorities will reproduce themselves, and even demand cultural autonomy, economic autonomy, and, in the end, political autonomy or even their own state, thus ultimately leading to the disintegration of nation-states. These erroneous beliefs are an important causal factor behind the death of languages. The prognosis of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) is that only 5 to 10 percent of the approximately seven thousand spoken languages in modern times may still be used by the year 2100.

SEE ALSO Genocide; Language

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Tove Skutnabb-Kangas

London Charter

The London Charter was part of an agreement concluded August 8, 1945, by the World War II allies to prosecute the "major war criminals of the European Axis." Several Allies had considered the possibility of summarily executing Nazi leaders. The United States then pressed for trials, and the other Allies agreed. Parties to the agreement were France, the United Kingdom, the USSR, and the United States. The Charter provided for the creation of a court, the International Military Tribunal (IMT), composed of four judges, one from each signatory state. The Charter gave the Tribunal jurisdiction over three categories of offense: crimes against peace, war crimes, and crimes against humanity.

At the conclusion of World War I, the Treaty of Versailles had called for trial of the German Kaiser "for a supreme offense against international morality and

the sanctity of treaties," but that trial was never held. The London Charter represented the first successful attempt to carry through with trials, at the supra-national level, of major figures accused of responsibility for an aggressive war and for particular atrocities perpetrated during that war.

The category of war crimes included offenses found in established principles of customary international law, which had previously been applied by courts of individual countries to prosecute military personnel. War crimes were defined in the Charter to include "murder, ill treatment, or deportation to slave labor, murder or ill treatment of prisoners of war, and wanton destruction of cities, towns, or villages."

The category of crimes against humanity was less well grounded in customary international law. The Charter defined it as "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population before or during the war or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."

The category of crimes against peace included the "planning, preparation, initiation or waging of a war of aggression." This category was only weakly grounded in customary international law. War among states was first prohibited by treaty in the 1920s, and even if war was wrongful on the part of a state, as legal experts of the time argued, it was not clear that it was wrongful as a penal offense for which an individual could be held responsible.

Importantly, the London Charter stipulated that the official position of an accused individual provided no immunity from prosecution, and that superior orders were not a defense, although they might be taken into account to mitigate punishment.

The London Charter provided that if an accused acted as a member of a group, the Tribunal could declare the group a "criminal organization." The effect of such a declaration was that in subsequent trials to be held in the four zones of occupation of Germany, the court of an occupying power would be authorized to try persons for membership in such an organization.

The prosecution team as stipulated by the Charter was composed of a chief prosecutor from each of the four signatory states. Rights of defendants were specified, including receipt of a particularized indictment, the opportunity to present evidence and cross-examine witnesses, translation of proceedings into a language the accused would understand, and the right to be represented by counsel or to represent oneself.

The London Charter had a major impact on the subsequent development of internationally defined crimes. The category of crimes against humanity served as the basis for conceptualizing the category of genocide, which was defined and criminalized in the UN Convention on the Prevention and Punishment of the crime of genocide, adopted in 1948.

The United Nations (UN) General Assembly tasked its International Law Commission with drafting a code of offenses based on the London Charter, with the idea that it might be adopted as a treaty. Although this effort eventually came to naught, the categories of be international crime outlined in the London Charter were used, with modifications, in the crime definitions written into the charters of the two tribunals that the UN Security Council formed in the 1990s to address atrocities committed in Yugoslavia and Rwanda. These categories also served as the model for the crime definitions in the Statute of the International Criminal Court (ICC), which came into force in 2002.

The London Charter was also a precursor to the concept of human rights law that emerged in international society after World War II. Whereas the London Charter placed responsibility on leaders, human rights law ascribed it to states, establishing an elaborate network of mechanisms to ensure that states would not mistreat individuals.

SEE ALSO Control Council Law No. 10; Crimes Against Humanity; Germany; Nuremberg Trials; War Crimes

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John Quigley

Mandela, Nelson

[JULY 18, 1918–]
Anti-apartheid peace activist; former president of South Africa

Nelson Rolihlahla Mandela was born in 1918 in Quno, a village near Umtata in the province of Transkei on the southeastern coast of South Africa, near the Indian Ocean. A scion of the Madiba tribal clan, he belonged to the Thembu people, his great-grandfather having been a Thembu king. Nelson's father, Gadla Henry Mphakayiswa Mandela, was chief counselor to the paramount chief of Thembuland. He had four wives and thirteen children, but died in 1927. Young Mandela then became the ward of the chief and was groomed for the chieftainship. An African teacher at the local primary school gave the young Mandela the English name Nelson, but he was affectionately known as Madiba by his friends. He attended Healdtown Methodist Boarding School and matriculated for a bachelor's degree at Fort Hare University, where he completed two years before leaving for Johannesburg in 1940. He received his degree, completed articles of clerkship, and met Walter Sisulo, who introduced him to the law firm Witkin, Sidelsky, and Eidelman. He attended the University of Witwatersrand and became a lawyer.

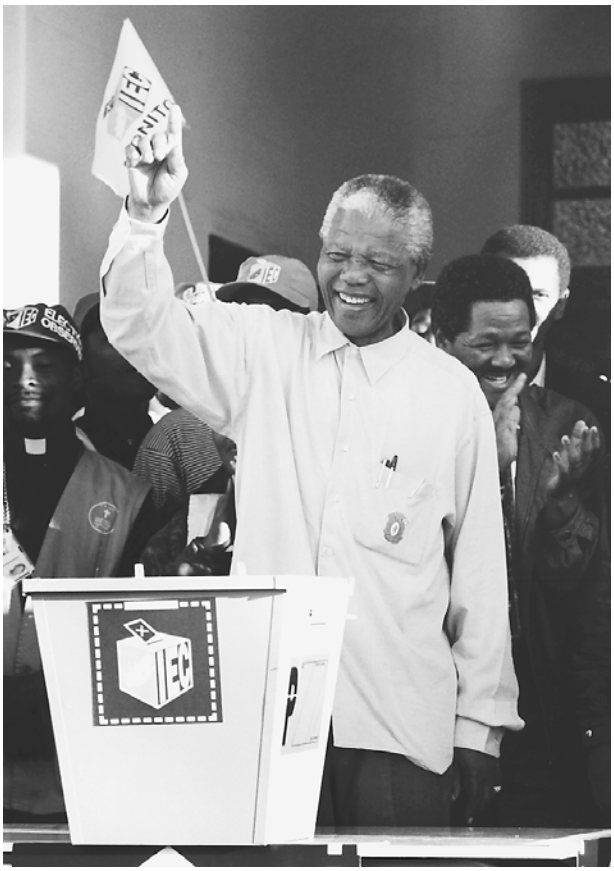
Struggle against Apartheid

In 1943 Mandela joined the African National Congress (ANC). Founded in 1912, the goal of the ANC was to end white domination and create a multiracial South Africa. At this time he made friends with the leaders of the Indian community, who were protesting against new legislation restricting their right to purchase land. Mandela observed their practice of peaceful resistance and learned about the philosophy of nonviolent disobedience advocated by the Indian lawyer Mohandas Gandhi. Gandhi spent twenty-one years in South Africa helping the Hindu population defend their human rights.

In 1944 Mandela, together with Oliver Tambo and Walter Sisulu, formed the Youth League of the African National Congress. The Youth League was impatient with the slow pace of progress and was determined to make the ANC an activist organization. Also in 1944 Mandela married Evelyn Mase, a nursing student who had grown up in Thembuland. He had three children with Mase. They divorced in 1957 and a year later he married Winnie Madikiyela, a social worker from Pondoland. She bore him two daughters, Zenani and Zindzi.

In 1948 the white National Party came to power under Daniel Malan, whose platform was called apartheid, or "apartness." Although racial laws and land dispossession had already been known during the colonial period, the National Party enacted new laws providing for racial segregation, including the Separate Representation of Voters Act and the Prohibition of Mixed Marriages Act.

In 1949 the ANC Youth League drafted a program of action calling for mass strikes, boycotts, and passive resistance. As a response, the National Party passed the Suppression of Communism Act, the Population and Registration Act, and the Group Areas Act, aimed at en-



A triumphant Nelson Mandela, leader of the African National Congress' struggle against apartheid. [AP/WIDE WORLD PHOTOS]

forcing apartheid policies and crushing any mass resistance movement.

As a member of the ANC executive committee from 1949, Mandela organized the Defiance Campaign in 1952, a nonviolent mass resistance movement against apartheid laws. Also in 1952 Mandela and Tambo opened a law firm in downtown Johannesburg, the first black law firm in South Africa, specializing in defending black South Africans from the injustices associated with apartheid laws, particularly the so-called pass laws that restricted freedom of residence and movement.

White rule in South Africa meant that some 5 million whites governed over a population of 25 million blacks, Indians, and other ethnicities. As an alternative to apartheid, Mandela offered a plan for a multiracial society, in which majority black rule would guarantee the welfare of all South Africans, black and white alike. As early as June 1955 he drafted an idealistic program, the "Freedom Charter," containing principles of coexistence and reconciliation.

Mandela also struggled against the so-called Bantustan policy launched by the government of prime minister Hendrik Verwoerd in 1959, a program that aimed at forcibly resettling parts of the black population into larger reservations or ghettos, called "homelands," frequently separating the work force from their families. This partly implemented policy of resettlement constituted a crime against humanity according to the Nuremberg judgment, which condemned Nazi demographic manipulations, including mass deportations, population transfers, and internal displacements carried out during World War II. These acts of war affected nearly one million Poles, who were expelled from the Warthegau into eastern Poland, and more than 100,000 French Alsatians expelled into Vichy, France.

Conflict and Imprisonment

While the African National Congress vigorously condemned the 1959 Promotion of Bantu Self-Government Act, which fragmented the black African population into eight separate black homelands, some tribal leaders accepted the policy and cooperated with the apartheid government. Mandela's vocal opposition to the Bantustan policy exacerbated tensions with the government, and he was repeatedly arrested and harassed, ultimately being charged with high treason and subjected to the treason trial, which dragged on for several years.

In a climate of escalating violence, demonstrations in March 1960 culminated in a massacre at Sharpeville, a town southwest of Johannesburg, in which sixty-nine protesters were killed by the white police. The government declared a state of emergency and banned the ANC. Mandela was again arrested and kept for five months at the prison center known as Pretoria Local. Quite unexpectedly, when the treason trial ended in March 1961, he was found not guilty.

Facing the reality that peaceful overtures were met with force, in the summer of 1961 Mandela endorsed the necessity of armed struggle and formed the *Umkhonto we Sizwe* ("the Spear of the Nation") or MK, the military wing of the ANC, which mainly targeted government offices, economic installations, and symbols of apartheid.

Early in 1962 Mandela illegally left South Africa for a period of six months, to canvas in London and elsewhere for financial support for the armed struggle. He took military training in Ethiopia and addressed the Conference of the Pan African Freedom Movement of East and Central Africa in Addis Ababa. Upon his return to South Africa in August 1962 he was arrested, charged with illegal exit and incitement to strike, tried, and sentenced to five years' imprisonment. He was first held in Pretoria and then transfered to the maximum

security prison at Robben Island, some four miles off the coast of Cape Town. Although already imprisoned, he was newly indicted on charges of sabotage and attempting to overthrow the government by violence. Mandela's statements from the dock at his trial in Rivonia, a suburb of Johannesburg, constitute classics in the history of resistance movements:

> During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die (Meredith, 1998, p. 268).

Mandela escaped capital punishment, but was sentenced to life imprisonment. In all, he spent twenty-seven years in prison, including eighteen at Robben Island as prisoner number 466/64, where he worked in a lime quarry until he was transferred in March 1982 to Pollsmoor Prison in Cape Town. In December 1988 he was transferred to the Victor Verster Prison near Paarl, from which he was released on February 11, 1990.

Peacemaker and Renowned Leader

Decades of international condemnation of apartheid, accompanied by severe economic sanctions, denial of bank loans, widespread disinvestment in South Africa, and international ostracism, including exclusion from the United Nations General Assembly and from participation in the work of international organizations, persuaded the South African government that the price of maintaining the apartheid system was too high, even for the white South African population. Thus, in February 1990 president Frederik Willem de Klerk lifted the ban on the ANC and paved the way for a nonviolent departure from apartheid.

In 1991, at the first national conference of the ANC held inside South Africa, Mandela was elected president of the ANC. In 1992 president de Klerk and Mandela signed a Record of Understanding and established an elected constitutional assembly to develop a new democratic constitution for South Africa. Later they developed the idea of "truth commissions" aimed at reconciliation of white and black in the post-apartheid period.

In 1992 Mandela separated from Winnie, who had become a controversial figure in South Africa. They divorced in March 1996 and on his eightieth birthday, in 1998, Mandela married Graca Machel, the widow of the former president of neighboring Mozanbique.

Mandela was awarded the Nobel Peace Price in 1993, together with de Klerk. Mandela was the second opponent of apartheid to win the prize; in 1984 archbishop Desmond Tutu had been honored for his efforts to end apartheid in South Africa.

From April 26 to April 29, 1994, the first all-races election took place in South Africa on the basis of the one-man/one-vote principle. Mandela was elected president, the ANC won 252 of the 400 seats in the national assembly, and de Klerk became deputy president.

On May 10, 1994, Mandela took office as the first democratically elected president of South Africa and served one term until June 1999. His generosity of spirit and unwillingness to take revenge won him the respect of his white South African adversaries. Mandela's legacy is a new South Africa that enjoys greater racial harmony than ever before and a quality of reconciliation that remains an example for other conflict-ridden societies.

SEE ALSO Apartheid; South Africa

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Alfred de Zayas

Mao Zedong

[DECEMBER 26, 1893–SEPTEMBER 9, 1976]
Communist leader of People's Republic of China

Born in Shaoshan (Hunan), Mao Zedong was the son of a moderately wealthy peasant. After a checkered classical primary education and training at the Hunan Teacher's College, the young Mao gathered like-minded anarchists in his bookstore in Changsha. In 1921 he cofounded the Chinese Communist Party (CCP). After the collapse of the united front with the

After the communist victory in the long Chinese civil war, Chairman Mao prepares to deliver a public proclamation. Tiananmen Square, 1949. [BETTMANN/CORBIS]

Nationalist Party in 1927, the two former allies fought a civil war until 1949. At its beginning the CCP found itself in rural areas trying to stem rapid decline. Forced from its largest base in Jiangxi in 1934, the party commenced its famous, yearlong Long March to Yan'an (Shaanxi), during which Mao rose to a preeminent leadership position. Only after continued internal struggle did Mao emerge in 1945 as the "chairman" of the CCP—a position he retained until his death in 1976 in Beijing. In 1949, after victory in the civil war, the CCP founded the People's Republic of China, with Mao serving as the chairman (or president) of the new country until 1959.

Given the merciless nature of political conflict in Republican China (1911–1949) and the extraordinary brutality of the Japanese occupation (1931–1945), it is no surprise that Mao concluded that a "revolution is not a dinner party" (*Investigation of the Peasant Movement in Hunan,* 1927). His astonishing disregard for individual human lives in later years, however, cannot be explained solely by the brutalizing experiences of his early career. Starting in the mid-1950s, Mao repeatedly affirmed his willingness to sacrifice up to a third of the Chinese population in a nuclear war so long as this would help bring about the downfall of world capitalism.

Mao's desire at Yan'an to cement his leadership of the CCP met opposition from two directions. First, pro-Soviet communists returned from Moscow to work for the Bolshevization of the party. Second, urban intellectuals who had been attracted by the utopia Yan'an seemed to promise in an otherwise corrupt China demanded greater freedoms once they recognized the repressive nature of the CCP regime. Benefiting from his disputed but, as it eventually turned out, correct decisions with regard to conduct of the civil war, Mao in the early 1940s pushed for a party purge, with the goal of installing his version of communism. A small number of dissidents were driven to commit suicide or killed. Although Mao in 1945 apologized publicly for the brutality of the campaign, it nevertheless set a precedent for future campaigns against dissidents, real or imagined.

The Korean War (1950–1953) against the "imperialist" United States provided the backdrop for class warfare against so-called capitalist elements, designed to rectify abuses tenant farmers and workers had endured in the past. Incomplete evidence from China's countryside suggests that it often served as a pretext for the continuation of local clan conflict by other means. According to Mao ("On the Correct Handling of Contradictions among the People," February 27, 1957), 800,000 counterrevolutionaries were killed (in 1952 China's population was 575 million).

In the wake of Nikita Khruschev's Secret Speech (February 1956), in which the Soviet leader charged his predecessor Joseph Stalin with criminal and arbitrary rule, and the resulting Hungarian uprising against Soviet occupation (October 1956), Mao tried to preempt the outburst of pent-up dissatisfaction by allowing criticism under highly controlled conditions (the Hundred Flowers Campaign that occurred during the spring of 1957). Despite all the precautions taken to avoid this, party members and intellectuals called for greater freedoms. In the resulting antirightist campaigns in subsequent years, critics, including leaders of national minorities (particularly in Xinjiang and after 1959 also in Tibet), were persecuted, lost their positions, and were sent to reeducation camps. An unspecified, but probably large, number of victims died or suffered permanent damage to their health from forced labor, abuse, and malnutrition in the camps.

By far the greatest loss of life during Mao's regime stemmed from the deadly spring famines (1959–1961) of the Great Leap Forward. Unlike the Ukrainian famines in the early 1930s, which Stalin had planned to

crush as anti-Russian nationalism, the famine of 1959 resulted from the misguided economic policies of the Great Leap Forward. However, once it became clear that the Great Leap Forward had not only failed to produce the promised economic miracles but also led to serious economic disruptions, Chairman Mao refused to change course because he feared a loss of face, if not his preeminent position. The acrimonious debates about economic reform in 1959 convinced Mao that alleged rightists in the party wanted to replace him. After crushing his supposed enemies, Mao relaunched the Great Leap Forward in late 1959; it collapsed on its own a year later. Due to lack of direct evidence, the number of famine victims can only be calculated on the basis of incomplete demographic data. Most historians agree that excess deaths (the difference between projected and actual demographic data) total at least 20 million (with more than two-thirds of these deaths occurring in 1960 alone); high estimates stand at 65 million (in 1957 China's population was 646 million).

Although still poorly understood, the Cultural Revolution (1966–1976) was, in many respects, Mao's most far-reaching attempt to rid China of his supposed opponents. Unlike Stalin, who remained in firm control of the Soviet party from the 1920s, Mao never had complete command over the CCP. Many of the campaigns from 1957 onward were attempts to increase his political control over the party. However, once Mao realized by the mid-1960s that his quest for undisputed leadership had been stymied, he turned to forces outside the CCP to attack what he considered a reticent party unwilling to implement his erratic policies. The Cultural Revolution was a mixture of party purge and class warfare, during which radicalized students persecuted, humiliated, tortured, and even murdered alleged rightists or counterrevolutionaries. The exact number of those who were killed, committed suicide, or died in camps is not known; nonetheless, it is clear that most of the victims came from the educated strata, had party backgrounds, or were from minorities.

SEE ALSO China; Famine

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Lorenz M. Lüthi

Massacres

The term *massacre* can be defined as a form of action, usually collective, aimed at the elimination of civilians or non-combatants including men, women, children or elderly people unable to defend themselves. The definition may also include the killing of soldiers who have been disarmed. One of the most notorious European examples of the latter was when Soviet troops massacred Polish officers in Katyn in February 1940. There are various definitional problems inherent in the notion of "massacre." For instance, there are divergent interpretations between adversaries, such as can be seen in the Israeli-Palestinian dispute over the tragic events at Jenin in April 2002. The Palestinians labeled the event a massacre, a charge that Israel denied. The Palestinian charge was further undercut by a report from the Secretary General of the United Nations, which challenged the Palestinian claim of hundreds of dead, substituting instead the much lower estimate of about fifty-five. This brings up an additional problem regarding the determination of a massacre based on victim tallies. After the Guatemalan Civil War, a UN commission conducting an inquiry on human rights violations stated that a massacre implies at least three murders, while certain experts consider this number to be "very low."

Debates Surrounding the Notion

Another debate surrounds the practices attached to the term *massacre*. Etymologically, the word derives from the popular Latin *matteuca*, meaning "bludgeon." The word contains the sense of butchery, designating both the abattoir and the butcher's shop. In Europe from the eleventh century on, *massacre* became synonymous with the putting to death both of animals and human beings. Massacre has historically presupposed a situation where the perpetrator and his victim are face-to-face, since it is based on the practice of slitting the throat—the technique used to slaughter animals for market. This technique was used in massacres such as the civil wars fought in Algeria or Greece. However, if the concept of massacre implies a type of one-on-one interaction, must we conclude that technologies of murder exercised from a distance cannot be considered

In July 1992 after the Serbs were defeated in Mostar (the main city of Herzegovina), the Croats proclaimed their own state in the area. In this photo, from September 1992, Serbian prisoners-of-war dig up bodily remains from a mass grave in the area around Mostar as Croatian soldiers look on. **[TEUN VOETEN]**

massacres? What then of the modern technique of air bombing? If we retain such a limited definition, we ignore the evolution of the technologies of war and the political motivation of the practice. Military forces that employ air strikes to create a climate of terror in order to force a town or country to surrender exemplify this phenomenon. In that regard, it makes sense to distinguish between local massacres (face-to-face encounters) and long-distance massacres (aerial bombings).

The connection between war and massacres poses another problem, because it is easy to assume that massacres only happen within the context of war. However various historical examples show that massacres can be perpetrated in relatively peaceful times. For instance, in Nazi Germany the Crystal Night (*Kristallnacht*) pogrom against the Jewish community took place on November 9, 1938), and in Indonesia, an even larger massacre was directed against all suspected communist partisans from October 1965 to June 1966. It is also possible to consider famine as a type of slow, "soft" massacre. If we do, we can cite the Ukraine famine that was essentially willed by Stalin from 1932 to 1933. Nevertheless, the context of war can without a doubt generate various practices of massacre, since war provokes a radical social polarization into the dialectic pair "friend vs. foe."

A massacre can then be one of several types. It can be integrated into the act of war when it is an extension of war. Such was the case of the massacre at Oradour-sur-Glane in France by a division of the SS on June 10, 1944. In this massacre, the military killed the whole population of this village just to intimidate the so-called terrorists in the area. Alternatively, a massacre can be deeply associated with the objectives of a war. Thus, for example, when a nationalistic power wants to force a given population to flee, one of the most efficient means is to massacre this population. As a result, the flow of refugees generated by this killing is not the consequence of the war but is, rather, its very goal. This was the case in the ethnic cleansing operations within the former Yugoslavia during the 1990s. Finally, a massacre may be quasi-autonomous with regard to war. This happens when practices of massacre tend to be detached from the battlefield and grow on their own. One

such case is the genocide of European Jews during the Holocaust. The logic of war seemed to contrast with the logic of massacre in this instance. Indeed, soldiers or trains were employed to destroy civilian populations instead of being deployed on the front, where they could be more useful from a military standpoint.

This leads to another problem: how can we differentiate between the notions of massacre and genocide? Some authors do not make any distinction between the two, and even go so far as to include within the concepts such industrial catastrophes as the Chernobyl nuclear disaster in 1986. Other experts consider it crucial to distinguish between the notions of massacre and genocide. These experts believe the term *massacre* refers to the deliberate but unsustained killing of unarmed human beings within a relatively short period of time and in a relatively small geographic area. According to this definition, neither the Saint Bartholomew massacre in France (August 24, 1572) that was perpetrated by Catholics against important members of the Protestant community; the Kishinev pogrom in Russia (April 19–20, 1903), when Moldavian Christians killed dozens of Jews in the city; nor the Amristar massacre in Punjab (April 13, 1919), perpetrated by British general Reginald Dyer against Indian demonstrators, can be considered genocides. Nevertheless, sometimes a variety of massacres tend to evolve in a genocidal process, in which case certain authors use the expression "genocidal massacre." One of the key issues in genocide studies is to explain why and how this particular framework of violence can pass—slowly or suddenly—from massacre to genocide. The answer to this question presupposes developing our understanding of the logics of massacre operations.

Delusional Rationality

When a massacre is committed and is made known by the press, journalists are inclined to stress its apparent irrationality. Why attack children, women, and the elderly? Details of atrocities are also given in such reports. The appalling aspects of massacres must not, however, prevent us from examining the question of the perpetrators' rationale, their operating techniques, their objectives, and their perceptions of the enemy. Beyond the horror, it must be acknowledged that they are pursuing very specific aims, which may include amassing wealth, controlling territory, gaining power, destabilizing a political system, or other goals.

Envisaging the notion of massacre thus means attempting to understand both its rationality and its irrationality. This means taking into account the human capacity for both cold calculation and folly, in sum, for delusional rationality. The term *delusional* relates to two mental phenomena. The first is psychosis. In this context, the psychotic element of the aggressor's behavior toward the victim or victims stems from the belief that the victim can and must be destroyed. The aggressor in effect denies the humanity of the victims, perceiving them as "other," as "barbarians."

However, *delusional* can also signify a paranoid image of this "other" (the victim) who is perceived as constituting a threat or even as the embodiment of evil. The particularity and dangerousness of a paranoid syndrome and the conviction that one is dealing with an evildoer are so strong that they create the risk of acting out against the perceived enemy. In a massacre, the "good vs. evil" and "friend vs. foe" binary polarization is at its peak, as is also true in war. Massacre is therefore always compatible with war and, if there is no actual war, it is experienced as an act of war.

Hence massacres are not irrational in the eyes of those who perpetrate them, because they are part of one or more dynamics of war. In this respect, those who commit massacres attribute specific political or strategic aims to them. These aims can, however, change with the course of the action, the international context, the victims' reactions, or other variables. The diversity of historical situations in which massacres occur leads us to distinguish between at least two fundamental types of objectives linked to the processes of partial and even total destruction of a community: its subjugation and its eradication.

Destruction in Order to Subjugate

The aim here is to bring about the death of civilians with a view to partially destroying a community in order to subjugate what remains of it. The destruction process is partial by definition, but it is intended to have an impact on the total community because those responsible for the deed rely on the effect of terror in order to impose their political domination on the survivors. The act of massacre is particularly suited to such a strategy. The slaughter need not be wholesale; it only has to become widely known so that its terrorizing effect spreads throughout the population.

Since the dawn of time, this form of massacre has been associated with warfare. The civilian destruction-and-subjugation dynamic can in fact be fully incorporated within a military operation to precipitate an adversary's surrender, speed up the conquest of its territory, and facilitate the subjugation of its people. Massacres can be found in most wars, both ancient to modern, and not merely as excesses of war but as part of its actual dimensions. However, such types of destruction sometimes turn "mad." This occurred during the Japanese invasion of China, when Japanese soldiers,

apparently free to pursue their will, raped, slaughtered, and pillaged the Chinese people of Nanking for six weeks from December 1937 to January 1938. What could have been justified as an awful but rational practice of war by some realist strategists became completely irrational in this case, particularly due to the impunity of the invading soldiers.

Such destruction-and-subjugation methods can also be found in contemporary civil warfare, where the distinction is no longer made between combatants and non-combatants. Even if the women and children of a village are unarmed, they can be suspected of supporting enemy forces by furnishing them with supplies. They therefore become potential targets that must be destroyed. Many examples of this phenomenon can be found in certain past conflicts (e.g., Lebanon, Vietnam, Guatemala, and Sierra Leone) or in ongoing conflicts (e.g., Colombia and Algeria).

These destruction-and-subjugation practices can also extend to the ways in which people are governed. A war of conquest, which may have been conducted by massacre, might give way to the economic exploitation of the conquered population, with further recourse to the murder of some of its members if necessary. That was the essential attitude of the Conquistadors toward Native Americans, whom they perceived as worthless beings existing to do their (Spanish) masters' bidding. History offers other political variants of the shift of the destruction-and-subjugation strategy from a means of warfare to a tool of governance. In this instance, Clausewitz's formula ("War is the continuation of politics by other means") could be reversed. Instead, politics becomes the means of pursuing war against civilians.

Those who win a civil war are logically drawn into this power-building dynamic, as illustrated to some extent by the example of revolutionary France. There, the "*Colones infernales*" slaughtered large segments of the Vendean population in 1793. The Bolsheviks in Lenin's Russia after 1917 and the Khmers Rouges in Pol Pot's Cambodia (1975–1978) illustrate this phenomenon even more radically than the case of the French Revolution. The perpetration of extreme violence that builds up in the course of a civil war tends to be transferred to a power-building phase.

Whether in the case of civil wars or not, this process dates back a long time. Torture and killing to "set an example" constitute one of the standard techniques of the tyrant seeking to quash an internal rebellion. A more recent example was the tactic of hostage execution employed in Europe by the Nazis, who executed one hundred civilians for every German killed in a bid to overcome armed resistance groups. Sometimes dictatorial powers do not hesitate to kill nonviolent demonstrators, as the racist South African regime did in Sharpeville on March 21, 1960 against black opponents. In this case the massacre was committed in order to deter any kind of resistance. Other regimes developed more sophisticated techniques, such as the "disappearance" method implemented by various Latin American dictatorships in the 1970s.

Destroy in Order to Eradicate

The destruction-and-eradication dynamic is quite different. Its aim is not the actual subjugation of a populace, but rather the utter elimination of a fairly extensive community. This involves "cleansing" or "purifying" the area where the targeted group (which is deemed undesirable or dangerous) is present. The concept of *eradication* is particularly relevant here, because the word's etymology conveys the idea of "severing roots" or "removing from the earth," in short "uprooting," as one would root out a harmful weed.

This identity-based process of destruction and eradication can also be connected with wars of conquest. The massacre process, combined with rape and pillage, is the means by which one group makes its intentions clear and consequently hastens the departure of another group, either because that group is deemed undesirable or because it occupies territory that the attacking group wants for its own use. The partial destruction of the victimized group and the resulting terror bring about and accelerate such departure. This was the practice employed by European settlers in North America against Native American peoples, who were driven further and further west, beyond the Mississippi River. In the Balkans, the forced movement of populations from a territory has been termed *ethnic cleansing,* in particular to describe the operations conducted mainly by Serbia and Croatia in the early 1990s. However the methods used (e.g., slaughtering people, burning villages, and destroying religious buildings) can be linked to earlier practices in that region. Since at least the nineteenth century, similar practices occurred in the context of the rise of nationalism and the decline of the Ottoman Empire.

These practices of massacre aimed at chasing away undesirable populations are genuinely universal. Regimes often used militias to do their work. These militias could usually rely on the support of conventional armed forces, however, even though the latter might prefer to remain in the background. One example of this situation is the Sabra and Shatila massacre in Lebanon (September 18, 1982), in which more than 1,000 Palestinians were killed by the Christian Lebanese militia with the support of the Israeli army. The goal was to terrorize the Palestinians and chase them out of Leb-

anon. This episode can be related to massacres that were perpetrated in 1948 by Israel in an attempt to chase Palestinians out of the territory claimed by the newly formed Israeli state. Numerous other such examples can also be found dating to the eighteenth century, when state building began to imply a homogeneous population. Achieving this homogeneity entailed the forced departure of populations that did not share in the same cultural, ethnic, or religious heritage. If war makes the State to the same extent as the State makes war, as historian Charles Tilly put it, the same could be said of massacres.

Once again, the processes at work in warfare can be reemployed in terms of the internal governance of a destroyed people. This is the case across the spectrum of ethnic and religious nationalistic conflicts, which include the riots between Muslims and Hindus in India since at least the late 1940s. Generally speaking, these types of conflicts involve the instrumental use of ethnic or religious criteria for the purposes of a group's political domination over an entire community. Recourse to killing is justified by the appeal to homogeneity in order to resolve a seemingly insoluble problem.

This process can, however, take on an even more radical form, such as the total elimination of a targeted community whose members are not even given the chance to flee. In such circumstances, the aim is to capture all of the individuals belonging to the targeted community, with the goal of eradicating them. The notion of a territory to be cleansed becomes secondary to the idea of actual extermination. Some colonial massacres were probably perpetrated with this in mind, such as the slaughter of the Herero population in 1904 by the German colonial army in Namibia. We still know far too little about colonial massacres, including those perpetrated by England, France, and Belgium in their conquest of African territories in the nineteenth and early twentieth centuries.

The leaders of Nazi Germany went further than any others in the planned total destruction of a community. Their systematic extermination of European Jews between 1941 and 1945, which followed the partial elimination of mentally sick Germans, is the prototypical example of this eradication process taken to the extreme. In very different historical contexts, the same can be said of the extermination of the Armenians within the Ottoman Empire in 1915 and 1916, and that of the Rwandan Tutsis in 1994. In each of these cases, the objective was not to scatter a people across other territories, but rather, in the words of Hannah Arendt, "to cause it to disappear not just from *its* own land, but from *the* land."

It is at this final stage of the eradication process that the concept of genocide can be introduced as a notion in social science. In general, the public at large sees genocide as a form of large-scale massacre. In the popular view, whenever the death toll reaches several hundred thousand, it becomes possible to refer to a genocide. This kind of intuitive criteria, based on a large number of victims, is not, however, adequate to describe genocidal behavior. Moreover, no expert could effectively set a minimum number of deaths as the necessary criterion for declaring that genocide has occurred. A qualitative criterion *combined* with a quantitative criterion, however, could offer a more reliable definition of genocide. For instance, most experts would agree that widespread killing combined with the implicit or express desire for the total eradication of a community qualifies for the label of "genocide."

Genocide thus fits within the same destructivity continuum as ethnic cleansing, but is essentially distinguishable from it. Their respective dynamics are both aimed at eradication; however, in the case of ethnic cleansing the departure or flight of the targeted population is still possible, whereas in the case of genocide, escape is futile or impossible. In this regard, genocide can be defined as the process of specific civilian destruction directed at the total eradication of a community, for which the perpetrator determines the criteria.

However, such reasoning is necessarily further complicated by the fact that the destruction-and-subjugation and destruction-for-eradication processes can coexist and even overlap within the same historical situation by targeting different groups. In general, one is the dominant process and the other is secondary. In 1994, Rwanda saw the attempted eradication of the Tutsi population (which can therefore be classified as a genocide) occurring simultaneously with the killing of Hutu opponents of the government (which constitutes a destruction-and-subjugation process. Conversely, the mass killing in Cambodia clearly constituted a destruction-and-subjugation process because Pol Pot never sought to destroy all the Khmers, but that process included certain eradication offensives directed at specific groups, particularly the Cham Muslim minority. Identifying these different dynamics of violence is often a very complex task, because they may not only overlap, but also change over time, shifting, for example, from subjugation to eradication.

SEE ALSO Algeria; Armenians in Ottoman Turkey and the Armenian Genocide; Bosnia and Herzegovina; Comparative Genocide; Developmental Genocide; Ethnic Cleansing; Genocide; Katyn; National Prosecutions; Rwanda; Sabra and Shatila; Utilitarian Genocide

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Jacques Semelin

Mass Graves

Several definitions of mass graves have been offered. From a scientific perspective, a mass grave contains two or more bodies that are in contact with each other. More legally precise is the definition offered by one United Nations (UN) special rapporteur, who interpreted a mass grave as a location where three or more bodies are buried, victims of extrajudicial, summary, or arbitrary executions, not having died in combat or armed confrontations (ICTY, 1996). Mass graves are an expedient method of disposing of large numbers of human remains. However, not all mass graves result from criminal actions; some contain legally buried combatants or victims of natural disasters.

Mass graves are investigated to collect and document physical evidence for accountability purposes and/or to identify the dead for return to their families. Forensic exhumations provide evidence to establish accountability and bring those responsible to justice. The process of investigation and documentation creates a historical record. From a humanitarian perspective, families may finally know the fate of their loved ones and be able to give them a proper burial. Finally, forensic exhumations reconfirm the dignity of the victims and of human life (Haglund, 2002; Stover and Ryan, 2001).

It is important to note that for the purpose of successful prosecution of crimes such as genocide and crimes against humanity, personal identification of victims may not be required. Identification at the categorical level of national, religious, ethnic, or racial group may suffice. This said, in the course of examinations, experts are ethically bound to collect information that may further the personal identification process.

Investigation of mass graves requires a multidisciplinary effort, and for large ones completion may involve days, weeks, or even months. Prominent among experts involved are forensic archeologists, anthropologists, pathologists, and evidence technicians. First, a detailed documentation of surface features and potential evidence is conducted. Once the grave boundaries have been defined, the overburden (deposits of soil or other materials that cover the remains) is removed. This too is inspected for evidence. As excavation progresses, graves yield evidence bearing on circumstances of burial, as indicated by marks from tools or machines that may have been used to dig them. Sometimes, it is possible to ascertain whether or not victims were killed at the site or somewhere else. Once human remains are reached, each individual remains are carefully exposed and recovered. Postmortem examinations of the victims reveal information concerning cause of death, as well as information supportive of their identification, such as sex, age, stature, and trauma during life. Throughout the exhumation process written narratives, maps, and photographs document the findings and observations.

Forensic investigations of mass graves date to World War II. In 1943 forensic specialists of the Axis powers carried out the exhumation and study of victims from graves in the Katyn Forest, located in the modern-day region of Russia named Smolensk. When the Nazis took over the area, rumors circulated that previously occupying Soviet forces had systematically executed and buried approximately 11,000 Polish prisoners of war in 1940. The Germans, on occupying the Katyn, immediately organized investigations, prompted by the anticipation of accusations of Nazi culpability for the deaths. Findings based on the examination of 4,143 victims appeared in an April 1943 report. The majority had been shot in the head, and 5 percent were found with their hands tied behind their backs with ropes. On the basis of recovered personal artifacts and documents, 2,914 bodies were identified (Fitzgibbon, 1977). The report went on to comment that the absence of insects, as well as the presence of documents, correspondence, diaries, and newspapers, in the grave indicated that the deaths occurred from March through May of 1940.

A footnote on the Katyn mass massacres occurred during the Nuremberg trials. At the insistence of the Soviets and over the reluctance of the French, British, and American prosecutors, the Soviets successfully advocated that allegations of the massacres be included in count three of the indictment against the Nazis. Although the falsehood of these allegations was strongly suspected, they were allowed to stand, but were not mentioned in the tribunal's final verdict (Davidson, 1997; Taylor, 1992).

Other World War II–era mass grave exhumations were carried out after the war, notably in Saipan (Russell and Flemming, 1991) and Ukraine (Bevan, 1994). The Australians conducted the Ukraine investigation, with the cooperation of the Soviets, into the case of Nazi Officer Ivan Polyukhovich, who was indicted for

Mass grave of unidentified victims discovered west of Baghdad, April 17, 2003. [TEUN VOETEN]

his involvement in a massacre of Polish Jews outside the town of Serniki in the fall of 1942. Limited examinations of 533 selected crania confirmed that 410 of the men, women, and children exhumed had been shot in the head. Polyukhovich died before the prosecution was completed.

In May 2001 an aborted attempt was made to investigate the 1941 execution and burial site of an alleged 1,600 Polish Jews on the outskirts of the hamlet of Jadwabne, Poland. Addressing Jadwabne was an effort on the part of the Polish government to set the record straight on whether the killers had been occupying Nazis or fellow Polish neighbors of the victims. Strict Jewish orthodox interpretation of religious objections to the disturbance of graves was successful in closing down the exhumation efforts (Gross, 2001; Polak, 2001).

Except for the investigation of World War II graves, a four-decade hiatus passed before the momentum for a second and continuing era of mass grave investigations gathered. In 1984, prompted by a request from newly elected Argentine President Raúl Alfonsín, the American Association for the Advancement of Science's Committee on Scientific Freedom and Responsibility assembled a group of forensic experts. They were asked to investigate the fate of the thousands of disappeared, those who went missing, during Argentina's military rule from 1976 to 1983. This historic plea led to the development of Latin American forensic teams and exhumations throughout Central and South America, with major mass burial sites investigated in Guatemala, El Salvador, Chile, and Peru.

A virtual explosion in the export of forensic experts to investigate mass graves occurred in 1996. The ad hoc International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) provided the impetus. Throughout 1996 multidisciplinary teams staffed by forensic experts made available by the nongovernmental organization (NGO) Physicians for Human Rights (PHR) exhumed and examined the remains of nearly 1,200 individuals in Rwanda, Croatia, and Bosnia and Herzegovina. The first exhumation was of 496 victims at the Kibuye Roman Catholic Church. Seventy percent of the victims were women and children, 74 percent died of blunt and/or sharp force trauma, and 25 percent were children 10 years of age or younger. These findings were presented in the trial of

Two men wearing masks have transported the bodies of victims of the Rwandan genocide to the site of a mass grave. One man hurls a body into the pit. [TEUN VOETEN]

Clement Kiashima, a pediatrician and former Prefect of Kibuye, who was convicted of crimes against humanity.

The 1996 exhumations continued in the former Yugoslavia. The initial focus was on graves believed to contain the seven thousand men and boys who had disappeared in July 1995, immediately after the fall of Srebrenica. In relation to these deaths, Radislav Krstic became the first person to be convicted by the ICTY of genocide and was sentenced to forty-six years of imprisonment (ICTY, 2001). As presented in the Krstic trial, these and other graves exhumed in subsequent seasons showed that many graves had been robbed in an attempt to destroy evidence. Deaths resulted primarily from gunshot wounds, with many of the victims blindfolded or bound.

The fieldwork in 1996 concluded with exhumation of the Ovcara grave in eastern Croatia. This grave held the remains of patients and staff taken from the Vukovar hospital after the fall of that city in September 1991. Although the grave had been discovered that same year, occupying Serb military prevented the first exhumation attempt in 1993. Fifty-five percent of the victims, whose ages ranged from 17 to 66 years old, demonstrated evidence of medical attention or recent hospitalization. Of the two hundred victims, the majority died of gunshot wounds. DNA identifications have confirmed the identity of over 90 percent of the victims. It is the unfortunate fate of many families that the graves containing their relatives may never be found. For example, of the estimated 28,500 people missing from Bosnia during the Yugoslav conflict, as of 2004 the remains of nearly 16,500 have been found and of those about 11,500 identified.

Initial hurdles to mass grave exhumations are lack of will or authority to investigate. Until regimes change or international will forces the issue, atrocities hidden in mass graves are not addressed. In order for investigations to proceed and accountability to take place, a forum such as a tribunal, special court, or truth commission needs to be established. Even when these criteria have been met, access to sites may be blocked for lack of security.

Once authority is granted and security insured, the focus shifts to support of the project: its funding, resources, staffing, and logistics. Limitations of time, funding, and support may impact the approach to the examinations. If not considered beforehand, religious, cultural, or other community concerns may prove to be impediments to the investigation. For all mass graves, there are deep concerns revolving around what will be the fate of remains in relation to their identity and return to families. In the end, accountability is ever at the mercy of societal will and a legitimate judicial forum.

As a phenomenon, mass graves are, unfortunately, all-too-common features in the landscape of genocide and crimes against humanity. Alarm at the atrocities of World War II was, in small part, hastened by evidence of mass graves. The mass grave investigations of the ICTR and ICTY have, in large part, triggered expectations for similar exhumations from far-flung regions of the globe. In the early twenty-first century requests for the investigation of mass graves came from a host of countries, including Afghanistan, Bangladesh, Cambodia, Congo, East Timor, Indonesia, Iraq, Nepal, Sierra Leone, and Sri Lanka. Even when forensic investigations of mass graves are undertaken, accountability and punishment of perpetrators may not follow.

SEE ALSO Babi Yar; Forensics; Katyn; Srebrenica

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Medical Experimentation

The use of experimentation on human subjects is a necessary method of advancing medical and public health knowledge. However, it has been abused extensively in the context of genocide and crimes against humanity, especially by the Axis Powers during World War II. Experimentation was part of the state-sanction behavior of Nazi doctors within the broader program of extermination of races considered inferior or of targeted political groups. The medical and health personnel involved were charged with having committed war crimes and crimes against humanity during World War II, and many were convicted by a U.S. tribunal set up in tandem with the International Military Tribunal sitting in Nuremberg.

Medical experimentation refers to the testing and evaluation of a new drug or procedure on a human person in order gain generalizable knowledge that can be used for various purposes. In its accepted form, such experimentation is conducted on willing human subjects for the purpose of advancing the curative or preventive role of medicine. In its prohibited form—done in connection with genocide or crimes against humanity—it is conducted without the consent of the individ-

To better understand the effects of high altitudes on German pilots (in particular, pilots needing to eject from damaged aircraft), physicians of the German Experimental Institute for Aviation subjected concentration camp prisoners at Dachau, such as this man, to simulated high-altitude conditions. Many of the subjects died during the experiments. [USHMM]

uals tested and for purposes that may purport to have positive value for medical science, such as finding a vaccine against smallpox, or for the misuse of medicine, such as learning how to keep a prisoner from dying under torture, in order to continue the acts of torture.

Medical Experimentation in History

The trial of the Nazi doctors was in many ways the defining moment of standard setting regarding medial experimentation. The practice is, however, an ancient one, found among physicians in ancient Greece and Rome, the Arab and Ottoman Empires, and especially in European medical practice during the eighteenth and nineteenth centuries. Among the best-known examples of medical advances made thanks to medical experimentation are Edward Jenner's inoculation of an eight-year-old boy with cowpox against smallpox, Sir James Young Simpson's use of chloroform for anesthesia, and Louis Pasteur's testing an antidote to rabies. Although these advances have proved important, the experimentation sometimes took place without adequate attention to aquiring informed consent or reference to previous scientific studies, and testing usually took advantage of vulnerable groups, such as children, orphans, prisoners, and mental patients.

One of the first efforts to establish ethical standards for medical experimentation was made by the English physician, Thomas Percival, in 1803. He wrote that doctors performing "new methods of chirurgical treatment . . . should be scrupulously and conscientiously governed by sound reason, just analogy, or well-authenticated facts . . . and no such trials should be instituted without a previous consultation of the physicians or surgeons." More directly to the point of human experimentation was the code drafted by an American, William Beaumont, in 1833, requiring voluntary consent of the subject and cessation of the experiment when it causes distress to the subject or when the subject is dissatisfied with it. The French physician Claude Bernard, writing in the middle of the nineteenth century, defined the basic principle of "never performing on man an experiment which might be harmful to him to any extent, even though the result might be highly advantageous to science, i.e., to the health of others."

The principle of informed consent evolved as a result of several well-known experiments. During World War I, Walter Reed experimented with mosquitoes as a vector of yellow fever, first on servicemen and then on Spanish workers. His test subjects signed a contract by which they accepted the risk of yellow fever in exchange for $100 in gold, twice that amount was paid if they contracted the disease. The ethical problem with Reed's experiment was that prospective test subjects were recruited on the basis of false information. The certainty of non-participants in the experiment contracting yellow fever was exaggerated, and the possible fatal consequences of the experiment were understated.

In the early twentieth century, a collaborator of Reed, George Sternberg, experimented on children in an orphan asylum, as well as on mental patients and prisoners. Although criticized for it, Hideyo Nogushi and his colleagues tested a drug (luetin) to diagnose syphilis on uninformed mental patients, patients in public hospitals, and orphans. These examples raised problems of medical ethics, and this concern contributed to the rethinking of rules governing medical experimentation in the mid-twentieth century.

During World War II, the Committee on Medical Research of the Office of Scientific Research and Development—the precursor to the National Institutes of Health—conducted major experimental research using human subjects on diseases such as dysentery, influen-

za, and especially malaria. Again, mental patients and prisoners were infected to determine their response to antimalarial therapies and flu vaccines. The subjects were usually considered volunteers, but little attention was paid to the nature of their consent. For instance, prisoners were often promised early release, but no one stopped to think of how that promise might induce a prisoner to give consent to the experimentation. The overriding concern was for results, because the tests would directly effect the health of soldiers engaged in the war effort. Hepatitis testing on mentally retarded children at Willowbrook, and cancer research, using live cancer cells, on unsuspecting patients at the Brooklyn Jewish Chronic Disease Hospital were also conducted without adequate attention to the consent of the subjects and the ethics of the use of live cancer cells.

Perhaps the most notorious example in the United States of failure to apply standards of informed consent was the Tuskegee study, which the U.S. government ran from 1932 to 1972. The test subjects were African Americans with secondary syphilis and were not conscripted during the war and in order to allow the scientific team to continue studying the progression of the disease, were not given penicillin even after its efficacy against the disease was discovered. It was not until Henry Beecher published his groundbreaking article, "Ethics and Clinical Research," in 1966 that the laxity of standards for experimentation in medical schools, hospitals, and government institutions was considered urgent enough for clear rules and monitoring procedures to be established.

By far the most significant precedent for the dangers of unrestricted and barbaric medical experimentation was that set by the Nazi and Japanese doctors before and during World War II. Japanese physicians conduced germ warfare experiments in the early 1930s under the direction of Lieutenant-General Shiro Ishii. Some 20,000 Japanese professionals were involved in experiments on humans and participated in massive germ warfare attacks against Chinese and Korean civilians and U.S. prisoners of war. An estimated 400,000 Chinese died of cholera as a result of these attacks, and the final death toll of Japan's medical-biological war crimes has been estimated at 580,000. Unit 731, the most notorious secret military medical unit of the Imperial Japanese Army, was a facility of 150 buildings on six square kilometers. There, a number of experiments were carried out on human subjects, including vivisections, grenade tests, frostbite experiments, and a bacilli bomb developed for use as a defoliant. The U.S. government did not prosecute the Japanese perpetrators for these acts as they did in the case of the Nazi doctors. Instead, the crimes were left unprosecuted, in exchange for access to test results and documents.

Experiments Carried Out by Nazi Physicians during World War II

At the end of World War II, twelve experiments were singled out for prosecution as war crimes. Extensive evidence was presented for each of them during the trial of the Nazi physicians.

High-Altitude (or Low Pressure) Experiments

Inmates of the Dachau concentration camp in 1942 were locked in an airtight pressure chamber and the pressure was altered to simulate atmospheric conditions at very high altitude without oxygen. In the words of the official report on this experiment, performed on a 37-year-old Jew:

> After 4 minutes the experimental subject began to perspire, and wiggle his head; after five minutes cramps occurred; between 6 and 10 minutes breathing increased in speed and the experimental subject became unconscious; from 11 to 30 minutes breathing slowed down to three breathes per minutes, finally stopping altogether. Severest cyanosis developed in between and foam appeared at the mouth. About one-half hour after breathing had stopped, dissection was started.

The report then provides a detailed description of the autopsy.

Freezing Experiments

In experiments conducted in Dachau in 1942 and 1943 to learn how to rewarm German pilots downed in the North Sea, victims were forced to stand naked in freezing weather for nine to fourteen hours, or in a tank of ice water for three hours. The official Nazi report notes, "the experimental subjects died invariably, despite all attempts at resuscitation." In October 1942, one of the defendants presented a paper, "Warming Up after Freezing to the Danger Point," based on these experiments to a conference held in Nuremberg on the prevention and treatment of freezing.

Malaria Experiments

Over 1,200 Dachau inmates were infected by mosquitoes or injected from the glands of mosquitoes and then treated with various drugs. As a consequence, thirty inmates died from malaria, and 300 to 400 more died from complications and overdoses of some of the drugs.

Mustard Gas Experiments

Victims in Sachsenhausen, Natzweiller, and other camps were deliberately inflicted with wounds. These were subsequently infected by mustard gas, or were injected with the gas, or were forced to ingest it by inhaling or drinking. Nazi reports of these experiments in 1939 describe the swelling and intense pain the victims suffered.

Experiments with Drugs, Muscle and Nerve Regeneration, and Bone Transplantation
Chief Prosecutor Telford Taylor described these experiments as "perhaps the most barbaric of all." They were performed primarily on women in Ravensbrück, and consisted in inflicting wounds to simulate battle injuries, into which a gangrene-producing culture was introduced to cause severe infections. Some victims were then treated with sulfanilamide, others with nothing. Bone transplantation was performed on other subjects. In Buchanwald, victims—usually Polish Catholic priests—were injured and then treated with polygal or sulfanilamide. Many died from these tests or from untreated blood poisoning and other infections.

Seawater Experiment
Conducted in Dachau in 1944, these experiments involved feeding the victims shipwreck rations. Some were given no water, others received ordinary seawater, or seawater in which the salty taste was concealed, or seawater that had been treated to remove the salt. The tests were performed primarily on Roma (Gypsies). The test subjects suffered deliriums and convulsions, and some died.

Epidemic Jaundice Experiments
Eight Jews of the Polish resistance were selected for this experiment in Sachsenhauser and Natzweiler camps. The experiment began in an effort to find an inoculation against epidemic jaundice and resulted in the torture and death of the subjects.

Sterilization Experiments
These experiments, conducted on victims in Auschwitz, RavensbrÌck, and other camps, were part of Nazi planning for genocide by the most efficient, scientific, and least conspicuous methods. The aim was to eliminate Russians, Poles, Gypsies, Jews, and other undesirable populations by using medicinal rather than surgical sterilization, primarily through injection of caladium sequinum and other substances. In addition, gland transplantation was performed on fourteen inmates of Buchanwald, two of whom died. Others were subjected to sterilization by X-rays and castration. The aim was to prevent reproduction among Jews who were preserved from extermination in order to perform labor.

Typhus and Other Virus Experiments
For nearly five years, until the end of the war, medical experiments were performed on inmates of Buchanwald and Natzweiler to test vaccines for typhus, yellow fever, smallpox, paratyphoid A and B, cholera, and diphtheria. For the typhus experiments, hundreds of prisoners were infected with typhus. Some of these had received an antityphus vaccine to be tested, the others were used as the control group or simply infected to provide a supply of the virus for further testing.

Poison Experiments
Russian inmates of Buchanwald were injected with poisons, sometimes administered through poison bullets. The tests were designed to permit the Nazi doctors to observe the victims' reactions to the poison up to the point of death.

Incendiary Bomb Experiments
These experiments took place in Buchanwald in 1943. Five inmates were burned with phosphorous material taken from an English bomb and were severely injured as a result.

Anthropology Experiments
Two of the defendants in the Doctors' Trial were obsessed with racial theories and had collected skulls representative of "all races and peoples," but lacked those of the "Jewish race." In order to complete the collection, they had requested that Jewish victims be photographed and that "anthropological measurements" of their skulls be taken while they still lived. The victims were then killed and beheaded, and their heads were brought to the laboratory in a sealed tin filled with conserving fluid. In requesting this service from the Wehrmacht, one of the defendants had explained that he wanted skulls to "represent the prototype of the repulsive but characteristic subhuman." Prosecutor Taylor called these experiments "perhaps the most utterly repulsive charges in the entire indictment."

The Trial of the Nazi Doctors
The trial of the Nazi doctors, known as the *United States of America vs. Karl Brandt et al*, the Medical Case, or the Nazi Doctors Case, was based on the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, signed in London on August 8, 1945 by the United States, the United Kingdom, France, and the Soviet Union, which created the International Military Tribunal (IMT). The Nazi doctors were not tried by the IMT, but rather by a U.S. tribunal acting pursuant to Control Council Law No. 10, signed on 20 December 1945.

The trial of the Nazi doctors was officially Case No. 1 of Military Tribunal I, constituted on October 25, 1945, and consisting of Walter Beals, Harold Sebring, Johnson Crawford, and Victor Swearingen. Telford Taylor served as chief of counsel for the prosecution, and James McHaney was chief prosecutor. Taylor charged the defendants with "murder, tortures, and other atrocities committed in the name of medical science." There were four counts in his indictments:

(1) Conspiracy to commit war crimes against humanity: The ordering, planning, and organization of the war crimes and crimes against humanity charged in counts two and three. Although all the defendants were charged on this count, the tribunal decided not to convict.

(2) War crimes: The tribunal found fifteen defendants guilty on this charge and acquitted eight.

(3) Crimes against humanity: Charged against all defendants. Fifteen were found guilty, eight were acquitted.

(4) Membership in a criminal organization: Ten defendants were charged with membership in the SS. All were found guilty.

The trial began on December 9, 1946. The judgment was returned on August 19, 1947, and sentencing was pronounced on the following day. The tribunal met 139 times, heard 85 witnesses, and examined 1,471 documents. There were twenty-three defendants, seven of whom were found guilty of war crimes and crimes against humanity and sentenced to death. Four of these were physicians. Five other defendants were sentenced to life imprisonment. Seven were found not guilty and one was found guilty of the charge of belonging to the SS but not of crimes relating to medical experimentation. Thirty-one lesser officials were put on trial and found guilty, of whom twenty-two were sentenced to death.

Taylor gave the opening statement for the prosecution, noting that "most of [the defendants] are trained physicians, and some of them are distinguished scientists." He set aside from the medical trial the charges of "euthanasia" and slaughter of tubercular Poles because they did not relate to actual medical experiments. The charges retained against the defendants related to experiments that constituted war crimes or crimes against humanity, and murder for so-called anthropological purposes. Some of these experiments were aimed at assisting the German Wehrmacht in coping with battlefield problems and diseases encountered in occupied territories. However, others, in Taylor's words, were not aimed at determining "how to rescue or to cure, but how to destroy and kill." Among the latter, he listed the sterilization experiments and shooting of poison bullets at prisoners in Buchanwald to see how quickly they died. He called these crimes "thanatology," or the science of producing death.

The Nuremberg Code

The judgment of the tribunal included a section on "permissible medical experiments," in which the judges enumerated ten principles that "must be observed in order to satisfy moral, ethical, and legal concepts." Through these principles, the judges intended to identify "requirements which are purely legal in nature" and not to venture into the field of medicine, which they deemed a "field that would be beyond our sphere of competence." Nonetheless, the principles have come to be known as the "Nuremberg Code," and have had far-reaching significance for bioethics.

The Nuremberg Code begins with that core principle that "the voluntary consent of the human subject is absolutely essential." The other requirements are that any experiment on a human subject should be for the good of society; it should build on the results of animal experimentation and scientific knowledge, it should "avoid all unnecessary physical and mental suffering and injury;" there should be no "a priori reason to believe that death or disabling injury will occur" (with the possible exception of the experimental physicians serving as subject); the degree of risk should be proportionate to the humanitarian gain; adequate precautions should be taken "to protect the experimental subject against even remote possibilities of injury, disability, or death;" only scientifically qualified persons should conduct the experiment; the subjects should be able to halt the experiment "if he has reached the physical or mental state where continuation of the experiments seems to him to be impossible;" and the lead scientist should be prepared to end the experiment at any stage "if he has probable cause to believe, in the exercise of the good faith, superior skill, and careful judgment required of him, that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject."

The Nuremberg Code sets a very high standard, for which it has sometimes been criticized, especially in relation to the absolute character of voluntary consent. It should be noted that it only deals with adult consent in the context of the Nazi experiments, and was not intended to cover all situations. The tribunal drew heavily on two expert witnesses, Andrew Ivy and Leo Alexander, who compiled historical precedents and proposed most of the points that were eventually incorporated into the judgment. Michael Grodin, an expert on the Nuremberg Code, has called it "the cornerstone of modern human experimentation ethics."

Since the tribunal's judgment, standard-setting regarding medical experimentation has followed two major trends. The first is the development of detailed ethical codes and procedures for protecting human subjects involved in experimentation. This has been accomplished primarily through the World Medical Association's Helsinki Declaration and the Council for International Organizations of Medical Sciences

(CIOMS)'s Ethical Guidelines for Biomedical Research Involving Human Subjects. These standards are implemented primarily through national legislation and institutional review boards. The second is through the incorporation of provisions that ban impermissible medical experimentation in international humanitarian and human rights treaties.

International Humanitarian and Human Rights Law

As a result of the Nazi medical trial, the issue of medical experimentation and other biological experiments was a preoccupation of the drafters of the principal post–World War II instruments of international humanitarian and human rights law. Under the First and Second Geneva Conventions, the wounded, sick, and shipwrecked armed forces "shall not be. . .subjected to torture or to biological experiments" (Article 12 of each convention). Article 13 of the Third Geneva Convention, regarding the treatment of prisoners of war stipulates: "In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental, or hospital treatment of the prisoner concerned and carried out in his interest." In the Fourth Geneva Convention, regarding the protection of civilians in time of war, Article 32 bans "mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person." Protocol I, relating to the protection of victims of international armed conflicts (Article 11) states the following:

> [I]t is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

It further prohibits carrying out "on such persons, even with their consent: (a) Physical mutilations; (b) Medical or scientific experiments; (c) Removal of tissue or organs for transplantation." As for Protocol II, which deals with the protection of victims of non-international armed conflicts, it is similarly "prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances." This prohibition appears in Article 5.2, concerning internment or detention. All four Geneva Conventions of 1949 list among the grave violations, which all parties are required to punish, "willful killing, torture or inhuman treatment, including biological experiments."

The 1998 Rome Statute of the International Criminal Court continues this trend in international law. It defines "war crimes" in Article 2 as:

> Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: . . . Torture or inhuman treatment, including biological experiments; [and] Willfully causing great suffering, or serious injury to body or health.

In addition, Article 2(b) lists the following as serious violations of the laws and customs applicable in international armed conflict:

> Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental, or hospital treatment of the person concerned, nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.

Although the Genocide Convention does not specifically mention medical experimentation, the 1992 International Covenant on Civil and Political Rights stipulates, in Article 7, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation." In its General Comment 7 on this article, the Human Rights Committee took special note, as follows:

> [T]he reports of States parties have generally given little or no information on this point. It takes the view that at least in countries where science and medicine are highly developed, and even for peoples and areas outside their borders if affected by their experiments, more attention should be given to the possible need and means to ensure the observance of this provision. Special protection in regard to such experiments is necessary in the case of persons not capable of giving their consent.

The issue of experimentation was also included in principles for the protection of persons with mental illness and the improvement of mental health care, adopted by the UN General Assembly in 1991. Principle 11 stipulates the following:

> Clinical trials and experimental treatment shall never be carried out on any patient without in-

formed consent, except that a patient who is unable to give informed consent may be admitted to a clinical trial or given experimental treatment, but only with the approval of a competent, independent review body specifically constituted for this purpose.

Finally, in the Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, it is provided that "States Parties shall prohibit, and protect persons with disabilities from, medical or scientific experimentation without the free and informed consent of the person concerned, and shall protect persons with disabilities from forced interventions or forced institutionalization aimed at correcting, improving, or alleviating any actual or perceived impairment."

Through these normative developments since the trial of the Nazi doctors, the medical profession and authors of international treaties on human rights and humanitarian law have sought to draw lessons from the atrocities and wonton misuse of science during World War II and the disregard for welfare of human subjects involved in biological and medical experimentation in democratic societies in peacetime. Medical experimentation continues to be a critical step in improving human health but must come under strict limitations and control in accordance with the Kantian imperative (in his *Metaphysical Foundations of Morals*) to "act so as to treat man . . . always as an end, never merely as a means."

SEE ALSO Auschwitz; Eugenics; Euthanasia; Japan; Mengele, Josef; Physicians

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Stephen P. Marks

Memoirs of Perpetrators

Perpetrator behavior shakes one's sense of humanity and provokes a desire to be separate from such cruel barbarism, often achieved by characterizing perpetrators as demonic or psychologically deformed. The historical record and insights of scholars are used to confirm this judgment. But most contemporary work on this subject supports the recent conclusion of social psychologist James Waller who argues, "that it is ordinary individuals, like you and me, who commit extraordinary evil. Perpetrators of extraordinary evil are extraordinary only by what they have done, not by who they are" (2002, p. 18).

Judgments about perpetrators are often made without their own accounts. Facing condemnation and punishment, perpetrators are unlikely to record their experiences in memoir form. Thus, while survivor memoirs, especially of the Holocaust, multiply, those of perpetrators are rare, even when supplemented by the writings of those who examined perpetrators. Among perpetrator memoirs are those of the Commandant of Auschwitz, Rudolf Höss, written while he

awaited trial in Poland for crimes for which he was executed in 1947, and of Djemal Pasha, who as Minister of the Marine in the Young Turks government of the Ottoman Empire and Commander of the Fourth Army in Syria was one of three key architects of the Armenian genocide of 1915. Among studies of perpetrators are those of Nazi leaders tried at Nuremberg that were authored by American psychologists Douglas Kelley and Gustave Gilbert, and that of Franz Stangl, Commandant of Treblinka, by the journalist Gita Sereny, based on her extensive interviews with him following the 1970 trial for his role in genocide.

Given an extremely thin resource base, what claims can be made about the historical value of perpetrator memoirs? These texts are, after all, suspect, and readers must approach them with critical skepticism. Perpetrators have obvious reasons to diminish their responsibility for or role in murderous actions. Djemal, for example, stated that when World War I began in 1914, he left Constantinople and thus had no input in the momentous 1915 decision to deport Armenians from the Ottoman Empire. He claimed that he took "the necessary measures to protect the Armenians against any attack while passing through my command . . . [and] did everything possible during the whole period of their deportation to give help to the Armenians" (1922, pp. 277–278). Scholars of the Armenian genocide paint a radically different picture of Djemal's involvement and actions.

Although both Höss and Stangl acknowledged and often accurately detailed their roles in the Holocaust, the reader must be cautious in accepting their accounts. Like most perpetrators, they developed an extensive set of rationalizations for their actions and these permeate their narratives. Both Höss and Stangl portrayed themselves as initially ignorant of the true nature of their assignments as commandants of their respective death camps, as administrators who devoted their energies solely to building and maintaining efficient camps in fulfillment of their duty, and as men who did not personally hate Jews or indulge in deliberate cruelty toward prisoners. By separating themselves from the actual killing process, not personally brutalizing the victims, and highlighting their roles as good fathers and husbands, they attempted to defuse their own responsibility and affirm their decency. Arguing that serious threats to his safety and that of his family trapped him in his perpetrator role, Stangl stated, "It was a matter of survival—always of survival. What I had to do, while I continued my efforts to get out, was to limit my own actions to what I—in my own conscience—could answer for" (Sereny, 1974, p. 164). No matter that he commanded two death camps with energy and dedication; as long as he personally did not pull the trigger or start the engines for the gas chambers, he was not guilty in his own mind.

Armed with the knowledge of perpetrator evasions and justifications, the reader can profitably use such materials to better understand: (1) how rather normal persons could become part of genocidal projects; (2) the various perpetrator roles, including killers, bureaucrats, and policy makers; (3) their motives for becoming involved; (4) the costs they paid for their involvement; and (5) the fact that perpetrators were essentially ordinary men.

If contemporary readers can gain significant insights from reading these memoirs, did their writing have any therapeutic value for the authors? If the memoir was the product of a genuine effort at self-understanding, including a willingness to accept responsibility for one's actions, then it could have such a value. Djemal's memoir, however, takes a very different tact as he essentially blames others, primarily the Russians, and unfortunate circumstances for the Armenian deaths and, thus, does not see himself in need of therapy or forgiveness. With death the likely outcome of his impending trial, Höss had an incentive to engage in such a therapeutic exercise. He begins his autobiography promisingly, "In the following pages I want to try and tell the story of my innermost being. . .and of the psychological heights and depths through which I have passed" (1959, p. 20). But the end result is so full of rationalizations, self-justifications, and evasions, that one questions whether it did have genuine therapeutic benefit. At the end of his extensive and probing interviews with Sereny, Stangl haltingly, painfully offered a kind of confession: "But I was there. So yes, in reality I share the guilt. Because my guilt . . . my guilt . . . only now in these talks . . . now that I have talked about it all for the first time. [pause] My guilt is that I am still here" (Sereny, 1974, p. 364). Nineteen hours later Stangl died of heart failure, perhaps more at peace with himself than he had been in many years.

SEE ALSO Diaries; Memoirs of Survivors

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Donald G. Schilling

Memoirs of Survivors

Genocides destroy human communities, physically and culturally. Unimaginable acts of cruelty characterize genocide, and the horrific becomes commonplace. For those who manage to survive the maelstrom, the tasks of reconstructing broken lives, often in new settings; of making sense of the nonsensical; and of piecing together the fragments of memory represent new and daunting challenges. The temptation to repress the past and live only for the present and future is powerful, yet without confronting the past, healing is impossible. Some survivors almost immediately record their experiences, bearing witness to an indifferent humanity of the crimes they endured; others take decades before they can examine their shattered pasts in this manner; and still others can only come forward as the end of life approaches. An outpouring of oral and video testimonies and of written memoirs has accumulated, especially from survivors of the Holocaust and, to a lesser extent, from those of the Armenian Genocide. For many other twentieth century genocides, however, survivor memoirs are rare. This may be because these survivors were not literate, or lacked the resources to create their memoirs, or perhaps they had to continue to live among or under the perpetrators of the genocide.

Survivors write for multiple reasons. For many, the commitment to bear witness—and thus deny the perpetrators one more victory—is motivation enough. Primo Levi, a survivor of Auschwitz, published a powerful survivor's memoir, *Se Questo è un uomo* (1947; published in English as *Survival in Auschwitz*; 1986). In the introduction to a second English-language publication of the book, issued in 1993, he explained his reasons for writing:

> Its origins go back . . . as an idea, an intention, to the days of the Lager concentration camp. The need to tell our story to 'the rest', to make 'the rest' participate in it, had taken on for us, before our liberation and after, the character of an immediate and violent impulse, to the point of competing with our other elementary needs.

To speak for the silenced and to commemorate their lives and communities, to reinforce the identity of their people, to instruct one's children, to sound a warning for the future, and to make meaningful and coherent their own inchoate memories are among the other reasons survivors assume the burden of writing. Elise Hagopian Taft, who wrote of her experiences during the Armenian genocide, observes, "I did it for my three sons so they would know something of their roots, the mass deportations, the atrocities perpetrated by the Turkish government in 1915 and thereafter," and she admonishes, "May the world get to know through these pages the true meaning of Genocide and what it does the human spirit, and resolve never to let the Holocaust happen again to any people on earth" (1981, pp. vii–viii).

In writing, survivors might find some relief from their wounds. This was true for Isabella Leitner, a Hungarian Jew, who wrote:

> America . . . put its healing arms around me. Still the pain would not go away. To get some relief, I needed to talk. But to whom? . . . Auschwitz was—and is—unfathomable. Naïve questions only increased my frustration. Yet I had to talk. . . . I began to "speak" on little scraps of paper in my native tongue, Hungarian, using a pencil (1994, p. 15).

Those little scraps became a part of her first book, *Isabella: From Auschwitz to Freedom*. Similarly, as Gerda Weissmann Klein finished her celebrated memoir, *All But My Life*, she felt "at peace, at last. I have discharged my burden, and paid a debt to many nameless heroes. . . . For I am haunted by the thought that I might be the only one left to tell their story" (1995, p. 1). To be sure "there are pains that will not go away, adding their burden over extended periods of time" (1995, p. 252), but even in surveying the desolate landscape of genocide, survivors often find some therapeutic value.

If survivors' memoirs serve a critical function for their creators, they are of inestimable worth for those spared such trauma. Despite the inadequacies of language to render the unimaginable, powerful survivor memoirs can draw readers into the depths of genocide, touching hearts and heightening understanding. Were historical narratives solely dependent on the sanitized records of the perpetrators, or on the more distanced descriptions of bystanders, they would be impoverished. The concrete, personal narratives of survivors can break through numbing impersonal statistics and cultivate empathy, arouse compassion, and fuel anger at injustice. As survivors of the genocides of the first half of the twentieth century pass away, their memoirs become an enduring legacy to educate the inquiring and confound the denier.

To be sure, memoirs should not be treated as sacred texts. Like all written work they reflect the conventions of the memoirist's genre. The author benefits from hindsight and thus can impose a degree of coherence on a fragmented past. While the memoir derives its authenticity and power from lived experience, it can also be enriched by historical research—to check the vagaries of memory and expand its reach—and by the reconstruction of scenes and conversations unlikely to have been preserved intact in memory, but which capture the essential truth of the event. Survivor memoirs present an interpretation informed by strategies of historical and literary reconstruction, and must be subject to critical evaluation, just as any other source. For example, in his best selling memoir, *Man's Search for Meaning*, Viktor Frankl "wanted simply to convey to the reader by way of a concrete example that life holds a potential meaning under any conditions, even the most miserable ones" (1985, p. 16). However, in carrying out this purpose, his critics argue that Frankl made himself the hero of the story and created a myth of heroic survival that belied the devastating reality of Auschwitz. Critical judgment also needs to be applied when reading Abraham Hartunian's moving memoir of the Armenian catastrophe, *Neither to Laugh nor to Weep* (1968). Hartunian, an evangelical Christian pastor, understands his survival and that of his family in the face of numerous encounters with death as a result of God's providential mercy. He cannot, however, ask why that mercy was withheld from all those who perished in misery.

Although they shared certain experiences, survivors and their memoirs reflect considerable diversity, depending upon the genocide about which the survivor writes and upon the particular aspects of the genocide experienced: the ghetto, labor camp, concentration camp, death camp, death march, forced relocation, hiding, passing, or fighting in a partisan band. Further, the survivor's age, gender, class, and location can all produce important variations in the survivor's story. Such diversity reminds us of how critical survivor memoirs are as sources for reconstructing the complex histories of modern genocides and of our need for caution in generalizing about such diverse materials.

SEE ALSO Diaries; Memoirs of Perpetrators; Memorials and Monuments; Memory

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Donald G. Schilling

Memorials and Monuments

What should memorials of mass murder or genocide accomplish? Are they intended to honor the dead, even if, all too often, there are too many to name? Are they meant to provide a place for people to gather, mourn, and find solace? Or is their role to document the events and perpetrators of the crime and contextualize the crime in history? Is their ultimate goal to shift the focus from mass murder to future peace? For many faced with the grim task of building such memorials and monuments, the answer seems to be some or all of the above. And it is often the case that what is omitted from the memorial may be more telling than what is included.

Naming the dead is a time-honored way of acknowledging their sacrifice, because in a sense any mass memorial is also, in part, a cemetery. An important precedent was set by Sir Edwin Lutyens's World War I memorial, Thiepval Arch in the Somme, which contains the engraved names of soldiers lost during that war, listed by military unit on the interior of the memorial's massive arches. Maya Lin followed this practice, listing the names of dead or missing soldiers in order of their death or disappearance on the Vietnam Veterans Memorial in Washington, D.C. People re-

In the rear courtyard of Budapest's Great Synagogue, a memorial honors the many thousands of Hungarian Jews who perished in Nazi concentration camps. Created by Imra Varga, this metal sculpture in the shape of a giant weeping willow bears the following inscription: "Whose agony is greater than mine." [DAVE BARTRUFF/CORBIS]

spond to this display by touching the names and leaving objects at the base of the memorial walls. This has led later memorial and monument designers to incorporate provisions for public response. Thus, listing the names of the dead is a major component of the 9/11 memorial project in New York.

Without names, and sometimes even with them, relics of the dead are considered powerful memorials. In Rwanda, where over 800,000 Tutsi and moderate Hutus were murdered in April 1994, skeletons were stored for a time in schools and churches as grim reminders of what occurred. The Roman Catholic Church in Ntarama has become a memorial, for it contains the remains of people who died there during the killings. At Hiroshima, where the United States dropped its first nuclear bomb in 1945, ashes of the deceased are incorporated into in a central mound in the Memorial Peace Park. For the 9/11 memorial in New York, an underground chamber has been designated to hold cremated remains of those who perished, as well as portions of the physical structure of the World Trade Center Towers, known as the slurry wall. Relics of structures, such as A-Bomb Dome (previously the Industrial Promotional Hall) in Hiroshima, prove to be lastingly evocative structures, providing physical evidence of past destruction in a radically altered present.

Without physical evidence, the deceased, like the six million Jews who perished in the Holocaust, are often honored by eternal flames. Sometimes a single such flame stands for many or even all of the victims. Alternatively, the Hall of Remembrance at Yad Vashem, the Holocaust memorial complex in Jerusalem, has the names of the 22 largest Nazi concentration camps inscribed on the ground, and the name of each camp serves to stand for the victims who were murdered therein. In an attempt to encapsulate memory in a variety of expressive forms, Yad Vashem also includes a history and an art museum, a hall of names (a constantly updated record of those who died in World War II), a separate Children's Memorial, a synagogue, a Memorial Cave, and an archival library.

The desire for green places to mourn the dead and soothe the living, an essential aspect of established

cemetery practice, is incorporated into many genocide memorials as well. Hiroshima's memorial complex is also a park. Jerusalem's Yad Vashem has many outdoor spaces and paths for walking from one structure to the next. The above-ground portion of New York's 9/11 memorial will include a landscaped park or garden.

Museums have taken on a critical function for remembering and contextualizing genocide. Holocaust Museums in many cities are frequently intended to serve also as memorials, such as the United States Holocaust Memorial Museum in Washington D.C. Serving as a national institution for the documentation, study, and interpretation of Holocaust history, it also is considered a national memorial to the millions murdered during the Holocaust. It combines its scholarly function with collections of artifacts (including a very moving collection of victims' shoes), films, photos, and oral histories.

Memorial museums and memorial complexes try to encapsulate the horror of genocide in a variety of ways, but sometimes it is the single symbolic structure or the individual work of art that resonates most. In a residential section of Berlin, removed from the memorial building activity of the center, an apparently innocuous bronze sculpture of a table and two chairs stands in the middle of the Koppenplatz, in a quarter where Eastern European immigrants once lived and where Jewish institutions co-existed with their Christian counterparts. This is Karl Biedermann's sculpture, called *The Abandoned Room (Der verlassene Raum)*, and in it one senses rather than sees its underlying strangeness. The chair and table are just slightly larger than life, and there is a second, overturned chair lying on the ground. Nearby there is an inscription written by the Holocaust poet Nellie Sachs. Like Baroque still-life paintings with their abruptly overturned crystal goblets and pewter bowls, these simple pieces of furniture, as well as their location in an otherwise normal residential site, suggest a life suddenly interrupted. Part of the first large East German Holocaust memorial project, commissioned in 1988 but realized only in 1996, the sculpture and accompanying inscription commemorate the fiftieth anniversary of Kristallnacht and recalls the Jewish citizens of Berlin prior to World War II. It is an effective memento mori sculpture, evoking not only thoughts of the fragility of earthly life, but also the eerie sense of individuals who have apparently vanished without a trace.

Even more profoundly disturbing is Israeli sculptor Micha Ullman's *Library* (1994–1995), situated in the Bebelplatz in Berlin. This work marks the site of the infamous Nazi book burning of May 1933. A bronze plaque on the ground quotes the German poet Heinrich Heine: "Where they burn books/At the end they also burn people." Immediately adjacent, flush to the ground, is a glass-covered view into a subterranean but glaringly lit room with floor-to-ceiling walls of empty shelves painted a stark white. During the day the now scratched viewer's portal is often fogged, rendering the empty library all but invisible, and many people stroll past without noticing, or even walk right over it. At night, however, people are drawn to the light that emanates from the sculpture. Thus, the very ground of Berlin, like the unconscious mind, seems to suppress trauma during the day, only to release it, hauntingly transformed into the night.

SEE ALSO Architecture; Memory of Survivors

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Harriet F. Senie

Memory

A useful way to situate memory within the context of modern genocide is to consider the Holocaust of the Jews by Nazi Germany. First, the Holocaust represents what may be called open memory that has become part of popular culture in Western societies. The relatively high level of literacy among the victims plus the traditions within the Jewish religion about memory gave birth very quickly to survivors' written accounts called Memorial Books, composed from memory and testimonies, makeshift memorials in places of destruction, and ultimately, published memoirs, films, and art. Second, and in contrast, the Romani and Sinti (gypsies), also victims of genocide by the Nazis, did not tell their story because of reverse literacy issues and traditions within the culture that prohibited talking about the dead. The creation of the State of Israel in 1948 became a repository for the memory of the Holocaust as well as the counterimage of the new Israeli Jew in his or her own nation-state.

With other genocides issues regarding memory are more complex and often politicized because of denial by the perpetrators, or descendants of the perpetrators. Thus, the main issue of the Armenian genocide is the search by Armenians around the world for confirmation of the event as "genocide" by the Turkish Republic. The Armenian diaspora population, although it has constructed memorials, overseen the writing of memoirs, and directed video and oral history projects among survivors, still views the need for Turkish official recognition of the events of 1915 through 1922 as genocide as critical to the well-being of the community. Turkish denial of the genocide, and even the creation of reverse history whereby accusations of Armenian genocide against the Turks have been made, has created a counterproblem in Turkey, where Turks are uncertain about their own modern history. Therefore, the Armenian case might be characterized by deliberately suppressed memory.

In sites of genocide and crimes against humanity during the 1990s, conflicting stories have emerged about those responsible for atrocities and as a result of the intersection of age-old antagonisms in recent political, economic, and national issues that the victims as well as the perpetrators may not have been cognizant about. Thus, the Yugoslavian War of 1992 and beyond produced contradictory memory about oppressor and victim among Croats, Bosnians, and Serbs. In the Kosovo War of 1998 mutual recriminations existed between Serbs and Kosovar Albanians. Even if the war crimes tribunals addressing these conflicts convict leaders of crimes against humanity or genocide, it is doubtful that a standard narrative explaining clearly who is the victim and who is the perpetrator will emerge. Oral histories, however, in addition to art forms, poetry, and folk idioms, will undoubtedly be significant in creating and maintaining memory.

Memories of the Rwandan genocide are wrapped up in the completion of trials for those accused of genocide, as well as the difficult issue of creating a common memory that allows both perpetrators and victims to live together in the same society in the aftermath of genocide.

As time passes, memory fades. Influenced by contemporary events, films, and historical writing, survivors of genocide who write their memoirs a long time after liberation or rescue may have flawed memories that would be deemed inadmissible in court proceedings. Children of survivors often receive the memory of their parents' tragedies in fragmented ways; this produces trauma in what is called the "second generation." Actual memories of events, however, are reserved for those who unfortunately experienced them, whereas the second generation receives the story as a kind of fable.

The collective memory of genocide has been formed in many different ways. For Jewish memory there remains the traditional *Yizkor* service of remembrance of the dead on Yom Kippur, the Day of Atonement in the Jewish calendar. *Yom HaShoah* (Day of Holocaust Remembrance) has been added to this same calendar; it is commemorated in both Israel and the Jewish diaspora on the 27th of the Hebrew month of Nissan, usually late April on the Gregorian calendar. Because it appears only in the Hebrew calendar, *Yom HaShoah* is reserved for Jewish memory, not that of other victims. European secular memory of the Holocaust, however, suggests some contradictions, as its commemoration annually occurs on January 27th, the day the Soviet army liberated Auschwitz. For a survivor who was in another concentration camp until the end of World War II on May 8, 1945, the European commemorative date may be meaningless. For other genocides often the date of their onset has become the date of commemoration. Thus, April 7 is usually the date the Rwandan genocide is commemorated, and April 15 marks the commemoration of the Armenian genocide.

Art and monuments can play an important role in creating memory, especially if such manifestations of culture evoke memories at unexpected moments. Various generations of artistic memory may be found in every genocide. The most visceral images are generally uncovered in children's art. Survivors often create works of art as a form of witnessing or grieving. The second generation and those not touched by the event itself nevertheless often attempt to deal with the subject as part of an informal discourse about collective memory. The result may be representations in the plastic arts, memorials, film, and plays that may create problems over issues such as historical accuracy and the ability to represent what many describe as "unrepresentable." The only case of a perpetrator nation creating significant memorials to its victims is Germany. In most other cases it is the nation of the victims that has developed memorials to genocide, in its own country, such as Armenia, or among diasporas. The unwillingness to address genocide through historical writing, official apologies, commemorative dates, compensation, or memorialization is perhaps an indication that genocide, for some regimes, remains an unfinished project.

SEE ALSO Art as Representation; Diaries; Historiography as a Written Form; Memoirs of Perpetrators; Memoirs of Survivors; Memorials and Monuments

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Stephen C. Feinstein

Mengele, Josef

[MARCH 16, 1911–1979]

Notorious Nazi war criminal known as the "Angel of Death."

Born March 16, 1911, to Karl and Walburga Mengele, Josef Mengele grew up in Gunzburg Germany. His father, an engineer, owned a foundry and manufactured farm equipment for milling, wood sawing, and straw cutting. These enterprises formed the base of the Mengele family fortune that ultimately supported Mengele when he became a fugitive. Josef was raised in a devout Catholic home, passed his high school exams in April 1930 and by October had enrolled at Munich University as a student of philosophy and medicine, with a focus in anthropology and human genetics.

In Munich, Mengele became enamored with the Nazi Party and joined the military. At the rank of *Untersturmfuhrer* (sub lieutenant), he was first posted to the Ukraine. His next military assignment was to the Geological Section of the Race and Resettlement Office. This was a program involved with classifying and eliminating non-Germans from annexed territories, including orphans and persons falsely claiming German blood. As a captain, in May 1943, Mengele was posted to Auschwitz. He served there from May 1943 through January 1945.

For many prisoners disembarking at the concentration camp railhead, one of the last things they would ever see was Mengele, the immaculate, well-mannered SS officer who greeted them. With a flick of his cane, the "Angel of Death" directed newly arrived prisoners to the right or to the left. This was the selection process employed to separate those fit to work from those destined for the gas chambers. Mengele was later charged with more than simply selecting victims. It was alleged that he used electricity to test women's endurance of pain; subjected patients to massive, burn-producing doses of radiation; and conducted bone marrow transplant experiments on healthy inmates. Most notorious of all were his abhorrent experiments on twins.

Mengele departed Auschwitz on the evening of January 17, 1945, with a ten-day head start on the advancing Russian Amy. Thus began a flight that successfully eluded his pursuers six years beyond his death. Mengele's first destination was Gross Rosen Concentration Camp, infamous for its biological warfare experiments using Soviet prisoners. On February 16 he fled again, this time into the no-man's land between the Russian and Allied Armies. He was captured in a sweep by American troops and detained for two months, but was then released. Part of the time during his detention, as often during the rest of his life, Mengele used his correct name. Nonetheless, his captors did not recognize him, even though his name had been placed on lists of wanted war criminals, including the list published by the U.S. Judge Advocates General and the First Central Registry of War Criminals and Security Suspects. The oversight has been attributed to Allied administrative failure.

Upon release he took the name Fritz Hollman, and found work on a farm, milking cows and growing potatoes near Mangolding, in an agricultural area in southern Germany. He remained there for four years, during which the Nuremberg Trials were underway. Among the prosecutions, the Doctors Trials most likely provided Mengele with an incentive to depart from Europe. In mid-July 1949, he sailed for Buenos Aires, Argentina. In subsequent years, Mengele successively took up residence in Paraguay and Brazil. There he apparently suffered a fatal heart attack while swimming. A death certificate, issued in the name of his then-alias, Wolgang Gerhard, attributed the cause of death due to drowning. The body was buried in Brazil in 1979. Six years later authorities tracked down the grave's location.

In June 1985, a team of forensic experts from the United States, West Germany, and Israel released a controversial identification of Mengele's skeletal remains. In the absence of ante mortem dental records or medical X-rays, U.S. experts refused to definitively confirm the identification. Their cautious opinion was limited to a statement that the remains were those of Josef Mengele "within reasonable scientific certainty." Subsequent DNA analysis has provided strong independent evidence that the remains were indeed those of Josef Mengele.

Wanted poster for the Nazi "Angel of Death," infamous for the cruelty he exhibited at Auschwitz in selecting victims for the gas chamber and conducting medical experiments on those who survived. [GETTY IMAGES]

SEE ALSO Auschwitz; Medical Experimentation; Physicians

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William D. Haglund

Mercenaries

The general definition of *mercenaries* focuses on the following two elements: the foreign nature of the military service provided and the primarily financial motivation in providing combat service. Mercenarism refers to the hiring of foreign individuals or groups of individuals by a state or entity to serve in a combat role for private gain. In 1987 the United Nations Commission on Human Rights appointed Special Rapporteur Enrique Bernales Ballesteros of Peru to analyze, monitor, and report on all forms of mercenarism. Despite growing condemnation, mercenaries continue to exist in many different forms and are involved in diverse activities.

Historical Overview

Mercenarism dates back to antiquity, a time during which armies were predominantly comprised of foreign professional soldiers seeking personal gain. The first account of mercenarism was recorded by Xenophon in *Anabasis*; there he noted Cyrus's use of ten thousand mercenaries against his brother Artaxexers in a bid for the Persian throne in 401 BCE. A large number of these foreign soldiers were Arcadians, Achaeans, and Peloponnesians who had endured economic instability fol-

lowing the Peloponnesian War. In 334 BCE the Persians used Greek mercenaries to fight against Alexander the Great, who in turn brought more than 44,000 mercenaries to Asia Minor. His Macedonian successors also used highly trained mercenary armies to wage war, as did Greek city-states in the fourth century BCE. The First Punic War between Rome and Carthage (264–261 BCE) originated in mercenary activity, and in the second century German mercenaries played a pivotal role in defending the Roman Empire. For more than one thousand years mercenaries were the backbone of the army of the Eastern Roman Empire. The rulers of Byzantium and Carthage also relied on the military expertise of foreign soldiers in defending their respective empires.

Throughout the Middle Ages the phenomenon of mercenaries persisted and their recruitment increased. In the twelfth century mercenaries were mostly used for colonial expansion and for maintaining foreign domination in colonized countries. The Crusades gave rise to a more anarchic form of mercenarism, including postconflict exploits following the emergence of mercenary groups. The formation of coalitions in response to these groups eventually led to their temporary defeat in the twelfth and thirteen centuries. Comprised of a variety of nationalities, including English, French, Flemish, German, Italian, and Catalan fighters, these groups reappeared as *Grandes Compagnies* during the One Hundred Years War (1337–1453) and were finally disbanded in 1453. Between the thirteenth and sixteenth centuries the *condottieri*, freelance commanders of Catalan, English, German, and Hungarian troops, were hired in Italy to recruit and arm men and to conduct hostilities within the Italian republics. The rise of the absolute monarchy in the fifteenth and sixteenth centuries led to an enhancement in the status of mercenaries, whom rulers relied on to fight wars and to maintain order within their kingdoms. Mercenarism was thus relatively institutionalized during the feudal period; kings and lords had at their disposal a collection of individuals willing to fight for pay.

Both the progressive extinction of privatized war and the consolidation of the nation-state eventually gave rise to a new form of mercenarism. Traditionally, the mercenary had sold his services to a foreign state or entity. However, in the fifteenth and sixteenth centuries a prescribed number of soldiers were temporarily rented out by one state to another foreign sovereign. This procurement of foreign troops was extensive during the Renaissance and differs from the undisciplined mercenary companies of the Middle Ages. Swiss and German troops were leased regularly between the fifteenth and nineteenth centuries, and played an important role in the religious wars during this period. For example, the Swiss Guard, founded in the sixteenth century, continues to serve the Vatican. Widespread state practice gave mercenaries an international legal status and legitimacy until the eighteenth century, during which the rise of nationalism and the adoption of the standing army to defend the state led to a decline in mercenarism. The development of the law of neutrality in the nineteenth century, which generally prohibited the enlistment of a state's citizens in foreign armies, also prompted a regression of mercenary activities. This evolution was most notable in Europe, for colonial powers continued to rely on the use of local mercenaries in the Americas, Indies, and Africa.

In the twentieth century the practice of mercenarism evolved and reappeared in a different form. Mercenarism intensified within the context of decolonization in the 1960s and the recognition of the right to self-determination. These independent mercenaries, often referred to as "soldiers of fortune," "wild geese," or *les affreux* (the dreaded/horrible ones), surfaced in postcolonial Africa and were used to destabilize newly independent governments. By the 1960s, however, mercenaries were no longer accepted as an integral component of armed forces. The use of mercenaries nevertheless continued in the following decades, including their active participation in the civil wars in the Congo (1960–1963; 1964–1967), Nigeria (1968–1969), the Sudan (1970), Angola (1975), and Latin America in the 1980s. Also commonly referred to as traditional mercenaries—many of whom came from former colonial armies, including the French Foreign Legion and Belgian army—they threatened weak, newly independent nation-states, often influencing intrastate conflict on the African continent. During this time mercenary activities tended to be disorganized and undisciplined and were comprised of a relatively small number of individuals. Vital economic interests were often at stake and mercenarism involved activities such as insurgencies and counterinsurgencies, regime change, and civil conflicts.

International Law

Recently, the legal framework to prohibit mercenaries has been envisaged through norms regulating the general use of force between states. Of particular relevance to the question of mercenaries is Article 4 of the 1907 Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Convention V), which stipulates that "(c)orps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents." States that have chosen to remain neutral during an armed conflict are obliged under Article 4 to prevent the formation of mercenary groups on their ter-

ritory for the purpose of intervention in the armed conflict. However, international humanitarian law (the law of armed conflict) made no formal distinction between mercenaries and other combatants prior to the adoption of the protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977. Before that time mercenaries were regarded as respectable professionals and usually accorded prisoner-of-war status when captured, thus benefiting from protection under the Third Geneva Convention relative to prisoners of war, provided that they met the conditions of Article 4.

According to Article 47 of Additional Protocol I, mercenaries are not entitled to prisoner-of-war status, although a state may grant them equivalent treatment if it so desires. Under Article 45 any captured combatant is presumed to be a prisoner of war until his or her status has been determined by a competent tribunal. If a mercenary is not granted combatant or prisoner-of-war status, he or she must be treated as a civilian having unlawfully participated in armed conflict. In qualifying as a civilian, protection is afforded by Article 4 of Convention (IV) relative to the protection of civilians in times of war (Geneva, August 12, 1949), subject to certain conditions enumerated in Article 5. Furthermore, all parties to a conflict must observe the fundamental treatment and judicial guarantees afforded to persons affected by armed conflict and who find themselves in the hands of a party to the conflict (Article 75).

International humanitarian law does not address the issue of the legality of mercenary activities or prohibit the use of mercenaries by states or other entities. The law of armed conflict simply defines the status of mercenaries and the implications in the event of capture. According to the definition contained in Article 47 of Additional Protocol I, a mercenary is any person who:

(a) is specially recruited locally or abroad in order to fight in an armed conflict;

(b) does, in fact, take a direct part in the hostilities;

(c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

(d) is neither a national or a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

(e) is not a member of the armed forces of a Party to the conflict; and

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

These requirements are cumulative in that they must all be applicable for an individual to be categorized as a mercenary. The narrow scope of this definition reflects a fundamental tenet of international humanitarian law, which is to ensure that the loss of special safeguards only occurs in very limited circumstances.

The law of armed conflict does not envisage protection in internal armed conflict (civil wars) for persons who would otherwise qualify as mercenaries in international armed conflict, because the status of combatant does not exist in situations of internal conflict. In an international armed conflict a prisoner of war cannot be convicted for having fought in a conflict, whereas in a civil war, no such immunity exists. Nevertheless, civil war mercenaries are entitled, at a minimum, to certain fundamental guarantees such as humane treatment and nondiscrimination (Common Article 3 of the Geneva Conventions). Out of battle mercenaries are also protected by applicable international human rights law and other applicable humanitarian law, especially Articles 4 and 5 of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts. Mercenaries in situations of internal armed conflict are also subject to the laws of the territory in which the conflict takes place.

In contrast to Additional Protocol I, the Convention for the Elimination of Mercenaries in Africa prohibits both mercenaries and mercenarism, which is considered a crime against peace and security in Africa regardless of whether committed by an individual, a group, an association, a state, or a state representative. Adopted by the Organization of African Unity (OAU) in 1977, the Convention, which came into force in 1985, defines the crime of mercenarism as "the attempt by an individual to enroll, or his enlistment or enrollment as a mercenary; the employment or support of mercenaries in any way; and when a State allows mercenary activities to be carried out within its territory or in any place under its control while intending to overthrow or undermine the constitutional order or territorial integrity of another State." Substantively, the definition of a mercenary contained in the OAU Convention differs little from that of Article 47 of Additional Protocol I. The OAU Convention is significant in that it creates a specific offense of mercenarism and contains a series of corresponding obligations, including the adoption of measures to eradicate mercenary activities, and the prosecution or extradition of those

committing an offense under the Convention. Additionally, state representatives may be punished if a state accused of involvement in mercenary activities is brought before any competent OAU or international tribunal and is found to have breached the Convention. Whereas Additional Protocol I is internationally recognized, the OAU Convention is regional in scope, as it is only applicable to states in the African region that have completed the ratification process.

The International Convention Against the Recruitment, Use, Financing and Training of Mercenaries was adopted in 1989 and came into force on October 20, 2001. Its international scope is similar to that of Additional Protocol I, but the International Convention expands the definition of mercenary to cover situations other than armed conflict by including situations in which individuals are recruited to participate in a concerted act of violence for the purpose of overthrowing a government or undermining the constitutional order of a state, or infringing on the territorial integrity of a state. The International Convention identifies specific offenses, including the recruitment, use, financing, or training of mercenaries, or the attempt to do so. It also criminalizes the accomplice of any person who either commits or attempts to commit an offense cited in the Convention, regardless of whether the mercenaries in question have taken part in the concerted act of violence. States are obliged to refrain from taking part in any of the activities designated in the Convention and to prevent such activities by others through the adoption of appropriate measures. The prosecution of offenders at the national level is also set out within a framework established by the Convention. Although the International Convention is a binding instrument of international law, it lacks widespread ratification.

Generally, efforts to deal with the mercenary phenomenon, whether regionally or internationally, have met with little success. The various instruments lend themselves to different and sometimes contradictory interpretations, and a number of legal inadequacies and gaps make it difficult to accurately classify the act of mercenarism and identify those who commit it. According to United Nations (UN) Special Rapporteur Enrique Bernales Ballesteros, questions to which there are no definitive answers include the following: What is the status of foreigners who, following their entry into a country, acquires its nationality in order to cover up the fact that they are mercenaries in the service of either a third state or the other side in an armed conflict? What is the status of a nonresident national paid by a third state to undertake criminal activities against his or her own country of origin? What is the status of those with dual nationalities—one of them being that of the state against which they are carrying out criminal activities—who are paid either by the state of their other nationality or a third party? What are the limits of *jus sanguinis,* a right by which nationality or citizenship may be conferred to any person born to a parent who is a national or citizen of that state? In particular, what are the limits of jus sanguinis in armed conflict when those paid and sent to fight in the country of their ancestors invoke this right in either a domestic or international armed conflict? The definition of a mercenary contained in Article 47, although failing to address these questions, is almost literally repeated in the definitions adopted in both the OAU and International Conventions. According to the Special Rapporteur, "The relevant international legal instruments are but imperfect tools for dealing with the issue of mercenaries." Furthermore, these definitions fail to address recent changes that have taken place in mercenary activities.

The New Mercenaries

International restructuring and transition following the end of the cold war have revealed the need for alternative security measures in the absence of superpower support. This security vacuum includes, for example, the resurgence of extreme nationalism and separatism and ethnic and religious intolerance, and the inability of smaller states to contain internal security threats. The post–cold war period has thus witnessed the emergence of new categories of mercenaries and mercenary activities. Mercenary activities have increased and diversified in both theory and practice, and are no longer predominantly confined to the African continent. For example, mercenaries were used in wars that took place within the territory of the former Yugoslavia and in wars that affected some states having emerged from the former Union of Soviet Socialist Republics. They were also used in long-term conflicts, such as that in Colombia, and in attempts to destabilize political regimes, including Fidel Castro's communist government in Cuba. The modernization of mercenary activities has significantly altered mercenary practice, which has taken on complex and multifaceted forms in a variety of situations and contexts.

In the 1990s private security companies specializing in military services supplemented the use of traditional mercenaries. Groups of professionals have partially replaced the relatively small number of individuals that dominated the mercenary scene between the 1960s and 1980s. Such companies existed prior to the end of the cold war, including the *condottieri* and *Grandes Compagnies* of the Middle Ages and Renaissance period. Similar to their predecessors, private security companies contract their soldiers out to

The hiring of foreigners to wage aggressive war is not a contemporary phenomenon. The drawing reproduced here shows hessians (German mercenaries) about to depart for the American Revolution in the service of Great Britain. [BETTMANN/CORBIS]

foreign entities, but have adapted to the needs and structure of the post–cold war world. Operational methods now include the offer of security services and military advice and assistance on the international market in return for money, as well as mining and energy concessions. The Special Rapporteur notes that private companies offering military, consultancy, and security services are now established on all five continents, and that some of these companies have recently obtained contracts worth tens of millions of United States dollars. Unlike traditional mercenaries, who are mostly covert in nature, private security companies are registered corporate companies. According to the Special Rapporteur, they are generally part of corporate holding companies and subsidiaries and take part in various services through other companies, including transport, communications, economic and financial consultancy, and health and sanitation services. In addition to sovereign governments and government entities, clients range from international organizations, foreign embassies, and nongovernmental organizations (NGOs) to multinational corporations that are usually involved in oil and exploration and mineral prospecting. The Special Rapporteur also notes that some of these private security companies provide training to combat forces or pilots for troop transport, offer specialized technical services, and on occasion actively participate in combat situations.

Some of the most important private security companies include Executive Outcomes (now disbanded), Military Professional Resource Institute, Defense Systems Ltd., and Sandline International. In April 1995 Executive Outcomes was hired by the government of Sierra Leone to confront the threat from a rebel army, the Revolutionary United Front (RUF). Executive Outcomes prompted the RUF to negotiate a peace settlement in November 1996, after having destroyed the rebels' headquarters in the southeastern part of the country. The success of Executive Outcomes in Sierra Leone, however, may be contrasted with the fact that it provided a temporary, short-term solution to the conflict. Once the company had withdrawn from this West African country in January 1997, the peace agreement disintegrated and violence erupted once again. According to the Special Rapporteur, the right to life, security, and peace, including the preservation of both

the rule of law and democracy, are not matters that can be entrusted to private security companies. One of the most controversial aspects of this issue includes the claim that security companies operate legally because they sign their contracts with legitimate governments. However, according to the Special Rapporteur, responsibility for the internal order and security of a sovereign state lies with the state itself; it can neither transfer nor renounce these responsibilities. Despite the fact that in recent years security has been partially privatized and the state now shares this function, a number of limits should not be exceeded. According to the Special Rapporteur, companies should not actively participate in armed conflicts or recruit and hire mercenaries. Additionally, the state should retain the right to protect external borders or maintain public order. In short, companies should not attempt to replace the state in defending national sovereignty.

Moreover, the premise underlying the claim that security companies fill a critical void in offering an alternative security model cannot be confused with the effectiveness of the services offered and the nature of the acts that they carry out, according to the Special Rapporteur. For example, some activities conducted by mercenaries and the hiring of this type of professional services extend to other illicit activities, including arms trafficking, drug trafficking, terrorism, attempts to destabilize legitimate governments, and acts to take forcible control of valuable natural resources. According to the Special Rapporteur, the involvement of mercenaries in other criminal activities has also led to their participation in the commission of serious violations of human rights and of international humanitarian law. The concern thus lies with companies offering military security services on the international market that recruit, hire, and use mercenaries and the instances when these companies become involved in armed conflict.

The restrictive approach adopted by the UN in linking mercenaries with concerted acts of violence aimed at violating the right of peoples to self-determination and undermining the constitutional order of a state or its territorial integrity, while seeking substantial personal gain and material compensation, is such that private security companies, as presently constituted, do not fall within this definition. Although they do have some mercenary traits, the personnel that work for private military, advisory, training, and security companies, and the contracts concluded between such companies and states, cannot be described as completely mercenary, according to the Special Rapporteur. Loopholes encountered in the definition of mercenaries led the General Assembly to request, in December 1999, that the United Nations High Commissioner for Human Rights convene several expert meetings to study the current forms of mercenary activities and to propose recommendations for an updated legal definition that would provide a more effective prevention mechanism for and punishment of mercenary activities. This the Office of the High Commissioner did at two meetings where amendments to the 1989 International Convention were proposed.

Experts from various regions attending the first meeting in 2001 recommended that the review of the legal definition include the elements of motive, purpose, payment, type of action, and nationality, with particular attention given to the purpose for which a mercenary is hired. In relation to private security and military companies, the group of experts recommended that states introduce specific laws and regulations prohibiting these companies from participating in armed conflicts, creating private armies, engaging in illicit arms trafficking, recruiting mercenaries, and partaking in the illegal extraction of natural resources. Efficient firms offering a widespread range of services do exist, according to the experts. Opposition to such firms offering their services on the international market lies in their participation in armed conflicts through mercenary groups forming private armies, rather than in their operation per se or the private nature of such companies.

At the second meeting held in 2002, the experts analyzed issues concerning recent events related to mercenary activities, the mandate of the Special Rapporteur, the criminalization or penalization of mercenary activities, the definition of mercenary, state responsibility for mercenary activities, the relationship between terrorism and mercenary activities, and the regulation of private security companies that offer military assistance and consultancy services. In particular, analysis focused on the definition of mercenary, including aspects related to the legal framework within which the question arises and the difficulties in taking into consideration the various forms of mercenary activities. The experts did not, however, reach a consensus regarding the legal definition of mercenary, most notably with regard to the constituent elements, international treatment of the mercenary question, and identifying the nature of mercenary activity that required criminalization from activities which already constitute crimes under international law.

The Special Rapporteur has considered these elements in his own formulation of a new legal definition for a mercenary in his report to the United Nations General Assembly in its fifty-eighth session. In its resolution on the use of mercenaries as a means of violating human rights and impending the exercise of the right

of peoples to self-determination, the General Assembly noted with appreciation the proposal of a legal definition of mercenaries by the Special Rapporteur, and requested that the Secretary-General seek member states' comments to include them in the report of the Special Rapporteur to the General Assembly. It also requested that the Special Rapporteur include specific recommendations to the General Assembly in its fifty-ninth session.

In his final report submitted to the United Nations Commission on Human Rights, the Special Rapporteur recommends that the Commission support the decision to circulate among states his new proposal, which consists of amendments to the first three articles of the 1989 Convention Against the Recruitment, Use, Financing, and Training of Mercenaries. The alternative definition covers unlawful acts, including the following: trafficking in persons, arms, and drug trafficking and other illicit trafficking, terrorism, transnational organized crime, actions to destabilize legitimate governments, and actions aimed at taking forcible control of valuable national resources. It also considers that mercenaries who directly participate in the commission of the crime be criminally responsible, and extends criminal liability to those who recruit, finance, employ, or train mercenaries to participate in criminal activities. Rather than limiting itself to the mercenary as an individual agent, the proposed definition includes *mercenarism* as a concept related to the responsibility of the state and to other organizations and individuals. The alternative definition also considers the participation of mercenaries in international and internal armed conflict, as well as concerted acts of violence. Given both that the definition of mercenary contained in Article 1 of the 1989 International Convention is difficult to apply in practice, and the consensus that a new definition should be established, the Special Rapporteur believes that the definition must be modified by amending the International Convention if mercenary activities are to be prevented, eradicated, and punished.

According to the Special Rapporteur, the amendment should be debated and approved within the existing text of the International Convention, without prejudice to Article 47 of Additional Protocol I to the 1949 Geneva Conventions. He also makes a number of suggestions, including the fact that domestic and international law must clearly differentiate between military consultancy services on the international market from participation in armed conflict, and from activities that could be conceived as intervention in matters of public order and security that are the exclusive responsibility of the state. Such companies should be regulated and placed under international supervision, according to the Special Rapporteur. He also suggests the refining of legal instruments that allow the effective legal prosecution of both the mercenary and the company that hires and employs him. The various United Nations bodies and regional organizations that combat the presence and use of mercenaries must also be strengthened, and should include the link between mercenaries and terrorism, and their participation in organized crime and illegal trafficking.

The Special Rapporteur also states in his formulation of a proposal that mercenary activity must be considered a crime in and of itself and must therefore be internationally prosecutable. According to the Special Rapporteur, states are not authorized to recruit and employ mercenaries, and must be punished if they use mercenaries to attack another state or to commit unlawful acts against persons. A factor that should also be taken into account is that existing norms of international law and customary international law referring to mercenaries and their activities condemn mercenary acts in the general sense of paid military services that often lead to the commission of war crimes and human rights violations, because such services are not subject to humanitarian norms applicable in armed conflict. The Special Rapporteur also states that the foreign nationality requirement be reviewed in order for the definition to rest primarily on the nature and purpose of the illicit act with which an agent is connected by means of monetary gain.

SEE ALSO Humanitarian Law; Sierra Leone

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Natalie Wagner

Milosevic, Slobodan

[AUGUST 20, 1941–]
Serb nationalist and Yugoslav leader

Slobodan Milosevic, who presided over Yugoslavia's disintegration in the 1990s, was born in Pozarevac, Serbia, the largest of the six Yugoslav republics. (Yugoslavia then included Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Slovenia, and the autonomous regions of Kosovo and Vojvodina as well.) During an unhappy childhood, Milosevic was abandoned by his father, an orthodox priest, and later survived the suicides of both his father and schoolteacher mother. In high school Milosevic met his future wife Mirjana Markovic, daughter of a leading communist family.

In 1964, following his legal studies at the University of Belgrade, Milosevic embarked on a career as a communist technocrat, serving in a variety of government and industry positions. In 1984 he was appointed to lead the Belgrade Communist Party and two years later became head of the Serbian Communist Party.

Milosevic rose to national prominence in April 1987. A rioting Serb crowd had surrounded the town hall in Kosovo Polje, claiming mistreatment by Kosovo's ethnic Albanian majority. Milosevic quieted the crowd, assuring them, "No one should dare to beat you!" As word of this event spread, Milosevic's popularity grew dramatically throughout Serbia, solidifying his reputation as an ardent Serb nationalist. In 1989 Milosevic became President of Serbia.

Pursuing his dream of an ethnically pure "greater Serbia," Milosevic purged the Yugoslav Army of non-Serbs and fomented unrest in areas outside Serbia with sizable minority Serb populations. The multiethnic Yugoslav state quickly disintegrated. In 1991 Croatia, Slovenia, and Macedonia declared their independence. Milosevic encouraged Serbs in Croatia to take up arms

A defiant Slobodan Milosevic (center) faces trial at the International Criminal Tribunal for the Former Yugoslavia, accused of wreaking "medieval savagery and a calculated cruelty" on the Balkans. [REUTERS/CORBIS]

and, assisted by the Yugoslav Army, seized control of large portions of Croatia.

In 1992 Bosnia and Herzegovina seceded. Bosnian Serbs, supported by Milosevic's military and paramilitary forces, rebelled, beginning a brutal struggle to "purify" Bosnia of its Muslim inhabitants. During the ensuing conflict, hundreds of thousands in Bosnia were killed, raped, and confined in concentration camps. Despite the dispatch of United Nations (UN) peacekeeping troops, the international community was unable to halt the genocide. The war finally ended in 1994 when a North Atlantic Treaty Organization (NATO) ultimatum forced a Serb ceasefire. In December 1995 a permanent peace agreement was signed in Dayton, Ohio, by Milosevic and the presidents of Bosnia and Herzegovina and Croatia.

In July 1997, after serving the maximum two terms as President of Serbia, the Federal Parliament appointed Milosevic as president of the rump Yugoslav state, which consisted only of Serbia (including Kosovo and Vojvodina) and Montenegro.

In 1998, in response to an ethnic Albanian uprising in Kosovo, Milosevic sent in his military. Within weeks hundreds of thousands of ethnic Albanian refugees were forced to flee to neighboring countries. Fearing a repeat of the ethnic cleansing that had occurred in Bosnia, NATO delivered an ultimatum to Milosevic to halt the offensive. When its warnings were ignored, NATO began a bombing campaign against Yugoslavia on March 24, 1999. After over two months of continuous air strikes Milosevic agreed to a plan for Serb withdrawal, the return of refugees, and UN administration of Kosovo.

In May 1999 the UN's International Criminal Tribunal for the Former Yugoslavia (ICTY) indicted Milosevic and four subordinates for crimes against humanity and violations of the laws and customs of war during the Kosovo conflict. Milosevic, however, remained Yugoslav president and beyond the reach of the Court.

On September 24, 2000, Yugoslavs went to the polls for the first-ever direct presidential elections. Although it initially appeared that Milosevic's challenger, Vojislav Kostunica, had won the election, the Milosevic-controlled election commission announced that Kostunica had failed to gain an absolute majority, mandating a runoff. Angry Kostunica supporters took to the streets, prompting strikes and protests that swept the country. On October 5 a massive anti-Milosevic

mob rampaged through Belgrade and seized Parliament. Milosevic conceded defeat, and on October 7 Kostunica was sworn in as the new President of Yugoslavia.

On April 1, 2001, Milosevic was arrested at his Belgrade villa. He was handed over to the UN tribunal on June 28 and taken to The Hague to stand trial. In addition to the Kosovo charges, Milosevic was indicted on charges related to the wars in Croatia and Bosnia and Herzegovina, including violations of the laws and customs of war, crimes against humanity, grave breaches of the 1949 Geneva Conventions, complicity in genocide, and genocide.

In his first court appearance on July 3, Milosevic refused to enter a plea, accusing the tribunal of being an "illegal" body established by his enemies in the West. The Court entered a plea of not guilty on his behalf. On February 12, 2002, Milosevic's trial began, with Milosevic acting as his own attorney. In 2003 Milosevic ran for a seat in the Serbian Parliament from his prison cell and won, highlighting the resurgence of Serb nationalism since his departure.

Milosevic's trial has suffered significant delays due to his fragile health and the resignation of the presiding judge. In February 2004 the prosecution rested its case after presenting over 200 witnesses and 29,000 pages of evidence. Milosevic began his defense by submitting a list of 1,631 intended witnesses, including British prime minister Tony Blair and former U.S. president Bill Clinton.

SEE ALSO Bosnia and Herzegovina; International Criminal Tribunal for the Former Yugoslavia; Immunity; Kosovo; Yugoslavia

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Daniel L. Nadel

Minorities

Who can be considered as a person belonging to a minority? Is the definition of minority essential to a regime protecting a minority?

On the one hand, the more precisely the target group is defined, the more effective the international rules on protection and promotion may be. On the other, an overall definition of minority is not only impossible but it would also lead to a deadlock: No precise rules could be internationally developed because of the differences in situations, needs, traditions, economies, and so on.

Several scholars (e.g., Francesco Capotorti, the United Nations [UN] rapporteur on the topic in the 1970s) have attempted to propose a definition for the term *minorities* (at least for the purpose of formulating an international legal instrument). Here is Capotorti's definition:

> A minority is a group numerically inferior to the rest of the population of the State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (1979, p. 96).

Nonetheless, it seems impossible at a universal or even a regional level to arrive at a definition that is operative for and at the same time acceptable to all member states. As a consequence, the related instruments in this field have been adopted without international organizations advancing any precise definition of minorities.

It is clear, however, that for theoretical and practical reasons it would be useful to make a distinction between linguistic, national, or religious minorities on one side, and sexual, political, and social minorities on the other. Even if the principle of nondiscrimination and tolerance should equally apply to both groups, the concrete needs of each (e.g., in case of the first group, the use of a special language in different private and public settings, and the exercise of belief) are motivated and satisfied in a different manner with different financial consequences for the states involved.

For the same reasons it is easier to formulate separate regulations for "traditional/historical minorities" (who often become minorities because of historical retribution, border changes, etc.) and "immigrant workers, refugees, and other new minorities" (whose status in a given state is a result of their personal choice). The attitude vis-à-vis assimilation or the use of language in public varies between these two groups.

In the same way facilities for the physically challenged are regulated separately according to both national and international laws. Even if nondiscrimination is equally applied, concrete rules and needs are

promoted in a manner that is partly similar, partly different.

All this does not suggest that such overlap is unimaginable or erroneous. This can be proved, for example, by the complexity of the Romani problem facing contemporary Europe, in which a real mixture of historically rooted ethnic, linguistic, and especially social handicaps exists.

Historical Birth of Minority Issues: Interdependence with the Nation-State

Even if almost all states are composed of different linguistic communities throughout their history, a minority issue (as a legal and political problem) is closely linked to a definite historical period. In the early twenty-first century the basic problem underlying most minority issues is that for various reasons, partly resulting from intolerance but also from the insensitive policies of governments, persons belonging to a minority (and generally their whole community as such) are linguistically, socially, and politically disadvantaged. This has not always been the case during the history of humankind. One can link modern minority problems to the nation-state concept due to its reductionist tendencies and the temptation it creates to perpetuate linguistic and cultural hegemony. When Central and Eastern Europe embraced the concept and applied it on a broad scale, more tensions than existed in Western Europe soon developed, and border changes and the establishment of new states incited local politicians to take revenge on history by establishing nation-state structures favoring their own linguistic community over others. This particularly occurred following the breakup of empires.

The Lessons of the League of Nations

When U.S. president Woodrow Wilson advanced his ideas about the reconstruction of the world after World War I, he was full of idealism. It was his belief that "open diplomacy" and a golf-club-like international organization could prevent the outbreak of such conflicts that had earlier transformed an act of retaliation against a form of state-sponsored international terrorism (e.g., the murder of Austro-Hungarian archduke and heir Francis Ferdinand in Sarajevo in 1914) into a genuine world war. Wilson also realized that his ideas about the self-determination of peoples were not actually the deeply held beliefs of political interest groups who had spoken a similar message in their attempts to dissolve a particular government structure, for instance, the Austro-Hungarian monarchy and Ottoman Empire. During the final delineation of state boundaries after those events, strategic, economic, and alleged historical factors were taken into account much more seriously than the given ethnic data of the annexed territories. Wilson's ideas about true international cooperation were maintained, however, in the minority protection system of the League of Nations, the first international organization to claim general (and not only sectorial) competencies in this area.

The League of Nations (the de facto predecessor of the UN) was charged with a supervisory role in implementing international commitments for the protection of minorities in defeated states and territorially enlarged or newly created (recreated) states. The commitments outlined in conventions (or in the case of the Baltic states, Albania, and Iraq in unilateral statements) enjoyed constitutional value in national laws and could not be altered without the approval of the Council of the League of Nations. Violations could be deferred by states to the Council, but individuals were also entitled to directly submit petitions to the League of Nations. If these survived several filters (including the so-called committee of three procedure), they could be placed on the Council's agenda. The Permanent Court of International Justice (the predecessor of the International Court of Justice) also had the right to intervene in any such matters, providing advisory opinions at the request of bodies such as the League of Nations (in fact the Council) or judgments in interstate disputes when both states previously fell under the jurisdiction of the Hague World Court—this occurred quite often, contrary to twenty-first-century tendencies. The complex of rules and international proceedings was referred to as procedural or formal minority law.

Material law was embodied in the abovementioned conventions or unilateral declarations. Most of the rules were virtually identical (prohibition of discrimination, free use of language in private intercourse, adequate facilities for the use of minority languages before tribunals or other authorities, and some guarantees for teaching the minority language, mainly in private schools). Despite such unified rules, it is interesting to note that some regions were put under international control, for instance, in the case of the territorial autonomy of the Swedish-speaking Aaland Islands (belonging to Finland) and Ruthenia (belonging to Czechoslovakia at that time), or the personal autonomy of certain subgroups of the Hungarian- or German-speaking minorities of Romania.

In the end no one was satisfied with the League of Nations' mechanisms. Minorities complained about the lengthy nature of the uncertain, endless process, whereby in contrast to governments party to a complaint, their claims were not made in person but only through submitted documents. Respondent governments decried the assymmetry of minority protection:

The League of Nations' commitment mostly applied to Central and Eastern European states but not Western European nations. Modern scholars laud some landmark statements of the Permanent Court of International Justice (e.g., those pertaining to the merits of so-called positive discrimination, or *affirmative action* to use the American term) and some technical details of rulings and procedures that can be construed as precursors of modern international human rights systems (the admissibility criteria of petitions and, in particular, the exhaustion of local remedies, polite and deferential language, etc.). Nevertheless, the system became paralyzed in the mid-1930s when more and more states failed to reply to petitions after Germany's withdrawal from the League. Even though Germany officially departed from the League after Adolf Hitler's rise to power, the collective memory of several states (unjust it may be countered) is that the League of Nations' system was more or less supportive of Nazi subversive or revisionist policy. Despite its merits, the minority protection system of the League of Nations disappeared along with the organization itself, and after World War II the UN chose not to continue on the same path.

The UN and the Protection of Minorities

The UN has presented decidedly different attitudes vis-à-vis the protection of minorities. The first period of activity may be associated with Eleanor Roosevelt, the widow of president Franklin D. Roosevelt and the first U.S. ambassador to the UN. She played a very active role in the negotiations on the text of the Universal Declaration of Human Rights in the UN General Assembly, and an important part in formulating the UN's human rights concept as such. It stated that the promotion of traditional civil and political rights, with the prohibition of genocide and a strict nondiscrimination policy, is in itself sufficient and neither special social or cultural rights or a group-oriented approach is required, the latter being either useless or even dangerous.

This reductionist approach, combining the American melting-pot concept with the lessons learned from the crimes committed by Nazis and their collaborators, was not adequate for genuinely multicultural countries in which the presence of different ethnicities could be traced not to voluntary immigration but historical phenomena, namely changes in borders. The harrassment of certain ethnic groups because of their difference, the residual role of their language in public life and schooling, not to mention political and legal condemnation on the basis of collective culpability for alleged collaboration with the Nazis, all contributed to the recreation of well-known tensions. Often, legislative acts directed against some minorities may be regarded as being based on purely racial considerations (see, e.g., the Benes' decrees adopted in Czechoslovakia against Germans and Hungarians or the deportation of the Volga German, Chechen, Ingush, and Crimean Tatar population in the Soviet Union by Joseph Stalin).

During its first decade of existence the UN did not insist on the inclusion of clauses protecting minorities in the peace treaties of former Axis powers. Moreover, the UN Secretary-General, when pressed about the legal validity of the League of Nations' rules protecting minorities, concluded that they should be extinct for several legal reasons, most linked to the principle of *rebus sic stantibus* (i.e., a fundamental change in circumstances). (See the UN's 1950 *Study on the Legal Validity of Undertakings Concerning Minorities*.)

It is true, nonetheless, that the most evident assault on minorities was codified as a crime against humanity when the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide was adopted. The Convention is based on the five main categories of indictment, as outlined by the Nuremberg International Tribunal in its well-known statute, the 1945 London Agreement:

> [K]illing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group (Article 2).

The General Assembly rejected proposals (submitted by Denmark) that attempted to add to the Universal Declaration a minority clause, or to the Genocide Convention the category of so-called cultural genocide. The former Soviet Union backed the proposals as they perfectly complemented its ideological campaign during the cold war. In 1948 politicians apparently considered the clauses of the Genocide Convention as being qualitatively different from "minor" violations of minorities' interests. The end of the 1990s, however, saw the tragedy of the Balkans and that of Rwanda, and examples of ethnic cleansing as a method of warfare surfaced, the cruelty of which its perpetrators tried to justify in terms of their own harassment and humiliation as a former minority. The international community then witnessed the proper codification and punishment of these horrifying acts by different international tribunals, such as the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the International Criminal Court, and so on.

In the 1950s, nevertheless, the UN took steps toward the adoption of some specific rules to protect mi-

norities. Beside the nondiscrimination conventions in general, and its efforts in the area of global education, the UN adopted a special clause for minorities in the 1966 International Covenant on Civil and Political Rights (CCPR). Its Article 27 stipulates: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language."

Moreover, since the 1970s (and on a Yugoslav initiative, however strange that may seem after the southeast European tragedy of the 1990s), efforts have been made within the UN General Assembly to pass a comprehensive resolution on the inherent rights of minorities. These efforts have generally met with hostility, not only on the part of some influential European states but also many newly independent countries, former colonies. The number of member nations opposing an international measure of protection for minorities has only increased. Because the boundaries of these countries as inherited from the colonial period did not take ethnic configuration into consideration and as the divide-and-conquer policy of the former administrative power often favored the minority population in terms of the makeup of the local administration, police, and army, the new tribal majority frequently harassed, punished, and intimidated this minority, and only because of the past, national pride, and shortsightedness. Africa's modern history, for the most part, may be tragically linked to ethnically colored pogroms and bloody civil wars. The governments of these countries emphasized economic and social rights and the so-called right to development over civil and political rights. If they were not in favor of comprehensive control, they were even less supportive of adopting new rights. Within the context of American-Soviet rivalry characterizing the world before the 1990s, nepotism and tribal corruption were also forgiven by these close allies.

The collapse of the Soviet empire, the recognition of the United States' unquestionable military omnipotence, and the ethnic tensions and bloody civil wars of the 1990s in the former Soviet territories and Yugoslavia all contributed to the UN General Assembly's adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Resolution GA 47/135).

This document, conceived by several high-ranking politicians as an example of the *prevention vs. cure* policy, unfortunately could not prevent the tragedy of the Balkans, although it is a worthwhile reflection of the collective opinion of early-twenty-first-century's international community about the importance of a legally guaranteed place for minorities and their languages. It is the greatest achievement of the otherwise not too successful Sub-Commission on Prevention of Discrimination and Protection of Minorities that formulated it.

Even if the General Assembly's declaration focuses mostly on classic political and civil rights tailored slightly to serve the needs of minorities, it is worth emphasizing the political and pedagogical importance of the multiple refererences to the use of minority language in worship and administration, as well as the effective participation of minorities in public and economic life. The UN also took a historic step when referring to affirmative actions in its Article 8: "Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights." This reference is slightly more generous than that of the UN Convention on the Elimination of All Forms of Racial Discrimination.

The real merit of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities may be observed in the impact it has had on otherwise inactive UN organizations, inspiring them to play a more assertive role. The Human Rights Committee on Civil and Political Rights (the monitoring organ of the 1966 Covenant) suddenly realized in 1994 that the previously cited Article 27 of the Covenant stipulates not only passive but also active obligations. In addition, it emphasized at the time that the article's scope of application concerns persons belonging to a minority irrespective of their citizenship and does not depend on an earlier recognition of minorities by the state. (See CCPR General Comment No. 23.) The Human Rights Committee has also contributed to the evolution of the concept of minority protection in its examination of some individual applications. Most of them have concerned, however, indigenous problems, for example, the claims of Native Americans (see the *Lovelace*, *Ominayak*, and *Connors* cases), Samis (see the *Kitok*, *Sara*, and *Länsman* cases), and Maoris (see the *Mahuika* case).

The applications made to the Human Rights Committee have generally dealt with the alleged negative impact of some major industrial or agricultural interventions on the fishing and hunting rights of indigenous peoples. The complaints have been rejected if the governments in question could offer a sufficient amount of water, land, or forest to the aggrieved parties. The *Lovelace* v. *Canada* case was particularly interesting in the sense that the state was condemned because it had failed to grant adequate protection to a

Native-American woman against the actions of her own tribe. (The case was linked to the fact that marriage outside one's tribe could deprive a woman of her tribal membership, and that a return to tribal territory after the end of such a marriage did not automatically confer on that woman the right to renewal of tribal membership.)

The Committee on the Elimination of Racial Discrimination (CERD), the UN organization monitoring the 1965 Convention on the Elimination of All Forms of Racial Discrimination, also wrote several comprehensive reports, including one on some aspects of reporting minorities and another on the right of self-determination. (See CERD's General Recommendations No. 8 and 21.)

In addition, the specialized institutions of the UN formulated some related instruments of treaty law. The United Nations Educational, Scientific, and Cultural Organization (UNESCO) adopted the 1960 Convention on Discrimination in Education, applied in the area of education, and the International Labor Organization (ILO) elaborated Conventions 107 (1957) and 169 (1989), both addressing the rights of indigenous laborers and obligations of governments and employers. Article 30 of the 1989 Convention on the Rights of the Child is in its language almost identical to the already cited Article 27 of the 1966 Covenant, and it also promotes the use of minority language in the media and education.

It is a well known that making international law is hostage to the smallest common denominator principle. In the case of the nearly two hundred member states of the UN, reaching an acceptable but at the same time serious and truly comprehensive treaty law is manifestly impossible. Is the situation any better in regional terms?

International Minority Protection: European Results

The nondiscrimination principle is embodied in the three main regional conventions, namely the European Convention on Human Rights, the Inter-American Convention on Human Rights, and the African Charter on Human and Peoples' Rights.

The basic international treaty of the Council of Europe, an organization established on the initiative of Great Britain's Prime Minister Winston Churchill to promote international cooperation based on the rule of law, the European Convention of Human Rights is considered to be the most widely used and effective mechanism for protecting human rights. As of 2003 the European Court of Human Rights had reviewed and pronounced judgment on approximately 3,800 cases. Few of them were related to classic national or linguistic minority issues. Scholars mainly attribute this fact to the formulation of Article 14 that—contrary to the UN approach (manifested in Article 26 of the International Covenant on Civil and Political Rights)—may not be applied by itself but only in conjuction with another article of the Convention. (The same can be said about the nature of nondiscrimination clauses in the Inter-American Convention and the African Charter.)

Because the other articles of the European Convention of Human Rights do not in fact address the traditional needs of minorities (e.g., the use of languages in schooling or before an administration), minorities have had practically no chance of submitting a succesful claim on the basis of a current or future discrimination.

Political efforts and endeavors to supplement the European Convention with an additional protocol covering minority rights were consequently rejected in the 1960s and 1970s. Only in 1999 did the Council of Europe adopt a twelfth additional protocol putting nondiscrimination in a larger perspective, prohibiting discrimination as a right secured by "law."

The same development may be observed in the jurisprudence of the European Court of Human Rights, whereby the Court's hesitation to tackle minority problems during the second half of the twentieth century (see the judgment in the Belgian linguistic case in which the Court recognized the admissibility of affirmative action; see also *Mathieu-Mohin & Clerfayt v. Belgium*, *Tyrer v. United Kingdom*, and *Gillow v. United Kingdom* concerning legislation and the practice of some special territorial autonomies) was followed by a deeper desire to address these issues at the start of the twenty-first century.

Still in this new phase, the European Court of Human Rights seems poised to examine the problems of minorities within the interrelated context of religious freedom or the right to the integrity of family life. When the freedom of religion of ethnic or linguistic minorities was involved in recent cases (see *Serif v. Greece*, *Hassan & Chaush v. Bulgaria*, and *Orthodox Metropolitan Church of Bessarabia v. Moldova*), the Court decided in favor of the applicants. In 2001 a minority organization won a case linked to freedom of association (see *Stankov and Ilinden United Macedonian Organization v. Bulgaria*).

On the other hand, the applications submitted by Romani were unsuccesful either because of lack of evidence (*Assenov v. Bulgaria*) or because of the Court's limited authority over governments in regulating a nomadic way of life and squatting (unlawful settlement) (*Buckley v. United Kingdom*, *Chapman v. United Kingdom*).

The most important theoretical breakthrough occurred, however, in a legal dictum delievered by an ad hoc tribunal, the Arbitration Commission of the International Conference on ex-Yugoslavia. This organ, also known as the Badinter Arbitration Commission (named after its chairman, Robert Badinter, the president of the French Constitutional Court), pronounced several advisory opinions in 1992 emphasizing that the protection of minorities falls within the peremptory norms of international law (*jus cogens*).

The decision on whether or not to supplement the European Convention on Human Rights was not only a political issue but also a legal one. Opponents of an additional protocol generally based their arguments on solid legal grounds, namely the fact that the Convention's control mechanism is based on the existence of an individual victim whose precise right has been violated. Such a philosophy works well when contemplating classic civil and political rights, that is, individual rights. However, mostly everything that is important for minorities is of a collective nature (or at least requires a collective approach), and in these cases, some states are apparently not ready to accept precise norms. As these obligations cannot be deferred to a court, there is no need to envisage such a procedure of complaint.

Within the Council of Europe, the repeated rejection of proposals aiming to complement the European Convention on Human Rights with an additional protocol resulted in a change of attitude among those who were open to a minority breakthrough. Their view was that if the adequate protection of minorities was not possible through traditional human rights safeguards, a fresh approach must be chosen. Defining the obligations of states instead of the rights of minorities became the new watchword.

The Council of Europe benefited from this new approach when drawing up two international treaties, namely the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. The aim was to prepare an adequate and effective, but—and this is always the big challenge for those codifying international law—widely acceptable instrument of treaty law.

In the 1992 case of European Charter for Regional or Minority Languages, the novelty consisted of an optional (à la carte) system of commitments operating in harmony with the real needs of minority languages. The assumption was that by allowing sovereign states to choose from different commitments according to the real situation surrounding minority or regional languages spoken in their territory, and according to the specific uses of those languages (in schooling, administration, the judiciary, economic and social life, the media, culture, and transboundary cooperation), they would demonstrate more willingness to accept them. These options vary from the lowest to the highest level (e.g., teaching all subjects in a minority language, teaching a substantial part of the curriculum in a minority language, or teaching the minority language as such). States, the contracting parties to the Charter, are not obliged to apply these options to all the languages spoken in their territory, only those that are chosen explicitly in the instrument of ratification. For the other languages, general principles enumerated in the Charter are to be applied. Even if the title of the Charter itself seems slightly redundant, according to the original drafters, the wording allows states that do not recognize "minorities" as a distinct category of public law in their constitution to accept it. The Charter was drafted before the admission of Central and Eastern European "new democracies"—but it was approved in their presence and with the active participation of Hungary and Poland.

The 1995 Framework Convention for the Protection of National Minorities is the fruit of the second wave of minority codification in the 1990s. This convention addresses not only language issues, but also other aspects of day-to-day minority life. The hot button of minority codification, that is, how the convention or statute might reflect collective interests when several states who must be party to it oppose the recognition of collective rights for minorities, was mollified in three ways: (1) Some classic individual rights were formulated in a minority-friendly style (as also occurred in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities). (2) Instead of the rights of persons or groups, the Convention refers to obligations of states. (3) General legal premises and programmatic norms were formulated.

In this complicated and sometimes very obscure way, the Framework Convention contains rules concerning the use of a minority language in education, the judiciary, and administration; the prohibition of gerrymandering; the protection of minority identity; the promotion of minority culture; and the effective participation of minorities in the decision making of public authorities. It is worth noting that affirmative action is proclaimed here, too, moreover not only as an eventual possibility but as a rule whose application may even be mandatory in certain cases.

The control mechanism of both the European Charter and the Framework Convention is based on periodic reports submitted by states. Even if no possibility of submitting individual or collective applications exists, the independent experts' committees can orga-

nize hearings where not only governments but also minority representatives may have their say. In addition, experts can visit the countries concerned: Apparently, governments invite such individuals quite often, on their own initiative. The reports prepared by these expert committees are used to formulate recommendations and resolutions by the Committee of Ministers, composed of ministers of foreign affairs for the member states of the Council of Europe. Despite the genuinely intergovernmental character of this organ, its resolutions closely follow the criticisms developed by the expert committee. Even if such a process concludes without any binding decision, these soft-law-type resolutions enjoy considerable moral and political authority.

It is worthwhile to note the identity and number of contracting parties in an international treaty. More than half the member states of the Council of Europe are contracting parties to the Framework Convention for the Protection of National Minorities and a good dozen are bound by the European Charter for Regional or Minority Languages.

The Organization for Security and Co-operation in Europe (OSCE) was created within the context of the so-called Helsinki process, the series of follow-up conferences since the 1975 summit meeting in Helsinki on security and cooperation in Europe. A landmark of 1970s détente policy, the ad hoc 1975 summit conference of East and West became progressively institutionalized, and the end of bipolar rivalry resulted in a new impetus for this process, composed of followup conferences. From the so-called three baskets (with the first basket signifying disarmament and confidence-building measures; the second basket a reduction in the number of obstacles to commerce between capitalist and Marxist economies; and the third basket an emphasis on "human dimensions," a euphemism for human rights), the third was used to establish a code of conduct for the trans-Atlantic protection of minorities. The 1990 Charter of Paris for a New Europe and especially the Final Act of the 1990 Copenhagen Conference are considered basic documents. Even if the documents do not enjoy a legal value, they repeat legal norms already stipulated elsewhere or proclaim political commitments. This is especially true of the Copenhagen Document, which contains a long list of principles supporting the rights minorities.

The Office of the OSCE High Commissioner on National Minorities was established after the 1992 OSCE Conference in Stockholm. Its original mandate concerns fact-finding and early warnings vis-à-vis minority-related tensions (with the exception of international terrorism). In reality the High Commissioner generally mediated between states or states and minorities. With a very small staff but backed by the international scientific community, the Office of the High Commissioner launched an interesting standard-setting activity: Instead of creating new rules, it attempted to compile existing international documents (on both treaty law and soft law). The documents issued are mostly recommendations of a commendable nature, but to a certain extent they also merely reflect the existing customs in the areas of education, use of language, and effective participation (see the Hague, Lund, and Oslo Recommendations).

In the 1990s the OSCE adopted important instruments such as the 1992 Stockholm Convention on Conciliation and Arbitration and the 1995 Pact on Stability in Europe, whose aim was to settle interstate disputes related among other issues to minority protection.

Bilateralism and Unilateralism in Minority Protection

Multilateral instruments on minority protection may be complemented by bilateral agreements. These are generally more comprehensive than multilateral treaties, which nonetheless often encourage states to enter into complementary bilateral treaties.

When regulating minority issues, national law may simply be implementing an already contracted commitment, but it need not be based exclusively on international law. It can be generous beyond that obligation, even also within itself, without any interstate commitment. Besides a nondiscrimination clause and some requirements concerning language, which are specified in the constitution of most European states, certain countries have gone as far as regionalization (Spain) or the recognition of the autonomy of local authorities, as happened recently within the context of devolution in the United Kingdom.

In Central and Eastern Europe, one may observe how the links between kin-state and kin-minority have greatly multiplied. States are offering educational or social opportunities to persons belonging to a minority living in another state but speaking their language. As the European Commission for Democracy through Law (the Venice Commission's *Report on the Preferential Treatment of National Minorities by Their Kin-States*) put it, these legally institutionalized contacts may be matched by current international law when they are restricted to items closely linked to national and cultural identity. The observance of the nondiscrimination rule, reciprocity, and cooperation with one's state of citizenship are, however, important in avoiding interstate conflicts (see the European Commission's *Report on the*

Preferential Treatment of National Minorities by Their Kin-States).

Conclusion

The basic principles of minority protection in the modern world may be summarized as follows: Respect for and the protection of the identity of persons belonging to a minority presuppose the free choice of identity, that is, despite any alleged outside characteristics, one cannot be considered as legally belonging to a group against one's will. International law (in its universal, regional, and bilateral forms) and national law are getting closer to not only sanctioning diversity but also promoting the concrete expression of the most important aspects of minority life, often by affirmative actions necessary for genuine equality. Minority participation in decision making is emphasized in a wide range of legal documents, especially within national legal systems where one can find different forms of self-government or a home rule system, based on territorial or personal approaches. The legal systems of states vary greatly, and the adaptability and tangible expression of the aforementioned legal principles are very different as a result.

It is thus evident that with tolerance of and respect for another's identity, language, religion, and culture and by providing the opportunity for all individuals to have a good life in the contemporary world, countries draw closer to eliminating the animosity, suspicion, and national arrogance that characterized a certain period of history.

SEE ALSO Disabilities, People with; Economic Groups; Ethnic Groups; Political Theory; Racial Groups; Religious Groups

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Péter Kovács

Mladic, Ratko

[MARCH 12, 1942–]
Commander of the Bosnian Serb Army

Fueled by a deep-seated animosity hearkening from the days of the Ottoman Empire's control of Bosnia and Herzegovina (BiH) and the Croatian alliance with Nazi Germany, General Ratko Mladic rose through the ranks of the Bosnian Serb Army by appealing to Serbian nationalism. As Commander, Mladic left in his wake at least ten thousand dead and several hundred thousand forcibly transferred or internally displaced.

Born in Kalinovik, a small town in southern Bosnia, Mladic spent his early years training at the military academy in Belgrade for the Yugoslav People's Army (JNA), in which he later served as an officer. Between the summers of 1991 and 1992 Mladic's military authority and popularity increased exponentially. In June 1991 he was appointed Commander of the 9th Corps of the JNA, and within a year he was promoted to General Lieutenant and Chief of Staff of the Second Military District Headquarters of the JNA in Sarajevo. When the Bosnian Serb Assembly voted to create the army of the Serbian Republic of the BiH (VRS) in May 1992, Mladic was also appointed Commander of the Main Staff of the VRS, where he remained until December 1996. As commander of the military, he exclusively followed the directives of political leaders Radovan Karadzic and Slobodan Milosevic.

Some of the most egregious charges leveled against Mladic by the International Criminal Tribunal for the former Yugoslavia (ICTY) stem from his campaign, as VRS Commander, to "ethnically cleanse" BiH of Bosnian Muslims and other non-Serbs. The fifteen-count indictment includes charges of genocide or the complicity to commit genocide against Bosnian Muslims; various crimes against humanity—such as persecution, extermination, murder, deportation, and inhumane acts—against Bosnian Muslims, Bosnian Croats, and other non-Serbs; and the taking of United Nations (UN) hostages.

Although Mladic may not have physically committed the crimes with which he was charged, he remains responsible as commander of the army under the 1949 Geneva Conventions on the laws of war and the statute of the ICTY. Moreover, UN Security Council resolutions repeatedly warned that those who perpetrated or ordered the commission of war crimes would be held accountable. While Mladic denies the allegations, several of his subordinates have insisted that they were following Mladic's orders—most notably his most immediate subordinate, Radislav Krstic.

From 1992 to 1996 Mladic and Karadzic unleashed a brutal campaign of ethnic cleansing to eradicate all non-Serbs from BiH. During this period continuous reports detailed the killings, rapes, forcible expulsion, imprisonment, cruel and inhumane treatment, and forced labor of non-Serbs. Numerous concentration camps were discovered along the Croatian border, reminiscent of camps the Nazis had established during the Holocaust. Private property and places of religious worship were common targets for misappropriation and destruction throughout BiH. The exactitude and similarity of the crimes repeated in both northwestern and eastern Bosnia strongly suggest that they were part and parcel of a widespread, systemic operation.

In July 1995 Mladic ignored Security Council Resolution 819 declaring Srebrenica and surrounding regions "safe areas." He not only commanded his troops to capture Srebrenica, but also enlisted the assistance

Genocide under General Mladic in Bosnia and Herzegovina. [MAP BY XNR PRODUCTIONS/THE GALE GROUP]

of several Serbian paramilitary groups, ostensibly to distance himself from any wrongdoing. Thousands of Muslim men were rounded up and executed in the ten-day fall of Srebrenica, under the pretext of capturing Muslim soldiers and "suspects of war crimes." More than twenty thousand Muslim women, children, and the elderly were forcibly expelled. The mass graves later exhumed in the farms and rural villages surrounding Srebrenica indicate that the killings were part of a well-rehearsed and organized plan. Individual acts of revenge could not have resulted in thousands of deaths, nor would the manner of death have been so eerily similar—a single gunshot wound to the head.

Despite the UN's warnings, the ICTY's indictment, mitted from 1992 to 1996, Mladic has never seen the inside of a courtroom. Initially he lived openly in BiH—an affront to the tribunal's authority—but after the arrest of Milosevic in 2001 Mladic fled into hiding. Without increased international political pressure mounted against his staunch allies, Mladic is unlikely to face prosecution either at home or through extradition to the ICTY, and will live with impunity.

SEE ALSO Bosnia and Herzegovina; Ethnic Cleansing; Humanitarian Intervention; Incitement; Karadzic, Radovan; Massacres; Mass Graves; Nationalism; Peacekeeping; Safe Zones; Superior (or Command) Responsibility;

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Jaspreet K. Saini

Mongol Conquests

In many parts of the world, in particular, the Arab Middle East, Europe, and the Americas, the Mongols have become synonymous with murder, massacre, and marauding mayhem. Their advent is portrayed as a bloody "bolt from the blue" that left little but destruction, death, and horrified grief in its wake. A medieval Russian chronicle from Novgorod vividly describes their impact on the region:

> No one exactly knows who they are, nor whence they came out, nor what their language is, nor of what race they are, nor what their faith is . . . God alone knows (Mitchell and Forbes, p. 64).

A thirteenth-century Persian eyewitness succinctly summarized their initial impact in Iran: "They came, they sapped, they burnt, they slew, they plundered and they departed" (Juwayni, 1916/1997, p. 107). The Arab chronicler ibn al-Athir, although not an eyewitness, described his emotions on hearing of the Mongols' rise in words that have echoed down through history and colored half the world's perception of the Eurasian hordes:

> O would that my mother had never borne me, that I had died before and that I were forgotten [so] tremendous disaster such as had never happened before, and which struck all the world, though the Muslims above all . . . *Dadjdjal* [Muslim Anti-Christ] will at least spare those who adhere to him, and will only destroy his adversaries. These [Mongols], however, spared none. They killed women, men, children, ripped open the bodies of the pregnant and slaughtered the unborn (Spuler, 1972, pp. 29–30).

The reasons for such negative impressions are not hard to discern. Genghis Khan (1167–1227) even described himself as "the punishment of God" and was pleased that others perceived him to play this role. The Mongol period is not only noted for its supposed barbarity, but also for the plethora of historians and chronicles it produced. These many scribes, both within the Mongol camp and without, were happy to pander to the Mongols' desire for notoriety and a reputation for barbarism and cruelty. Primary sources in a wealth of languages have survived the so-called Mongol mayhem. Critical analysis and comparison of these various sources yield a more balanced and less sensationalist picture of what actually occurred during the thirteenth and fourteenth centuries than the lurid portrait that myths and legends have conjured up. Since Bernard Lewis questioned the basis of the Mongols' tainted reputation in 1995, scholarly opinion has grown more sympathetic toward the legacy of Genghis Khan.

Turco-Mongol Unity

By 1206 the Turco-Mongol clans of the steppe were united under the charismatic rule of Genghis Khan. It was the size and unity of this force and its endurance that distinguished it from previous steppe armies. Prior to Genghis the tribes had often been manipulated by the Chinese and other settled peoples, and often the nomads' predatory raids had occurred at the behest of a hidden hand. Genghis raided for the prestige he accrued on which to build his power, and for the booty with which to placate his rivals, satisfy his followers, and outwit any reckless challenger to his rule. The initial raids into northern China during the early decades of the thirteenth century were characterized by the barbarity for which the name of Genghis Khan and the Mongols have become inextricably identified. However, Mongol rule subsequent to this, during the reigns of Genghis Khan's grandsons, Hülegü in Iran (ruled 1256–1265) and Qubilai Qa'an in China (ruled 1260–1294), stands in sharp contrast to this earlier violent eruption. The "storm from the East" arose from anger, a spirit of vengeance, and the need to assert power.

Genghis Khan, the leader of the "people of the felt-walled tents" and the "the peoples of the Nine Tongues" (Onon, 1993, p. 102), was born Temüjin and had endured a brutal and merciless childhood. His father was murdered when he was still young, and his mother and her offspring were abandoned by their clan to survive in a very harsh and unforgiving environment. Compassion was not a virtue valued on the steppe. This was a society of submit or be challenged, fight or be beaten, and often kill or be killed.

Map outlining Mongol conquests of the thirteenth century. Historians of the time chronicled many of these campaigns as barbarous massacres. [MAP BY XNR PRODUCTIONS. THE GALE GROUP.]

Force of personality, military and physical might, and tribal alliances were the means through which tribal leaders of the steppe clans rose to power. They maintained power only by delivering on promises of wealth and plenty. If the promise did not materialize, the leader fell, or was forced to join an alliance with another leader who could meet the aspirations of the tribe. Steppe life was brutal, and knowing nothing else, the steppe tribes initially exported this ethos.

The Mongols themselves were few in number, but from the outset Genghis absorbed other Turkish tribes and later any conquered troops into his armies. He used traditional steppe military tactics, with light cavalry, feigned retreats, and skillful archery to conduct what were initially raids of pillage and plunder from bases in the steppe into the agriculturally developed and settled lands as opposed to the steppe grasslands, home to the nomads. Terror, real and imagined, was an important element in the success of these raids. In 1211 the Mongols invaded the independent Chin of northern China, helped by renegade seminomadic Khitans, in a struggle that continued, after Genghis's death, until 1234. It was the defeat of the Chin capital, Zhangdu (the site of modern Beijing), that gave rise to one of the most notorious stories of Mongol atrocities:

> [An envoy from the Khwarazmshah] saw a white hill and in answer to his query was told by the guide that it consisted of bones of the massacred inhabitants. At another place the earth was, for a long stretch of the road, greasy from human fat and the air was so polluted that several members of the mission became ill and some died. This was the place, they were told, where on the day that the city was stormed 60,000 virgins threw themselves to death from the fortifications in order to escape capture by the Mongols (Raverty, 1995, p. 965).

The World-Conqueror

Genghis then turned his attention westward in campaigns against the ethnically Chinese Qara Khitai, whose Muslim merchants and administrators would form the backbone of his emerging empire, and reluctantly against Khwarazm (corresponding to present-day Turkmenistan and Uzbekistan), the first Muslim state to experience the full fury of the Mongol on-

slaught. This apocalyptic invasion occurred in retaliation for the murder of a commercial and political trade delegation composed of Mongols, Chinese, and Muslims. As the self-proclaimed "punishment of God," Genghis Khan unleashed the bloody raids and merciless devastation on the Islamic west that has made his name synonymous with barbaric mass slaughter.

The trail of blood and massacre that followed the crumbling of the Khwarazmshah's empire in 1220 led from Central Asia through Iran to the Caucasus and north into the plains of Russia. The chronicles have told us that 1,600,000 or possibly as many as 2,400,000 were put to the sword in Herat (a city in present-day western Afghanistan), while in Nishapur, the city of Omar Khayyám, 1,747,000 were slaughtered. The two Mongol *noyans* (generals) Jebe and Sübedei led an expedition in pursuit of the fleeing Khwarazmshah (died 1221), demanding submission to, and assistance and human shields for their advancing armies, or death, destruction, and slavery. These were the two options for the cities and towns in their path. Outside every town they reached, the Mongols would deliver a chilling message: "Submit! And if ye do otherwise, what know we? God knoweth" (Juwayni, 1916, p. 26). In fact, there were few who did not fully understand their fate upon the conquerors' arrival. This epic cavalry mission was perhaps the greatest reconnaissance trip of all time, including not only intelligence gathering but also the conquest, massacre, and defeat of all lands neighboring the Caspian Sea and beyond. Jebe and Sübedei's expedition of pursuit, terror, and reconnaissance represents the Mongols at their destructive peak; thereafter their armies became for those who fell under the shadow of their approach both the invincible wrath of God and the emissaries of the biblical Gog and Magog (Revelations 20). The Mongols wore their notoriety like a *khil'at* (a robe of honor).

Khorasan in particular suffered grievously for the sins of its deluded leader, the Khwarazmshah. Although the massacres and ensuing destruction were widespread, there was method in the Mongols' madness. Artisans and craftsmen, with their families, were often spared the Great Khan's fury. Separated from their less fortunate fellow citizens, they were often forcibly transported east to practice their crafts in other parts of the empire. It is said that in Khwarazm (Kiva) in 1221, each of the 50,000 Mongol troops was assigned the task of slaughtering 24 Muslims before being able to loot and pillage. However, it is also reported that Genghis Khan personally implored the famed Sufi master and founder of the Kubrawiya order, Najm al-Din Kubra, to accept safe passage out of the condemned city. The saint refused to flee, but allowed his disciples to do so. Even at this early stage the "barbarian" Tatars demonstrated a respect for and knowledge of scholars and learning. (Although previously they had been a Turco-Mongol tribe rivaling Genghis, the Tatars came to be a generic term for the Genghisids in Europe and western Asia. *Tartarus* in Greek mythology was Hades or Hell.)

The World Ruler

Although Genghis died in 1227, unlike other steppe empires, his survived through his progeny who succeeded in maintaining and extending his power and territories. Genghis Khan rode out of the steppe as a nomadic ruler intent on rapine, pillage, and booty, and combining these traditional steppe practices with dexterous political and military skills, he proved unstoppable. The devastation he inflicted differed only in its scale from the raids of other nomadic rulers before him. Cities were razed, walls were consistently demolished, the *qanat* system of underground irrigation was damaged physically and, perhaps more serious, allowed to fall into disrepair through neglect. However, Genghis was astute enough to recognize that continued pillage and killing would be counterproductive and eventually succeed in destroying the source of the Mongols' wealth. He had wreaked horror and destruction on an unprecedented scale and achieved legendary status within his own lifetime, but it was only as long as he could deliver the prosperity to sate his hungry followers that he and his progeny would reign unchallenged.

Genghis was a man of vision. The blood and destruction, the plunder and the terror had been in the tradition of the age-old conflict between the steppe and the sown. Although the steppe had won, Genghis knew that its future depended on the sown. The mean tents of his childhood had been transformed into the lavish pavilions of his kingdom. The ragged camps of old had been replaced by mobile cities of wealth, splendor, and sophistication. The infamy he now enjoyed served as his security. In fact, the death tolls recorded and descriptions of the desolation his armies had caused were beyond credibility. The province of Herat, let alone the city, could not have sustained a population of two million, and the logistics involved in actually murdering this number of people within a matter of days are inconceivable. The already mentioned chronicler ibn al-Athir did much to perpetuate the mythology of the Mongol rule of terror. He recounts that so great was people's fear that a single Mongol could leisurely slaughter a whole queue of quaking villagers too afraid to resist, or that a docile victim would quietly wait, head outstretched, while his executioner fetched a forgotten sword (Browne, 1997, p. 430).

These apocryphal tales and the exaggerated accounts of massacres and mayhem were believed as literal truth. This vision of the Tatars as a visitation from Hell was readily accepted by religious zealots, both Christian and Muslim, who were able to shift responsibility for the carnage to their faithful followers.

Successors

Before his death Genghis Khan had appointed his second son Ögödei as his successor and divided his empire among the others. By 1241 Batu, his grandson, had overrun the principalities of Russia, subdued eastern Europe, and reached the coastline of Croatia. The year 1258 witnessed the fall of Baghdad and another grandson, Hülegü, firmly established in western Asia. Qubilai Qa'an was able to proclaim himself not only Great Khan (Qa'an means "Khan of Khans"), but also in 1279 the emperor of a united China. War and conquest had continued, but the nature of the conquerors and rulers had changed.

Qubilai Qa'an is quoted in contemporary Chinese sources as declaring that "having seized the body, hold the soul, if you hold the soul, where could the body go?" to explain his support and cultivation of Tibetan Buddhism (Bira, 1999, p. 242). The new generation of Mongols were essentially settled nomads, living in semipermanent urban camps, educated, sophisticated, and appreciative of life's fineries and luxuries. Qubilai Qa'an has been described as "the greatest cosmopolitan ruler that has ever been known in history" (Bira, 1999, p. 241). His brother Hülegü and the Ilkhans in Iran received other praises for their rule: justice, farsightedness, and statesmanship.

Once in power, the Mongol princes sought to rule their subjects, avowedly, with justice and tolerance, and for the prosperity of all. They ruled by the standards of the time, and their contemporaries differentiated between the "barbarian" nomads of the past and their masters residing in fabulous imperial courts. The ragged remains of the Khwarazmshah's army, led by the bandit king Jalal al-Din Mangkaburti, inspired far more fear and loathing than the disciplined Mongol troops. The Mongols had never targeted specific groups for persecution on religious, nationalistic, or ethnic grounds. When Baghdad was attacked, it was with the advice of Muslim advisers such as Nasir al-Din Tusi, and the supporting Muslim armies were led by Muslim rulers. Co-option was the desired result of conquest or the threat of attack. Top administrators in all parts of the empire were Mongol, Chinese, Persian, Uighur, Armenian, European, or Turkish. Loyalty and ability were prized above ethnicity or religion. A center of learning was established around 1260 in Iran's first Mongol capital, Maragheh. It attracted scholars from around the world who flocked, in particular, to see the observatory built for the court favorite, Tusi. The Syriac cleric Bar Hebraeus used the libraries, stocked from the ruins of Baghdad, Alamut, and other conquered cultural centers, to research his own acclaimed studies and historical accounts. The nation of archers had changed its priorities.

Most of what is now known of the Mongols comes from non-Mongol sources, among them Persian, Arabic, Armenian, European, and Chinese observers and commentators. While recognizing the might of the Mongols, these sources often betrayed a degree of anti-Mongol bias. Even in the writings of their most loyal proponents, servants, such as the Persian Muslim Juvaini (died 1282), there is a sense of distain and condescension for these *arriviste*. In many ways the Mongols became victims of their own propaganda and success. The horrors they perpetrated were the crown by which they managed to rise so high. Their impact was of such might that their achievements have been drowned in that initial sea of blood.

SEE ALSO Genghis Khan

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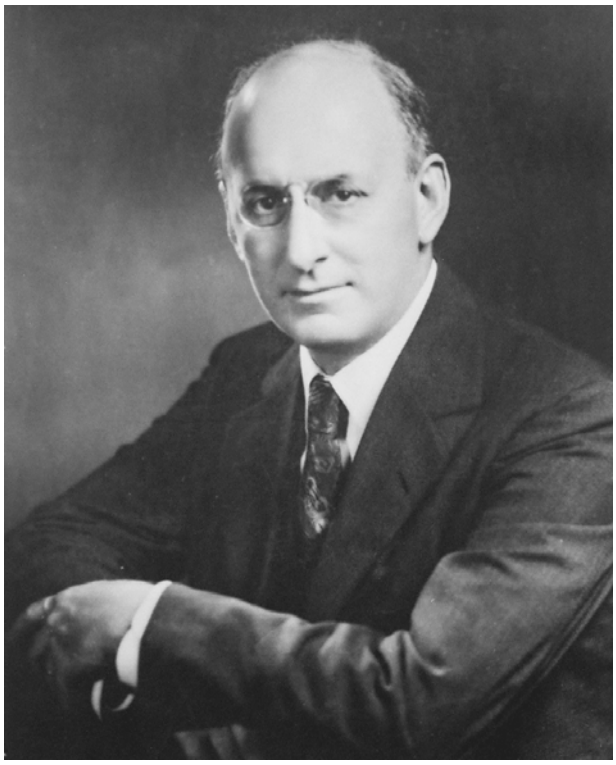
George Lane



Henry Morgenthau, Jr., played a major role in the creation of a wartime refugee policy during World War II when he persuaded President Franklin D. Roosevelt to establish an independent refugee agency—the War Refugee Board. It helped save the lives of as many as 200,000 European Jews. [LIBRARY OF CONGRESS]

Morgenthau, Henry

[MAY 11, 1891–FEBRUARY 6, 1967]
Author of a plan to rebuild post-World War II Europe

Henry Morgenthau served as secretary of the treasury in Franklin D. Roosevelt's administration from January 1, 1934, until July 22, 1945. Born in New York City into a German Jewish family, Morgenthau was a friend and a neighbor of Roosevelt in Hyde Park, New York. During the final months of the war, Morgenthau became a catalyst for the U.S. plan on punishing German war criminals that—although very different from what he had envisioned—was to become the core of the Nuremberg Charter.

Morgenthau's involvement in the question of punishing war criminals was a by-product of his deep interest in the overall question of the treatment of Germany after the war. Disturbed by the U.S. Army's *Handbook for Military Government in Germany* and other policy papers on the issue, Morgenthau succeeded in winning the president's support for a comprehensive memorandum, entitled Program to Prevent Germany from Starting a World War III, which he presented to Roosevelt on September 5, 1944. The Morgenthau Plan, as it became known, had two major themes: the complete demilitarization and deindustrialization of Germany, and the severe punishment of all Germans involved in perpetrating war crimes. Morgenthau did not try to hide his prime motive—to eliminate once and for all Germany's threat to world peace, and to take revenge for the atrocities Germany committed during World War II.

Morgenthau's stand on punishing suspected war criminals corresponded with his overall view favoring the harsh treatment of Germans. The treasury secretary suggested the preparation of a list of arch-criminals whose guilt had generally been recognized by the United Nations (UN). Anyone on the list who was apprehended and identified by military authorities would be executed by firing squads made up by United Nations soldiers. Morgenthau also suggested establishing military commissions to deal with crimes that had been committed "against civilization during this war." In this category he included the killing of hostages and execution of victims because of their nationality, race, creed, color, or political conviction. Morgenthau advocated that any person convicted by such a military commission "be sentenced to death, unless the military commissions, in exceptional cases, determine that there are extenuating circumstances, in which case other punishment may be meted out, including deportation to a penal colony outside of Germany. Upon conviction, the sentence shall be carried out immediately." In this respect, Morgenthau's Plan much resembled the suggestions Britain's Prime Minister Winston Churchill had made to the British War Cabinet in late 1943 in anticipation of the war's end.

Fearing that Allied military authorities would be unable to tackle the enormous number of cases of war criminals, Morgenthau called for the detention, until the extent of their guilt had been determined, of all surviving members of the SS and Gestapo; high-ranking officials of the police, SA, and other security organizations; high-ranking government and Nazi Party officials; and all leading public figures closely identified with Nazism.

Morgenthau's Plan was vehemently opposed by U.S. Secretary of War Henry L. Stimson, who argued that in the long run it would prevent the achievement of world peace. Stimson also strongly disapproved of Morgenthau's proposals about the treatment of war criminals for their failure to include at least the rudimentary aspects of the Bill of Rights, namely, notifying the accused of the charge, giving them the right to be heard, and within reasonable limits allowing them to call witnesses in their defense. Instead, Stimson envisaged an international tribunal to try the chief Nazi offi-

cials on the charge of committing offenses against the laws and rules of war, whereas those who had committed war crimes in Nazi-subjugated territories would be tried by military commissions of the countries involved.

The Stimson-Morgenthau collision over the question of the treatment of postwar Germany formed a watershed in Washington's handling of the war criminals problem. In spite of the fact that Morgenthau enjoyed the president's support as well as Churchill's in principle, Stimson won out by taking advantage of Roosevelt's political weakness prior to the elections of November 1944 and the press criticism of the Morgenthau Plan. The president was compelled to withdraw his backing for the summary execution of major criminals.

Morgenthau's involvement in the war criminals issue, however, did produce important achievements: First, it prompted the administration to finally take the problem seriously, and second, it led the United States to include within the rubric of "war crime" the notion of crimes the enemy had committed against its own nationals from 1933 on. The prevailing stand in Washington had been not to view as a war crime any massacre of Axis nationals. As late as September 1944 Stimson drew an analogy to lynching in a letter to Roosevelt, arguing that Allied courts would be in the same predicament that foreign courts would be if they attempted to prosecute lynching in the United States.

Stimson's eventual decision to include crimes against nationals of Axis countries in the War Department's plan to punish war criminals, which became the essence of the final U.S. plan, was more the result of political calculation rather than moral or legal considerations on his part, that is, to appease Morgenthau and to dispel accusations that he supported the soft treatment of Germany. In effect, Stimson was convinced that Morgenthau's position derived from the fact that he was Jewish. As of mid-1943 Morgenthau had demonstrated growing concern for the fate of Europe's Jews, and in early 1944 he played a significant role in galvanizing Roosevelt to seek a halt to the Nazis' ongoing extermination of the Jews. Roosevelt's executive order of January 22, 1944, establishing the War Refugee Board, which was mandated to take all measures within its power to rescue and assist the victims of enemy oppression, was the administration's main operative action on behalf of the Jews during World War II. After Roosevelt's death on April 12, 1945, Morgenthau's influence within the White House significantly diminished, and he resigned from President Harry S. Truman's administration in July 1945.

SEE ALSO Jackson, Robert; London Charter; Nuremberg Trials; United Nations War Crimes Commission; War Crimes

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Arieh Kochavi

Moriscos

The term *Moriscos* is used to refer to those Spanish Muslims who were, under various degrees of duress, converted to Christianity at the beginning of the sixteenth century, and continued to live in Spain until the general expulsion of the Moors that occurred from 1609 to 1614. Muslims had been a minority in Christian Spain during the Middle Ages, at which time time they enjoyed a legal status that allowed them to practice Islam, retain their own communal authorities, and be ruled by Islamic Law. This minority was known as the Mudejar. In Castile, the Mudejar population was small, predominantly urban, and highly acculturated. In Aragon and Valencia, the Mudejar population was much more numerous and mainly rural. For the most part, they lived on the estates of large landowners, to whom they owed labor and who protected them from the interference of Church and State. The Mudejars of Valencia spoke Arabic, whereas the Muslims of Castile and Aragon produced a literature known as *Aljamía*, which combined Castilian or Aragonese vernacular with an Arabic script.

In 1469 King Ferdinand of Aragon and Queen Isabella of Castile had wed, uniting their two formerly independent kingdoms. Together they launched measures aimed at the creation of an homogeneous country ruled under a single body of law and loyal to a single religion. Spain became a territorial nation, with new social classes and new institutions. Among these institutions was Inquisition, established in 1478 for the purpose of creating an all-Catholic nation. Jews were the first victims of the homogenizing policies of this new state, for in 1492 they were obliged to choose between conversion to Catholicism and exile. The majority chose exile. In that same year, Castile conquered the

Spain, where the Moriscos (or Moors) experienced religious persecution during the Inquisition and later faced expulsion. [EASTWORD PUBLICATIONS DEVELOPMENT. GALE GROUP.]

Kingdom of Granada, which was the last region in the Iberian Peninsula to be ruled by a Muslim political power. This had enormous consequences for minorities in the whole of Spain.

In capitulating to the Spanish Christian forces, the Moorish population of the Kingdom of Granada was guaranteed certain rights which gave them a status similar to that of the Mudejar. Nevertheless, the upper classes quickly emigrated to North Africa, The Crown encouraged this emigration during the first two years after Granada fell by paying the costs of transport across the Straits of Gibraltar for all those who wished to go, and by permitting the émigrés to take their movable property with them.

The situation deteriorated rapidly after the end of the fifteenth century, however, when new Christian settlers arrived in Granada. In a country in which the state tended to intervene in every aspect of its subjects' lives, society was becoming increasingly intolerant of difference. In February 1502, the Muslims of the Kingdom of Castile (which now included Granada) were offered the choice between conversion or emigration by a decree very similar to the one previously applied to Jews. This time, however, conditions were added which made emigration practically impossible. In 1512 the Castilan decree was extended to Navarre, whose Mudejar communities fled to Aragon (including Valencia), where the practice of Islam remained, for a time, legal. During the Germanías rebellion against landlords and crown (1521–1522), the rebels turned against the Mudejar vassals who supported their lords and subjected them to forced baptism. The validity of these baptisms was contested by theologians, but in 1526 the general conversion of all Muslims in the lands of Ara-

gon and Valencia was decreed. From 1526 on, therefore, no Muslim could legally be a subject of the kings of Spain.

Only their legal status separated Mudejars, who were permitted to practice Islam, from Moriscos, who were forcibly converted to Christianity. Of course, most of the new converts, in spite of missionary efforts, continued to practice Islam in secret. If they were caught they were persecuted by the Inquisition as apostates or as heretics, for, after all, they had been baptized, however unwillingly. Inquisitorial persecution of Moriscos was particulaly intense in the 1550s and 1560s. Inquisition documents reflect the pressure that Christian society exerted upon the Moriscos communities, and its efforts to eradicate all cultural, social, and religious differences. The Crown, in the person of Philippe II, took new and radical repressive measures. In 1567 a law was passed forbidding the spoken or written use of Arabic, the publication or possession of Arabic books, the use of Arabic names, the wearing of Arabic clothing, and the patronage of Arabic bathhouses.

This decree, together with other factors such as the crisis in the silk industry, which employed many Granadan Moriscos, ignited a Morisco rebellion in the mountains of Granada, known as War of the Alpujarras (1568–1570). This was a long and cruel war, with all the atrocities which are inherent to civil wars. The outcome was a difficult and costly Christian victory and the deportation, in the winter of 1569 and 1570, of the entire Morisco population of Granada to the territories of northern Castile. There the Moriscos were settled in small, scattered groups. Many of these impoverished and uprooted Granadan exiles turned to outlawry, and tension between Moriscos and Christians, hitherto unknown in those territories, grew considerably.

The Spanish government grew to fear the prospect that Moriscos might seek to ally themselves with North African pirates, with Morocco, or with the Ottoman Empire. This concern led to a ban on Moriscos residing near the coasts. From 1582 onward, the expulsion of Moriscos was an idea that grew increasingly attractive to the Spanish government. When the final decision to expel all Moriscos was reached in 1609, it was mainly justified on grounds of national security. Moriscos were considered unrepentent Muslims, regardless of their conversion status, and were thought likely to conspire with foreign powers—mainly Muslim, but also with French Protestants. Some Moriscos were Muslims, of course, but by this time many had fully assimilated to Christian society and were sincere Christians. The authorities did not trouble to make such fine distinctions.

Between 1609 and 1614, about 320,000 Moriscos were expelled in phases. The first to be obliged to leave were the Moriscos of Valencia, considered the most dangerous. The last to go were those of Castile. Some communities were directly transported to North Africa via the harbors in the south and east of Spain. Others crossed to France, from where they went (sometimes via Italy) to the Ottoman Empire and Egypt. The majority of Morisco exiles to North Africa settled in Morocco and Tunisia, but some settled in Algiers. In their new countries they had a distinct personality, which was manifest during the first century after their arrival. Most of these first generation of exiles did not speak Arabic, and their knowledge of Islam was scant. Their integration into the societies of North Africa was generally difficult. Only in Tunisia did they find an easy entry, for the Tunisian *Dey* (governor), Uthman, applied a generous settlement policy to these newcomers.

In their new countries, Moriscos tended to settle in small, ethnically homogeneous enclaves near the coasts. Many turned to the sea for their livelihoods, and considerably increased the ranks of the corsairs and pirates that plied the shipping lanes. In the Moroccan port of Sale, a group of Moriscos founded a pirate republic, which maintained its independence for a time. Other Moriscos settled in the agricultural plains of North Africa, where they introduced the irrigational techniques that they had used in spain. They also introduced new crops, some of which had only recently come to Spain from the Americas. Moriscos also settled in the capital cities, near the courts, where their knowledge of Spanish and of European ways helped some of them to become secretaries, interpreters, translators, and ambassadors. Before the end of the seventeenth century, the Moriscos were totally assimilated to North African societies. By the early twenty-first century, only a few family names and some fragments of folklore remained of their once distinctive culture.

SEE ALSO Catholic Church; Ethnic Cleansing; Inquisition; Nationalism

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Mercedes García-Arenal

Music, Holocaust Hidden and Protest

Nazi cultural policies toward the arts were foreshadowed in Weimar Germany, where party spokesmen denounced jazz, the musical avant-garde, and any work by a Jewish composer, regardless of category. With the advent of the Third Reich in January 1933, institutionalized harassment of Jews and antifascists began in earnest. A great many Jewish and politically dissident musicians fled Germany at this time, while those who remained were quickly forced from the public sphere. Facing unemployment and social isolation, a group of Berlin-area musicians, artists, and entertainers led by Dr. Kurt Singer established the *Kulturbund deutscher Juden* (Culture League of German Jews), an all-Jewish performance society, in the spring of 1933. With approval from the authorities (who reasoned the organization would serve to further separate Jews from the cultural mainstream), Kulturbund branches soon thrived in many Germany localities. The Kulturbund at its peak in the mid-1930s supported four orchestras, two opera companies, and several large choirs, each offering a busy schedule of concert events. In the wake of escalating state terror, these programs—in time restricted to Jewish-themed fare—provided respite and spiritual renewal for audience and performers alike. Immigration, deportations, and the onset of war significantly curtailed Kulturbund activities well before the Gestapo shut down the organization in 1941.

Concentration Camps

Songs of resistance from the first Nazi concentration camps (built to imprison Hitler's political opponents) often reflected the inmates' socialist and communist sympathies. The best known of these songs, "Die Moorsoldaten" (The peat bog soldiers), written in August 1933 at the Börgermoor camp by political prisoners Johann Esser, Wolfgang Langhoff, and Rudi Goguel, is emblematic of the repertoire. With lyrics hinting at the Nazis' downfall and a march melody symbolically shifting between the minor and major modes, the song became a model for later resistance songs such as "Dachau-Lied" (Dachau song, 1938), written by two Austrian Jewish political prisoners, and "Fest Steht" (Stand fast, 1942), sung by Jehovah's Witnesses imprisoned for their religious beliefs. Disseminated outside Germany by refugees, "Die Moorsoldaten" became an international symbol of spiritual opposition to Nazi barbarism.

Prisoners' performance ensembles had been established at many camps both before and after the outbreak of war in 1939. Official orchestras at Sachsenhausen, Buchenwald, Auschwitz, and elsewhere accompanied the inmates' forced march to labor and provided entertainment for the camp command. Orchestra members, while compelled to oblige, were often spared the worst hazards of camp life. Music making also took place in secret, with popular, patriotic, and satirical songs offering a measure of diversion and psychological release to prisoners. Such activity, particularly among non-Jewish inmates not prioritized for extermination, may have been fairly widespread: The archive of former Polish prisoner Aleksander Kulisiewicz lists approximately five hundred topical songs and numerous instrumental works originating in thirty-six different camps for the period from 1939 to 1945. This kind of activity was also dangerous. Kulisiewicz, himself the author of many anti-Nazi songs, noted that those caught performing such music risked torture and execution at the hands of the authorities.

Of the Nazi camps, Theresienstadt (Terezín), near Prague, was an exception, a "model camp" where for propaganda purposes the Germans allowed inmates a relatively open and varied cultural life. Drawing on a deep well of Jewish talent from throughout occupied Europe, the camp administration scheduled a full calendar of programs that included opera, operetta, symphony, chamber, and choral concerts. In addition, many gifted artists—among them the cabaret writer Karel Ávenck and composers Viktor Ullmann, Hans Krása, Pavel Haas, and Gideon Klein—produced original works for performance at the camp. Ullmann, whose allegorical anti-Nazi opera *Der Kaiser von Atlantis* (Emperor of Atlantis) was rehearsed but never staged at Theresienstadt, spoke for his colleagues and himself when he proclaimed "our endeavor with respect to the arts was commensurate with our will to live" (Bloch, 1989).

Ghettos

The larger ghettos of German-occupied eastern Europe were scenes of a flourishing if precarious cultural life. Jews crowded into ghettos in Warsaw, Lodz, Vilna, and Kovno could attend concerts by orchestras and choirs of a professional caliber, and recitals by famous singers and instrumentalists, and enjoy cabaret-style entertainment in local cafés. Although archival sources and survivor memoirs indicate that original classical compositions were created and performed in the ghettos, few such works remain extant. However, hundreds of Yiddish songs from dozens of ghettos survive to bear witness to events and personalities that would otherwise be lost. Renowned troubadors such as Jankiel Hersz-

kowicz of Lodz and Mordecai Gebirtig of Kraków, and legions of lesser known and nameless scribes, chronicled ghetto life in songs that addressed the subjects of hunger, smuggling, ghetto "elites," hidden children, deportations, death, and remembrance. Often based on popular prewar melodies, these songs were easily memorized and circulated widely. The documentary value of this repertoire was recognized early on, and published collections began to appear within a month of the Allied victory in Europe. Of these, the anthology *Lider fun di getos un lagern* (Songs of the ghettos and camps), compiled in 1948 by Shmerke Kaczerginski, remains the most comprehensive, with 233 song texts (not all with musical notation).

In the aftermath of World War II the ghetto song assumed a new function as memorial music. Performed at the gatherings of Holocaust survivors and commemoration ceremonies worldwide, the mainstays of this repertoire include "Vu ahin zol ikh geyn" (Where shall I go), with lyrics by the Warsaw writer Y. Korntayer; "Ani Ma'amin" (I believe), a text by Maimonides sung by Hasidic Jews en route to execution; and the partisans' anthem "Zog nit keynmol az du geyst dem letstn veg" (Never say that you have reached the final road), with lyrics by the Vilna poet and underground fighter Hirsh Glik.

SEE ALSO Architecture; Ghetto; Memorials and Monuments; Music and Musicians Persecuted during the Holocaust; Music at Theresienstadt; Music of the Holocaust

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Bret Werb

Music and Musicians Persecuted during the Holocaust

On November 15, 1936, three years after Adolf Hitler came to power, the *New York Times* reported that the statue of Felix Mendelssohn in Leipzig had been destroyed. This violent action clearly signaled that music by composers of the Jewish faith or tradition would no longer be performed in opera houses and concert halls. The great compositions of Salomon Sulzer, Jaques Offenbach, Erich Korngold, Gustav Mahler, Arnold Schönberg, Mendelssohn, and many others were also silenced throughout the Third Reich and Nazi-occupied Europe.

Prior to the destruction of the Mendelssohn statue, Jewish musicians were systematically expelled from concert halls and opera houses throughout German-controlled Europe. In early March 1933, Bruno Walter, one of Germany's most beloved and renowned conductors, had just returned to Berlin after a successful concert tour in the United States. Walter was informed of "certain difficulties" should he decide to follow through with a previously scheduled guest appearance in Leipzig. The management of the concert hall, however, decided to go ahead with Walter's appearance. A few hours before the doors opened, however, the performance was banned. A week later, Walter was to conduct a concert in Berlin's Philharmonic Hall. Again, he was advised to cancel the performance in order to avoid "unpleasant occurrences." What the Nazis meant by that became clear on April 1, 1933, when Nazis boycotted Jewish stores, defaced the storefronts of Jewish-owned businesses, and publicly blackmailed those who continued to shop in stores owned by Germans of the Jewish faith.

From that point on, every week brought further governmental decrees that robbed Jews of their livelihood and their right to German citizenship. Between 1933 and 1939, more than 2,000 conductors, soloists, concert masters, singers, members of orchestras, and musicologists were banned or expelled from stages and teaching positions throughout Germany, Austria, and Poland because they were Jewish.

Many musicians left Europe for the United States. The ramifications of this forced migration were enormous. Europe lost thousands of its best artistic and intellectual minds. For the United States, however, the arrival of European artists meant tremendous enrichment. The distinguished cultural elite made a decisive mark on American institutions of higher learning, and redefined these schools in terms of research, teaching, and performance styles.

Although this process was of decisive benefit to the United States as a whole, the individual émigré, being outside Europe, often endured a marked decline in social status and a loss of identity. The difficulties émigré musicians faced in finding employment is poignantly expressed in a letter by Arnold Schönberg, the most prominent composer of modern tonality. On February 26, 1940, he wrote from his new home in Los Angeles to Adolf Rebner, who was himself trying to eke out a living in Cincinnati: "Dear friend, . . . I am happy that you could escape hell. . . . But it has become rather difficult to procure positions. There are so many gifted people here, though few of your reputation and ability." Even Schönberg's work was considered too obscure in the United States, and he lacked the appropriate contacts to help his former students and associates.

Nazi Germany not only expelled its Jewish artists and intellectuals; it also poisoned the intellectual intimacy of people who had once been professional associates. In 1932, the composer Richard Strauss had asked Stefan Zweig, a poet and novelist of Jewish heritage, to write the libretto for his new opera, *The Silent Woman*. The ensuing relationship between the two men was, according to Zweig, most cordial and harmonious at first. Then Zweig learned that Strauss had assumed the position of president of the official Nazi *Reich Music Chamber*. Zweig later wrote: "To have the most famous musician of Germany align himself with them at so embarrassing a moment [constituted an] immeasurable gain to Goebbels and Hitler." Zweig reproached Strauss for the self-serving "art-egotism" that permitted him to serve such evil masters.

One of the most exceptional and painful aspects of this dark period is the fact that Jewish musicians were forced to perform in concentration camps and for the German SS. Auschwitz is reported to have had six orchestras. One of the musicians was Alma Maria Rosé, Gustav Mahler's niece. A student of her father, Arnold Rosé, she was a renowned violinist. After the annexation of Austria in 1938, she escaped to France. There she was captured, interned, and eventually she was deported to Auschwitz. The orchestra of young female musicians that she founded in Auschwitz is memorialized in *Playing for Time*, a book written by her surviving assistant conductor, the singer Fania Fénelon. We also know of the musicians Henry and Poldek Rosner through their mention in the movie *Schindler's List*. The Rosners were forced to perform for Amon Göth, the commander of the Plaszow concentration camp.

There was also a vibrant cultural life in the camp of Terezin (Theresienstadt). In his book *The Terezin Requiem*, Josef Bor tells of the performance in camp of Verdi's *Requiem*, conducted by Rafael Schächter. Schächter was deported to Auschwitz shortly after the performance. Another important event was the performance of the opera for children, *Brundibar*, by Hans Krasà. Both the Czech composer and the entire cast of children were deported to Auschwitz. Victor Ullmann composed his opera *The Emperor of Atlantis* while incarcerated in Terezin. Ullmann was a student of Arnold Schönberg and was murdered in Auschwitz. The opera had its premiere in New York in 1977.

Also banned were many of the composers and performers of Klezmer music, a popular musical form that originated in the Jewish *stetls* and ghettoes of eastern Europe and celebrated traditional aspects of Jewish life. Similarly, the composers and performers of partisan songs and songs of resistance were murdered as well. Mordecai Gebirtig was one of the most popular balladeers in Poland. He was deported to the Krakow ghetto and killed there in 1942. His song "Our Town Is Burning," written in 1938, became one of the most popular anthems in ghettos and concentration camps.

The number of musicians and composers who perished in the Nazi-run camps will never be known with certainty. However, among them are: the baritone and cantor Erhard E. Wechselmann, murdered in Auschwitz; the contralto Magda Spiegel, murdered in Auschwitz; Richard Breitenfeld, a member of the Frankfurt opera ensemble, murdered in Theresienstadt; James Simon, a student of Max Bruch, murdered in Auschwitz; the Czech composers Pavel Haas and Viktor Ullmann, murdered in Auschwitz; the jazz pianist Martin Roman and the cabaret singer and songwriter Kurt Gerron, murdered in Auschwitz as well.

The creative products of those banned as "Jewish" or "degenerate" belong among the early twenty-first century's most cherished expressions of popular and high culture. Their legacy has generated and intensely personal post-Holocaust oeuvre that continues to enhance our understanding of the infamous years of the Nazi era. Among the composers represented in this body of work are: Krzysztof Penderecki, composer of *Dies Irae* (1967), a memorial to the victims of Auschwitz; Demitri Shostakovich, whose symphony *Babi Yar* (1962) commemorates the victims of the massacre near the city of Kiev; Arnold Schönberg, who wrote *A Survivor from Warsaw* (1947); Francis Schwartz, who created the electronic music piece *Caligula* (1975) with human voices chanting, howling, and groaning; and Charles Davidson, whose *I Never Saw Another Butterfly* (1968) is based on the collection of poetry written by children of the Terezin camp.

SEE ALSO Art, Banned; Music at Theriesienstadt; Music of the Holocaust

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Viktoria Hertling

Music at Theresienstadt

During the Third Reich music played significant roles for Nazi oppressors and their victims. The history of both the Nazi *Entartete Musik* policy and musical activities in the concentration camps is a compelling mixture of terror, inspiration, irony, and surrealism. Ultimately, it was the inspiring determination of artists, particularly those incarcerated in Theresienstadt, which left an enduring musical and social legacy for future generations.

Entartete Musik

The Nazi regime used music, as well as other arts, as a political tool to unify and indoctrinate the German *Volk* (the public). *Entartete Musik* was the name given by the Nazis to a wide variety of composers and musical genres as part of their propaganda machine. *Entartete* (degenerate, a term connoting psychologically abnormal behavior) signified something aberrant about the art, thus perceived as a threat to German society. In addition to educating people about the dangers of degenerate music, the public was also "protected" from cultural pollution by a ban on the performance, recording, and publication of this music. This policy was initially introduced at an exhibit of visual arts, *Entartete Kunst* (degenerate art), displayed in Munich in 1937. The following year in Dusseldorf, music received similar attention in the *Entartete Musik* exhibition.

The *Entartete* program became a policy of censorship that supported the ethnic and political cleansing of German society. The music targeted was enormously varied, as were the lives and backgrounds of the composers. What the Nazis identified in common for all were either elements of jazz, atonal music, or, most insidiously and specifically, any music written by Jewish composers. Simply put, jazz was deemed "Negro" music and atonality bore the subversive influences of the "Jew" and Bolshevism. Racial considerations aside, the compositions of many German composers experimenting with such new musical forms were also targeted. According to this twisted formula, such music was symptomatic of a cancer infecting German culture. The Nazi Propaganda Ministry was determined to "educate" the public about the danger of this music, and to revitalize the concept of a pure German music as exemplified by the work of Richard Wagner and Anton Bruckner.

Some targeted musicians, such as Arnold Schoenberg, Franz Waxman, Berthold Goldschmidt, and Bruno Walter, fled to the United States and United Kingdom to start anew. Others were not so fortunate; many exceptionally gifted artists were imprisoned and eventually murdered.

Theresienstadt

A number of artists who were among the intelligentsia of Western Europe were sent to the Theresienstadt (Terezín in Czech) concentration camp in Czechoslovakia. Theresienstadt functioned not only as a transit camp to the Nazi death camps, but also as a propaganda vehicle designed to deceive the world community about the true nature of the Final Solution. Originally a garrison town of approximately six thousand, Theresienstadt was converted into a concentration camp, growing to a prison population almost ten times that number.

The overcrowding, inadequate medical care, and starvation in Theresienstadt made for intolerable living conditions. Around 120,000 people passed through Theresienstadt; 33,000 would die there. Remarkably, in the midst of horrid living conditions, musical instruments were smuggled in as early as the second transport. At first concerts were held secretly in the attics and basements of the barracks. The performances increased with the mounting number of amateur and professional artists arriving with each transport. This active cultural community included many of Europe's most gifted artists, musicians, and literary figures. On eventually discovering these secret performances, the Nazis realized the great importance of culture to the prisoners, and believed that in allowing such cultural activities, they could more easily contain the Theresienstadt prisoners.

The *Freizeitgestaltung* (Administration for Free Time Activities) was instituted by the Nazi SS command. This Jewish-run organization was responsible

for a wide range of cultural activities for prisoners, including lectures, theater, opera, jazz, cabaret, and chamber music. Amateur and professional musicians formed a variety of ensembles. Egon Ledec, former associate concertmaster of the Czech Philharmonic, established the Ledec Quartet, one of several string quartets and ensembles in Theresienstadt. Kurt Gerron, who was the original "Tiger Brown" in Kurt Weill's *Three Penny Opera* and costarred with actress Marlene Dietrich in *Der blaue Engel* (The Blue Angel), produced cabaret productions. In the realm of jazz and popular music, Martin Roman led the Ghetto Swingers. Czech choirmaster Raphael Schächter directed productions of operas by Wolfgang Amadeus Mozart, Bedrich Smetana, and Georges Bizet. Schächter's most inspiring act of musical resistance was exemplified by his determination to perform Giuseppe Verdi's *Requiem*. Between 1943 and 1944 he and over 150 fellow prisoners rehearsed and performed the requiem 15 times for inmates, and ultimately the Nazi elite. Twice the chorus was decimated by transports to Auschwitz.

Four classical composers emerged among the central creative forces in this extraordinarily rich cultural community: Gideon Klein, Pavel Haas, Hans Krása, and Viktor Ullmann. Before their incarceration these men were active participants in the principal trends of European culture, and were among the gifted students and musical successors of Arnold Schoenberg, Alois Haba, and Leos Janaček. Their works were performed under the direction of such notable conductors as Leopold Stokowski, William Steinberg, George Szell, and Serge Koussevitzky. Deported to Theresienstadt within four months of each other, they were important figures in the *Freizeitgestaltung*.

In one of many of the twisted and surrealistic aspects of Theresienstadt, the imprisoned artists and audience members experienced a cultural freedom impossible in Germany and Nazi-occupied countries. Programs were rarely censored, especially with consideration to the racial criteria of the degenerate policy.

The Nazis attempted to portray Theresienstadt as a *paradeis ghetto* (paradise ghetto) to the outside world. This was highlighted in the summer of 1944 with the carefully orchestrated inspection by the International Committee of the Red Cross (ICRC) and the production of a propaganda film entitled *Der Fuehrer schenkt den Juden eine Stadt* (The Führer Gives the Jews a City). Theresienstadt was superficially beautified with an outdoor concert pavilion and fake storefronts. During the staged Red Cross visit, Krása's children's opera *Brundibár* was performed, and a scene from the opera was shot for the Nazi propaganda film. Theresienstadt's prisoners—children and adults alike—were forced to produce and participate in the film, which was directed by Gerron. The film also included a sham performance of Haas's *Study for String Orchestra*, (with the narrator asserting: "Musical performances are happily attended by all. The work of a Jewish composer in Theresienstadt is performed"). Shooting of the film ended in September 1944. Within a month most of Theresienstadt's cultural establishment, including Gerron and Haas, were deported to the gas chambers of Auschwitz.

For almost half a century the music and history of these artists, whose careers and lives were cut short by Nazi policies, have been absent from concert halls and mainstream musical consciousness. The reemergence of these composers represents a significant addition to humankind's understanding and appreciation of twentieth-century classical music. In the face of the Final Solution the history of these artists is poignant testimony to their determination and creative legacy.

SEE ALSO Music, Holocaust Hidden and Protest; Music and Musicians Persecuted during the Holocaust; Music of Reconciliation; Music of the Holocaust

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Mark D. Ludwig

Music Based on the Armenian Genocide

The Armenian genocide (1915–1923) reportedly took the lives of over 1.5 million Armenians and is considered by many to be the first genocide of the twentieth century. Despite the Turkish government's general denial of the event, for the Armenians this period in history is an omnipresent source of pain and historical consciousness that finds itself expressed through literature, art, and music. Three overarching areas of Armenian

music have been infused by the genocide: (1) Armenian music history and the work of Armenian musicologist Komitas Vardapet; (2) the style and content of some Armenian songs that validate the experience of the Armenian genocide; and (3) religious ritual performances for the preservation of Armenian identity in the diaspora.

Komitas Vardapet and the Armenian Genocide

In terms of Armenian musical history, the genocide profoundly affected musicologist Komitas Vardapet, who is regarded as the father of Armenian national music. Born Sogomon Soghomonian in 1869, Komitas, renaming himself after a seventh-century writer of hymns, studied music in Berlin and transcribed Armenian folk songs during the reign of the Ottoman Empire. As a participant in the International Musical Society Congress in Paris (May–June 1914), he introduced the music of Armenia to the Western world. On orders from the Ottoman government, he and other Armenian scholars were deported to the interior of the country. Komitas suffered a breakdown, and from 1919 until his death he lived in a mental hospital in Paris. As a result, much of his groundbreaking work was lost. Despite this the Arts Institute of the Armenian Academy of Sciences has published six volumes of his musicological works. His *Armenian Sacred and Folk Music* (1998) includes eight original essays, and has provided much of what is known about Armenian music in general.

Songs as Oral History

Historical validity is often conferred by written texts or other visual means, that is, newspapers and photographs. Oral history can also be an exceedingly important source of historical evidence and allow for truthful descriptions of general conditions. Jan Vansina states in his *Oral Tradition As History* that "the expression 'oral tradition' applies both to a process and to its product. . . . The process is the transmission of such messages by word of mouth over time until the disappearance of the message" (Vansina, 1985, p. 3). By passing down songs, the Armenian people have, in fact, cemented the Armenian genocide's place in history.

The most significant work linking the genocide directly to music is Verjine Svazlian's *The Armenian Genocide in the Memoirs and Turkish Language Songs of Eye-Witness Survivors* (1999). In the 1950s Svazlian began transcribing and recording the memoirs and interviews of survivors of witnesses to the Armenian genocide. She characterized these songs as follows:

1. Created under the immediate impression of specific historical events on the western segment of the Armenian people, these songs are saturated with historicity.
2. Similar songs have been simultaneously created, in different variants and modifications.
3. Although the songs have been created in the Turkish language, they are, however, of Armenian origin (Svazlian 1999, p. 10).

For example, the testimonies of Serpoohi Makarian (b. 1903) and Mikael Keshishian from Adana (b. 1904) recall the horror of the events:

Hey, cedars, cedars, variegated cedars,
The resin drips every time the sun strikes,
Alas! Adana River is full of corpses and blood,
Behold! I've come to see you, slaughtered Adana,
Alas! I've seen you, massacred children (Svazlian, 1999, p. 11).

This song depicts the beginning of the genocide, "when young Turks feverishly prepared the total extermination of the Armenian people waiting for a propitious occasion" (Svazlian, 1999, p. 11). Later in the same work Svazlian provides songs characterizing the experiences of those who were pressed to walk the "death road":

Green grass did not grow in the desert of Deyr-el-Zor,
Fifty thousand persons were shot down,
The people's teeth fell down from affliction,
Armenians dying for the sake of faith!
(1999, p. 20)

Here the Christian faith becomes a shining badge of "Armenianness." Having embraced Christianity in the fourth century CE, Armenia is regarded by many as the first Christian nation. In the very name of faith, Svazlian reports that the following song recounts the torture inflicted on Armenians in the town of Marash:

Marash is called Marash, alas!
Marash, how do they call you Marash?
When they burn a church in Marash,
And they burn Armenians in the church.
(1999, p. 33)

These are but a sample from the vast collection of ethnographic songs that Svazlian assembled. The songs are memorials to the many who perished—in the writer's own words, "the Armenian folk memoirs and the Turkish-language songs entrusted to the generations, become owing to their historico-cognitive value, testimonies, artistic, yet reliable, objective and evidential documents illustrating, in a simple popular language, the historic events and the Armenian Genocide" (1999, p. 36).

Sacred Music: Preserving Armenian Identity in the Diaspora

Armenians have maintained much of their history through the ritual performance of their Christian faith throughout the diaspora. The Armenian liturgy and its music comprise the *Badarak* (Mass) and the *sharagan* (hymns) sung at the services, also called offices, and the *sharagan* sung for the sacraments. Sung in the classical Armenian language of *Graber,* the music lends spiritual meaning to the text of the *Soorp Badarak* (Divine Liturgy) or Holy Sacrifice. With the participants gathering for the liturgy, their performance becomes an active expression of communal identity, evoking their worldview, which is a direct reflection of their religious belief system as well as the event that brought many of them to the diaspora—the Armenian genocide. If music is then considered in ritual contexts, one can look at it not only as an integral part of the liturgical performance, but also as a way of maintaining historical identity.

If music is a sign of a people, then without a doubt Armenian music may be regarded as a referential idiom—embodying meaning that extends the purely musical to that of memory, history, and identity.

SEE ALSO Armenians in Ottoman Turkey and the Armenian Genocide

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Jonathan McCollum

Music of Reconciliation

In Rwandan history and society, music has always played a very important role. In this society, where history has been kept through spoken rather than written words, music has been one essential tool of keeping memory alive. However, music has been used in both a negative and positive way. During the 1994 genocide, music was used to initiate hatred and terror against the Tutsi minority and Tutsi-friendly Hutus. The rhythm of hate speech was broadcast daily on Radio Television Mille Collines (RTMC), a popular, nationalist-oriented but unofficial Hutu radio station based in Rwanda's capital city, Kigali. RTMC offered music that was not allowed to be played on official radio, including extremist nationalist folk music by Hutu singers. Lyrics dealt with the superiority of the Hutu race and encouraged people to kill their Tutsi neighbors. A single extremist song might be played ten or fifteen times a day, so people could learn its lyrics by heart. During the 1994 genocide, the role of music used in this manner had been to incite hatred and separation within communities.

The sound of music, its lyrics and rhythms, is used in to achieve the opposite goal—to bring together communities that had once been driven apart. For instance, in 2002, Rwanda's government, under President Paul Kagame, established traditional courts to hear the trials of genocide suspects. In support of this effort, the radio aired a folksong with lyrics such as, "Now, here they are: the *Gacaca* tribunals. The tribunals, which should help to strengthen reconciliation and unity." The song explains the idea of the popular courts and their procedures to listeners, and exhorts the people to cooperate: "My dear fellow countryman, witness of the tragedy without name. Tell the truth. Tell who is innocent and who is guilty." Most such songs are broadcast on national radio, Radio Rwanda, as part of a campaign to sensitize the population of the upcoming court procedures.

During the actual court hearings, music has been used by the suspects to ask the audience for merciful treatment. Usually, the prisoners, dressed in rose-colored prison uniforms, start to dance and sing together before the start of the hearing. They sing about what they have done and ask the survivors and families of the victims for forgiveness. In other cases, prisoners sing about being wrongly arrested and they plead their innocence. When the singing ends, the actual court

proceeding starts. Singing and dancing is here seen as one way of building a bridge between perpetrators and victims.

Another way that music is used in reconciling the communities torn apart by genocide is found in the government-sponsored reintegration or solidarity camps. Under the supervision of the Rwanda Demobilization and Reintegration Commission and the National Unity and Reconciliation Commission, these camps were installed to prepare surrendered or captured combatants from armed groups for their return to civil society. These former members of the Forces Armées Rwandaises and Interahamwe militias carried out most of the 1994 Rwandan genocide and fled to neighboring countries after the fall of the regime. On their return to Rwanda they are required to stay in a solidarity camp for several weeks, during which time they receive counseling, medical screening, and psychological treatment. They are also taught—and are required to sing—songs with lyrics like: "We are no Hutus, we are no Tutsis. We are all Rwandese now." Most of the camp songs are about peace, unity, and how to live together. Through these songs, former soldiers are asked to learn the new framework of the state: a reunited, reconciled Rwanda.

The benefit of using music in order to overcome a difficult past is especially important while reaching out to young people. The youth of Rwanda have suffered greatly from the genocide. Many youngsters, especially those from a poor background, were recruited by the militias at the time of the genocide. According to World Bank figures, there were more than three thousand former child-combatants who had to be reintegrated into society. Most of them had to learn how to live as children again. They were sent to special camps and schools, where they were undergoing sensitization and counseling activities.

Singing and dancing have been used with good effect to help these children to cope with their difficult past. In 2004 many of them, as well as the thousands of children who lost their families to the slaughter, still live in orphanage centers throughout the country. Music projects involving modern dance or hip hop music have been set up to give young people their own voices and to help them overcome the traumas of their past. All forms of artistic expression—theatre plays, music bands, dancing—have been integrated into projects by various non-governmental organizations working in Rwanda as well. The Kimisagara Youth Centre on the outskirts of Kigali, for instance, offers children and teenagers singing and dancing classes in which they can talk about their past and their future.

Music can strengthen unity and reconciliation, but it has to be seen as only one aspect within a wider framework of understanding and overcoming the legacy of the Rwandan genocide. It is not by singing, "We are all Rwandese now" that the history of the genocide can be properly commemorated. Critics of the government's reconciliation strategies have already made this point by demanding that the lessons of recent history must be learned in order for all of Rwanda's citizens to learn to live together again. However, music can contribute to opening the hearts and minds of the people: it can play a role in reaching out to victims, survivors, and perpetrators, and it can help to keep the memory of the past and the hope of a better future alive.

SEE ALSO Hate Speech; Music, Holocaust Hidden and Protest; Music and Musicians Persecuted during the Holocaust; Music of the Holocaust; Propaganda; Radio Television Mille-Collines; Reconciliation; Rwanda

Tania Krämer

Music of the Holocaust

From 1933 to 1945 Nazi ideologues devised and implemented schemes whereby music could be used to further their goals. Their propaganda promoted the idea of German superiority in the art of composition and the inferiority of any music touched by Jews.

For centuries many German non-Jews had considered Jews to be culturally inferior. In his article "Das Judenthum in der Musik" (Judaism in Music), the composer Richard Wagner wrote, "The Jew speaks the modern European languages merely as learned, and not as mother tongues. This must necessarily prevent him from any capability of therein expressing himself idiomatically, independently and comfortably to his nature. Our entire European art and civilization have remained a foreign tongue to the Jew" (1850/1995, p. 84). Wagner also decried the influence of Jewish conductors and music critics: "The Jew . . . has been able to reach the rulership of public taste in the widest spread of modern art forms, especially in music" (1850/1995, p. 87).

Eighty years later Adolf Hitler wrote, "I have the most intimate familiarity with Wagner's mental processes. At every stage of my life I come back to him" (Rose, 1992, p. 182). Indeed, the Nazis carried out Wagner's theories in a way that had never been done before. In 1933 the *Reichsmusikkammer* (National Ministry of Music) introduced a succession of policies aimed at protecting Aryan culture. All Jewish music teachers, performers, composers, and musicologists were expelled from their posts. Music composed or performed by Jews was banned from concert programs and

broadcasts; their recordings and sheet music were removed from stores; textbooks were revised to remove offending references to their accomplishments. In 1938 Hans Ziegler organized an exhibit of degenerate music (*Entartete Musik*) in Düsseldorf. Visitors to the exhibit could see and hear examples of what Ziegler called "the artistic aspects of Cultural Bolshevism . . . and the triumph of Jewish impudence" (Levi, 1994, p. 96).

The Nazis also used music to control prisoners in concentration camps. An orchestra of Jewish inmates was created to play joyous music to distract new arrivals as they disembarked from trains and awaited selection, and to perform rousing marches to energize prisoners as they marched off to forced labor. The performers were rewarded with extra rations of food, better clothing, and more humane living conditions; they were temporarily spared from the murderous work details and the crematorium itself.

In one camp the Nazis organized extensive musical activities. In November 1941 the Nazis evacuated Theresienstadt (in Czech Terezín) and transformed that ancient walled city into a huge holding pen for the Jews of Czechoslovakia until they could be shipped to death camps. At first the Nazis organized cultural activities to promote calm among ghetto residents and to distract them from their fate. However, a year later they decided to use Theresienstadt as a "model camp," a facade to hide the truth of the extermination of European Jewry. There were choirs, chamber ensembles, orchestras, opera companies, a cabaret, and a jazz band called the Ghetto Swingers. The Nazis allowed inspectors from the International Committee of the Red Cross (ICRC) to visit Theresienstadt, where they were shown gardens, schools, concerts, and cafés. The prisoners' performances were even featured in a Nazi propaganda film. But, in fact, of the 140,000 men, women, and children who were sent to Theresienstadt, only 11,000 survived.

Composition and performance thrived at Theresienstadt, not merely because it was enforced, but because it provided spiritual uplift. Ghetto residents eagerly participated in various activities, led by some of Europe's most prominent composers and performers, including Karel Ancerl, Karel Berman, Pavel Haas, Gideon Klein, Paul Kling, Hans Krása, Rafael Schächter, Zikmund Schul, and Viktor Ullmann. Ullmann declared, "Terezin served to enhance, not to impede, my musical activities. By no means did we sit weeping on the banks of the waters of Babylon. Our endeavor with respect to Art was commensurate with our will to live" (Bloch, 1979, p. 162).

Jews also used music as a means of protest, satire, and warning. At Theresienstadt Ullmann and Peter Kien collaborated on *Der Kaiser von Atlantis* (The Emperor of Atlantis), an opera that satirized Hitler and the Nazi death machinery. A pogrom in the village of Przytik inspired the Polish singer Mordecai Gebirtig to compose "Es Brent" (It's Burning), a song that warns of the dangers of passivity in the face of oppression. In the Sachsenhausen concentration camp, Martin Rosenberg wrote "Jüdischer Todessang" (Jewish Death-Song) for his clandestine chorus of twenty-five prisoners when they were about to be sent to the Auschwitz death camp. Rosenberg hoped that his song would survive and thus inform the free world of this horror.

For others music served as a means of expressing unbearable sadness. Mothers sang lullabies to their children not only to soothe the youngsters' spirits, but also to be unburdened of their own anguish. In songs such as "Shtiller Shtiller" (Quiet, quiet) or "Nit Keyn Rozhinkes" (No more raisins), a disturbing mixture of comfort (addressed to a baby) and despair (spoken to oneself) exists.

Those who wished to maintain their faith and hope developed their own songs, too. Even in the face of death, some Jews sang of their ultimate faith in God and the goodness of humankind with "Ani Ma'amin" (I believe) and "Zol Shoyn Kumen Di Ge'uleh" (Let our redemption come soon). And throughout Europe Jews found courage in the words of Hirsh Glick's partisan anthem "Zog Nit Keyn Mol" (Never say this is the end).

Music also served as an antidote to the dehumanizing tactics to which the Jews were subjected. While Nazis were branding them as subhuman, Jews used music to affirm their humanity. When they were barred from attending public concerts, they formed their own orchestras. When they were prohibited from leaving their homes at night, they organized clandestine concerts there. In the Vilna (Vilnius) ghetto Jewish musicians, artists, writers, and poets formed the Literary Artistic Circle, which met nearly every week throughout the war for lectures, discussions, and concerts. They declared, "Our bodies may be enslaved, but our souls are not." Music allowed the condemned to cling to life. As Theresienstadt survivor Greta Hofmeister stated so eloquently, "Music! Music was life!" (Karas, 1985, p. 197).

SEE ALSO Music, Holocaust Hidden and Protest; Music and Musicians Persecuted during the Holocaust; Music of Reconciliation

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Joshua Jacobson

Namibia (German South West Africa and South West Africa)

Prior to the establishment of German South West Africa in 1884, a number of African states and peoples, including the Herero and Ovambo, had established themselves within the territory that would eventually become the Republic of Namibia in 1990. By the early 1840s Oorlam raiders, who had originated on the Cape's colonial frontier in what is presently South Africa, governed a string of small but highly centralized multiethnic polities in southern and central Namibia. In so doing, they conquered and incorporated the Khoisan-speaking Nama communities that had existed there before.

In the late 1860s, as Oorlam hegemony in central and southern Namibia crumbled, disenfranchised Basters (the term used to refer to the descendents of Africans and Europeans) from the Cape Colony trekked into central Namibia and established an independent Trekker republic centered in Rehoboth on the southern fringes of Hereroland. Alarmed by the establishment of this republic, Herero chieftains appealed for the establishment of a British protectorate over central Namibia. In 1876, anxious not to incur any excessive costs, Britain declared a protectorate over the immediate environs of Walvis Bay.

The late 1870s and early 1880s saw the reemergence of Nama polities in southern and eastern central Namibia. In southern Namibia, Hendrik Witbooi, the son of the chieftain of Gibeon, claimed to have received a vision from God, which instructed him to trek north with his followers to a promised land. As Witbooi trekked north, he and his followers were ambushed and driven off by Herero. As a result of this attack, Witbooi unleashed an unrelenting guerrilla war on the Herero. At the same time a German entrepreneur, Adolf Luderitz, sought to acquire land rights along the Namibian coast. In early 1884 the imperial German government granted protectorate status to lands acquired by Luderitz by means which it knew to be fraudulent. Shortly thereafter Germany annexed the Namibian coast, with the exception of Walvis Bay, from the Orange River in the south to the Cunene in the north. To fulfill the conditions agreed to at the Berlin conference in 1884, German officials were sent to central Namibia in 1885 to sign protection treaties with Namibian leaders. In the immediate aftermath of an attack by Witbooi forces, Maharero Tjamuaha, the most powerful of the Herero chiefs, agreed to sign a protection treaty with the Germans. Although the treaty proved to be ineffective in terms of protection, and the Herero annulled it and expelled the German officials from their territory in 1888, it proved to be the basis for further German involvement in Namibia.

In 1889 German troops landed at Walvis Bay and seized control of the trade routes leading from the coast into the interior. Thus cut off from arms and under continual attack from Witbooi's forces, the majority of Herero withdrew from central Namibia. In 1890 Tjamuaha died. In the ensuing succession dispute his son, Samuel Maharero, was able to mobilize German support against his Herero rivals, as well as the forces of Witbooi. In 1894 the future German governor, Theo-

Map of Namibia. It was not until 1988 that South Africa agreed to end its administration of the area. Independence for Namibia came in 1990 following multiparty elections. [EASTWORD PUBLICATIONS DEVELOPMENT]

dor Leutwein, arrived in the territory. Through a mixed policy of divide and rule, and cooperation with a number of local chiefs at the expense of others, Leutwein was able to expand German control over the territory to the south of the Etosha pan. The rinderpest epidemic and ensuing drought and famine of 1897 and 1898 shattered the pastoral and pastro-forager economies of the indigenous communities of Namibia. Chiefs, who in the past had already sold large tracts of land to European settlers, were forced to sell more of their land and supply a greater number of their subjects as laborers to the new colonial economy.

In early 1904, following a series of misunderstandings, war broke out. Under the command of General Lothar von Trotha, the German army waged a genocidal war against the Herero. An estimated 80 percent of the Herero died as they were summarily hung or shot, driven to die of thirst in the *Omaheke* region of the Kalahari desert, or incarcerated in concentration camps. At the same time that a *Vernichtungsbefehl* (extermination order) against the Herero was issued in October 1904, the Nama chieftains in southern Namibia, under the command of Witbooi, waged war against the Germans. Nama survivors were also driven into concentration camps, deported to Togo and Cameroon, and forced to work as laborers under harsh conditions. An estimated 75 percent of the Nama were killed, and though some Nama leaders continued a guerilla war until 1908, the Nama, too, were defeated. After the war all Nama and Herero above the age of eight had to wear numbered metal tags, were prohibited from owning cattle or land, and were constrained within a web of inhumane labor laws.

Independent African chiefs and chieftains ceased to exist in German South West Africa. Bureaucrats euphemistically referred to the destruction of Nama and Herero societies as having been dissolved (*aufgelöst*). German civilian administrators, in view of labor needs within the colonial economy, opposed the wholesale extermination of African societies, but were overruled by the military and the German emperor, Kaiser Wilhelm II.

German administrators attempted to establish a single amorphous African working class bereft of, and indeed prohibited from having, an ethnic and cultural identity beyond that deemed acceptable to the colonial state. Lands cleared of African occupants were allocated as ranch lands to German settlers, many of whom had served as soldiers in the Herero and Nama wars. In 1908 diamonds were discovered in southern Namibia, and along with the already established copper and zinc mines in northern Namibia, this led to a blossoming of the Namibian colonial economy. An extreme shortage of labor in the colony due to the wars resulted in the recruitment of a large labor force from the northern territory of Ovamboland. There a rising population, declining hunting and export opportunities, as well as frequent battles with the Portuguese colonial armies in southern Angola, had led to economic hardship and impoverishment.

In the context of World War I, troops from the Union of South Africa invaded Namibia in 1915 and defeated the German troops. With the end of German rule in the territory, thousands of Herero and Nama left their sites of employment and migrated back to their ancestral homes. Ovambo, fleeing south in the face of extreme drought in Ovamboland, replaced them as the labor force. Anxious to extend their control over Ovamboland, something that Germany had not done, Union forces defeated and killed Mandume, the Kwanyama king in 1917.

By 1918 Nama and Herero had reacquired substantial herds of cattle and were able to pressure the new South African administration into assigning reserves to them. Following the Treaty of Versailles, Namibia was granted to South Africa as a class C mandate; while legally separate, in reality it became a fifth province of the Union of South Africa.

Throughout the 1920s South Africa sought to strengthen its hold over Namibia, in part through the resettlement of Afrikaner families on newly created farms in central Namibia. African resistance to the continued dominance of German missionaries in their churches led the majority of the Herero and Nama to establish independent Ethiopian churches. Dissatisfaction with the new South African administration meant that organizations such as the Universal Negro Improvement Association (UNIA), as well as the Industrial and Commercial Workers Union of South Africa, were able to quickly and extensively mobilize in the territory. However, airplanes and brute force crushed all serious opposition, such as the Bondelswarts revolt in southern Namibia in 1922, the Rehoboth rebellion in central Namibia in 1924, and the Ukuambi revolt under Ipumbu in northern Namibia in 1935.

Although Namibian soldiers had died fighting fascism in World War II, this did not prevent the election of the Nationalist Party in the 1948 South African elections. Intent on acquiring Namibia as a fifth province, the South African government sought to convince the outside world that Namibia's population had agreed to their formal incorporation into the Union of South Africa. Hosea Komombumbi Kutako was able to successfully mobilize opposition to the intended annexation of Namibia. In one of its first acts after being created, the United Nations (UN) rejected South Africa's claim, but South Africa prohibited a UN commission from visiting the territory and prevented Herero delegates from presenting the Nambian case to the General Assembly.

In the 1940s the African Improvement Society, a direct descendent of the UNIA, was founded primarily among Herero intellectuals. It was partly from these same ranks that in 1959 the South West African National Union (SWANU) evolved. In Cape Town Ovambo migrant laborers, inspired by the Congress movement in South Africa, formed the Ovambo People's Congress. In 1958 OPC leader Andimba Toivo Ja Toivo was deported to Namibia, where in 1959 he founded

the Ovamboland Peoples Organisation, which later became the South West African Peoples Organisation (SWAPO).

In keeping with apartheid legislation, the South African administration set about clearing so-called black spots; Africans were cleared off lands and deported to new so-called homelands and locations. In December 1959 more than ten people protesting their forced removal from the capital city of Windhoek were shot. In the ensuing crackdown many SWANU and SWAPO members fled the country. Undaunted, the South African administration continued its apartheid policies and established the Odendaal Commission, which recommended "further extending apartheid throughout the Territory and to make it the basic political, economic and social principle of South Africa." In 1966 SWAPO guerrillas entered northern Namibia and an armed struggle against South African rule began. In 1971 and 1972 wildcat strikes in the mining industry marked a turning point in the territory itself.

In 1973 some one hundred member states of the UN, with the notable exception of a few European states and the United States, adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid. With the independence of Angola in 1975, SWAPO forces became more effective. This, coupled with the continued petitioning activities of SWAPO at the UN, forced the colonial administration into reaching an internal settlement advantageous to South Africa.

The South African administration organized the Turnhalle Conference beginning in 1975. Namibians appointed by the South African powers to serve as representatives of administration-defined ethnic communities were expected to form the local authorities within the constraints of apartheid. Petty apartheid laws, such as the mixed marriages act were abolished, yet legislation continued to be applied on the basis of race. Control and ultimate power remained in the hands of the newly appointed South African administrator general.

In 1977 all Namibian men above the age of seventeen became eligible for conscription in the South West African Territorial Force, formed as a South African proxy force in the territory. By 1980 there were an estimated 80,000 men bearing arms in the service of the South African government in a territory populated by little more than a million people. An estimated 100,000 Namibians fled to neighboring states. Operating out of northern Namibia, South Africa sought to eliminate SWAPO bases in southern Angola and became directly involved in the Angolan civil war. Northern Namibia was transformed into a war zone in which all forms of civil government and administration were ended and made subservient to the South African military.

In the war both sides committed numerous human rights abuses. South African forces, which ranged from regular conscripted soldiers, to shadowy para-militaries and officially sanctioned death squads, freely roamed northern Namibia and southern Angola. In cross-border raids South African forces targeted refugee camps and killed thousands of civilians. Within the war zone thousands of people were detained without formal charge and were tortured. Thousands more were forced to move from their homes. In this manner the whole of the northern strip of Caprivi was cleared of its civilian population. No less than 10 percent of the Namibian population fled into exile, and thousands of people disappeared without a trace. During the course of South Africa's Truth and Reconciliation Commission meetings, it was revealed that many people captured and detained without charge or trial in Namibia and southern Angola had been thrown out of aircraft into the Atlantic Ocean. In addition, many others had been summarily executed and left in the bush, or buried in unmarked graves.

The People's Liberation Army of Namibia (PLAN), the military wing of SWAPO, also committed human rights abuses in its operations from bases in Angola and Zambia. In internal feuds and spy-scares, hundreds of SWAPO members were detained, tortured, and killed. In the interests of propaganda hundreds of young recruits were sent to their certain death on military operations doomed to failure. Within the organization all forms of dissent were prohibited and silenced. As with the thousands of missing attributed to South Africa, many hundreds of Namibians who were detained by SWAPO are still unaccounted for.

Between 1977 and 1989 the Namibian economy went into decline, and the country's gross domestic product, an estimated $1 billion, barely covered the annual military expenditure. At the same time the South African economy continued to decline, in part because of international boycotts and sanctions. Social expenditure was equally high; in 1986 an estimated 2,500 white South African soldiers lost their lives—this coupled with continued urban unrest in South Africa served to bring about less and less support for government policies from the white electorate. In 1988 Angolan government forces, supported by Cuban forces and SWAPO guerrillas, were able to turn the tide and inflict a heavy defeat on South African forces at Cuito Cuanavale in southern Angola.

In April 1989, on the basis of UN Security Council Resolution 435, the United Nations Transition Assistance Group (UNTAG), operating in conjunction with

the South African administrator general, took over the administration of Namibia. A UN-supervised ceasefire got off to a shaky start as UNTAG forces were unable to confine South African forces to base and prevent them from attacking SWAPO guerrillas seeking to report to UNTAG forces. Subsequently, elections under UN monitoring took place. SWAPO won 57 percent of the vote and representatives were chosen for an assembly authorized to draft and adopt a constitution guaranteeing minority, property, civil, human, and religious rights. South African troops were withdrawn, and on March 21, 1990, Namibia gained its independence as the South African flag was lowered and the new Namibian flag raised in the national stadium.

Independent Namibia has been largely peaceful and able to establish good relations with its neighbors. Walvis Bay, Namibia's sole deep-water harbor, was handed over to Namibia shortly after independence and is being developed as a free trade zone. Following independence, tourism expanded with an average annual growth of 30 percent. Together with relative industrial stability and continued investor confidence, this ensured the Namibian economy showing an average growth of 2 percent in the first five years of independence. Unfortunately, since the elections in 1995, the rule of law in Namibia has come under increasing threat. In 1996, without parliament's approval, soldiers of the Namibian Defence Force (NDF) were deployed in the war in the Democratic Republic of Congo. That same year the Special Field Force (SFF), a Namibian para-military force of demobilized PLAN fighters, started operating in northern Namibia and southern Angola. More often than not, SFF operated beyond the rule of law, with numerous documented cases of murder, torture, rape, and detention without trial. In 1996 the Namibian government entered into a dispute with Botswana regarding the delineation of their common border. In 1998 the regional government of Liambezi (formerly Caprivi) sought refugee status in Botswana, and in 1999 a political uprising in Liambezi was brutally suppressed by NDF and SFF forces. Human rights organizations have reported the reestablishment of detention centers, and there are numerous reports of detentions without trial. Another major problem is land distribution—over 85 percent of arable land remains in the hands of white settlers or their descendants, creating hardship and resentment.

The territories and peoples incorporated within the republic of Namibia, formerly known as South West Africa, have a long and troubled history of human rights abuse and ethnic conflict. As of 2004 Namibia stands at a historical juncture: It may descend even further into a spiral of even more blatant human rights abuses, or return to the stability and rule of law that were attained with independence in 1990.

SEE ALSO Apartheid; Herero; Historical Injustices; Slavery, Historical; South Africa

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Jan-Bart Gewald

National Groups see Ethnic Groups; Minorities.

Nationalism

The twentieth century has been defined as the century of nationalism and genocide. How intense is the relationship between the two, given the fact they so often tend to occur simultaneously? Nationalism is the doctrine that "the rulers should belong to the same ethnic (that is, national) group as the ruled" (Gellner, 1983, p. 1). The doctrine assumes that a ruler belonging to an alien nationality or ethnic group is not fully legitimate. However, the inverse formula is a sure recipe for ethnic cleansing, mass deportation, and genocide: to claim that the inhabitants of a specific constituency must share the same ethnic lineage as its leaders is effectively to give full legitimacy to the mass expulsion of different ethnicity and the drastic redrawing of boundaries to suit the group's pedigree. Nationalism also holds that "nation and political power should be congruent" (Gellner, 1983, p. 1). This longing for con-

gruence, or ethnopolitical purity, is the historical hallmark of most nationalist attempts to erase ethnic distinctiveness by homogenizing entire populations.

Nationalism is a modern Western phenomenon that has mutated and adapted its chameleonic shape according to geography and history. Industrialization, accompanied or preceded by state militarism, changed the shape of the world forever. Nationalism in the post-industrializing era was most often accompanied by assimilationism and the elimination of minorities. The very assimilationist (hence intolerant) nature of the modern state has created the preconditions for turning its unprecedented powers against hapless minorities. Thus, the modern itinerary of genocide follows the spread of nationalism and modernity.

However, nationalism in itself cannot account for the worst episodes of genocide. Nationalism can only become fully lethal if it is infused with the power of the modern state. It is ultimately state power, with its repressive, bureaucratic, media, and military machine, that can account for the most tragic occurrences of genocide. Among other things, state institutions can define the criteria of citizenship. If the state's definition of citizenship is based on ethnicity, it can provide the basis for inciting intolerance, crimes against humanity, and even genocide.

The connection between Westernization, modernity, war, and genocide has become well established in academia. All of these terms are strictly related to both state formation and nationalism. Many Holocaust scholars describe genocide as an entirely modern phenomenon, with its unprecedented systematic technological dimension. Leon Poliakov, in his 1974 volume, *The Aryan Myth*, argued that the Nazis envisaged the Holocaust as a triumph of Western civilization, the latter being conceived in terms of racial superiority against spurious Oriental, non-Western influences. Genocide is therefore intensively related to European state expansion and interstate rivalry, including the state's intrusion into the private realm via the consolidation of central power. Patriotism and nationalism provided the state with its ideological glue and emotional underpinning.

The earliest avatar of this tragic trend was probably the Armenian genocide. Systematic pogroms had already occurred between 1894 and 1896, when Westernizing nationalism emerged as an influential force among Turkish elites. But the mass extermination campaigns that took place between 1914 and 1916 were unprecedented by any standard, and were the direct consequences of rapidly modernizing state structures emulating Western models in the wake of the Ottoman Empire's collapse. Young Turk army officials fought against victorious nationalist uprisings in the Balkans and ended up imitating them, while forging links with German and other nationalisms. In addition, the Young Turks' nationalist movement was inspired by, and mimicked, its post-1789 Western archetypes. Paradoxically, the main victim's of Turkey's secular and anti-Islamic nationalism were non-Muslim minorities that had previously enjoyed protection and prosperity under the more liberal consociational laws of the Ottoman Empire.

Historically, genocide occurred in the wake of both imperial expansion and its disintegration. Even before the conquest of the Americas, the fate of the indigenous Guanches of the Fortunate Islands (present-day Canaries) anticipated a pattern of European expansion leading to cultural destruction, environmental collapse, and physical extermination. Downsizing semi-authoritarian states or contracting autocratic empires, such as the French in Algeria during the 1950s or the Ottoman Empire in its death throes, also occasionally display genocidal behavior.

Typically, genocides have been carried out by modern totalitarian regimes (the Nazis, the Soviet Union, Saddam Hussein in Iraq, the Khmer Rouge in Cambodia) and authoritarian states (post-Ottoman Turkey, Slobodan Milosevic's Serbia, and Vladimir Putin's Russia). Most of these have used a patriotic defense of national security to justify the extermination of minorities. Dehumanization and demonization of the ethnically defined "other" are recurring harbingers and symptoms of genocide: "seeing or treating the other as a threat is . . . an intrinsic part of the process of genocide" (Rummel, 1994, p. 40). In the nationalist *Weltanschauung*, the main internal threat comes from the ethnically different, whether assimilated or not. Moreover, nationalist history typically attempts to erase all evidence that implies complicity in genocide, while exaggerating the pain that the ethnic in-group has had to undergo in one's own nation. Revisionism, denial, and a general temptation to forget inconvenient historical facts are therefore in-built into nationalist historiography.

Modern genocides and inter-ethnic wars are rarely, if ever, directed against wholly differentiated groups. With the exception of the Roma and several indigenous victims of imperial expansion, most nationalist-led mass murders are directed against minorities that are fully integrated and assimilated into the mainstream culture. Therefore, cultural factors are never in themselves a cause of genocide, nor any other form of political murder. Instead, the target victims are most frequently similar looking groups, often sharing the same language, outlook, and customs as their persecutors.

The Tutsis in Rwanda, the Croats and Muslims in Bosnia and the Jews in Nazi Germany were fully integrated into their societies and assimilated into the mainstream culture of their time. A possible counter-argument to this view may be the case of the *Porajmos* (the Gypsy Holocaust): The Roma were typically seen as a stateless people, and hence as incompatible with the nationalist project of an homogeneous nation-state. They have therefore often been targeted by nationalist regimes and ultra-nationalist groups.

The relationship between genocide and nationalism or patriotism is among the most powerful ones. The three terms have common roots (*genos*, from *gens*, meaning lineage; nation from the Latin *nasci*, meaning to be born; *patria* from the Latin *pater*, meaning father). They all relate to the idea of shared descent and of belonging into a single extended family. The exaltation by the state of a dominant nation as superior to all others inevitably leads to a series of discriminatory acts against competing stateless nations, ranging from assimilation and marginalization to genocide. The role of central governments and the military appears to be of key importance in most instances of genocide, in tandem with media censorship and popular misinformation. Globalization provides a third, still unexplored, item in a triangular relationship that includes nationalism and genocide. Like nationalism, globalization destroys whole communities and lifestyles, exerting unprecedented homogenizing pressures.

SEE ALSO Ethnic Cleansing; Ethnicity

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Daniele Conversi

National Laws

Genocide, crimes against humanity, and war crimes are considered the core international crimes. The definition and penalization of these offenses date back to post–World War II instruments such as the Charter of the Nuremberg Tribunal, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and the 1949 Geneva Conventions Relating to the Protection of Victims of Armed Conflict. Their legal origin is thus clearly international and relatively recent. In practice, genocide, the crime of crimes according to William Schabas, and crimes against humanity may encompass war crimes (see, e.g., the decisions of the International Criminal Tribunal for Rwanda [ICTR]). When genocide or crimes against humanity committed within the context of an armed conflict are involved, therefore, national war crimes legislation may apply as well.

Core International Crimes and National Law

States parties to the Genocide Convention undertake "to prevent and to punish" genocide (Article I) and "to enact . . . the necessary legislation to give effect to the provisions of the Convention and, in particular, to provide effective penalties for persons guilty of genocide . . ." (Article V). Article VI of the Convention provides that "[p]ersons charged with genocide . . . 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." The international court envisaged in 1948 was established on July 1, 2002, when the Statute of the International Criminal Court (ICC) entered into force.

For war crimes the Geneva Conventions require adhering States "to enact any legislation necessary to

provide effective penal sanctions for persons committing . . . any of the grave breaches of the present Convention. . . ." *Grave breaches*, the term used in the treaties, is understood to mean war crimes. States are also required to search for persons alleged to have committed, or to have ordered war crimes, and bring such persons, regardless of their nationality, before their own courts (Articles 49, 50, 129, and 146 of the four respective Geneva Conventions). Similar obligations exist for states who are parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 4, 5, 6, and 8).

Crimes against humanity, in contrast, are not the subject of a specific convention. A treaty obligation "to prevent and to punish'" therefore does not exist, but resolutions by intergovernmental bodies, such as the United Nations (UN) General Assembly, have called on states to do so.

International law thus traditionally has allowed but not consistently required states to prosecute and punish international crimes. This has led to piecemeal domestic legislation. However, the creation of the ICC, which is "complementary to national jurisdictions" (ICC Statute, Article 1) has been an impetus for states to review and consolidate their relevant laws.

National Laws and Decisions

The countries discussed below are examples of states that have rendered related legal decisions and enacted related legislation. These landmark judicial cases include:

Public Prosecutor v. Cvjetkovic. (Austria.) Trial judgment, Landesgericht Salzburg (May 31, 1995); Appeals judgment, Oberste Gerichtshof (July 13, 1994).

Public Prosecutor v. the "Butare Four." (Belgium.) Trial judgment, Assize Court of Brussels (June 8, 2001).

Regina v. Finta. Trial judgment, 69 O.R.2d 557 (H.C. 1989), Ontario Court of Appeal (73 Canadian Criminal Case 3d 65; Ont. C.A.1992), Supreme Court of Canada [1994] 1 SCR 701 (March 24, 1994).

Sivakumar v. Canada. Minister of Employment and Immigration, Federal Court of Canada, Court of Appeal, 1 F.C. 433, 163 N.R. 197, 44 A.C.W.S (3d) 563 (November 4, 1993).

Mugesera v. Minister of Citizenship and Immigration. Immigration and Refugee Board, Adjudication Division, File No. QML-95-00171 (July 11, 1996).

Mugesera v. Canada. Immigration and Refugee Board, Appeal Division, Case No's. M96-10465 and M96-10466, Reasons and Order (November 6, 1998).

Mugesera et al. v. Canada. Minister of Citizenship and Immigration, 4 FC 421 (TD) (2001).

Public Prosecutor v. Barbie. (France.) Trial judgment, Assize Court of Rhône (July 4, 1987).

Public Prosecutor v. Touvier. (France.) Trial judgment, Assize Court of Yvelines (April 20, 1994).

Public Prosecutor v. Papon. (France.) Trial judgment, Assize Court of Gironde (April 2, 1998).

Attorney General of Israel v. Eichmann. Trial judgment, District Court of Jerusalem (December 12, 1961); Appeals judgment, Supreme Court of Israel (May 29, 1962).

Attorney General of Israel v. Demjanjuk. Trial judgment, District Court of Jerusalem (April 18, 1988); Appeals judgment, Supreme Court of Israel (July 29, 1993).

Unión Progresista de Fiscales de España et al. v. Pinochet. (Spain.) Central Investigating Tribunal No. 5, Audiencia Nacional (October 16 and 18, November 3, 1998); Criminal Division, Plenary Session, Audiencia Nacional (November 5, 1998).

Menchú Tum et al. v. Montt et al. (Guatemala.) Criminal Division, Plenary Session, Audiencia Nacional (December 13, 2000); Criminal Division, Supreme Court (February 25, 2003).

Military Prosecutor v. Niyonteze. (Switzerland.) Trial judgment, Military Tribunal, Division 2, Lausanne (April 30, 1999); Appeals judgment, Appeals Military Court 1A, Geneva (May 26, 2000); Cassation judgment, Military Court of Cassation (April 27, 2001).

Austria

One of the first trials for genocide anywhere in the world was held in Austria. *Public Prosecutor v Cvjetkovic* arose out of the war and ethnic violence in the former Yugoslavia that occurred during the first half of the 1990s, which caused an influx of thousands of refugees, including Cvjetkovic, into Austria. According to the indictment, the accused, as military commander, was responsible for the ethnic cleansing of the Muslim section of the village of Kucice. He was charged with genocide and complicity in genocide. A jury acquitted him.

The genocide charges were brought under Sections 321 and 65(1), subparagraph 2, of the Austrian penal code. The former makes genocide a criminal offense; the latter provides that offenses committed abroad shall be punished in Austria "if the offender, though he was

a foreigner at the time when he committed the offense, was found in this country and if, due to reasons different from the nature and characteristics of the offense, is not extradited to a foreign State." The foreign authorities were notified but did not respond, and the International Criminal Tribunal for the Former Yugoslavia (ICTY) declined to take over the proceedings.

Belgium

After years of controversy Belgium repealed in 2003 its Act Concerning Grave Breaches of International Humanitarian Law, which made the core international crimes punishable in Belgium, even when the offense had no direct connection to Belgium. In other words, formal prosecutions were possible even though the crime was committed outside of Belgium by someone of another nationality, none of the victims were Belgian, and the accused did not reside in Belgium. Application of this law to the actions of foreign officials led to several serious diplomatic incidents and litigation before the International Court of Justice (ICJ) (e.g., *Democratic Republic of the Congo v. Belgium*, April 2000, holding that an incumbent minister of foreign affairs is immune from criminal jurisdiction of other states).

The repeal of the act does not mean, however, that the core crimes, even when committed abroad, can no longer be prosecuted in Belgium. Indeed, while repealing the law, the legislator simultaneously introduced most of the act's substantive provisions into the criminal code (Article 136, *bis–octies*), while amendments to the code of criminal procedure establish the extraterritorial jurisdiction of Belgian courts, provided there is some connection with Belgium.

One successful prosecution occurred under the repealed act. *Public Prosecutor v. the "Butare Four"* arose out of the genocide against the Tutsi and the massacres of moderate Hutu in Rwanda during the armed conflict between government armed forces and a rebel army in 1994. The accused were among hundreds of Rwandans from both sides of the conflict who fled to Belgium. They were charged with war crimes, not crimes against humanity or genocide, most likely to avoid a possibly controversial retroactive application of the Act Concerning Grave Breaches of International Humanitarian Law, which back in 1994 did not include these offenses.

Canada

Canada was among the first countries to consolidate and harmonize its legislation regarding the core international crimes following ratification of the ICC Statute. Prosecutions in the early 1990s of alleged foreign war criminals (under repealed legislation) had all failed (e.g., *Regina v. Finta*). The Canadian government then proceeded with administrative procedures, especially denaturalization and deportation. Among the most well-known deportation cases are *Sivakumar v. Canada* (involving crimes against humanity committed by the Liberation Tigers of Tamil Eelam in Sri Lanka) and *Mugesera v. Minister of Citizenship and Immigration* (involving genocide against the Tutsi in Rwanda).

The 2000 Crimes against Humanity and War Crimes Act incorporates the provisions of the ICC Statute into Canadian legislation. Its twofold objective is to allow full cooperation with the ICC in matters of investigation and prosecution, and to increase national capacity and punish alleged perpetrators of genocide, crimes against humanity, and war crimes. Prosecution of extraterritorial offenses under the act always requires a link with Canada.

East Timor and Indonesia

After the people of East Timor voted in a UN-administered referendum for independence from Indonesia, the Indonesian National Army and Timorese militias launched a campaign of murder, arson, and forced expulsion (in September 1999). A UN commission of inquiry called for the establishment of an international tribunal.

Indonesia successfully staved off such a tribunal by promising to prosecute those responsible for the atrocities. To this end it created an ad hoc court with jurisdiction over genocide and crimes against humanity (Law No. 26/2000 on the Human Rights Court and Presidential Decree No. 53/2001). As of 2003, seventeen individuals, mostly senior civilian, police, and military officials, have been tried meanwhile in Jakarta for crimes against humanity. Twelve defendants were acquitted; five received prison sentences between three and ten years.

In East Timor a procedure was also created to prosecute Indonesians and Timorese responsible for the 1999 violence. The UN Transitional Administration in East Timor (UNTAET) created the Serious Crimes Investigative Unit, with an international staff, to investigate and prosecute crimes against humanity and other serious offenses before Special Panels for Serious Crimes of the newly created Dili District Court (UNTAET Regulation No. 15/2000). The trials before the Special Panels, which are composed of both Timorese and international judges, were still ongoing in late 2003. Dozens have been sentenced to prison terms ranging from eleven months to thirty-three years. Indonesia has refused to extradite any Indonesian for trial in East Timor.

Ethiopia

Ethiopia took part in the negotiations that led to the adoption of the Genocide Convention in 1948; it was the first nation to ratify the Convention on July 1, 1949. Its penal code of 1957 incorporates genocide and crimes against humanity in Article 281. However, in addition to the groups named in the Genocide Convention—national, ethnic, racial, or religious groups—Article 281 includes political groups.

These provisions have been the basis for the prosecution of the Dergue regime (1974–1991), infamous for its campaign of "Red Terror." After the overthrow of the Dergue, a Special Prosecutor's Office was established to investigate Dergue crimes and prosecute those responsible. Thousands were arrested and charged with genocide and war crimes.

Trials began in 1994. By mid-2004 only a fraction of the accused have been tried. Just over 1,500 decisions have been handed down, with 1,017 convictions. Some 6,000 defendants are still awaiting trial. Colonel Mengistu Haile Mariam, the Dergue leader, is being tried in absentia. He lives in exile in Zimbabwe.

France

Before March 1, 1994, crimes against humanity were incorporated in the French legal system by reference to the Nuremberg Principles (December 26, 1964). However, French case law restricted crimes against humanity to crimes committed within the context of World War II by or on behalf of the Axis powers, thus excluding possible French crimes during World War II, the Algerian War, and French operations in Indochina. In 1987 French courts convicted Klaus Barbie, the head of Gestapo in Lyon during the wartime occupation of France, as well as Vichy collaborators Paul Touvier (in 1994) and Maurice Papon (in 1998), of crimes against humanity for their activities during Word War II.

The penal code in force since March 1, 1994, includes crimes against humanity (Article 212-1) and genocide (Article 211-1). French courts are vested with extraterritorial jurisdiction, provided either the perpetrator or victim is a French national.

Following the establishment of the ICTY and ICTR, the French parliament adopted special cooperation laws that provide for French jurisdiction over all offenses falling within the competence of both tribunals, if the perpetrators are found in France. Despite credible information regarding the presence of Rwandan *génocidaires* in France, no prosecution of these individuals has so far taken place.

Germany

Germany is another country that has consolidated and harmonized its legislation regarding the core international crimes following ratification of the ICC Statute. To align domestic law with the ICC Statute, Germany has opted for a unique solution: a national Code of Crimes Against International Law (*Völkerstrafgesetzbuch*) that makes the core ICC crimes offenses under domestic law, "even when the offense was committed abroad and bears no relation to Germany" (Article 1).

Prior to the Code of Crimes Against International Law's enactment, genocide was an offense under Section 6(1) of the ordinary penal code, regardless of the place of commission. On the basis of the repealed provision, four Bosnian Serbs (all at some point German residents) have been tried in Germany for their role in the ethnic cleansing that characterized the armed conflict in the former Yugoslavia during the first half of the 1990s. One of the defendants was acquitted of genocide because it was found that he lacked the necessary mens rea (or intent).

Iraq

After the overthrow of the Baathist regime by the United States and its allies, the Iraqi Governing Council established the Iraqi Special Tribunal for Crimes Against Humanity in December 2003. The tribunal has jurisdiction over Iraqi nationals or residents accused of genocide, crimes against humanity, war crimes, and violations of certain Iraqi laws, committed between July 1968 and May 2003, in Iraq or elsewhere. The tribunal's statute specifies its jurisdiction over crimes committed against the people of Iraq, "including its Arabs, Kurds, Turcomans, Assyrians and other ethnic groups, and its Shi'ites and Sunnis, whether or not committed in armed conflict" (Article 1b).

It is expected that the some of the captured Baath Party leaders, including former President Saddam Hussein, will be tried before the Special Tribunal.

Israel

As the new homeland of many Holocaust survivors, Israel was one of the first countries to enact legislation criminalizing serious violations of international humanitarian law. The Nazi and Nazi Collaborators (Punishment) Law of 1950 applies retroactively to certain offenses committed "in an enemy country" during the period of the Nazi regime or World War II. The principal offenses under the law are "crimes against the Jewish people", crimes against humanity, and war crimes (Article 1). The Crime of Genocide (Prevention and Punishment) Law of 1950 implements the Genocide Convention, granting universal jurisdiction to Israeli courts (Article 5).

Two foreigners as well as some Israeli citizens (former Jewish collaborators or *Kapos*) have been prosecut-

ed under the Nazi and Nazi Collaborators (Punishment) Law for their role in the Holocaust. The most famous trials were those of Adolf Eichmann (in 1961) and John Demjanjuk (in 1987). Eichmann, the director of the Office of Jewish Affairs and Evacuation Affairs in the Third Reich, was abducted from Argentina by members of the Israel Secret Service. He was tried and sentenced to death for coordinating the Final Solution. Demjanjuk was accused of being Ivan the Terrible, the individual responsible for operating the gas chambers at the Treblinka death camp in Poland. His conviction was later overturned by the Israeli Supreme Court.

Rwanda

More than 100,000 individuals have been arrested on charges of participation in the 1994 genocide and massacres in the African nation of Rwanda. A special retroactive statute, Organic Law 8196 (Loi organique No. 8196 du 30/8/96 sur l'organisation des poursuites des infractions constitutives du crime de génocide ou de crimes contre l'humanité, commises à partir du 1er Octobre 1990) is the basis for their prosecution. The law classifies the perpetrators into four groups based on their degree of participation. For the first category of offenders (planners, organizers, instigators, supervisors, and zealots), the law mandates the death penalty. Note that the ICTR, which has primary jurisdiction, cannot impose the death penalty.

By 2001 fewer then five thousand suspects had been tried. To increase trial capacity, the government decided to resort to a customary institution, the *gacaca*. This system of participatory justice brings together all protagonists at the actual location of the crime, that is, the survivors, witnesses, and presumed perpetrators. All are asked to participate in a discussion of what happened in order to establish the truth, draw up a list of victims, and identify the guilty. These "debates" are chaired by nonprofessional judges elected from the men of the community who are deemed to have the most integrity. Suspects falling under the first category (estimated to be between three and ten thousand in number) will continue to be judged by the ordinary courts. For all other cases, the government has created approximately eleven thousand *gacaca* courts. They began their deliberations in 2002.

Spain

Genocide is an offense under Article 607 of the Spanish criminal code. Article 23.4(a) of the Organic Law of the Judicial Power (Ley Orgánica del Poder Judicial) provides that "Spanish courts have jurisdiction over acts [of genocide] committed abroad by Spaniards and foreigners." These provisions were the bases for criminal proceedings in Spain against former Chilean president Augustus Pinochet and former Guatemalan ruler General Efraín Ríos Montt. The characterization of the Pinochet regime's brutal repression of political opponents as genocide is questionable. The charges against Ríos Montt included acts of genocide committed against groups of Maya between 1981 and 1983 by Guatemalan state agents.

Neither of these cases ever went to trial. Pinochet, after his arrested in the United Kingdom at the request of Spain, was allowed to return to Chile on medical grounds. The proceedings against Ríos Montt came to an end when the Spanish Supreme Court held that "no particular State is in the position to unilaterally establish order, through resort to criminal law, against anyone and in the entire world, without their being some point of connection that renders legitimate the extension of extraterritorial jurisdiction."

Switzerland

To implement the Genocide Convention and take the "first step in the adaptation of Swiss law to the ICC Statute," Switzerland added Title 12*bis* to its penal code. As of 2003 Title 12bis only addresses genocide (Article 264), but it is expected that in a second phase the Swiss legislature will introduce the notion of crimes against humanity and possibly also revise the existing war crimes legislation.

In 1999 a Swiss tribunal successfully tried and convicted a Rwandan refugee for war crimes (*Military Prosecutor v. Niyonteze*). The prosecution also had charged the same defendant, the former mayor of Mushubati, with genocide and crimes against humanity for his role in the genocide against the Tutsi and massacres of moderate Hutu in Rwanda in 1994. For these counts the prosecution relied on customary international law, but the tribunal held that the notions of genocide and crimes against humanity under customary international law were not directly applicable in the Swiss legal system.

Former Yugoslavia

The conflicts in the former Yugoslavia in the 1990s will forever be associated with the practice of ethnic cleansing. However, few prosecutions for genocide have occurred in the various entities that comprised the former Yugoslavia, and this despite the fact that there were no legal hurdles, given that the crime of genocide had been defined and a punishment established pursuant to Article 141 of Yugoslavia's Criminal Law, which was in force when the conflict began (Schabas, 2003). As it turns out, more trials have taken place in third-party states (see the above sections on Austria and Germany) than in the former Yugoslavia.

The District Military Court of Bosnia and Herzegovina, sitting in Sarajevo in 1993, convicted two defendants of genocide. A second trial reportedly took place in 1997 before the Osijek District Court in Croatia. The defendant there was sentenced to five years imprisonment for genocide pursuant to Article 119 of the Basic Criminal Law of the Republic of Croatia. In 2001 the Supreme Court of Kosovo reversed a genocide conviction by the District Court of Mitrovica on the grounds that

> The exactions committed by the Milosevic's [sic] regime in 1999 cannot be qualified as criminal acts of genocide, since their purpose was not the destruction of the Albanian ethnic group in whole or in part, but its forceful departure from Kosovo as a result of [sic] systematic campaign of terror including murders, rapes, arsons and severe maltreatments (Schabas, 2003, p. 56).

Conclusion

World War II–related cases aside, domestic prosecutions of the core international crimes are a recent phenomenon. In the wake of the creation of the ICTR, ICTY, and ICC, and spurred by a powerful international human rights movement, national authorities have started to take the issue more seriously by considering measures such as the adoption or review of relevant laws, the training of law enforcement officials, and the establishment of special investigative units or tribunals. The list of countries and cases is likely to grow in the years to come.

SEE ALSO Barbie, Klaus; Bosnia and Herzegovina; Demjanjuk Trial; East Timor; Eichmann Trials; Ethiopia; Geneva Conventions on the Protection of Victims of War; Immunity; National Prosecutions; Pinochet, Augusto; Punishment; Ríos Montt, Efraín; Rwanda; Truth Commissions; Universal Jurisdiction

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National Prosecutions

States exercise domestic criminal jurisdiction over individuals for the commission of genocide, war crimes,

and crimes against humanity (hereinafter "the major crimes") committed within their own territory or by nationals of the state. In addition to prosecutions in domestic criminal courts, states have tried perpetrators of major crimes before military tribunals; conducted special inquiries, generally of a non-criminal nature; held truth and reconciliation commissions; and granted limited or general amnesties. Other venues for prosecuting alleged breaches of these offences include ad hoc international criminal tribunals, the International Criminal Court (ICC), and criminal courts of other states prosecuting perpetrators pursuant to some form of extraterritorial jurisdiction.

Domestic Criminal Jurisdiction

The purpose of prosecution is to punish the perpetrator and provide the victim with a measure of satisfaction, thus reducing the victim's desire to seek revenge. Prosecution ensures that a state's laws, and the value system underlying them, are respected, and demonstrates the state's, and (by extension) the people's, abhorrence for the offence. The consistent prosecution of offences also informs other people within the state that they will be punished for similar actions.

One of the most important aspects of a state's sovereignty is its right to create and enforce criminal laws. The territorial principle, whereby jurisdiction is determined by reference to the site of the crime, forms the bedrock of most domestic criminal justice systems. It is the state that determines whether a particular act committed within its territory is or is not a crime. That state normally has the greatest interest in seeing that the perpetrator is tried, as it is the state itself, inhabitants of the state, or property located within that state which has been victimized by the crime. From a more practical perspective, the territorial state generally has the greatest and most immediate access to evidence of the offence, the crime scene, and any witnesses to the offence. Usually, there are investigation and prosecution organizations in place. It is also likely that the state would have custody of the alleged perpetrator.

The second basis for jurisdiction, the nationality principle, is used by a state whose national commits an offence on the territory of another state. The exercise of jurisdiction on this basis is usually reserved for specific crimes that the perpetrator's state feels should be singled out as being particularly nefarious, such as torture or hostage-taking, or for crimes committed by individuals who are or may be taken as representing the state, such as military personnel or members of the state's diplomatic corps. By prosecuting its national, the state effectively distances itself from the crime.

The universality principle, on the other hand, is triggered in response to a treaty, international convention or customary international law-based obligation. It requires a state to take into custody an alleged perpetrator who has fled to that state after committing certain offences elsewhere. The custodial state is obliged to either extradite the perpetrator to a state willing to conduct a territorial or nationality-based prosecution or to prosecute the alleged perpetrator itself.

Post–World War I Turkish Prosecutions for Crimes against the Armenians

On October 29, 1914, the Ittihadist government in the Turkish-dominated Ottoman Empire brought that state into World War I as an ally of Germany. During the course of the war, and particularly during mobilization and deportation actions in 1915, hundreds of thousands of Turkish citizens of Armenian descent were killed, allegedly by Turkish military personnel at the instigation of the Turkish government, in what some have referred to as genocide.

The Treaty of Peace between the Allied Powers and Turkey (the Treaty of Sèvres) was signed on August 10, 1920. Article 230 of that treaty recognized the right of the Allied Powers to establish military tribunals to prosecute Turkish nationals alleged to have committed violations of the laws and customs of war. However, the Treaty of Sèvres was never ratified. Instead, it was replaced by the Treaty of Lausanne of July 24, 1923. This treaty included a declaration of amnesty for crimes connected with political events committed during the war. One of the bases for this reversal was the lack of valid law criminalizing these actions.

Following an investigation conducted by a commission of inquiry, Turkey itself formed a special court martial to try some of the alleged perpetrators, relying entirely on the Ottoman penal code. Despite the fact that a number of the highest-level perpetrators had escaped custody, a series of courts martial were held. Common to all of the trials was the question of whether the mobilization and deportation of the Armenians was an aspect of a central plan for the destruction of the Armenian population in Turkey. A number of the senior perpetrators were sentenced to death in absentia. Some lower-level perpetrators were sentenced to imprisonment. Many others were acquitted.

Nearly all of the accused senior Ittihadists party members escaped before having to stand trial. Many of those middle level perpetrators who were sentenced later escaped or were set free. With a change in government, and the finalization of the declaration of amnesty attached to the Lausanne Treaty, Turkish efforts to prosecute the many remaining perpetrators ended.

The exception to this was the prosecution of major crime perpetrators by Germany. By mid-2004, the Federal Republic of Germany had investigated more than 100,000 people for crimes committed during World War II, resulting in 6,456 convictions. These include the 1958 prosecution of Brigadier General Fischer-Schweder, who, as police chief in Tilsit, Lithuania, participated in the mass execution of Jews. He was sentenced to twelve years in prison. Nine officers and administrators from the Maidenak concentration camp in Poland were also prosecuted. One of the accused, Hermine Ryan-Braunsteiner, was found to be directly responsible for the deaths of over 1,000 people and complicit in the deaths of 700 others. He was sentenced to life imprisonment.

Twenty-one major trials took place in Germany between 1960 and 1965. Following an amendment to the statute of limitations for murder, from 1965 through 1969, 361 people were tried, resulting in 223 convictions. Sixty-three of the convicted were sentenced to life imprisonment. From 1970 through 1979, 219 accused were tried in 119 prosecutions, resulting in 137 convictions.

The German government also obtained the extradition of a number of individuals from countries around the world. In 1982, the United States extradited Hans Lipschis to stand trial in Germany for his participation in the deaths of tens of thousands of prisoners in Auschwitz and Birkenau. Canada extradited Helmut Rauca for his role as an officer in a concentration camp near Kaunas, in Lithuania, where Rauca was responsible for the deaths of more than eleven thousand people. Rauca died in prison while awaiting trail. Josef Schwammberger, extradited from Argentina, faced charges of participating in the murder of over 3,500 prisoners of the Przemysl and Razwadow concentration camps. He was sentenced to life imprisonment.

Some of Germany's most important trials took place between 1960 and 1980, well after the conclusion of the war. The German infrastructure had been rebuilt with international assistance. The country had become a stable political entity. A new generation of Germans, freed from the tensions of the conflict period, were able to effectively apply criminal law against fellow nationals who had been perpetrators of the century's worst crimes.

Prosecutions Outside of the Occupied Zones

Outside of the occupied area, formerly occupied states enacted domestic legislation enabling the investigation and prosecution of perpetrators of the major crimes committed on their territory or by their own nationals. France conducted three of the most famous postwar prosecutions outside of the Occupied Zones, namely of Klaus Barbie, Paul Touvier, and Maurice Papon. Barbie was accused of committing 340 crimes against French citizens. The Cour de Cassation determined that the concept of crimes against humanity, as set out in the London Charter, was applicable in French domestic law, and covered seventeen of the charges against Barbie. Included in the list of crimes was Barbie's participation in the deportation of forty Jewish children to Auschwitz and over 650 French citizens to German concentration camps in the last deportation action undertaken in France. On July 4, 1987, Barbie was convicted of crimes against humanity and sentenced to life imprisonment.

Paul Touvier was originally charged with numerous offences, including torture and deportation, allegedly committed while he was a Nazi collaborator and assistant to Barbie. After years of legal arguments, trials, and appeals, on April 20, 1994, Touvier was convicted of complicity to commit crimes against humanity in the murder of seven Jews at Rillieux-la-Pape and was sentenced to life imprisonment.

Maurice Papon had a postwar career which included positions as a high-level civil servant, the prefect of police for Paris, and France's budget minister. In the early 1980s, however, documentary evidence was uncovered linking Papon to the deportation of almost 1,700 Jews to German concentration camps during 1942. Despite overwhelming evidence, after a lengthy trial, Papon was convicted of complicity with respect to the arrest and imprisonment of some of the victims, but was acquitted of all murder charges. On April 2, 1998, he was sentenced to ten years imprisonment, but released in 2002 because of bad health.

Other Western European countries conducted similar trials, in greater or lesser numbers. In most cases, these trials elicited strong political debate concerning the role of nationals in the commission of gross offences against their own people. Politics and the political and social implications of the prosecutions overshadowed most of the trials. In Eastern Europe, the Soviet Union conducted thousands of trials for war-related crimes. However, the alleged widespread use of torture to elicit confessions or obtain evidence casts doubt over the validity of these trials.

The broad acceptance of a state's power to prosecute its own nationals for major crimes using domestic law was a tremendous development in efforts to address the problem of impunity. However, the prosecutions suffered from a number of flaws that reduced their overall impact. There were not enough prosecutions, in many cases as a result of a real or imagined lack of proper domestic legislation. The prosecutions

that did occur were often politically motivated, or the courts were influenced by political considerations. Sentencing procedures were nonexistent or not followed. Once again, the message conveyed by these failures was that the states concerned, and the international community, felt that the purposes of criminal prosecution were of insufficient importance in these circumstances to warrant more effective efforts.

Modern Domestic Prosecutions

With respect to modern prosecutions of the major crimes, most of the attention has been paid to the International Criminal Tribunals for the Former Yugoslavia and Rwanda (ICTY, ICTR), combined national and international tribunals such as the Special Court for Sierra Leone, and the International Criminal Court (ICC). In addition, there are third-party states that use universal jurisdiction principles to prosecute perpetrators found within their territory following the commission of the offences. Some states, attempting to balance political realities with legal obligations, conduct Commissions of Inquiry into alleged major crimes in an effort to uncover the truth outside of the more threatening arena of a criminal court. Territorial and nationality-based major crime prosecutions remain the exception rather than the rule, however.

My Lai

On March 26, 1968, American soldiers and officers assaulted My Lai village in Vietnam. During the operation, described as a "command-directed killing spree," 567 unarmed civilians were murdered. Four officers and nine enlisted men were charged with war crimes, including rape and murder. Twelve other officers were charged for their participation in cover-up activities. All were tried before military courts martial. Only First Lieutenant William Calley was convicted. He was sentenced to life imprisonment. The Secretary of the Army reduced the sentenced to 10 years. Calley served only three years under house arrest.

Israel's Commission of Inquiry

In 1982, Israeli military forces invaded Southern Lebanon in an effort to end Palestinian Liberation Organization–instigated terrorist attacks emanating from that area. Trained and equipped by Israel, and under Israeli control, was the largely Christian Lebanese Phalange faction. Israeli forces moved into West Beirut, and ordered the Phalengists to enter Sabra and Shatila refugee camps, ostensibly to search for terrorists. Between 300 and 1,000 Palestinian civilians were murdered by the Phalengists during the 48 hours of occupation.

Israel established the Commission of Inquiry into the Events at the Refugee Camps in Beirut, which produced a startlingly candid report. However, while the commission recognized the command-and-control failures of senior members of the Israeli government and military, and particularly noted the personal responsibility of then Defence Minister Ariel Sharon, it concluded that the determination of responsibility for most senior political and military offenders was sufficient penalty. It did recommend that the Prime Minister consider removing Sharon from office.

Canadian Commission of Inquiry

During the first six months of 1993, members of the Canadian Armed Forces (CF) occupied the area in and around Belet Huen, Somalia, as part of a U.S.-led peacemaking operation. During that time, CF members committed a number of war crimes, including the beating death of a Somali teenager and the shooting of two unarmed Somalis in the back as they fled one of the compounds. One victim died.

A Commission of Inquiry was established to investigate events surrounding the CF deployment. After two years of investigations and public hearings, and the issuance of an Order-in-Council terminating the inquiry, a report was released which addressed all predeployment and in-theater aspects of the mission. The CF conducted courts martial. Master Corporal Matchee, the primary culprit in the beating death, was found unfit to stand trial following an apparent suicide attempt. Private Brown was sentenced to five years imprisonment for manslaughter and torture. Another private, Brocklebank, was acquitted. Captain Sox and Major Seward were convicted of negligent performance of duty and given minor sentences. One charge was laid against Captain Rainville, who led the reconnaissance platoon involved in the shootings. He was acquitted. Lieutenant Colonel Mathieu, the on-site commanding officer, was acquitted of negligent performance of duty.

Amnesties in Latin America

In many post-conflict states, transitional governments grant or uphold amnesties for crimes committed by the former rulers. Proponents of amnesties argue that they are the price of peace. Victims-rights groups argue that amnesties conflict with internationally imposed obligations to extradite or prosecute perpetrators of the major crimes, and are in reality a tool for permitting perpetrators of the world's worst crimes to continue to operate with impunity. Often, both positions share in the truth. The use of amnesties became custom in Latin America during the 1980s and 1990s to reduce or eliminate criminal liability for some or all offences committed by prior regimes.

Chile's Amnesty Law

In September 1973, a military junta led by General Augusto Pinochet overthrew the government of President Salvador Allende in Chile. Within three months, approximately 1,500 suspected leftist party members and sympathizers had been murdered or "disappeared." By August 1977, a further 600 had been murdered. In 1978, Pinochet issued an unconditional amnesty for most criminal offences committed between September 1973 and March 1977. The exceptions included armed robbery and rape, but not murder, kidnapping, and assault, which were the most common forms of terror used by Pinochet's military. In 1990, a new government, led by Patricio Aylwin, was elected. However, General Pinochet retained strong support in the army and Congress, and Aylwin's tentative efforts to revoke the amnesty met with considerable opposition. A Truth and Reconciliation Commission was nonetheless tasked to identify the victims of human rights violations and to recommend reparation measures. Any evidence of criminal activity was to be directed to the Supreme Court.

In 1998, while in England, General Pinochet was arrested pursuant to an international warrant issued by Spain. The British House of Lords determined that General Pinochet could be extradited to Spain to stand trial for major crimes. Although General Pinochet was returned to Chile as a result of his ill health, the publicity surrounding the British extradition hearings resulted in the Chilean Supreme Court annulling the 1978 amnesty law, some twenty years after its proclamation.

Despite the amnesty, some successful prosecutions have taken place, including the prosecution and conviction of the head of the secret police, General Manuel Contreras, and his second-in-command, Brigadier Pedro Espinoza, for the murder of Orlando Letelier, the Chilean Minister of Foreign Affairs. Letelier was murdered in Washington, D.C. Pressure exerted by the United States resulted in his prosecution in the face of the amnesty. Contreras was subsequently convicted for the abduction of a member of the Movement of the Revolutionary Left and the disappearance of journalist Diana Aaron in 1974.

Other Latin American Amnesties

Other Latin American governments have issued unconditional or partial amnesties, ostensibly to help stabilize the post-conflict state. Immediately prior to the 1983 Argentine elections, then-President Leopoldo Fortunato Galtieri enacted the Law of National Pacification, which granted amnesties to individuals within both his and former President Juan Peron's governments, for acts of state terrorism committed during the "dirty war" period from 1976 to 1983. Despite initial efforts by the newly elected President, Raoul Alfonsin, to repeal the amnesty law, and the creation of the National Commission on the Disappeared, political pressure from within the country resulted in a series of retrenchments, culminating in the granting of unconditional amnesties and pardons to known perpetrators on the basis that it was time to put aside the divisions within the country. Finally, in August 2003, following the issuance of international arrest warrants for forty-five former Argentine military officers by a Spanish judge, both houses in the Argentine Congress voted to repeal the amnesty laws and reopen trials of former military officers.

In 1993, broad, unconditional amnesties for political crimes were granted in El Salvador, following a report by a UN-sponsored Truth Commission which recommended that, given the close ties between the judiciary and the government, prosecutions would likely be biased and lead to further instability. The amnesties covered decades of civil strife, during which more than 70,000 people were murdered or disappeared, and countless more were tortured.

Full or partial amnesties have also been granted in Guatemala, where an estimated 140,000 to 200,000 people were "disappeared" or murdered in an ongoing civil war that ended in 1996; in Honduras, where an estimated 179 people were "disappeared" by the armed forces between 1980 and 1993; and in Peru, where, in 1995, an unconditional amnesty was granted to Peruvian military, police, and civilians involved in brutal antiterrorist activities between 1980 and 1995. In a number of these cases, truth commissions were established to investigate alleged abuses and advise their respective transitional governments. While these commissions arguably made contributions to the protection and promotion of justice and the preservation of evidence, the lack of criminal sanctions against the perpetrators has encouraged the sense of impunity surrounding the commission of major crimes.

Domestic Prosecutions in the Former Yugoslavia

Domestic prosecutions of the major crimes in Bosnia and Herzegovina are governed by the Rules of the Road, adopted in 1996 by Presidents Izetbegovic of Bosnia and Herzegovina, Franjo Tudjman of Croatia, and Slobodan Milosevic of Yugoslavia as a follow up to the Dayton Peace Accords. Under the rules, potential major crime cases are forwarded to the International Criminal Tribunal for the Former Yugoslavia (ICTY) for a decision as to whether there is sufficient evidence, under an international standard, to conduct a prosecution. As of January 2004, the ICTY has referred back to Bosnia and Herzegovina approximately 550 cases determined

to have sufficient evidence to prosecute. Of these, approximately 10 percent have reached trial stage in Bosnia and Herzegovina, primarily at the cantonal court level.

The greatest advantage of this process, and of the work of the international community in Bosnia and Herzegovina, is that the justice system is being brought into line with international standards. The criminal legal system has undergone reform with the enactment of new procedural codes, court restructuring, and the creation of the High Judicial and Prosecutorial Council. Judicial and prosecutorial training programs are being implemented. Prison reform initiatives are underway. An Implementation Task Force is working towards the establishment of a War Crimes Chamber within the State Court, which should be ready to accept the transfer of cases from the ICTY by the end of 2004. While there remains room for improvement, particularly with witness protection programs and the elimination of prosecutorial and judicial bias, continued support by the international community will ensure that Bosnia and Herzegovina will be able to assume increasingly greater responsibility for domestic prosecution of the major crimes.

Croatian prosecutions have experienced problems similar to those in Bosnia and Herzegovina. Hundreds of trials have come before national courts, but the vast majority have been against Croatian Serbs, and many of these have been conducted without the accused being present. Only a handful have been commenced against Croats for crimes perpetrated against Serbs, and these have been tainted by allegations of witness intimidation and judicial bias. The worst example is the Lora Prison case in Split County Court in 2002. Eight Croatian military officers were accused of torturing and killing Serbian and Montenegrin prisoners in 1992. Evidence of the offences had been reported by local and international nongovernmental organizations (NGOs). Witness intimidation was rampant. Witnesses refused to testify, retracted their statements on the stand, or went into hiding. All accused were acquitted. While the Croatian government appears to be increasingly committed to conducting domestic trials of the major crimes, enhanced witness protection programs and the elimination of prosecutorial and judicial bias are essential.

In Serbia-Montenegro, following the transfer of former president Milosevic and other former Serb political and military leaders to the ICTY, legal reform has resulted in the commencement of prosecutions of Serbs for atrocities committed against non-Serbs. In July 2002, Ivan Nikolic, a former Yugoslav army reservist, was sentenced to eight years for the murder of two Kosovar Albanians in 1999. In September 2002, Nebojsa Ranisavlejevic, a Bosnian Serb Army volunteer, was sentenced to fifteen years for the murder of nineteen Yugoslav Muslims abducted from a train near the border town of Strpci in February 1993. In October 2002, a military court convicted two Yugoslav army officers and two privates for the killing of two ethnic Albanians during the Kosovo crisis. Finally, the trial of Sasa Cvjetan, a member of a Serbian police anti-terrorist unit, was commenced in October 2002. He is accused of the murder of nineteen Kosovar Albanians in March 1999. These prosecutions of ethnic Serbs in their own state demonstrates a limited but growing acceptance of the government's responsibility to exercise territorial and nationality-based jurisdiction over the major crimes. However, prosecutions of more senior military and non-military leaders are necessary to demonstrate a full commitment to justice.

Domestic Prosecutions in Rwanda

Following the 1993 genocide, the Rwandan government found itself faced with the daunting task of prosecuting the perpetrators of the atrocities. Organic Law 8/96 of September 1996 divided offenders into four categories, based on their level of participation in the atrocities. Confessions and the provision of information concerning other accused were to be rewarded with a significant reduction in sentence. However, by 1998, the number of prisoners being held in jails throughout the country amounted to almost 130,000, and comparatively very few trials had taken place. Frustrated by the massive numbers of accused and the lack of proper infrastructure and evidence, and recognizing the need for both justice and reconciliation, the government began to experiment with the traditional form of judicial process, called *gacaca*.

The original gacaca was a semi-formal judicial process designed to deal with local issues. The community met in the open and participated in the process, with local respected figures elected to serve as judges. The Gacaca Law on the Creation of Gacaca Jurisdictions, approved by the Constitutional Court on 26 January 2001, adapted traditional gacaca law to meet the demands imposed by the number and magnitude of the crimes committed during the genocide. The new law incorporated the provisions of Organic Law 8/96 concerning the classification of perpetrators and the confession/sentence reduction program. The "*gacaca* jurisdictions" are empowered to try anyone accused of involvement in the atrocities, except for those who held positions of power within Rwandan society and used that power to organize and carry out the genocide. These senior perpetrators are to be tried before normal criminal courts.

An early experiment with the new *gacaca* process was undertaken when 544 prisoners being held in Kibuye prison on little or no evidence participated in gacaca trials. Over a period of six weeks, the prisoners were presented one-by-one to the local population. Individuals who attended the trials were permitted to speak for or against each prisoner, and then to determine his guilt or innocence. By the end of the process, 256 of the prisoners had been released.

Victims rights groups have protested that the gacaca trials do not meet internationally recognized criminal process requirements, and fail to adequately punish offenders or to address victims' concerns, including the right to compensation. However, using the traditional process has significant advantages. Local people recognize and are comfortable with the procedures. They witness justice being done. The decision-making power rests with the community, tempered by the elected judges. The intent of the gacaca process is to discover the truth and to bring the offender back into the community after admission of the offence; a rehabilitation process fully in accord with the purposes of criminal prosecution. While the actual punishment imposed by the gacaca process might be lenient by international standards, it may be that it is the only available option for the Rwandan government, given the massive number of alleged perpetrators waiting for justice in horribly overcrowded jails.

Conclusion

History demonstrates that leaving states to prosecute their own nationals for major offences is rarely effective. Social and political tensions (post–World War I; Latin America), inadequate infrastructure (Rwanda), or simple disregard for justice when addressing major crimes committed by nationals against civilians in foreign countries (the United States in My Lai; Israel in Southern Lebanon; Canada and Somalia) have all played their part in undermining prosecutorial efforts. On the other hand, international institutions, operating on their own, are incapable of dealing with the large number of perpetrators normally involved in these offences, and the state concerned loses the cathartic benefits of the investigative process.

The most effective way to address impunity for major crimes is through a two-step process. The international community must intervene and conduct prosecutions of the most senior offenders at the earliest possible moment. This allows for the creation of a record of the offences and the removal from the transitional society of powerful elements potentially willing to reignite the conflict if threatened with domestic prosecution. Additionally, assistance must be provided to the transitional government for the rebuilding of infrastructure and the maintenance of political stability. As conflict-related tensions within the community begin to ease, the new government can commence domestic prosecutions of middle- and lower-ranking offenders, using domestic practices and laws amended to address these extraordinary offences.

SEE ALSO Argentina; Chile; Eichmann Trials; El Salvador; Guatemala; Immunity; Impunity; National Laws; Nuremberg Trials; Prosecution; Rehabilitation; Rwanda; Sierra Leone Special Court; Universal Jurisdiction; War Crimes; World War I Peace Treaties

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Native Americans

The international community has not legally admonished the United States for genocidal acts against Native Americans, yet it is clear that examples of genocidal acts and crimes against humanity are a well-cited page in U.S. history. Notorious incidents, such as the Trail of Tears, the Sand Creek Massacre, and the massacre of the Yuki of northern California are covered in depth in separate entries in this encyclopedia. More controversial, however, is whether the colonies and the United States participated in genocidal acts as an overall policy toward Native Americans. The Native-American population decrease since the arrival of Spanish explorer Christopher Columbus alone signals the toll colonization and U.S. settlement took on the native population. Scholars estimate that approximately 10 million pre-Columbian Native Americans resided in the present-day United States. That number has since fallen to approximately 2.4 million. While this population decrease cannot be attributed solely to the actions of the U.S. government, they certainly played a key role. In addition to population decrease, Native Americans have also experienced significant cultural and proprietary losses as a result of U.S. governmental actions. The total effect has posed a serious threat to the sustainability of the Native-American people and culture.

Ideological Motivations

Two conflicting yet equally harmful ideologies significantly influenced U.S. dealings with Native Americans. The first sprang from the Enlightenment and, more specifically, John Locke's *Second Treatise of Government*. Locke proposed that the individual had an exclusive claim to one's person. The fruits of one's labor, as an extension of the individual, then, become the laborer's property. Thus, individuals acquire property rights by removing things from the state of nature through the investment of their labor. This particular theory of property helped justify the many harmful policies against Native Americans throughout United States history. European settlers falsely saw the Americas as a vast and empty wasteland that the Native Americans had failed to cultivate and, therefore, had no worthy claim to. Euro-Americans saw themselves as the torchbearers of civilization and therefore thought they were uniquely situated to acquire the vast wilderness and develop it (this later developed into the idea of Manifest Destiny). To the Euro-American mind, that the Native Americans must yield to European settlement was inevitable. This line of reasoning went so far as to result in a common nineteenth-century belief that the extinction of Native Americans was also inevitable.

The second ideological motivation behind U.S. treatment of Native Americans was the policy of assimilation. Its origins are manifested in president Thomas Jefferson's idea of the yeoman farmer. Jefferson envisioned a land populated by industrious and autonomous yeoman farmers. Native Americans stood in the way of this vision by their communal occupation of vast quantities of land. The best solution, then, would be for Native Americans to assimilate to Euro-American ways. Thus, the Native Americans would require less land and the remainder would be available to white settlers. Under this ideological view of Native Americans' role in the new world, there was no place for Native-American culture as it existed before colonization. It was a useless stump in fertile land that had to be extracted. Assimilation of Native Americans and the intentional destruction of Native-American culture remained overt policies into modern times and were often tied to many religious groups' interactions with Native Americans.

Colonies and States

One of the lesser known facts in U.S. history is that the Virginia and Carolina colonies were heavily engaged in the slave trade of Native Americans. In the Carolinas, the proprietors of the colonies favored cultivating Native-American ties for the lucrative fur trade. Settlers, some from Barbados where slavery was already established, however, raided Native-American tribes and exploited long-standing native rivalries in order to capture and sell Native Americans on the slave market. Historian Thomas R. Berger notes that a South Carolinian, James Moore, abducted and enslaved 325 Native Americans in the Florida region in 1704 and also launched a lucrative attack against the North Carolinian Tuscarora tribe in 1713, killing 200 and capturing 392. The end result of such campaigns was to displace many of the eastern seaboard tribes. The majority of Native Americans in this region were enslaved domestically, sold abroad, or forced to flee into the interior. Such displacement necessarily also destroyed these tribes' cultural unity. These acts of intentional enslavement and displacement would qualify as genocidal acts under the United Nations (UN) definition of genocide. While slavery is not specifically mentioned in the UN Genocide Convention's definition of genocide, it fits the spirit of the convention. These acts deliberately caused bodily and mental harm and imposed conditions on the eastern tribes that made life near the colonized settlements precarious to the point of becoming impossible.

Relations between the northeastern tribes and colonists were also precarious and often hinged on perceived threat, land conflicts, and trade relations. The Puritans of New England recognized native land title only if the land was being cultivated and had a persistent practice of enslaving Native Americans. What harmony existed was often disturbed by conflicts over new settlements and further encroachment on native land. The Pequot War of 1637 illustrates this tension. The Pequot had faired the influx of Western disease better than other tribes and had the strength to resist settlements rather than acquiesce to them. When settlers moved into the Connecticut Valley, the Pequot did just that. In response, a group of settlers launched an attack against the Pequot stronghold at night, surrounding and setting fire to it. The result was the killing of more than five hundre Pequot and the enslavement of the survivors. The desire to eliminate a threat also motivated a similar policy of extermination in Virginia following the Indian massacres of 1622 and 1644.

The western states did not fair much better with their relations with Native Americans. The Sand Creek Massacre in Colorado (1864) and the massacre of the Yuki of northern California (1856–1860) demonstrate that the competition for land and other resources was not fixed in time, but enduring throughout the United States' westward expansion. Both the desire to eliminate a threat and competition for resources, usually land, led many colonies and states to actions that would probably be considered war crimes or crimes against humanity under the Rome Statute.

A mass burial in the aftermath of the Wounded Knee massacre, 1890.[CORBIS]

Federal Government

Much of the federal government's dealings with Native Americans were fueled by states' and individuals' desire for land. After the French and Indian War (1754–1763), the English strongly opposed encroachment on native lands for fear that it would provoke native retaliation and the destruction of beneficial military and trade alliances. King George's Proclamation of 1763 forbade settlement beyond the eastern mountain ranges and granted the Crown the exclusive right to purchase Native-American land. This law frustrated many colonists and land speculators, including Virginia statesman George Washington, who wished to purchase native lands. Under the Proclamation, native lands could be acquired from the Crown, but at a much higher price. The restriction on settlement of certain portions of land also greatly hindered the expansion that many colonists saw as desirable and inevitable. The Crown's interference with settlers' desire for cheap, arable land contributed to many colonists' support and justification for the Revolutionary War. This property system, whereby Native Americans had occupancy rights but because the Europeans "discovered" the continent the Crown had exclusive purchasing rights, was later absorbed into U.S. federal law in the seminal case

Map showing location of Native-American tribes throughout the United States prior to their annihilation and forced relocation westward in the nineteenth century.

Johnson v. McIntosh in 1823. Despite this paternalistic relationship between the federal government and the native tribes in the post-revolutionary United States, settlers continued to attempt to acquire native lands through direct purchase and coercion. The promise of economic gain at Native Americans' expense by taking native land was a cornerstone of the voting Euro-American population's interaction with Native Americans and heavily influenced U.S. Native-American policy.

The War of 1812 marked a turning point from the policy of Native-American assimilation and partial retention of native land to the policy of outright removal of native tribes to the West of the Mississippi. The forced removal or tribes also resulted in a total relinquishment of traditional native land. After many largely unsuccessful attempts to convince the five relatively prosperous and assimilated tribes of the Southeast (Cherokee, Choctaw, Chickasaw, Seminole, and Creek) to voluntarily move westward, the federal government acquiesced to state pressure and passed the Indian Removal Act of 1830. It offered a trade of land in the East for land in the West. The particularly coercive aspect of the act was that those who refused the exchange would no longer be protected under federal law and would be subject to hostile state regulation. The removal policies of the federal government resulted in the humanitarian disaster referred to by the Cherokee as the Trail of Tears.

Approximately four thousand Cherokee perished on this forced walk to western lands. Removal, however, was a larger policy than this one famed act. It occurred both before and after 1830 and represented the belief that American Indians were not capable of existing with nor desired to coexist with white settlers. There were conflicting motivations behind the policy. For some, it was a thinly veiled method of evicting Native Americans from land that was desired by white settlers. For others, it was based on the belief that Native Americans were members of an inferior civilization that could not survive in the civilized world and therefore needed to be removed for their own sake. Either way, some scholars reference the federal removal policy as a genocidal act due to the death and proprietary loss incurred to Native Americans as well as the destruction of their traditional way of life.

A second and particularly destructive policy was that of assimilation. Behind assimilation policies lies the desire to remove all that is "Indian" from the Native Americans. A particularly poignant historical example of how this policy was also tied to the continued desire for more land is the General Allotment Act of 1887 (the Dawes Act). This act terminated communal land holdings on the reservations and redistributed land to individual Native Americans by a trust system. After twenty-five years, they would own the land individually and become U.S. citizens. Any "surplus" land would be taken for sale to settlers. It was an attempt to assimilate Native-American traditions of communal land holdings to the Euro-American system of private ownership. Thereby, it was thought, Native Americans would join mainstream society and, at the same time, require less land. This act had disastrous effects on traditional Native-American life and reduced their land holdings by two-thirds.

Yet another assimilation policy was the forced removal of Native-American children from their parental homes to boarding schools for "civilized" education. The Northwest Ordinance of 1787 established an involuntary boarding-school system where children were typically forbidden to speak their native language and were stripped of all outward native characteristics. The Carlisle Indian Industrial School was one of these schools and incorporated an "outing system" whereby children were placed with white families in order to learn American customs and values. While having the good intention to provide education to Native-American children, this system of indoctrination was also aimed at "killing the Indian and saving the man" (Glauner, 2002, p. 10) as Richard Pratt of the Carlisle School said. In the twenty-first century, this policy would be considered both a potential violation of the UN Genocide Convention's prohibition on transferring children from one group to another, and a blatant intention to cleanse the Indian population of their native language and cultural values through the re-education of their children.

A clearer example of a federal genocidal act against Native Americans was the involuntary sterilization of approximately seventy thousand Native-American women. The federally funded Indian Health Services carried out these sterilizations between 1930 and the mid-1970s. They were often done without informed consent, covertly, or under a fraudulent diagnosis of medical necessity. This directly contravenes the UN Genocide Convention. Destroying a group's ability to reproduce is an obvious and crude method of ensuring the inability of the group's survival.

Whether government actions such as the Trail of Tears and assimilation policies qualify as genocidal acts or as crimes against humanity continues to be a subject of much disagreement and debate. The UN Genocide Convention requires that a state actor have "intent to destroy" a group to satisfy the definition of genocide. As previously outlined, many of the actions taken by the federal, state, and colonial governments fell short of actual intent to destroy the Native Americans. Scholars Frank Chalk and Kurt Jonassohn maintain that the closest cases are the massacres at Sand Creek and of the Yuki of Round Valley (a modern example would be the sterilization programs). In both instances, government officials played key roles in facilitating the purposeful killing of Native Americans. The circumstances under which the United States committed genocide against Native Americans tended to be when other methods failed to clear a path to settlement, or other

notions of progress. "Ethnocide was the principal United States policy toward American Indians in the nineteenth century . . . the federal government stood ready to engage in genocide as a means of coercing tribes when they resisted ethnocide or resorted to armed resistance" (Chalk and Jonassohn, 1990, p. 203).

The U.S. government was more often guilty of acts of "advertent omission" (that is, without intent to commit genocide, failing to act to prevent private acts that have genocidal effects or failing to perform obligations that prevent genocidal effects). There is a debate as to whether such acts should be incorporated into the definition of genocide, although they currently are not a part of the UN definition. Continually turning a blind eye to aggressive settlers' illegal consumption of native land and to other private acts of intimidation are examples. On the plains, the U.S. government did not prevent the destruction of tribes' primary food source and government officials often spoke in approval of it. From 1883 to 1910, the buffalo, upon which tribes in that area were dependent, were killed in such great quantities that the number fell from 60 million to 10 buffalo. Without their traditional food source and with the pressure exerted by settlers mounting, the plains Indians experienced famine or were forced to relocate to reservations. Further, the United States often failed to uphold treaty obligations to provide protection, food, and blankets to Native Americans. The failure of the U.S. government to protect Native Americans and, in some cases, to follow through on its own obligations, left Native Americans with few options and contributed to their destruction.

The third possibility is to categorize U.S. actions as crimes against humanity under Section 7 of the Rome Statute of the International Criminal Court. Murder, extermination, and deportation or forcible transfer of population fall under this statute when done "as part of a widespread or systematic attack directed against any civilian population. . . ." Because many of the acts of removal were coercive, they could qualify as crimes against humanity.

Conclusions

The aforementioned allegations of genocidal acts against American Indians occurred before the United States ratified the UN Genocide Convention in 1948 (as of 2004, the United States has not ratified the Rome Statutes). Most treaties in international law are not retroactive. Legal reprisal under the UN Genocide Convention, then, is not likely. An argument may be made, however, that the involuntary sterilization of Native-American women occurred after the United States signed the UN Genocide Convention (although before ratification) and that the United States violated its obligation not to act against the object and purpose of the treaty.

Perhaps more important than formal legal sanctions, however, is the recognition of the colonies', the United States', and individuals' role in the devastation of Native-American population and culture. As the description of state policies and actions attest, the destruction of Native-American communities and culture was neither by chance nor mandated by fate. It was directly connected to government policies and actions.

SEE ALSO Cheyenne; Forcible Transfer; Indigenous Peoples; Pequots; Racism; Sand Creek Massacre; Trail of Tears; Wounded Knee; Yuki of Northern California

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The secretary general of Amnesty International, Pierre Sane (second from right), discusses the organization's 1996 China campaign, March 15, 1996. [AP/WIDE WORLD PHOTOS]

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Stacie E. Martin

Nongovernmental Organizations

There is a vast diversity among nongovernmental organizations (NGOs) in respect to composition, methods of working, membership, and purpose. If there is a common denominator to be found, it is less in what NGOs are but rather in what they are not. As Deborah Spar and James Dail have noted, NGOs are not "states or firms; not elected or appointed" (2002, p. 173). Some have argued that this creates a "democratic deficit," meaning NGOs are self-appointed representative agencies that may not be accountable to those they represent. NGOs differ in size, focus, wealth, and working methods, as do their clientele and target groups. NGOs may be local (working within a single state), regional (working across national borders), or international. They range from one-person operations to organizations with large numbers of workers and with offices in numerous countries. Some, like Amnesty International, are membership-driven and supported largely by donations from its constituent members. Others, such as Human Rights Watch, rely primarily on foundations or single donors for the funds needed to pay operating costs. The degree to which an organization's membership base is drawn from civil society provides some clue as to what extent the organization suffers from the "democratic deficit" attributed to these "unelected" bodies.

Definitions

Given the rather fluid nature of the composition of the NGO community, it can be difficult to provide a precise definition of this type of organization. The *Encyclopedia of Public International Law* defines NGOs as:

> private organizations (associations, federations, unions, institutes, groups) not established by a government or by an international agreement, which are capable of playing a role in international affairs by virtue of their activities, and whose members enjoy independent voting

> rights. The members of an NGO may be individuals (private citizens) or bodies cooperate. Where the organization's membership or activity is limited to a specific state, one speaks of a national NGO and where they go beyond, of an international NGO.

In contrast, the *Oxford Dictionary of Law* defines an NGO as:

> A private international organization that acts as a mechanism for cooperation among private national groups in both municipal and international affairs, particularly in economic, social, cultural, humanitarian, and technical fields. Under Article 71 of the United Nations Charter, the Economic and Social Council is empowered to make suitable arrangements for consultation with NGOs on matters within its competence.

This more limiting definition reasserts the notion that NGOs are international in character and serve to facilitate national organizations.

The World Bank has defined NGOs more narrowly yet, as "private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development" (Operational Directive 14.70). This definition is specific to developmental NGOs, the partner community of the World Bank.

What characterizes NGOs and makes them distinct is their nongovernmental character. They may operate within a target state or across state boundaries, or indeed internationally, but they are independent from states, and ostensibly, from state influence.

Categories of NGOs

The World Bank places NGOs into three primary groupings. There are community-based organizations (CBOs), which serve a specific population in a narrow geographic area; national organizations, which operate in individual developing countries; and international organizations, which are typically headquartered in developed countries and carry out operations in more than one developing country.

Such distinctions are useful, but each of the categories subsume a rather disparate group of NGOs. To further identify the various strands of the NGO community, Spar and Dail offer a useful typology of NGOs. They divide the NGO community along ten focus topics: health services, infrastructural services, development assistance, education, commercial services, refugee assistance, basic needs, social development, the environment, and human rights. Undoubtedly, these topics and subtopics could be expanded or subdivided further, but the typology's usefulness is twofold. First, the diversity of groups and topical areas of interest highlights just how expansive the umbrella under which NGO groups are housed actually is. Second, the typology helps to categorize NGOs by function and, flowing from this, facilitates assessment of how well they fulfill their functions.

As well as their specific focus, NGOs may also be categorized according to their modus operandi. NGOs can be divided into two groups—those that are primarily advocacy oriented and whose work is to promote a particular cause or position, and operational NGOs, mainly found in the development field, whose primary purpose is to design and implement projects. Advocacy orientated groups use lobbying or public campaigns and education to influence policies and promote action. Development organizations, which include such groups as CARE, Oxfam, and Habitat for Humanity undertake projects, such as building housing for the poor, designing and implementing well systems for clean drinking water, and building irrigation systems for crop development, to name but a few.

Role of NGOs among Global Institutions

The significance, whether global or regional, of NGOs in shaping discourse at the international level and in the development of international law is undeniable. Often nonpolitical and unencumbered by the influence of governments, NGOs have become both the conscience and the voice of international civil society. Nongovernmental organizations, whether domestic or international, figure prominently in both the creation and implementation of international law. Accordingly, the development and increasing influence of NGOs somewhat mirrors the development and influence of the international legal regime. Historically, the rise of NGO activities parallels the growth in intergovernmental organizations starting at the end of the nineteenth century and especially after World War II.

Article 71 of the UN Charter expressly acknowledges the role of NGOs in international law and development:

> The Economic and Social Council [hereafter referred to as ECOSOC] may make suitable arrangements for consultation with nongovernmental organizations, which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

The impact of this measure is twofold. First, it recognized the formalized consultative relationship that

NGOs had assumed with national and international bodies, both inside and outside the League of Nations, during the period 1919 to 1934. Second, and more confining, are two conditions set forth under Article 71 that, in contrast to the previous and non-formalized period of engagement, actually place limits on NGO participation. The provisions of Article 71 confine the consultation areas to those that fall within the mandate of ECOSOC. As stipulated, the relationship between NGOs and the UN is limited to one of consultation.

> This distinction, [of consultative status] deliberately made in the Charter, is fundamental and the arrangements for consultation should not be such as to accord to non-governmental organizations the same rights of participation as are accorded to States not members of the Council and to the specialized agencies brought into relationship with the United Nations.

Thus, the position of NGOs and their representatives is in marked contrast to that of representatives of UN agencies, for the latter are able to "participate without vote" in ECOSOC deliberations. It is also worth noting that Article 71 specifies that engagement with national NGOs is to be made only on an exceptional basis.

The initial arrangements for consultation with NGOs were set out in ECOSOC Resolution 1296 (XLIV) on May 27, 1968. Resolution 1296 reaffirmed the international requirement of consultative status for NGOs, and noted that this status could be waived for national NGOs only when the participation of the national NGO was necessary to reflect a "balanced and effective representation of NGOs," or where that NGO had specific or "special" experience or expertise useful to the Council. ECOSOC Resolution 1996/31 subsequently amended resolution 1296 on July 25, 1996, enumerating the requirements for obtaining consultative status, as well as delineating the duties and responsibilities of NGOs in consultative status. Of note, the organization must demonstrate:

- Its activities are relevant to the work of ECOSOC;
- It has a democratic decision-making mechanism;
- Is of recognized standing within the particular field of its competence or of a representative character;
- It has been in existence (officially registered with the appropriate government authorities as an NGO or non-profit agency) for at least two years; and
- Its basic resources are derived primarily from contributions of the national affiliates, individual members, or other non-governmental components.

Significantly, Resolution 1996/31 appears to lower the bar for national NGOs to obtain consultative status, because the key requirement for the status is that the organization "is not established by a governmental entity or intergovernmental agreement." However, as noted above, the organization must still be of "recognized standing," which may serve to exclude national NGOs that fail to meet that criterion. Currently there are 2,350 NGOs in consultative status with ECOSOC, and some 400 NGOs accredited to the Commission on Sustainable Development (CSD), a subsidiary body of ECOSOC.

Status within International Law

There is some debate regarding the legal personality of NGOs. An entity possesses an international legal personality when it bears rights and duties under international law. Traditionally, the notion of bearing rights and responsibilities has rested primarily within the domain of states. The question is whether international law has evolved enough to recognize the role of non-state actors. The answer may well be both yes and no. Clearly states remain the primary rights-and-duty holders in international law. Nonetheless, the evolution of international law, combined with the increasing role of NGOs in the international playing field, suggests that NGOs have obtained some form of legal personality. This would most certainly apply to the International Committee of the Red Cross, whose position is recognized in international humanitarian law treaties.

NGO Effectiveness

Spar and Dail reasonably posit that the categorization of NGO functions goes some way in assessing an individual NGO's effectiveness. For example, it is possible to audit NGOs that are largely operational, in that they provide a particular service to a particular community, as is true of many development-oriented NGOs. It then becomes possible to assess how well that service has been provided, and how many in the target community are served. Such an audit may calculate how many planned projects were successfully executed and, further, what mechanisms were used for follow-up (e.g., was there training of local staff).

Measuring the effectiveness of advocacy-oriented groups, however, is a much more difficult task. Certainly, such groups might be assessed according to their success of changing a piece of legislation or government policy. Alternatively, effectiveness might be measured by an NGO's success in providing expertise and effective lobbying that culminates in a new treaty or undertaking, or a change in legislation, as happened in the Landmines Campaign (which led to the Landmines Treaty), the creation of a permanent International Criminal Court (ICC), and the worldwide move toward abolition of the death penalty. However, the tangibles

are often harder to codify when assessing the effectiveness of human rights NGOs. Worldwide campaigns to stop the use of child soldiers, to stop torture and extra judicial killings, to establish transitional justice processes that demand accountability for gross violations of human rights (including genocide and crimes against humanity), to free political prisoners and to secure socio-economic and cultural rights often operate on the principle of "one step forward and sometimes two steps back."

Limitations

Although NGOs have increased in both numbers and professionalism, and have assumed a significant role as players within the international arena, they still are limited in a number of areas. They can only engage on the international legal level when invited to do so by states, or when allowed by provisions within an international treaty. Some international instruments and regional instruments do allow for third party interventions before courts, which allow NGOs to directly participate in the proceedings. In their work, international, and indeed some national human rights, NGOs principally draw upon the so-called International Bill of Rights, comprised of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Social, Economic and Cultural Rights. These primary human-rights instruments are supplemented by thematic mechanisms—such as treaties that specifically focus on the rights of women or children, or on specific forms of violations, such as torture or discrimination—and other instruments of international law to serve as guiding mechanisms for human rights NGOs. Although international human rights NGOs and some national NGOs rely on international law and are active in more than one country, the term has also been applied to national NGOs that may work only in one country and may rely on a domestic, rather than international legal framework.

Despite the rather broad sense in which the term has been applied, there are fundamental criteria that human rights organizations must meet in order to qualify for NGO status:

- It must not be established by a government or have officers or board members appointed by a government;
- It must not be funded by one government, and if the organization accepts donations from states, the donor countries must not have an influence on the decision making of the organization;
- It must be a not-for-profit organization; and
- It must have the promotion and protection of human rights as its fundamental objective.

Beyond these essential criteria, the operations, support, advocacy, research methodology, funding, and structure can differ profoundly. There are many established and respected international human-rights NGOs that merit some specific mention in the campaign against impunity.

Amnesty International

Amnesty International (AI, at www.amnesty.org) was founded in 1961 by Peter Benenson, a lawyer and activist from the United Kingdom. The organization's mission has evolved from its initial focus on specific issues within the civil and political rights arena to a broader scope, which now encompasses social, economic, and cultural rights. Although it still "concentrates on ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination," its mandate has been expanded to include investigating abuses by non-state actors, addressing issues that arise from conflict, and striving for accountability for human rights violations "in the home or community where governments have been complicit or have failed to take effective action."

The organization states that it currently has over 1.5 million members from more than 150 countries. AI's 2002 report describes its operation and structure as follows:

> Its nerve center is the International Secretariat in London, with more than 410 staff members and over 120 volunteers from more than 50 countries around the world. The AI movement consists of more than 7,800 local, youth, specialist, and professional groups in over 100 countries and territories. There are nationally organized sections in 58 countries, and pre-section coordinating structures in another 22 countries and territories worldwide.
>
> Amnesty International is a democratic movement, self-governed by a nine-member International Executive Committee (IEC) whose members are elected every two years by an International Council representing sections.

The organization distinguishes itself from other international human rights NGOs in that it is membership-based and membership-driven. During 2002 and 2003, its international budget was listed as £23,728,000 ($43,809,006 in U.S. dollars), which comes from membership fees as well as donations from trusts, private individuals, foundations, and corporations. Amnesty International does not accept money from governments.

Lawyers Committee for Human Rights

The Lawyers Committee for Human Rights (LCHR, at www.lchr.org) was established in 1978. According to its mission statement, the organization works

> in the U.S. and abroad to create a secure and humane world by advancing justice, human dignity, and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; promote fair economic practices by creating safeguards for workers' rights; and help build a strong international system of justice and accountability for the worst human rights crimes.

The LCHR, now known as Human Rights First, has offices in both New York City and Washington, D.C. The organization is funded exclusively by private donations and does not accept government funding. Its 2001 annual budget was listed as $6.1 million. The organization is strongly supported through pro-bono work done by the legal community, which, according to their annual report was valued at $15 million in 2001.

Human Rights Watch

Human Rights Watch (HRW, at www.hrw.org) is the largest United States–based international human rights organization. Its organizational headquarters is in New York City and it has thirteen other offices worldwide. As of 2002, the organization employed 189 staff members as well as short-term members and fellows. In the past, HRW has distinguished itself from Amnesty International in that it had a broader mission statement. Its work includes

> not only prisoner-related concerns but also many abuses that do not involve custody, such as discrimination, censorship, and other restrictions on civil society, issues of democratisation and the rule of law, and a wide array of war-related abuses, from the indiscriminate shelling of cities to the use of landmines. Human Rights Watch prides itself on aggressively expanding the categories of victims who can seek protection from our movement. Since the late 1980s, we have gradually added special programs devoted to the rights of women, children, workers, common prisoners, refugees, migrants, academics, gays and lesbians, and people living with HIV/AIDS.

Amnesty International's refocus on thematic rather than country specific issues, and the broadening of its work to include more civil and political as well as social, economic, and cultural rights, has blurred the distinction between AI and HRW, at least with regard to their individual missions. In terms of function and membership, however, HRW is very different from Amnesty International. HRW does not have a mass-membership base, whereas such a base serves as the core of Amnesty's advocacy work. For HRW, a smaller membership base, together with staff and consultants, undertakes the organization's "principal advocacy strategy." HRW's total operating revenues during 2001 and 2002 have been noted to be $21,715,000. Like its counterparts, HRW does not accept government contributions.

All Groups Not Equal?

As the sheer number of NGOs have grown, so too has their level of professionalism, earning them a role as influential actors in an increasingly globalized international community. However, the broad universe of human rights NGOs has also come to include organizations that do not fit some of the basic NGO criteria. This has prompted some within the human rights field to note, "not all human rights groups are equal." In a letter to the *New York Times*, Aryeh Neier, the former Executive Director of Human Rights Watch argued that there has been a "proliferation of groups claiming to speak in the name of the human rights cause, but actually engaged in efforts to promote one or another side in a civil conflict" (Steiner and Alston, 2000, p. 945). Neier's concerns are not without merit. The credibility and effectiveness of the human rights movement rests on its ability to work impartially—in fact as well as in appearance.

Neier suggests that, in addition to the criteria previously outlined, the work of groups claiming to be human rights focused should be scrutinized to ensure that both their methodology and advocacy are of a consistently high standard. Fieldwork must be systematic and carried out in as transparent and impartial a manner as possible. When abuses occur, the organization must be willing to apply legal standards to critique and hold actors accountable for all violations—whether these arise from state or non-state actors. Language used to describe the violation must have legal determinacy and must accurately reflect the level and extent of abuse. Finally, when opposing or contradictory evidence or statements are documented and are found to be credible, they should be noted.

Working against Impunity

International human rights NGOs are primarily advocacy organizations, although some national human rights groups may also have caseworkers or operate clinics that provide legal support in the domestic courts systems. Both domestic and international human rights organizations produce reports or memoranda which detail the organizations' concerns regarding an issue or practice in one or more countries. Reports are often

supplemented by updates or alerts on specific countries or issues. Amnesty International, for example, produces *Urgent Actions*, which are bulletins used to mobilize its membership on cases that require immediate attention. Members are requested to lobby their local representatives on these issues and to engage in letter-writing campaigns to the relevant government or international actor.

Although human rights NGOs may differ slightly in their methods of collecting and disseminating information, there are some standard research procedures that can be noted. Organizations such as Amnesty International and Human Rights Watch will routinely send staff into individual countries to investigate human rights conditions there. These field missions are normally undertaken by a specific researcher from the country or region being investigated. The reasearcher may be accompanied by independent consultants who offer specific expertise in either the region or in a specific field (e.g., forensic pathology, military, or munitions experts). Field work may involve site visitations where violations have been alleged to have occurred, interviews with witnesses and victims, collection of medical or forensic evidence (where appropriate), photo or video documentation, interviews with both state and non-state actors (where violations are said to have been undertaken by state military or opposition groups), and interviews with all appropriate other parties.

The duration of the field visitations vary significantly, and depend on the scale of the work and the breadth of topics that are to be covered. Collection and dissemination of materials to a wider audience are a large part of the advocacy work undertaken by human rights groups. As these groups do not comprise political actors and are nongovernmental, the emphasis is on the use of documentation collected as part of its public education and advocacy missions. HRW stresses that a large part of its work focuses on lobbying and its "principal advocacy strategy is to shame offenders by generating press attention and to exert diplomatic and economic pressure on them by enlisting influential governments and institutions." These claims are true for other international human rights NGOs as well. Amnesty International, on the other hand, uses its membership base as an effective means of disseminating reports and fieldwork findings and mobilizes its members to lobby.

Additionally, most international human-rights NGOs use their materials for human rights education, providing online databases of their reports and summaries for use by locally based NGOs as well as others in the field and the general public. One important aspect of the work of international human rights NGOs is the use of mass media. Although organizations approach the question of media contact differently, with some groups putting large resources toward its media work, virtually all human rights groups at local or international levels depend on the media to assist in disseminating its findings and not just as a means to further public education on a given issue. Through the use of the media, these groups reach an audience that would fall outside of the human rights advocacy networks but might be motivated to apply pressure to governments to answer questions and create the impetus for appropriate action.

Human rights NGOs are increasingly becoming players at the international level. They are no longer limited to monitoring and advocating for the respect of international law and legal mechanisms, but are now active participants in the formulation of legislation. One recent example has been NGO involvement in the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, which was held in Rome, Italy between June 15 and July 17, 1998. Amnesty International, Human Rights Watch, and the Lawyers Committee for Human Rights were among the hundreds of international and national NGOs in attendance. NGO contributions ranged from the technical and prescriptive to the aspirational. This conference was the result of General Assembly Resolution 52/160 of December 15, 1997, which authorised the participation of selected NGOs in the preparatory work for the establishment of the International Criminal Court.

As part of its work, the Preparatory Committee for the International Criminal Court, which included a significant number of NGOs, established a Victims' Trust Fund. Article 75, paragraph 2 of the Rome Statute allows the ICC to direct a convicted person to pay compensation to a victim. NGO participation in the drafting of the guidelines for the Victims' Trust Fund ensured that it would operate independently of the court and would be the body to distribute financial awards. The Victims' Trust Fund is supported by a Victims' Trust Fund Campaign, based in the United States and coordinated by an organization called Citizens for Global Solutions. The Victims' Trust Fund Campaign has a number of United States–based participating organizations, including a number of national and international human rights NGOs. The conference, together with NGO participation in the preparatory work of the ICC, highlights a trend toward increased NGO participation at an almost quasi-state level.

Investigating War Crimes, Crimes against Humanity and Genocide

International human rights legislation and humanitarian law remain the primary framework of human rights organizations when investigating and reporting on allegations of violations. Investigations undertaken by local and international human rights organizations into allegations of genocide in Rwanda and Bosnia and Herzegovina, and crimes against humanity and war crimes in Israel and the Occupied Territories (to name but a few) have provided critical and independent sources of information. Moreover, these organizations have often played central fact-finding roles that the international community was unable to fulfill.

In cases where the UN has been slow to react to gross human rights violations or has been seen to be ineffective, particularly in the case of Rwanda, international human rights NGOs have spearheaded the research and public dissemination of information, and in calling to hold alleged perpetrators accountable. The work of international NGOs, such as Amnesty International and Human Rights Watch, in documenting the genocide in Rwanda and Bosnia and Herzegovina not only provided a historical record of the events, but moved the campaign against impunity further by pressing for the establishment of the ad hoc International Criminal Tribunals for Rwanda and the Former Yugoslavia. A brief look at a 2002 investigation by international human rights organizations in Israel and the Occupied Territories serves to highlight the sometimes pivotal role of human rights NGOs.

Israel and the Occupied Territories

There have been a number of reports issued by international as well as locally based human rights organization that have alleged grave violations of human rights in the Occupied Territories. However, one particular series of events merits review. In March 2002, the Israeli Defence Forces (IDF) launched a new offensive, Operation Defensive Shield, in Palestinian residential areas. An Amnesty International report stated that this offensive

> followed a spate of killings of Israeli civilians by Palestinian armed groups during March. According to the IDF, the purpose of the offensive—like the incursions into refugee camps, which preceded it in March and the occupation of the West Bank, which followed in June—was to eradicate the infrastructure of "terrorism."

Enormous speculation and concern was raised with regard to the Jenin refugee camp (although this concern was not to the exclusion of other areas in the West Bank). Both the city of Jenin and the camp of the same name had been designated controlled military areas, and those who had fled the fighting that followed the IDF's incursion into the camp were suggesting that the situation within the camp was quite grave. On April 5, 2002, the UN Commission on Human Rights ordered a UN fact-finding mission be undertaken in the Occupied Territories. However, the mission was not allowed to enter Israel and was therefore disbanded. A high-level fact-finding mission that had been agreed upon by Foreign Minister Shimon Peres and UN Secretary-General Kofi Annan and which had been authorized by the unanimous vote of the UN Security Council was also barred from entering Israel and was forced to disband after weeks of negotiations.

Amnesty International and Human Rights Watch, as well as several locally based human rights NGOs dispatched teams of investigators to the West Bank. Because the UN investigating team was not allowed into the areas of concern, the burden fell upon the international and locally based human rights organizations to undertake research and make public their findings on events surrounding the IDF operation. Human rights NGOs in the areas most affected provided critical information regarding the conditions within the camp and in Jenin, as well in other parts of the West Bank that were under Israeli military control. Moreover, using international legal instruments to guide their research and public comment, groups such as AI and HRW, were able to make preliminary assessments as to whether the IDF had operated within the laws of war and the applicable human rights framework.

Two significant reports were published as a result of these investigations. HRW released a report in May 2002, focused solely on Jenin, shortly after the IDF withdrew from the Jenin refugee camp. The report alleged grave breaches of Article 147 of the Fourth Geneva Convention, and suggested that a prima facie case existed for the charge that war crimes were committed. HRW listed several recommendations calling for investigations and accountability, and specifically called upon the Government of Israel to undertake a full investigation into these allegations. Further, HRW recommended that, should Israel fail in this undertaking, the international community should hold accountable those found to have violated human rights.

Amnesty International's report followed in November of that same year, and included a section on the West Bank city of Nablus. For the most part, AI's conclusions and recommendations mirrored those of HRW, but the AI report posited their findings in the wider context of its work in Israel and the Occupied Territories. Amnesty International concluded that

some of the reports findings revealed part of a pattern in which many of the violations

> have been committed in a widespread and systematic manner, and in pursuit of government policy (some, such as targeted killings or deportations, were carried out in pursuit of a publicly declared policy). Such violations meet the definition of crimes against humanity under international law.

These reports, together with findings from locally based human rights organizations, remain the only independently researched historical record of these events.

NGO Work-Product

International human-rights organizations use existing international legal frameworks as an important guide when evaluating and presenting their research findings. Additionally, some local as well as international human-rights groups have begun to use different mediums for presenting their research findings. For example, *Witness*, previously a project component of the Lawyers Committee for Human Rights, uses videography as its primary campaigning medium. Nonetheless, the main substantive tool for research dissemination for most human rights organizations remains a written report or informational booklets, which are often preceded by report summaries and press alerts. For international human rights organizations, there is a general format to these reports.

In a 1996 article, Stanley Cohen noted that the standard report format employed by human-rights organizations contains seven fixed elements. According to him, these include expressing concern, stating the problem, setting the context, enumerating the sources and methodology employed, detailing the allegations, citing relevant international and domestic law; and calling for the required action. This outline does, in fact, capture the layout of most international human-rights organizations reports. Neither the format nor the methodology used in compiling such reports differ significantly among the larger international human rights NGOs. However, there is a great deal of variance among national and thematic international human-rights organizations regarding the quality of research and the degree to which international legal frameworks play a role in determining findings.

The Challenges Ahead

The challenges that face human rights NGOs in large part mirrors the broader challenges facing internal human-rights and humanitarian legal mechanisms. The attempt to sideline, ignore, or challenge the relevance of human rights and humanitarian law, under the guise of state security and the need to combat the global threat of terrorism has gathered momentum. The adversarial relationship between the protection of human rights and the question of state sovereignty, traditionally fought between human rights NGOs and repressive state regimes, has now been extended to democratic or quasi-democratic states, which view the interference of international legal regimes as an impediment to state security and the fight against terrorism. The very public unpacking and demoting of international legal protections is particularly evident, although not unique to, the events that followed September 11, 2001.

SEE ALSO Documentation; Evidence; Humanitarian Intervention; Human Rights; International Committee of the Red Cross; United Nations

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Kathleen Cavanaugh

Nuclear Weapons

Genocide and crimes against humanity can be carried out with machetes. They can be carried out with nuclear weapons. It appears, however, that in the current state of international law, using a nuclear weapon on people may not, in itself, be genocide, a crime against humanity, or otherwise absolutely forbidden.

The Nuclear Age arrived in the desert near Los Alamos, New Mexico, on July 16, 1945, with the first nuclear test detonation. That same year, the bombs were dropped from U.S. planes on the Japanese cities of Hiroshima, on August 6, and Nagasaki, three days later. Hiroshima and Nagasaki have been the only uses of nuclear weapons in armed conflict.

Subsequently, the Soviet Union, the United Kingdom, France, and China became avowed members of the Nuclear Club. The United States and the Soviet Union tested hydrogen devices of ever more awesome power. Israel is widely believed to have nuclear weapons. South Africa probably had the capability but forswore development after the demise of apartheid. India and Pakistan tested devices in 1998. North Korea apparently has the capability, and Iran, Iraq, Libya, and Brazil have been suspected of developing it. Iraq's nuclear potential was a significant factor in the efforts by the United Nations and the International Atomic Energy Agency (IAEA) to control that country's development of weapons of mass destruction following the Gulf War of 1991. (The IAEA is an intergovernmental organization associated with the United Nations that is devoted to encouraging peaceful uses of nuclear energy.) Nuclear potential figured prominently in the rationale articulated by the United States for its pre-emptive invasion of Iraq in 2003.

Nuclear weapons are explosive devices whose energy comes from fusion or fission of the atom. Their explosion releases vast amounts of heat and energy as well as immediate and long-term radiation. Radiation, unique to nuclear weapons, can cause nearly immediate death and long-term sickness, as well as genetic defects and illness in future generations. Nuclear weapons can have dramatically greater explosive effect than conventional weapons. The bomb dropped on Hiroshima from the airplane named *Enola Gay* was the explosive equivalent of approximately three thousand B29 bombers carrying conventional bombs. The "Bravo" hydrogen test at Bikini Atoll in 1954 had one thousand times the power of the Hiroshima blast.

The Case of Hiroshima and Nagasaki

What might international law say of such forces? The first legal assessment came as a protest from the Japanese Imperial Government through the Government of Switzerland, four days after the bombing of Hiroshima. Referring to Articles 22 and 23 (e) of the Regulations respecting the Laws and Customs of War on Land annexed to the Hague Convention of 1907, the Japanese government emphasized the inability of a nuclear bomb to distinguish between combatants and belligerents, and the cruel nature of its effects, which it compared to poison and other inhumane methods of warfare. Article 22 of the Hague Regulations provides: "The right of belligerents to adopt means of injuring the enemy is not unlimited." Article 23 (e) provides that ". . . it is especially forbidden . . . (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering." The Japanese protest decried "a new offence against the civilization of mankind." Its adversary, however, emphasized how the use of the bomb had quickly brought the war to finality, with millions of lives saved by avoiding a sea and land assault on the Japanese mainland.

The Japanese protest appears as Exhibit III in *Shimoda v. State*, a case brought in the Tokyo District Court in 1963. The plaintiffs sought damages for injuries suffered in Hiroshima and Nagasaki. The plaintiffs argued the illegality of the use of nuclear weapons, founded on an expanded version of the 1945 protest. Damages were claimed from the Japanese government on the theory that it had, in the Peace Treaty, waived the rights of victims to obtain redress from the United States without supplying an alternative source of compensation. The court agreed that the bombings were illegal, but held there was no right to press a claim for damages against the Japanese government.

The concepts of genocide and crimes against humanity were not yet in wide usage when the Japanese government made its August 1945 protest. If the events had occurred a little later, after the concepts gained currency, the government might have added references to those concepts in its protest. Given the international conflict with the United States, however, it was natural to rely on the law of the Hague.

The general principles of the laws of armed conflict have been a major recurring theme in the efforts to rein in nuclear weaponry through international law. This strategy emphasizes banning the use (but not necessarily possession) of such weapons. Other means have included: the quest for partial or total nuclear disarmament (including efforts at non-proliferation and strategic arms limitation); attempts by treaty, resolutions in international organizations, and litigation to stop the testing of such devices; limitations on the development of delivery systems (and defenses thereto); and the creation of Nuclear Free Zones, such as Antarctica, the moon, the South Pacific, and Latin America.

Australia/New Zealand Law Suits

New Zealand incurred the wrath of its traditional allies in the 1980s by instituting a total ban from its ports of nuclear-armed and nuclear-powered vessels. In 1973 Australia and New Zealand endeavored to obtain a ruling from the International Court of Justice on the legality of French nuclear tests in the Pacific. Their arguments relied primarily on environmental law and the law of the sea. A majority of the court in effect held the case moot, without reaching a finding on the merits. France had, until the time of the proceedings, been testing in the atmosphere. It now announced that its future tests would be underground. The court held that this announcement was legally binding on the government, which meant that the object sought by Australia and New Zealand had been achieved.

The court, in vague language, left open the possibility of revisiting the case "if the basis of this Judgment were to be effected." New Zealand believed that its case dealt not only with tests in the atmosphere, but also tests that resulted in the entry of radioactive material into the marine environment, even if the testing took place below the ground. Receiving indications that radioactive material was escaping from underground, New Zealand tried to resurrect its case in 1995. A majority of the court refused to reopen the case, taking a narrow view of the earlier proceedings and insisting that, like Australia's somewhat differently worded case, only atmospheric testing had been at issue.

From June 30, 1946, to August 18, 1958, the United States conducted sixty-seven nuclear tests near the Marshall Islands in the South Pacific Ocean. In the first experiment, Able, which is shown here, a B-29 bomber released 23 kilotons of atomic energy into the atmosphere. Compensation claims for the effects of radiation suffered as a result have continued into the twenty-first century. [CORBIS]

International Court of Justice Advisory Opinion

A further significant effort to draw the various legal strands together occurred in the mid-1990s with efforts at the World Health Organization (WHO) and the United Nations General Assembly to seek an advisory opinion from the International Court of Justice on the legality of the use, or threat of use, of nuclear weapons. Ultimately, a majority of the court held that the WHO's efforts went beyond its constituted powers.

The court, however, had few qualms about trying to answer the concerns of the General Assembly, because the United Nation held much wider competence on questions regarding peace and security. The Assembly asked: Is the threat or use of nuclear weapons in any circumstance permitted under international law? The court rendered its opinion on July 8, 1996. States opposed to nuclear weapons argued that the use, or threat of use, of nuclear weapons is illegal in itself, any time and anywhere. Three of the fourteen judges on the court agreed. Seven more said that it would "generally" be contrary to the laws of war to use or threaten to use nuclear weapons. The seven added that they were not sure whether such a use "would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake." Four judges, Stephen Schwebel (United States), Sheru Oda (Japan), Gilbert Guillaume (France), and Rosalyn Higgins (United Kingdom), disagreed with both of these positions: They believed that each individual case had to be considered against the relevant standards and that no general rule was possible.

The arguments primarily drew upon the law of armed conflict (humanitarian law); environmental law; human rights law (especially the right to life and the law relating to genocide); and the constitutional documents of the UN and the WHO—the UN Charter and the WHO Constitution. Opponents of nuclear weapons argued that these bodies of law pointed, individually or cumulatively, in the direction of the illegality of nuclear weapons. Instruments such as the Partial Test Ban Treaty (PTBT) of 1963 and the Non-Proliferation Treaty (NPT) of 1968 were said to provide further indications of the aversion of international law to nuclear weaponry. The 1963 treaty bans nuclear weapons tests in the atmosphere, in outer space, and under water. The NPT recognizes that the original five nuclear powers—the United States, Russia, The United Kingdom, France and China—already have the weapons, but it nonetheless tries to keep others from developing them.

The essence of the argument by the nuclear powers was that none of these bodies of law expressly addresses the use of nuclear weapons and that, consequently, there was nothing to prohibit their use, or the threat of their use. Moreover, the NPT, they contended, legitimized the possession and thus potential use of nuclear weapons. The benevolent intentions of the nuclear powers were said to be supported by the "negative security guarantees" given in 1995 by the United States, Russia, the United Kingdom, and France. Essentially, they promised not to use nuclear weapons on a non-nuclear state, unless that state carried out an attack in association or alliance with a nuclear-weapon state. (China made a similar promise, without the exception.) Many developing countries, on the other hand, saw the NPT as discriminatory.

After initial discussion of the court's jurisdiction and of the question itself, the court addressed the arguments that were based on human rights and environmental law. It suggested that human rights arguments are inconclusive where nuclear weapons are concerned because they ultimately send the enquiry to the laws of armed conflict. The court then held that the laws of armed conflict amount to a *lex specialis* in the present context. In other words, the provisions of the laws of armed conflict would prevail over the more general precepts of human-rights law. The same was true of the environmental arguments. "Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality [in the laws of armed conflict]." Similarly, the provisions of the UN Charter on when force is, or is not, lawful do not get to the ultimate conclusion. They have to be read subject to the laws of war—even lawful self defense is subject to the constraints of those rules.

Of particular interest is the discussion of genocide. Some nations had contended that the prohibition contained in the 1948 Convention was a relevant rule of customary law that the court must apply to nuclear weapons. Article I of the Genocide Convention confirms that it applies "in time of peace or in time of war." The court summarized the arguments as follows:

> It was maintained before the Court that the number of deaths occasioned by the use of nuclear weapons would be enormous; that the victims could, in certain cases, include persons of a particular national, ethnic, racial, or religious group; that the intention to destroy such groups could be inferred from the fact that the user of the nuclear weapon would have omitted to take account of the well-known effects of the use of such weapons.

According to the court, however, this might sometimes be the case; sometimes not:

> The Court would point out in that regard that the prohibition of genocide would be pertinent in this case if the recourse to nuclear weapons did indeed entail the element of intent, towards a group as such, required by the provision quoted above. In the view of the Court, it would only be possible to arrive at such a conclusion after having taken due account of the circumstances specific to each case.

While the Court did not specifically address it, the logic of its argument on genocide must apply also to the

A hazardous warning sign marks Frenchman's Flat, the Atomic Energy Commission's former nuclear proving ground near Mercury, Nevada. The site of numerous tests for four decades starting in the late 1940s, it is not far from the increasingly populated Las Vegas area.[TED STRESHINSKY/CORBIS]

invocation of crimes against humanity in the attempt to ban the use of nuclear weapons. Unless the thresholds for a crime against humanity can be shown—an attack on a civilian population, and knowledge of that attack—there is no crime against humanity. Use of a nuclear weapon may, in some ill-defined circumstances, be justified or excused. In others it may be the engine of a crime against humanity. The court saw itself as concerned with international conflict. It could be argued that the most likely kind of case where it would be necessary to concentrate, for purposes of legal analysis, on genocide and crimes against humanity following the use of a nuclear weapon will be in the case of an internal conflict. In that context, the laws of armed conflict are still developing, and there the victims are not in a position to engage in the kind of armed resistance that would bring those laws into play. Thus the court arrived at what it regarded the nub of the debate: the laws of armed conflict.

Opponents of nuclear weapons argued that existing treaty provisions and customary law were broad enough to proscribe nuclear weapons, even though the laws do not say so explicitly and for the most part had been written before nuclear weapons were invented. The laws' relevance could be found, for example, by interpreting treaties (and customary law) that ban the use in armed conflict of items such as poison or asphyxiating substances as also including nuclear weapons. Alternatively, one could look to international customary law (anchored mainly in a series of General Assembly resolutions) specifically proscribing nuclear weapons. Another way to achieve the same end would be to acknowledge that it is impossible to use nuclear and other weapons of mass destruction without contravening the prohibitions of unnecessary suffering, indiscriminate attacks which include civilians as targets, and breaches of the neutrality of non-participants in the conflict. Eleven members of the court thought otherwise, however, stating, "There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such."

Views of the Court

So far as treaty language banning specific weapons goes, these eleven members did not regard what nuclear weapons do to people as bringing them within prohibitions relating to asphyxiating gases or poisons. Apparently, what radiation does is just incidental to the prime effect of nuclear energy, namely, to blow people to smithereens or to incinerate them. That is different from poisoning or asphyxiating and thus acceptable, or at least not illegal by virtue of the ban on poisons or gases. Moreover, the various treaties on nuclear-free areas and the NPT do not create a general prohibition on the use of nuclear weapons.

Nor did the eleven regard numerous nuclear-specific General Assembly resolutions as sufficient. The series of General Assembly resolutions in question begin with Resolution 1653 of November 24, 1961: the Declaration on the Prohibition of the Use of Nuclear and Thermo-Nuclear Weapons. Adopted by a majority of 55 to 20, with 26 abstentions, it asserted, "Any State using nuclear and thermo-nuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity, and as committing a crime against mankind and civilization." The reference to the laws of humanity evokes the Martens Clause in the preamble to the Fourth Hague Convention of 1907. This clause asserts that, until a more complete code has been attained for the laws of war, "the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." In the 1981 Declaration on the Prevention of Nuclear Catastrophe, also adopted by a large majority, the Assembly declared, "States and statesmen that resort first to the use of nuclear weapons will be committing the gravest crime against humanity." There is a close historical connection between the Martens Clause and the development of the concept of a crime against humanity, of which genocide is one branch.

Scholars usually assert that customary international law has two elements: consistent practice and a sense of obligation (or *opinio juris*) concerning that practice. The court acknowledged that although the General Assembly has no general law-making power, its resolutions may have a role in ascertaining customary law:

> General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character. Or a series of resolutions may show the gradual evolution of the *opinio juris* required for the establishment of a new rule.

The eleven did not see the failure to use nuclear weapons since 1945 and the practice represented by the line of GA resolutions as enough:

> [S]everal of the resolutions under consideration have been adopted with substantial numbers of negative votes and abstentions; thus, although those resolutions are a clear sign of deep concern regarding the problem of nuclear weapons, they still fall short of establishing the existence of an *opinio juris* on the illegality of the use of such weapons.

The opinion then turns to principles of the law of war, such as unnecessary suffering, indiscriminate targeting, and breaches of neutrality, which the court locates in an overlapping mixture of customary and treaty law. All fourteen judges agreed that these principles apply to nuclear weapons. The opinion even cites statements by the nuclear powers to this effect in the oral pleadings. It is the implication of these principles, which leads to a sharp divergence. "The Court" (in fact seven of the judges, with the tie broken by the unusual rule of the court that gives the President the right to cast a tie-breaking vote in addition to his normal one) offers some cryptic remarks on the topic, summarized at paragraph 105 (2) E of the opinion:

> It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;
>
> However, in view of the current state of international law, and the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake.

The individual opinions of the seven in the "majority" covered a broad spectrum, particularly on the second sub-paragraph of Paragraph E, which dealt with the possible exceptional case—self-defense—when the use of nuclear weapons would not be contrary to international law regarding armed conflict. At one end, some seemed to have doubts about even the validity of the ultimate self-defense exception. At the other, some seemed to accept that there was an in extremis self defense exception.

The seven person dissent comprised two diametrically opposite groups. Judges Christopher Weeramantry, Abdul Koroma, and Mohamed Shahabuddeen voted against the majority finding because they felt that the opinion did not go far enough; Judges Stephen Schwebel, Sheru Oda, Gilbert Guillaume, and Rosalyn Higgins voted against it because they felt the opinion went too far. For Weeramantry, Koroma, and Shahabuddeen, the rules of armed conflict, the specific and the general, proscribe nuclear weapons in all circumstances. No conceivable use of nuclear weapons could comply with the rules. For Schwebel, Oda, Guillaume, and Higgins, the laws of armed conflict apply, but each individual use or threat of use must be considered on its own merits, as would be true of any other weapon that is lawful in itself.

One other inquiry, which the court addressed only inconclusively, related to the nuclear powers' doctrine of deterrence, the argument that the possession of nuclear weapons deterred their use and intimidated non-nuclear nations who might otherwise be tempted to engage in aggression or to use nuclear or other weapons of mass destruction. During the cold war period, it was widely argued that the doctrine of Mutually Assured Destruction (MAD) meant that no leader would dare risk starting a nuclear war in which all might perish. While the court opined that it could not ignore the doctrine, it did not offer a legal characterization of it. Judge Schwebel, in his dissenting opinion, however, seemed to regard the doctrine as supportive of the nuclear powers' position on customary law.

Having split three ways on the crucial issue, the court spoke unanimously regarding a certain matter that was not directly responsive to the question asked. It nonetheless points in the only possible direction now open regarding the issue of nuclear weapons. The presence of this matter in the court reflected widespread frustration that, after nearly thirty years, the promise of Article VI of the 1968 Non-Proliferation Treaty (NPT) had not been fulfilled. Article VI provides that:

> Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

At the time that the Advisory Opinion was written, 182 countries were parties to the non-proliferation treaty. By the end of 2003, there were 188, but one had claimed to withdraw. The opinion reiterates the Article VI obligation in various ways, hinting that it applies (as customary law) to parties and (the few) non-parties to the treaty alike. There is an obligation both to negotiate in good faith and to achieve a particular result—total nuclear disarmament—as well as to reach the broader goal of general and complete disarmament.

The whole object of the case had been to delegitimize the nuclear bomb. No one doubted that ultimately it would still be necessary to complete the disarmament negotiations. Even total success in the case would not have magically eliminated existing stockpiles. The success of the case in chipping away at the acceptability of nuclear weapons should have made it a little more likely that those negotiations would be completed sooner rather than later.

Nuclear Nonproliferation

The NPT envisaged that conferences would be held at five-year intervals in order to review the operation of the treaty. Concluded in 1968 and in force in 1970, it was initially effective for a period of twenty-five years. In 1995, while the advisory proceedings were pending, the parties agreed that it would continue in force indefinitely. At the review in 2000, a group known as the "New Agenda Coalition" (Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden) spearheaded the effort that resulted in an "unequivocal undertaking by the nuclear-weapons States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States are committed under Article VI."

It is hard to see this vision being realized. In 1997 Costa Rica submitted a Model Nuclear Weapons Convention to the United Nations. Its title says it all: "Convention on the Prohibition of the Development, Testing, Production, Stockpiling, Transfer, Use, and Threat of use of Nuclear Weapons and on Their Elimination." It would lead to progressive prohibition and stringent inspections to ensure compliance. The model has been increasingly refined by nongovernmental groups, such as the Lawyers Committee on Nuclear Policy, but has not captured the imagination of governments. Negotiations proceed glacially in various forums, including the First Committee of the United Nations General Assembly, the sixty-six nation Conference on Disarmament which meets in Geneva and the Assembly's Commission on Disarmament.

Although they have worked toward reducing their arsenals, the nuclear powers seem determined to rely on them in some circumstances, and even to continue research and development. Albeit observing a moratorium on testing, the United States, for example, seeks to develop a "mini-nuke" capable of going after deeply buried weapons of mass destruction. In December 2001, President Bush announced the United States'

withdrawal from the 1972 agreement with Russia on the limitation of anti-ballistic missile systems. That agreement complemented the two super-powers' policy of Mutually Assured Destruction (MAD) and was a basic element of their search for deterrence. The 1972 treaty prohibited the parties from putting into place systems capable of defending their entire territories from intercontinental ballistic missiles and from developing, testing, or deploying sea-, air-, space-, or mobile land-based antiballistic missile systems.

Those in favor of withdrawing saw the treaty as an obstacle to developing a comprehensive defense against weapons of mass destruction. Those opposed feared the U.S. government would now embark on an incredibly expensive technological effort, which had no guarantee of success. At the same time, they argued, ending the treaty could result in a new arms race with Russia and even China. Meanwhile, a more pressing danger was posed by terrorists and rogue states with delivery systems other than intercontinental missiles. A relatively small "dirty bomb" or radiological instrument in the hands of terrorists might present a greater danger than a developed bomb, and resources might be better spent in dealing with such dangers.

In December of 2002, the United States issued a new "National Strategy to Combat Weapons of Mass Destruction" which asserts that the United States "reserves the right to respond with overwhelming force—including through resort to all of our options—to the use of WMD against the United States, our forces abroad, friends, and allies." The phrase, "all of our options," clearly includes both conventional and nuclear responses, even in "appropriate cases through preemptive measures." This is perhaps even clearer than a similar statement made earlier in the year in a Nuclear Posture Review. Serious questions have been raised about the compatibility of these moves with the United Nations Charter and with the International Court of Justice's opinion.

Three nations (India, Israel, and Pakistan) have remained resolutely outside the NPT. Another, North Korea, has purported to withdraw. It claims the right under a treaty provision (similar to that the United States invoked in withdrawing from the ABM treaty) that a party "shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country." North Korea asserted its security was jeopardized by the United States, which North Korea claimed was threatening a pre-emptive nuclear strike, other military action, and a blockade. North Korea's right to withdraw is hotly debated.

Divisions and Debate

More positive have been developments involving the IAEA's inspection regime. Under the NPT, the IAEA enters into safeguard agreements with non-nuclear weapons states to maintain controls over nuclear material for peaceful activities. Efforts to strengthen that system have been undertaken since 1992, with the discovery of the extent of Iraq's weapons program, notwithstanding the safeguards. These efforts entailed the development of more intrusive reporting and inspection. States are encouraged to accept this by becoming party to an optional protocol, a model of which was developed by the Agency in 1997. Late in 2003, Iran agreed to such a protocol and Libya was about to. The IAEA inspections regime could provide a precedent, along with that developed by the Organization for the Prevention of Chemical Weapons, for a more comprehensive nuclear abolition treaty, along the lines of the model introduced by Costa Rica. Meanwhile, efforts continue to put greater international control over fissile material adaptable to bomb-making.

Shortly after the International Court of Justice rendered its opinion, in September 1996, the United Nations approved the Comprehensive Nuclear Test Ban Treaty (CTBT). Its rationale is expressed succinctly in a preambular paragraph:

> The cessation of all nuclear weapon test explosions and all other nuclear explosions, by constraining the development and qualitative improvement of nuclear weapons and ending the development of advanced new types of nuclear weapons, constitutes an effective measure of nuclear disarmament and non-proliferation in all its aspects.

Parties undertake not to carry out any nuclear weapon test explosion or any other nuclear explosion, and to prevent any such nuclear explosion at any place under their control. At the end of 2003, the treaty was not yet in force. While it had over one hundred signatories, by its own terms it cannot come into effect until ratified by forty-four named States that possess nuclear reactors. About three-quarters of them had done so by 2004, including France, the Russian Federation, and the United Kingdom. There were notable holdouts, such as China, the United States (where the treaty was rejected in the Senate), India, Pakistan and North Korea.

An effort to include the use of nuclear weapons as a war crime in the Rome Statute of the International Criminal Court failed in 1998. In a negotiation based on finding consensus, a majority supported it but it was adamantly opposed by the Nuclear Club, and thus failed. The way was left open for re-examination in the future.

Perversely perhaps, the laws of armed conflict regulate the ethics and modalities of killing. They place an absolute ban on certain kinds of weapons, such as exploding bullets below a certain size, dum-dum (expanding) bullets, poison, asphyxiating gases, and bacteriological substances. Use of such weapons is always a war crime, no matter how good the cause. Judge Weeramantry, dissenting in the Nuclear Weapons Case, raised the fundamental question how such modalities can be proscribed, yet permit nuclear weapons to remain lawful:

> At least, it would seem passing strange that the expansion within a single soldier of a single bullet is an excessive cruelty which international law has been unable to tolerate since 1899, and that the incineration in one second of a hundred thousand civilians is not. This astonishment would be compounded when that weapon has the capability, through multiple use, of endangering the entire human species and all civilization with it.

One might equally ask whether it is "passing strange" that use of a nuclear weapon is not yet genocide or a crime against humanity as a matter of law. But genocide, as defined in the Genocide Convention, requires a specific mental element, the "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such." It will often be possible to infer such an intent from use of nuclear weapons, but apparently not always. A crime against humanity requires knowledge that what is being done is part of an attack on a civilian population. Again, inferences may be drawn, but some think that may not always be so.

SEE ALSO Hiroshima; Humanitarian Law; International Court of Justice; Weapons of Mass Destruction

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Nuremberg Laws

In August 1935 Adolf Hitler spoke of the need to codify provisions of the Nazi Party's program with a law that would define the status of Germany's Jews. In accor-

The Nuremberg Laws led to a September 1, 1941, decree requiring all German Jews above the age of six to wear a prominent star of David when in public. [BETTMANN/CORBIS]

dance with his wishes a Nazi conference in Nuremberg, September 1935, drafted two pieces of legislation to legally sanction a set of psychological and cultural attitudes toward Jews. The intent was to permanently segregate the Jewish presence within German society. The Nuremberg Laws—the Reich Citizenship Law and Blood Protection Law—legislated by the Reich Party Congress soon thereafter covered critical areas of human life: rights of citizenship under German law and the regulation of sexual relations between Jews and other Germans. The Blood Protection Law referred only to Jews, but a supplemental decree issued in November 1935 expanded the law to include additional groups, specifically Romani and Negroes, that constituted a so-called threat to German blood. The interpretation of "racially alien blood" was further expanded in subsequent decrees, which included special categories for Germans with mental and genetic deformities, and other biological embarrassments to the master race.

The Reich Citizenship Law excluded Jews as full Reich citizens: "A citizen of the Reich is only that subject who is of German or kindred blood, and, who through his conduct, shows that he is both desirous and fit to serve faithfully the German people and Reich." The legal and administrative machinery necessary to enforce the law fell under the jurisdiction of Reich Minister of the Interior William Frick, who expanded the law's reach to "members of other races whose blood is not related to German blood, as, for example, Gypsies and Negroes."

German Jews soon found themselves excluded from the positions in government, society, and cultural, educational, and financial institutions that they had acquired after their emancipation in the nineteenth century. Jews now forced into the position of second-class citizens lost critical human and civil rights. Disenfranchised from German society, they faced mounting political, economic, and cultural barriers. Tenured Jewish civil servants, who had been protected by their status as war veterans, were dismissed from the public sector. Jewish professors, physicians, and teachers were banned from the civil service; many Jews lost their pension rights. Insurmountable professional and legal obstacles were placed on physicians, pharmacists, and lawyers. In l938 Jewish professionals were banned from practicing their professions within German society. Social exclusion accompanied professional exclusion; that same year Jews were forbidden to attend the theater, concerts, the cinema, and art exhibitions; they were also banned from restaurants, hotels, and resort areas. And starting in early l939 Jews were compelled to use a first name of Sara or Israel.

Unresolved in the initial September 15th legislation was the biological definition of a Jew; in subsequent weeks, this issue generated considerable debate. The first of thirteen supplementary decrees, all designating the composition of Jewish blood, was published on November 14, l935, and defined a Jew in terms of lineage. Thus, a "full Jew" was one with three or four Jewish grandparents; those with two Jewish grandparents and two Aryan grandparents were considered "half-Jews." Such half-Jews had to meet certain conditions in order to be regarded as full Jews and therefore subject to the provisions of the new law. Half-Jews were to be considered full Jews if they practiced Judaism as a religious faith, or if they had married a Jew or were the legitimate or illegitimate children of Jewish and Aryan parents. The practical effect of these distinctions was that people with two Jewish grandparents, but who did not practice Judaism or who had been baptized, were not considered Jews. This group was referred to as *Mischlinge,* but even their fate generated consider-

able debate at the infamous Wannsee Conference in January 1942 that initiated planning for the Final Solution, the annihilation of all European Jewry. Germans married to Jews were encouraged to divorce their spouses. The regime relied primarily on church records to determine the ancestry of racial Jews who had been living as "non-Aryan" Christians.

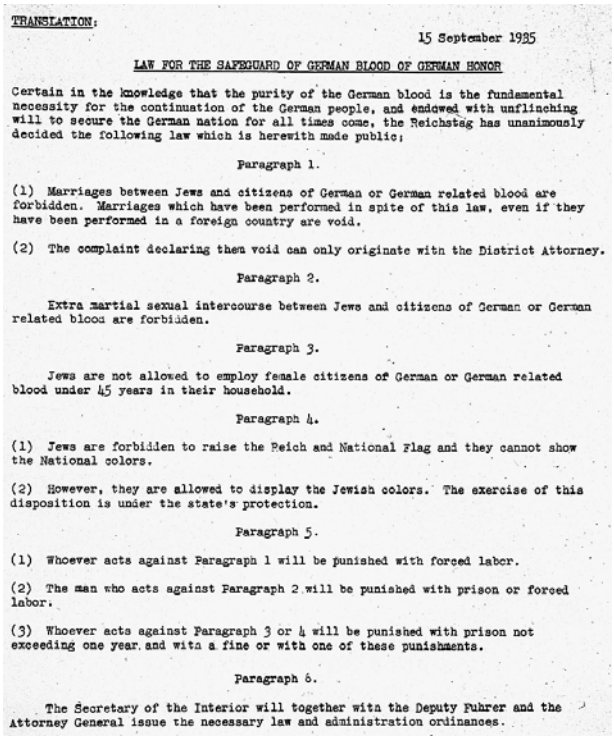
The Supreme Court of the Reich subsequently became quite involved in litigation interpreting the Blood Protection Law in terms of miscegenation. It and other courts were asked to decide on the types of sexual contact considered to be criminal: what constituted sexual intercourse; did criminal behavior include sexual contact that led to intercourse; how much touching was to be defined as sexual? In 1939 a Jewish man was sentenced to one month in jail for the crime of having looked at a fifteen-year-old Aryan girl.

The Blood Protection Law prescribed severe penalties for Jews engaging in sexual relations with Germans. Jewish men and women convicted of sexual crimes could be imprisoned or executed. Two additional provisions of the law prohibited the employment of any female Aryan servants under the age of forty-five in Jewish households, and Jews from holding or hoisting the German flag.

The Nuremberg Laws were a defining legislative moment in the history of the Third Reich. They codified what for several years had been a growing psuedoscientific and medical set of perceptions regarding so-called healthy Aryan traits, genes, and blood. The laws provided additional statutory justification for the euthanasia program that began in 1938, whereby German citizens, including Jewish and German children, suffering from congenital illness, alcoholism, and feeblemindedness, or anyone deemed otherwise mentally or genetically deficient, could be killed by the state. After 1938 major mental hospitals became killing centers for individuals designated as "life unworthy of life."

The major impact of the Nuremberg Laws was to isolate the Jewish and Romani populations; to deprive them of rights of citizenship; and to effectively bar marriages between Jews and other racially "unfit" groups, and Germans. To marry in Germany, a couple was required to demonstrate the purity of their genetic heritage. In disputed or questionable cases local commissions or courts determined if the amount of Jewish blood in a family's history was sufficient to deny a marriage license. Furthermore, the Nuremberg Laws had the practical effect of legitimizing concentration and death camps such as Auschwitz, Sobibor, Treblinka, and Maidanek.

The Nuremberg Laws also led to a decree issued on September 1, l941, requiring all Jews above the age of six to wear a Jewish star when in public. In Germany alone more than 166,000 Jews were forced to wear the badge, although over 17,000 Jews of mixed marriages remained exempt from this regulation. In Poland the chief sanitation inspector (the head of medical affairs in the Nazi-controlled government) decreed that even medication bottles issued by Jewish pharmacists must be identified with a Jewish star. German officials feared that if Germans or Poles touched one of these bottles, they might become infected with a "Jewish disease." As early as November 1939 the German head of Poland's general government, Hans Frank, ordered all Jews above the age of ten to wear a star of David on their right arm; he also forced Jewish businesses to display a similar sign in their windows.



TRANSLATION:

15 September 1935

LAW FOR THE SAFEGUARD OF GERMAN BLOOD OF GERMAN HONOR

Certain in the knowledge that the purity of the German blood is the fundamental necessity for the continuation of the German people, and endowed with unflinching will to secure the German nation for all times come, the Reichstag has unanimously decided the following law which is herewith made public;

Paragraph 1.

(1) Marriages between Jews and citizens of German or German related blood are forbidden. Marriages which have been performed in spite of this law, even if they have been performed in a foreign country are void.

(2) The complaint declaring them void can only originate with the District Attorney.

Paragraph 2.

Extra martial sexual intercourse between Jews and citizens of German or German related blood are forbidden.

Paragraph 3.

Jews are not allowed to employ female citizens of German or German related blood under 45 years in their household.

Paragraph 4.

(1) Jews are forbidden to raise the Reich and National Flag and they cannot show the National colors.

(2) However, they are allowed to display the Jewish colors. The exercise of this disposition is under the state's protection.

Paragraph 5.

(1) Whoever acts against Paragraph 1 will be punished with forced labor.

(2) The man who acts against Paragraph 2 will be punished with prison or forced labor.

(3) Whoever acts against Paragraph 3 or 4 will be punished with prison not exceeding one year and with a fine or with one of these punishments.

Paragraph 6.

The Secretary of the Interior will together with the Deputy Fuhrer and the Attorney General issue the necessary law and administration ordinances.

English translation of the original Nazi decree curtailing the rights of Jews. [CORBIS SYGMA]

The denial of fundamental human rights to Jews, Romani, and the psychologically disabled elicited little reaction from the German public. No mass protests were organized, and German citizens appeared undisturbed by the racist and medical assumptions of the Nazi regime. Indeed, the majority of prosecutions that involved "race pollution" arising from the Nuremberg Laws were initiated by ordinary citizens. The regime never forced its citizens to denounce Jews to the authorities for acts of miscegenation. The Gestapo on occasion pursued cases involving violations of the Blood Protection Law.

The Nuremberg Laws were enormously popular with ordinary German citizens; they accepted the underlying pseudo-scientific and medical theories that viewed the Jew as a race pollutant and a danger to the purity of Aryan genes. *National therapy* (a term coined by Carl Schneider, a psychiatrist active in defining and elaborating the psychological assumptions of Nazi ideology and science) meant ethnic cleansing: ridding the populace of genetic and blood contaminants threatening the psychological and physical health of the German/Aryan population. The Nuremberg Laws, rather than creating a state of mind, confirmed already existing psychological prejudices and phobias against Jews, and fantasies regarding their power to poison and degrade society, and pervert physiological and biological reality.

SEE ALSO Anti-Semitism; Auschwitz; Einsatzgruppen; Euthanasia; Extermination Centers; Gas; Gestapo; Ghetto; Goebbels, Joseph; Göring, Hermann; Heydrich, Reinhard; Himmler, Heinrich; Hitler, Adolf; Holocaust; Intent; Kristallnacht; Labor Camps, Nazi; Nuremberg Trials; SS; Streicher, Julius; Wannsee Conference

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James M. Glass

Nuremberg Trials

On November 20, 1945, six months after the surrender of Nazi Germany to allied forces, twenty-one military, political, media, and business leaders of the Third Reich filed into the dock of the Palace of Justice in the devastated and occupied German city of Nuremberg. There they stood trial for the most heinous crimes known to humankind, which were committed during World War II. Over the course of the next eleven months, unprecedented trials that profoundly influenced the development of international law and how governments must treat civilian populations unfolded. There were moments of lofty rhetoric and high drama, but often there was also the tedium that has characterized most criminal trials throughout history.

The four major victorious allied powers in the European theater of World War II—the United States, the United Kingdom, France, and the Soviet Union—met in London during the summer of 1945. On August 8 these nations entered into an international agreement, known as the London Charter, that created a special court called the International Military Tribunal (IMT). The IMT consisted of an organizing charter and constitution "for the just and prompt trial and punishment of the major war criminals of the European Axis." The aggressive military assaults of the German army, the criminal Nazi occupation policies in numerous conquered lands, and the Nazi-inspired extermination of millions of Jews and other victims seemed at the time to provide ample justification for establishing the IMT.

During the height of armed combat, on November 1, 1943, the Foreign Ministers of the United States, United Kingdom, and the Soviet Union declared in Moscow that their war efforts would not prejudice "the case of the major criminals whose offenses would have no particular location and who will be punished by a joint decision of the Governments of the Allies." They thus established a distinction between major war criminals in leadership positions and the many thousands who committed crimes in the field. This differentiation set the stage for the Nuremberg trials of prominent leaders in 1945 and 1946, followed by thousands of trials of war criminals of lesser stature in the courts of the four occupying powers of Germany.

Alternatives to Nuremberg

During World War II, there were many competing ideas about how best to deal with the war criminals of the Third Reich, and the IMT's creation was by no means a certainty until the very end of the war. There always was an expectation that soldiers charged with conventional war crimes would be prosecuted. However, enemy leaders responsible for the atrocities of the Third Reich might have faced an entirely different fate, consistent with the Moscow Declaration. For instance, British officials, aware of a vengeful British public, advocated summary execution of the fifty to one hundred top Nazi leaders. British Prime Minister Winston Churchill wrote to Soviet leader Josef Stalin in September 1944, arguing that such leaders should be executed as "outlaws" within six hours of capture, and that "the question of their fate is a political and not a judicial one." Such plans were kept secret, however, so as to

avoid German reprisals against British prisoners of war. In late 1943, Stalin recommended to Churchill and President Franklin D. Roosevelt that 50,000 to 100,000 of the German Commanding Staff "must be physically liquidated."

Within the U.S. government, there were strong advocates for summary execution. Treasury Secretary Hans Morgenthau, who had distinguished himself early in the war as a fierce opponent of the Nazis' anti-Jewish atrocities, was opposed to war crimes trials. In November 1944 he submitted a summary execution plan that initially targeted five million Nazi Party members but settled on 2,500 members. Roosevelt was prepared to adopt Morgenthau's plan, but Secretary of War Henry Stimson argued vigorously for war crimes trials with basic rights of due process drawn from the U.S. Bill of Rights. He believed that such trials would establish individual responsibility for the crimes of the Nazi leadership and uphold democratic notions of justice. Stimson warned, "Remember this punishment is for the purpose of prevention and not for vengeance." The tide turned in Stimson's favor with Roosevelt's endorsement of war crimes trials on January 3, 1945. This was followed by the strong backing of Roosevelt's successor, President Harry Truman. The Soviet Union based its own belated support on their own experience with show trials in the 1930s, believing that war-crimes trial verdicts would result in the public (and popular) execution of the German war criminals.

Victor's Justice?

The IMT can be viewed as symbolic of "victor's justice" and its associated charge of hypocrisy, meaning that the victors in World War II judged the vanquished. The inference of such a view is that the trials might be tainted by the lack of investigation and prosecution of any war crimes that the allied powers might have committed during the global conflict. It was no accident that aerial bombing was excluded as a war crime in the London Charter for the IMT. Including it would make prosecution of German aerial bombings (e.g., of London) appear as victor's vengeance, unless parallel investigations of American and British bombings of German cities (including the fire-bombings of Hamburg and Dresden) were also undertaken.

The German people accepted the reality of reprisals, but they deeply resented the failure at Nuremberg to hold accountable those who inflicted so much horror upon them. German historian and journalist Jorg Friedrich has noted that 700,000 German soldiers and civilians lost their lives in the last three months of the war. During one June 1943 British bombing raid of Hamburg, 43,000 residents died, 8,000 of them young children. Of the aftermath of Allied bombing missions, Friedrich has written:

> Nearly all large and medium-sized German cities lay in ruins, charred and exploded into rubble by aerial warfare. In February 1945, in the Baltic port of Swinemunde, a hospital city, more than 20,000 sick, exhausted refugees from eastern Pomerania had been killed in bombings. German settlements in and beyond the eastern and southeastern borders had been purged, in the course of which 1.5 million people perished. In Yugoslavia, 98,000 ethnic Germans were killed or starved to death, one in five members of the population. Two million women were raped by the invading [Soviet] Red Army.

The Soviet government had no interest in being judged for its conduct during the war, including the Soviet Army's role in massacring the Polish officer corps (in the Belorussian forests of Katyn and elsewhere). It also wished to avoid being held responsible for the Nazi-Soviet Pact of 1939 carving up Poland, the Soviet attack on Finland in 1940, and the concentration camps in Soviet-occupied regions during the war. In those camps, Soviets inflicted extreme mistreatment on civilian and military detainees, often in cooperation with German SS and Gestapo officials, and caused the deaths of tens of thousands of German prisoners of war.

During his trial, defendant Admiral Karl Doenitz (Supreme Commander of the German navy) effectively used in his defense an interrogatory from Admiral Chester W. Nimitz, the Commander in Chief of the American Naval Forces in the Pacific Ocean during the war. His lawyer used Admiral Nimitz's testimony to confirm that it was American policy to interpret the London Submarine Agreement of 1936 "in exactly the same way as the German Admiralty," supporting his claim "that the German sea war was perfectly legal." German submarine surprise attacks against British and other merchant ships, which doomed to the ocean's depths the lives of passengers and crew, mirrored what the U.S. Navy had done to sink Japanese merchant ships. Doenitz escaped conviction on the charge of having breached the international law of submarine warfare, although he was convicted on other charges.

The Nuremberg trials would not have taken place if there had been a requirement for reciprocal justice, because the allied powers could not have agreed to the intensive self-examination that such a criminal investigation would demand. However deep this apparent flaw in the process was at the time, there remains great value in what was accomplished to establish individual criminal responsibility for the atrocity crimes of senior Nazi leaders. Summary executions were avoided and crimes of great magnitude and horrific character were

publicly identified with their perpetrators, who were brought to justice relatively speedily. The manner in which the Nuremberg trials were conducted achieved a lasting credibility for its attention to due process rights. Further, the lessons of Nuremberg and the justice rendered there upon German leaders probably had a positive influence on later generations of Germans, who have been less affected by what their ancestors endured during World War II than they otherwise might have been. Probably as a result of the Nuremberg legacy, Germany has become a strong supporters of human rights, the non-use of force, international justice, and the work of the permanent International Criminal Court.

Composition of the Tribunal

The composition of the IMT reflected the multinational character of the victorious Allied powers. The United States, United Kingdom, France, and the Soviet Union were represented by four sitting judges and four alternate judges, one from each allied nation. All but the Soviet judge and alternate were drawn from non-military legal professions at the time of the trials. The prosecution counsel numbered fifty-two lawyers, again drawn from each of the four allied powers. The U.S. prosecution team was led by Justice Robert H. Jackson, on leave from the U.S. Supreme Court. Two of his American military prosecutors, Lieutenant Commander Whitney Harris and Brigadier General Telford Taylor, later wrote highly acclaimed, comprehensive histories of the Nuremberg trials. Twenty-eight German lawyers served as counsel for the individual defendants, and eleven German lawyers defended the six organizations that were charged with criminal conduct.

The London Charter required a fair trial for all of the defendants, and set forth fundamental rules for that purpose. These rules included the right to counsel and the right to cross-examine any witness. As the trials got underway, however, defense lawyers often found it difficult to obtain documents sought for the defense of their clients, and delays in the translation of key documents created difficulties for both the prosecution and defense.

Selection of Defendants

The selection of whom to indict and prosecute at Nuremberg bedeviled the four allied powers during the summer of 1945. For practical reasons, the total number of individuals who could stand trial before the IMT had to be extremely limited. Non-German Axis leaders were soon removed from the working list of targets for prosecution. Key Nazi leaders like Adolf Hitler, Joseph Goebbels, and Heinrich Himmler were already dead. The allies had to understand how power was exercised in Nazi Germany, and had to discover who wielded the most authority, and thus responsibility, for perpetrating the crimes described in the London Charter. Since first-hand information and actionable evidence about the crimes of the Holocaust had only begun to emerge, some of the obvious candidates for prosecution for the extermination of the Jews and others were not pursued. Among these were Gestapo chief Heinrich Muller and his deputy, Adolf Eichmann. In the end, notable and some far less notorious figures were selected.

The final list of twenty-four German defendants arose from political compromises and the intent of the allied powers to arrange the defendant pool to indict several branches of the Nazi leadership: military, political, propaganda, finance, and forced labor. The military defendants were Admiral Doenitz, Hermann Goering (Chief of the Air Force), Alfred Jodl (Chief of Army Operations), Wilhelm Keitel (Chief of Staff of the High Command of the Armed Forces), and Erich Raeder (Grand Admiral of the Navy). The political defendants were Hans Frank (Minister of Interior and Governor-General of occupied Poland), Wilhelm Frick (Minister of Interior), Rudolf Hess (Deputy to Hitler), Ernst Kaltenbrunner (Chief of the Reich's Main Security Office. under which the Gestapo and SS operated), Alfred Rosenberg (Minister of the Occupied Eastern Territories), Arthur Seyss-Inquart (Commissar of the Netherlands), Albert Speer (Minister of Armaments and War Production), Constantin von Neurath (Minister of Foreign Affairs and Protector of Bohemia and Moravia), Franz von Papen (former Chancellor of Germany), Joachim von Ribbentrop (Minister of Foreign Affairs), Baldur von Schirach (Reich youth leader), and Martin Bormann (Chief of the Nazi Party Chancery). Bormann was tried and convicted in absentia, meaning he was never located for arrest and thus did not physically appear for trial. The finance defendants were Walter Funk (President of the Reichsbank), Hjalmar Schacht (Minister of Economics prior to the war and President of the Reichsbank), and the industrialist Gustav Krupp von Bohlen und Halbach (the aging former president of the German munitions company, Friedrich Krupp A.G.). Gustav Krupp's prosecution was postponed indefinitely due to his poor health. He died in 1950, having never stood trial. The forced-labor defendants were Fritz Sauckel (Plenipotentiary General for the Utilization of Labor) and Robert Ley (former leader of the German Labor Front). Ley, however, committed suicide upon being indicted and thus never stood trial. The propaganda defendants were Hans Fritzsche (Ministerial Director and head of the radio division in the Propaganda Ministry) and Julius Streicher (editor of the newspaper *Der Stürmer* and Director of the Central Committee for

the Defense against Jewish Atrocity and Boycott Propaganda).

Criminal Organizations

In addition to these individual defendants, the Allied prosecutors, strongly encouraged by Jackson, were determined to prosecute certain organizations in Nazi Germany, alleging that they were illegal criminal enterprises. The prosecutors believed that individual defendants could be prosecuted and convicted by virtue of their membership in such organizations. Such a finding also would make it much easier to prosecute thousands of other defendants in subsequent trials simply by identifying an individual as a member of any such criminal organization. "Guilt by association" thus became the guiding principle of the prosecution strategy for these later trials. The London Charter empowered the IMT to define as criminal any group or organization to which any defendant appearing before the IMT belonged. Once such a finding was reached, the national, military, and occupation courts of the Charter signatories could bring individual members of those organizations to trial for years thereafter, with the criminal nature of such groups or organizations already considered proven. Such defendants would be permitted only limited defense arguments, for example that they joined the organization in question under duress. This represented the first of several legal innovations in the Nuremberg trials. Never before had national organizations been prosecuted, particularly by an international tribunal, for criminal conduct. Their alleged criminal character was determined by the IMT only after the war, thus raising concerns about retroactive justice.

Nevertheless, the IMT declared three of six organizations named in the indictment as criminal in character. The Gestapo, paired with the SD (*Sicherbeitsdienst*), was declared criminal for its role in "the persecution and extermination of the Jews, brutalities and killings in concentration camps, excesses in the administration of occupied territories, the administration of the slave labor program, and the mistreatment and murder of prisoners of war." The Leadership Corps of the [Nazi] Party, which included Hitler, his top staff officers, and an estimated 600,000 members, was declared criminal for "the Germanization of incorporated territory, the persecution of the Jews, the administration of the slave labor program, and mistreatment of prisoners of war." The IMT declared the SS (*Schutzstaffeln*), which ran the concentration camps and cleared Jews and others out of the ghettos, criminal for conducting the same activities as the Gestapo.

The Indictment

The indictment, issued on October 19, 1945, included four charges drawn from the London Charter: a common conspiracy to wage aggressive war, crimes against peace, war crimes, and crimes against humanity. The second category, crimes against peace, had no preexisting definition in international law. It was defined in the London Charter as the "planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of [war crimes or crimes against humanity]."

The third category, war crimes, was a well-established concept in international law. It was defined in the London Charter as follows:

> violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

The fourth category, crimes against humanity, had at best a very problematic foundation in international law. Such crimes were defined as follows:

> murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

War of Aggression

Despite the apparent injustice of the aggressive assaults by the German Army in World War II, there was no codified or even customary rule of international law in 1945 that explicitly outlawed a war of aggression. Yet Justice Jackson was determined to make "aggression" or "crimes against peace" the dominant allegation of the Nuremberg trials, and the American prosecution team assumed full responsibility for prosecuting the crime. In the aftermath of World War I, there had been a number of initiatives to outlaw wars of aggression, giving Jackson something to work with in legislating a new legal principle in the London Charter. Article 227 of the Versailles Treaty (1919), attempted to establish individual criminal responsibility for Germany's aggression in World War I by requiring the prosecution

of the German Kaiser for "a supreme offense against international morality and the sanctity of treaties." The viability of this provision, however, was never put to the test, for the Kaiser enjoyed sanctuary from prosecution in The Netherlands, which refused to surrender him for trial.

The Kellogg-Briand Pact of 1928 was sponsored by the United States as manifesting "the outlawry of war" and signed by sixty-five nations, including such World War II aggressor nations as Germany, Italy, and Japan. This agreement expressed the intent to renounce war as a means of settling disputes. Various other pronouncements prior to World War II declared aggression to be an international crime, but no law had yet been written that prohibited a war of aggression. Justice Jackson faced opposition from legal scholars and other allied prosecutors, who challenged his effort to establish a new crime of aggression.

Justice Jackson prevailed with a bold strategic move. He argued that there had been a conspiracy to wage an aggressive war that swept within its reach war crimes and crimes against humanity (the two other major categories of crimes). He went on to assert that the entire indictment of the Nuremberg defendants would be premised on the allegation of this "master plan" that had been implemented through a conspiracy stretching back to 1933, when the Nazi Party came to power in Germany. He noted that war crimes had a relatively solid basis in existing international conventions that already required a connection with warfare. Therefore, he argued, doubts about the legality of any particular charge of aggression or crime against humanity (along with many other kinds of criminal conduct) should be overcome by implicating such crimes within the overall conspiracy to wage aggressive war. The conspiracy theory, in which all participants can be held equally responsible for criminal conduct, was established in Article 6 of the London Charter and underpinned the first count in the Nuremberg indictment:

> Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Conspiracy charges were a based on a legal concept that was peculiarly rooted in common law as understood in Britain and the United States. The French, Soviet, and German legal systems had no legal tradition for framing conspiracy charges. They preferred charging defendants for direct participation in specific crimes. The Soviets were extremely worried that Jackson's formula could be used to implicate them for their own suspicious conduct during the war and embarrass them as essentially unindicted co-conspirators in many of the crimes.

Wartime Crimes against Humanity

The operational compromise that emerged in the course of the trials meant that the IMT judges would entertain the charge of conspiracy only for acts of aggression by the Axis powers, and not for the commission of war crimes or crimes against humanity. The crime of conspiracy was further limited to actions closely related to the commencement of armed conflict and to those leaders who met together to plan specific acts of aggression. However, the nexus-to-war that originally drove Justice Jackson's conspiracy theory remained as a key practical requirement for the prosecution of crimes against humanity, primarily because these were crimes that had not been previously codified in international law and remained highly contentious as an example of retroactive justice by the IMT. By limiting the charges to crimes against humanity committed during wartime, the IMT could amplify the illegality of the acts within the context of the overall aggressive war. This would serve to blunt at least some of the arguments that defense counsel could raise about the legality of the charges, particularly those pertaining to the period from 1933 to 1939, even though the London Charter permitted investigation of all but one type (persecutions) of pre-war crimes against humanity.

The perspective of American prosecutor Whitney Harris reflects the general view that guided the IMT's approach at the time. He wrote:

> [The limitation to wartime crimes against humanity] was a proper one in view of the status of the Tribunal as an international military body, charged with determining responsibility for war and crimes related thereto. If the Tribunal had assumed jurisdiction to try persons under international law for crimes committed by them which were not related to war it would have wholly disregarded the concept of sovereignty and subjected to criminal prosecution under international law individuals whose conduct was lawful under controlling municipal law in times of peace. Such jurisdiction should never be assumed by an ad hoc military tribunal established to adjudicate crimes of war.

The requisite nexus-to-war required by the IMT created a precedent for examining crimes against humanity that influenced, and arguably retarded, the development of the law for decades thereafter, until it was definitively broken in the 1990s in the Statute of the International Criminal Tribunal for Rwanda.

The conspiracy theory, particularly as it applied to crimes against humanity, had its doubters. Shortly be-

fore he committed suicide, Nuremberg defendant Robert Ley wrote: "Where is this plan? Show it to me. Where is the protocol or the fact that only those here accused met and said a single word about what the indictment refers to so monstrously? Not a thing of it is true." Ley's charges have received support from more recent scholarship on the subject. In 2003, historian Richard Overy of King's College, London, wrote:

> Subsequent historical research has confirmed that no such thing as a concerted conspiracy existed, though a mass of additional evidence on the atrocities of the regime and the widespread complicity of many officials, judges, and soldiers in these crimes has confirmed that, despite all the drawbacks of the trial and of its legal foundation, the conviction that this was a criminal system was in no sense misplaced.

The Nuremberg prosecutors nonetheless presented much evidence to support the conspiracy theory during the trials. The fact that three defendants were acquitted on all four counts, including the conspiracy charge, does not diminish the fact that some defendants were found to be participants in a conspiracy to wage a war of aggression.

Retroactive Justice

There is a general principle of law which states that individuals must not be held criminally responsible for conduct that was not illegal at the time it occurred (*nullum crimen sine lege,* also called the retroactivity rule). This principle was a very powerful presence at Nuremberg. Concerns about the credibility of the IMT arose with respect to defendants' arguments that they were only complying with German national law in the performance of their duties. Although German law under the Nazi regime became a vehicle of extreme discrimination and persecution of the Jews and other minorities, the invocation of national law as a defense, particularly regarding crimes against humanity, proved almost entirely unpersuasive to the IMT judges, who had a mandate to apply international law to the proceedings. The drafters of the London Charter struggled with these defenses; and defense counsel frequently offered them as mitigation for their clients' wartime actions.

Prosecutors and judges at the IMT found the legal basis for crimes relating to aggression and for crimes against humanity in the deep well of human experience and morality. For instance, Lieutenant Commander Harris drew upon how international law had over time criminalized acts of piracy on the high seas. He wrote:

> the Nuremberg judges declared against aggressive war and related acts which they considered to have been morally condemned by the majority of nations. In the Tribunal's view these acts, like piracy, could no longer be tolerated in a civilized world, and the Tribunal concluded that the responsible individuals could be punished for their actions, just as earlier courts had resolved upon the punishment of men for acts of piracy.

The IMT took a judicial leap by assuming that international law had been fairly rapidly evolving toward the view that aggression and crimes against humanity should be outlawed, and that individual criminal responsibility for such crimes had become legally enforceable. In a very real sense, the IMT took the initiative to declare and act upon what it regarded as international law at a momentous period in world history, when clarity of interpretation and action was being sought. The extreme violence of World War II elicited such an exercise of discovery. Justice Jackson wrote to President Truman in June 1945 with disarming understatement:

> Unless we are prepared to abandon every principle of growth for International Law, we cannot deny that our own day has its right to institute customs and to conclude agreements that will themselves become sources of a new and strengthened International Law.

The retroactivity rule challenged the IMT's jurisdiction over the crimes against humanity set forth in the London Charter. The overlap of many of these crimes with established war crimes presented little problem to the prosecutors. However, international legal principles of sovereignty and of non-interference in the internal affairs of other nations meant that the German assaults on their own civilian population, particularly the Jewish population, and the persecution inflicted on so many civilians might have been shielded from international criminal prosecution. To forestall this possibility, the IMT determined that its own self-made authority required freshly conceived jurisdiction over such "internal" crimes. Again, the IMT found strength of reason in the requirement that such crimes be committed in connection with an on-going war and another crime "within the jurisdiction of the Tribunal." In other words, the context of aggressive war and/or a war crime was required to trigger individual criminal responsibility under international law. Having taken this leap of logic, the IMT prosecutors and judges acted prudentially in the trials to enforce a newly defined law on crimes against humanity.

Defense of Superior Orders

The London Charter addressed one of the most common defenses for defendants who claimed they were only acting, and had to act, pursuant to orders from su-

perior officers and officials: "The fact that the Defendants acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires." The Nuremberg defendants' high rank and their direct role in formulating the policies of the Third Reich (including for some of them the plotting of a war of aggression) left them with little opportunity to credibly claim that they were acting on the orders of superiors. They usually were the superiors who drafted many of the orders; they often played a political role in decision-making; and the orders they responded to came from leaders, such as Hitler, who issued commands of obvious criminal character, particularly to men of the stature in the Nazi regime as those in the dock at Nuremberg. Their individual accountability could not be extinguished by claiming obligation to follow a superior's orders. If the orders of superiors were unchallengeable when weighed against the crimes they sought to unleash, then the entire foundation for the Nuremberg trials, the laws and customs of war, and the legal principles that defined crimes against peace and crimes against humanity would crumble. The IMT pronounced that, "[t]he true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible."

Defendant Wilhelm Keitel sought to explain to the IMT how the traditional training and concept of duty of the German officers "taught unquestioned obedience to superiors who bore responsibility" and "caused them to shrink from rebelling against these orders and these methods even when they recognized their illegality and inwardly refuted them." Keitel also testified that the decision to wage a war of aggression is solely political, and that the military soldier must obey orders relating to it. The IMT rejected the credibility of these arguments for an officer of Keitel's exceptionally high rank—a senior officer who knew what was at stake, played a role in the decision-making, and yet remained indifferent to the legal issues. American prosecutor Telford Taylor wrote of Keitel, "His attitude was not far from that of Goering, who was not moved by 'considerations of international law.'" Although Keitel may have criticized some of the orders he received, he enforced them.

Judgment

During the Nuremberg trials, ninety percent of the prosecution's evidence consisted of the Third Reich's own governmental files, which had been seized by Allied forces. Prosecutors had access to 100,000 German documents, millions of feet of video film, and 25,000 still photographs, including some taken by Hitler's personal photographer. Court stenographers prepared 17,000 transcript pages recording the testimony and proceedings of the trials. Active and often lengthy defenses were raised, frustrating the prosecution but also strengthening the fairness of the trials. It took twenty-eight sessions to hear the defenses of just the first four accused. Defense counsel took sixteen days to make their closing arguments.

The IMT judges delivered their opinions regarding the twenty-two individual defendants and six organizations on September 30 and October 1, 1946. They did not convict all defendants on all counts of the indictment for which they had been charged. Instead, the judges found that the evidence fell short of the requirement that guilt be proven "beyond a reasonable doubt" with respect to some of the charges against the defendants.

The IMT fully acquitted three defendants of all charges: Schacht, Papen, and Fritzsche. Of the remaining nineteen defendants, all but two of them were convicted on multiple charges, and six were convicted on all four counts of the indictment. Eight defendants were convicted on the first count, charging conspiracy to wage aggressive war. Twelve defendants were convicted on the second count, crimes against peace. Sixteen defendants were convicted on the third count, war crimes. Sixteen defendants also were convicted on the fourth count, crimes against humanity. The IMT sentenced twelve defendants (including the absent Bormann) to die by hanging, and sentenced the remaining seven defendants to prison terms ranging from ten years to life. Goering committed suicide before he could be hanged. The Soviet judge dissented on each of the acquittals and on the life imprisonment (rather than hanging) sentence for Hess.

Witnesses at the Nuremberg trials confirmed the Nazi regime's own death count of the Jewish population and others in the extermination (also known as concentration) camps and during killing operations in the field. One witness, an SS reporter who knew Adolf Eichmann, confirmed that in mid-1944 Eichmann reported to Himmler that the latter's orders for extermination of the European Jewry were being implemented. (Although he remained at-large and unindicted at Nuremberg, Eichmann was later found in Argentina, abducted, and brought to trial in Israel. He was convicted in 1961 and sentenced to death.) The witness testified that Eichmann wrote, "Approximately four million Jews had been killed in the various extermination camps while an additional two million met death in other ways, the major part of which were shot by operational squads of the Security Police during the cam-

paign against Russia." Although the prosecution had initiated the Nuremberg trials with a strong focus on charging the defendants with conspiracy to wage a war of aggression and with violations of "crimes against peace," in the end the trials also established the horrific truth of the Holocaust, namely the genocide against the Jewish population of Europe. It is that truth and the criminality arising from the charges of Nazi crimes against humanity that became the most prominent legacies of justice at Nuremberg.

Influence of Nuremberg Trials

The Nuremberg trials of 1945 and 1946 influenced later developments of international law and the courts that enforce it. It underpinned the work of the Tokyo War Crimes Trials (1946–1948) and subsequent trials under Control Council Law No. 10 in occupied Germany. They also firmly established the basis for attributing individual criminal responsibility for atrocity crimes such as genocide, serious war crimes, and crimes against humanity that would constitute the core jurisdiction of international criminal tribunals at the end of the twentieth century and beyond. The trials accelerated the further development of the principles of international criminal law and international humanitarian law, as reflected in the Genocide Convention of 1948, the Geneva Conventions of 1949, the Geneva Protocols of 1977, the Statutes of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, and the 1998 Rome Statute of the International Criminal Court.

The UN General Assembly affirmed in Resolution 95(I) of December 11, 1946, the "Principles of International Law Recognized by the Charter of the Nuremberg Tribunal." The illegality of aggression was further elaborated in a 1974 UN General Assembly resolution defining aggression with regard to state responsibility, and in the Draft Code of Crimes Against the Peace and Security of Mankind, which was adopted by the International Law Commission. Deeply influenced by the record of the Nuremberg trials, the states that are party to the Rome Statute of the International Criminal Court continue to negotiate how to activate the crime of aggression which, for purposes of individual criminal responsibility, is included in the new court's jurisdiction. In Justice Jackson's opening statement at the Nuremberg trials, he summed up what they were all about:

> The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to reason.

SEE ALSO Göring, Hermann; Jackson, Robert; London Charter; Morgenthau, Henry; Nuremberg Trials, Subsequent; Tokyo Trial; War Crimes

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Nuremberg Trials, Subsequent

On November 1, 1943, as the tides of World War II began to turn, leaders of the United Kingdom, the United States, and the Soviet Union convened in Moscow. Germany had been put on notice in 1941 and 1942 that perpetrators of war crimes would be held to personal account "through the channel of organized justice." The earlier warnings were renewed as President Franklin D. Roosevelt, Prime Minister Winston Churchill, and Soviet Marshal Joseph Stalin issued a solemn Declaration on German Atrocities. On behalf of thirty-two Allied powers, they proclaimed that Germans responsible for war crimes committed in territories overrun by Hitler's forces would be sent back to be judged by the people they had outraged. Major criminals, whose offenses had no particular geographic location, would be punished by joint decision of the Allies.

U.S. Army War Crimes Trials at Dachau

The war ended with Germany's unconditional surrender in May 1945. Captured German records disclosed that millions of Germans had been avid supporters of the Nazi Party and policies. Allied trials for such large numbers were logistically and politically impossible. They could be dealt with later in German "denazification" procedures. The U.S. Army lost no time in bringing to justice suspected war criminals who were already in custody. U.S. military commissions were convened to try Germans accused of murdering downed flyers or prisoners of war as well as perpetrators or accomplices responsible for atrocities committed in concentration camps freed by U.S. forces. Ironically, these little-known U.S. Army trials were held in the liberated camp at Dachau, near Munich.

The prosecutors, defense counsel, and judges were all U.S. army officers. Defendants were grouped according to the camps where they were captured. The summary proceedings generally followed rules for court martials. Between June 1944 and July 1948, when the trials unceremoniously ended, over 1,600 defendants had been tried. Almost all were convicted and over 400 were sentenced to death. After military reviews, fewer than 300 of the death sentences were confirmed. The guilty were confined in War Crimes Prison No. 1, formerly renowned as the Bavarian jail at Landsberg, where Adolf Hitler, after his failed coup in 1923, had written *Mein Kampf*.

Chief Prosecutor for the United States, Benjamin Ferencz, as he launches the "biggest murder trial in history," the case against twenty-four Einsatzgruppen, members of the SS killing unit that slaughtered over a million helpless civilians as Germany advanced into Poland and Russia. On the strength of their own meticulous records, all were convicted. [USHMM, COURTESY OF BENJAMIN FERENCZ.]

The First International Military Trial at Nuremberg

The trials in Dachau were overshadowed when the spotlight shifted to a new International Military Tribunal (IMT) established in Nuremberg, where Hitler's deputy, Hermann Göring and other prominent Nazi accomplices held center stage. The four victorious powers—the United States, the Soviet Union, the United Kingdom, and France—in their capacity as the sole acting government of Germany, signed an agreement in London on August 8, 1945, that provided for the establishment of an International Military Tribunal "for the just and prompt trial and punishment of the major war criminals of the European Axis."

The IMT Charter, which was annexed to the London Agreement, became the foundation stone for the IMT trial and for twelve lesser-known Nuremberg trials that soon followed.

The IMT prosecution began on November 30, 1945. After a trial that was generally considered to be eminently fair, the judgment against the twenty-four defendants was handed down on October 1, 1946. The Presiding Judge, Lord Geoffrey Lawrence of Great Britain, read the sentences. Three of the defendants were acquitted. Twelve others were sentenced to death for having planned and participated in aggressive war, which the tribunal condemned as "the supreme international crime," as well as for crimes against humanity and violations of the laws of war. After the Allied Control Council confirmed their sentences, those condemned to die were hanged. Göring committed suicide and Martin Bormann, Hitler's deputy, who was tried in absentia, was never found. Those sentenced to imprisonment were confined in Spandau Prison in Berlin, where they remained under strict quadripartite supervision until their sentences were fully served.

Trials under Allied Control Council Law

Defeated Germany was divided into four zones. Each zone was occupied and administered by one of the four victorious powers. Berlin was occupied jointly. The governing body was the quadripartite Control Council. Because the London Charter anticipated the possibility of more than one trial, the Control Council enacted Law 10, on December 20, 1945, to provide a uniform legal basis for any subsequent trials and to add some needed clarifications. The most important change was to make clear that crimes against humanity could be punishable even if committed in peacetime against one's own nationals. Invasions as well as wars were specifically made punishable, and rape was added as a specific example of a crime against humanity. These articulations would play an important role in the evolution of international criminal and humanitarian law.

The single trial by the IMT against two dozen culprits could not adequately portray the full extent of Nazi criminality. The Allies all agreed that additional speedy trials would be desirable to hold accountable those mid-level policy makers and accomplices without whose assistance Hitler's overwhelming reign of terror would not have been possible. Where and how such trials would be held posed a problem. The leading architect of the Nuremberg trial, Justice Robert M. Jackson, on temporary leave from the U.S. Supreme Court to serve as Chief Prosecutor for the United States, noted that quadripartite trials in four languages were both costly and time-consuming. With the Allies failing to reach an accord on another international trial, it was finally decided that each of the occupying powers could handle future war crimes prosecutions in its own zones of occupation as each might see fit.

In time the French conducted a few trials in their zone and the British did the same under rules prescribed by traditional royal warrants for military procedures. What the Soviets did in areas they occupied remains obscure, but millions of German prisoners of war were kept in Soviet custody for many years. The United States decided that justice would best be served by additional trials against a wide array of high-level Germans suspected of being the powers behind the Nazi hierarchy of crime. United States Zone Ordinance No. 7, adopted on October 18, 1946 (amended by Ordinance 11 on February 17, 1947), laid down rules for implementing Control Council Law No. 10 to guarantee a fair and speedy trial for all accused. Although the later proceedings were conducted in the name of the United States and the prosecutors and judges were U.S. citizens, the trials, based on the London Charter, had characteristics of international law rather than national law. The courts were created and the trials conducted pursuant to the quadripartite Control Council decrees and ordinances. They were bound to respect the legal findings of the IMT.

Nuremberg, ravaged by war, was in the U.S. zone. The old German courthouse had been refurbished for the IMT and would be available as soon as the international trial was completed. Telford Taylor, a Harvard law graduate who had served on the staff of Justice Jackson, was charged with responsibility for organizing and directing any subsequent proceedings. Taylor, promoted to Brigadier General, was designated Jackson's deputy and named Chief of Counsel for further trials. Nazi leaders who were not tried by the IMT as well as their principal agents and accessories, and members of Nazi groups found by the IMT to be criminal organizations, were potential targets for the new war crimes courts.

The evidence before the IMT had only outlined the broad sweep of Nazi criminality. Crimes of such magnitude could not have been committed without help from many sectors. German doctors, for example, had performed brutal medical experiments on victims considered racially undesirable or subhuman. German judges and lawyers had used the law as a tool for persecuting presumed enemies. High-ranking military officers directed or assisted massive war crimes in violation of the laws of war. The Nazi Party had been financed by banks and industrialists who were fully aware of Hitler's plans and programs. German companies had seized foreign assets and helped build concentration camps where helpless inmates were worked to death. German diplomats and ministers had planned and aided Hitler's repeated aggressions. To follow up on the IMT, a sample of such wrongdoers would be called to account for

their actions in courts of law set up in Nuremberg by the United States.

The challenge was daunting. Evidence had to be assembled quickly to prove beyond reasonable doubt that the suspects knowingly committed crimes within the jurisdiction of the court. The alleged perpetrators would have to be in custody and in mental and physical condition to stand trial. New staff had to be recruited and trained; bilingual researchers, investigators, and translators had to be hired. Qualified and available judges had to be recruited in the United States. Witnesses had to be located, housed, and safeguarded. Budgets were limited. Most important of all, it was imperative that any subsequent trial(s), be absolutely fair in fulfilling humanity's aspirations to do justice.

The Twelve Subsequent Trials at Nuremberg

Doctors and Lawyers on Trial

The lead defendant in Case No. 1, the so-called Medical Case, was Karl Brandt. Like many other Nazi leaders, he was given high rank in the SS (Security Services) and reported directly to Hitler. Dr. Brandt, together with twenty-two others, was indicted on December 9, 1946, for experiments on helpless concentration camp inmates and prisoners of war. The unwilling "guinea pigs" were deliberately infected with diseases and subjected to wounds designed to test the limits of human endurance. Euthanasia and sterilization programs had been organized against the aged, incurably ill, and others characterized as "useless eaters." The defendants all denied personal culpability, arguing that they were acting under "superior orders" and that such experiments were carried on legally elsewhere.

The U.S. judges, who came from superior courts in Oklahoma, Florida, and Washington, found there was unquestionable proof that war crimes and crimes against humanity had been committed. Individual responsibility had to be established beyond a reasonable doubt. Seven defendants were acquitted. The others were convicted on July 19, 1947, and sentenced to long prison terms. Five were condemned to hang and in due course were executed in Landsberg Prison. The tribunal laid down ten basic principles that had to be observed to satisfy ethical and legal standards for medical experiments. These guidelines became important signposts for the medical profession throughout the world.

Nazi lawyers and judges did not escape scrutiny. In the "Justice Case" that opened on January 4, 1947, fourteen leading officials of the judicial system of the Third Reich were accused of crimes against humanity by distorting the legal process to justify and support Hitler's programs of persecution and extermination. The trial judges came from benches in Ohio, Oregon, and Texas. They found that the dagger of the assassin was concealed beneath the robe of the jurist. The proceedings, which lasted less than a year, reinforced principles established by the IMT and became the subject of a popular Hollywood film, *Judgment at Nuremberg*.

The American judges denied that they were imposing ex post facto or retroactive law. International law, in contrast to national law, was described as an evolving process that relies on broad principles of justice and fair play, which underlie all civilized concepts of law and procedure. No one was convicted without proof that he knew or should have known that in matters of international concern he was guilty of participating in a nationally organized system of injustice and persecution shocking to the moral sense of mankind. The fairness of the trial was evidenced by the fact that four of the accused were acquitted. The six remaining were sentenced to life imprisonment or lesser terms.

Nazi Administrators and Executioners

Three subsequent trials were directed against leaders of different Nazi offices. The Pohl Case indicted Oswald Pohl, Chief of the Economic and Administrative Departments, and seventeen of his highest-ranking associates. They were accused of kidnapping and enslavement of millions of civilians, and the construction and administration of concentration camps, where forced laborers toiled under conditions that made work and death almost synonymous. Defendants argued that during the war food was scarce for everyone and hard work was mandatory, not unlawful. The judgment in November 1947 held that there is no such thing as benevolent slavery; compulsory, uncompensated labor under the most inhumane conditions was a crime. The trial lasted approximately six months and resulted in death sentences for Pohl and three of his cohorts. Three others were acquitted, while the rest received prison terms.

The second case against Nazi officials indicted fourteen leaders of the Main Race and Resettlement Office (RuSHA) whose assignment was to safeguard the purity of German blood by eliminating ethnic "inferiors," such as Jews, Romani (Gypsies), and Poles. Other non-Aryans were to be resettled or "Germanized." The trial lasted about four months and ended on March 10, 1948. The lead defendant, Ulrich Greifelt, was sentenced to life imprisonment. The one female defendant in all of the Nuremberg trials was acquitted. Others received prison sentences and those convicted only of membership in criminal organizations were allowed to go free for time already served.

Of special interest was the case against the special extermination squads known as SS Einsatzgruppen. Twenty-four high-ranking officers, including six gener-

als, were accused of slaughtering more than a million Jews, Romani, and other men, women, and children as part of the Nazi Final Solution to eradicate perceived opposition to Hitler's Reich. The defendants were commanders of units, totaling about three thousand men, who followed behind the German advance into Poland and the Soviet Union, where they rounded up helpless civilian victims for execution in ditches or gas vans. Their daily reports to higher headquarters and ministries tabulated the number of victims "eliminated," and the location and identity of the units and commanders in charge. Unfortunately for them, these official records, from about June 1941 to mid-1942, fell into the hands of U.S. war crimes investigators.

Relying on the defendant's own reports, the prosecution rested its case two days after delivering its opening statement on September 29, 1947. The defense took 136 trial days. They challenged the authenticity of the documents, and offered alibis, denials, excuses, and purported justifications, including the standard plea of superior orders. Presiding Judge Michael Musmanno, of Pennsylvania, allowed the defendants the opportunity to introduce any evidence they felt might save them. But they could not escape the damaging impact of the overwhelming proof against them. The judgment was comprehensive and devastating. On April 10, 1948, all defendants were convicted and fourteen sentenced to death. Executions were stayed pending appeals. The trial was widely publicized as "the biggest murder trial in history."

The defendants were well-educated men. Eight of them were lawyers and most others had advanced degrees. The lead defendant and an intellectual, SS General Otto Ohlendorf freely admitted that his unit had killed about ninety thousand Jews. He testified that he would do it again to answer his country's call. Even after Ohlendorf was sentenced to death, he showed not the slightest remorse. The trial offered new insights into the mentality of fanatics who are so convinced of the righteousness of their cause that they remain willing to kill or be killed for their own ideals.

The victims were killed because they did not share the race, religion, or creed of their executioners. The prosecution emphasized that no penalty could balance the enormity of the genocidal crime. The goal of the trial was not vengeance or merely justified retribution. It was a plea of humanity to law—that all people should have a legal right to live in peace and dignity regardless of their race or creed. The Opinion of the three U.S. judges confirmed that genocide and crimes against humanity were crimes that could never be tolerated. The trial and judgment set significant landmarks to advance the evolution of international criminal and humanitarian law.

Industrialists Called to Account

Three more trials focused on industrial leaders and financiers who backed the Hitler regime. The Farben, Krupp, and Flick cases also reflected the mentality of persons who aided and abetted the Nazi reign of terror without any regret or subsequent remorse. They were accused of profiteering from the slave labor programs of the Third Reich and from confiscation of properties plundered in occupied countries. Many of the defendants argued that loyalty to the regime made it necessary to go along with the Nazi government.

In the trial against Friedrich Flick and five of his associates, the defendants were charged with seizing properties as well as exploiting camp inmates under the most atrocious conditions. It was shown that Flick took the initiative for economic plunder and was a big contributor to Nazi entities. German defense lawyers argued that their clients had done no more than others would have done in defense of home and country. The arguments of economic and military necessity persuaded the American judges to acquit three of the accused. On December 22, 1947, Flick was sentenced to five years imprisonment and the two remaining defendants received lesser terms. With time off for good behavior, they would all soon be released.

Alfried Krupp was the sole owner and director of Hitler's major arms producer. (His father Gustav had been dropped as a defendant in the IMT trial when it was found that he was senile.) Alfried and eleven other key members of the company were indicted on a variety of charges. The court acquitted all of having been accessories to crimes against peace. The judges were not convinced that the defendants had sufficient knowledge of Hitler's aggressive intentions to be found guilty. Judge Hu C Anderson, from Tennessee, believed that liability for planning aggressive war should be limited to the leaders who did the planning and not include civilians who were not policy makers.

On other counts of the indictment the defendants did not fare as well. The judgment covered 122 printed pages. Eleven of the accused were found guilty beyond a reasonable doubt of plunder and violating laws of war by mistreatment of prisoners and camp inmates who slaved in their plants. The arguments that they acted under superior orders and feared they might otherwise be penalized were rejected. It was shown that the industrialists shared the goals of the Nazi regime and were in no way coerced. Any disadvantage that might have befallen them was trivial when compared to the suffering of the inmates they abused. Krupp was sen-

tenced to twelve years in prison plus forfeiture of all his property. His colleagues received lesser sentences. In the spring of 1949 they were transported to War Crimes Prison No. 1, where they began plans to obtain their release. It would not be long in coming.

The most difficult and complicated industrial trial was against the directors of the IG Farben chemical cartel. The "Farben Case" indicted twenty defendants, including Farben's Chairman of the Board, Hermann Schmitz. The charges were essentially the same as those leveled against Krupp. Farben had assisted Hitler in attaining power. Farben directors had worked closely with the military in restoring German might. Farben had financed the building of the concentration camp at Auschwitz. Farben was one of the heaviest users of slave labor in the camps. Farben had planned the unlawful acquisition of foreign companies to strengthen Germany's potential to wage war.

The tribunal's judgment in July 1948 acquitted all defendants of conspiracy and the crime of aggression. Two of the three judges were not persuaded that the accused were aware of Hitler's plans to start an aggressive war. Judge Paul Hebert, Dean of the Louisiana Law School, was not convinced that justice had been served. He dissented on some of the acquittals. Of the twenty-three defendants, ten were acquitted of all charges. Thirteen were found guilty of plunder or slave labor abuses. Those convicted received light sentences, of eight years or less—much to the disappointment of the young U.S. prosecutors.

Generals Face the Court

German field marshals and generals were among the high-ranking military leaders called to account in the Hostages Case for the murder of prisoners of war and civilian hostages in occupied territories. The trial lasted about six months and ended in February 1948. The judgment, led by Charles Wennerstrum of Iowa, helped to clarify the law regarding the status and rights of partisans and other belligerents as well as the limits of "command responsibility" and "military necessity." Superior orders were considered in mitigation. No death sentences were imposed and some generals were acquitted. Fourteen of the convicted men were sentenced to prison terms.

The second military trial had only one defendant. In the Milch case, Field Marshal Erhard Milch, deputy to Göring, was sentenced to life imprisonment in April 1947 for his deep involvement in slave labor programs. In another such trial in the summer of 1948, all fourteen defendants in the "High Command" case were acquitted of planning or waging aggressive war since they were not found to be the policy makers. Most of the thirteen other defendants were sentenced to prison terms for abuse of forced laborers and other war crimes.

Ministers and Diplomats on Trial

The last and longest of the subsequent Nuremberg trials was the "Ministries" case that began in January 1948 with twenty-one defendants and spanned some fifteen months. High officials of Germany's Foreign Office and other government ministries were charged with responsibility for crimes against peace, crimes against humanity, and a large variety of war crimes and atrocities. Five defendants, including Ernst von Weizsaecker, a career diplomat who was State Secretary in the Foreign Office, were convicted of "crimes against peace." Following IMT reasoning, the court held that those leaders clearly responsible for initiating or cooperating in waging unlawful war, knowing that it was aggression, must be held accountable. They noted particularly that the principles laid down in the judgment were not binding merely on Germans but were applicable to all nations. Those found guilty were sentenced to prison terms ranging from four to fifteen years.

Clemency for War Criminals

The twelve Nuremberg trials had indicted 185 persons and convicted 142. The convicts joined more than a thousand prisoners sentenced by the Dachau military commissions to confinement in War Crimes Prison No. 1. Life in the Landsberg jail was relatively comfortable, but the prisoners lost no time in trying to win their freedom.

As the passions of war cooled and the political climate in Germany changed, the attitude toward the convicts in Landsberg also changed. The Soviet Union, which had been a wartime partner, soon came to be regarded as an enemy by the United States. West Germany, a wartime enemy, was seen as a potential ally in opposing communist expansion. German veteran's organizations, Nazi sympathizers, influential friends of the prisoners, as well as church and humanitarian groups, joined respected German politicians who beseeched the Americans to release the prisoners in Landsberg. They were not without friends in the U.S. Congress, where senator Joseph McCarthy and others argued that the real enemy was not Germany but the communists. German militarists made plain that they could not be expected to join Allied forces as long as their revered wartime commanders were imprisoned as criminals.

General Lucius Clay, as U.S. Military Governor, had personally reviewed both the Dachau and subsequent Nuremberg trials in 1948. He had affirmed practically all the verdicts, including hundreds of death sen-

tences. As part of the movement away from military occupation, he was replaced in 1949 by a civilian high commissioner, John J. McCloy, a prominent New York lawyer who had served as Assistant Secretary of War. McCloy was left with the unenviable task of signing death warrants that would trigger the hanging of fifteen prisoners who had been convicted at Nuremberg but whose execution had been postponed pending appeals.

In July 1950 McCloy appointed an Advisory Board for Clemency for War Criminals to advise him. The board was instructed not to challenge any of the findings of law or fact reached by Nuremberg judges. Its sole purpose was to consider discrepancies in sentences for the same offense as well as personal hardships of health or family. It was not an appellate review and no Nuremberg prosecutors were consulted. On January 31, 1951, after all legal appeals had been exhausted, including petitions to the U.S. Supreme Court, which refused to accept jurisdiction, McCloy announced his final decisions. Thirty-one of the Nuremberg defendants, including the nine industrialists who had been sentenced to prison in the Krupp case, all had their terms reduced to "time served." On February 5, 1951, Krupp walked out of prison a free and happy man. High Commissioner McCloy ordered the return of the enormous Krupp fortune to him.

Taking account of every consideration in favor of the prisoners, McCloy commuted ten of the fifteen death sentences to life imprisonment. He could find no grounds for clemency for four Einsatzgruppen commanders (Paul Blobel, Werner Braune, Erich Naumann, and Ohlendorf) or for Pohl, who had been responsible for mass murders in concentration camps. Aware that Germany had abolished the death penalty, McCloy nevertheless confirmed that those five genocidal killers should be executed.

At the same time the commander of the U.S. Army in Europe, General Thomas Handy, who was responsible for the prisoners convicted in the army trials at Dachau, reduced sentences for about four hundred of those under his charge who were still detained in the war crimes prison. He commuted eleven death sentences that remained pending, but directed that two others face the gallows. The five Nuremberg defendants on death row plus the two convicted at Dachau were hanged in Landsberg Prison on June 7, 1951.

In December 1951 many of the war criminals convicted at Dachau or Nuremberg were granted their freedom as a "Christmas amnesty." Attempts to secure the release of the remaining Landsberg prisoners were unrelenting. The sympathetic U.S. authorities were increasingly creative in quietly finding ways to reduce sentences or grant paroles to remaining prisoners. Similarly, the British, eager to have German forces join in the defense of Europe, found reasons to release Hitler's leading commanders, Field Marshals Albert Kesselring and Fritz Erich Von Manstein, in 1952 and 1953. By the end of 1958 all war criminals convicted at any of the twelve subsequent trials at Nuremberg were free.

Significance of the Nuremberg Trials

The thirteen judicial proceedings at Nuremberg were designed to protect the fundamental rights of all human beings to live in peace and dignity regardless of their race or creed. In careful and well-reasoned judgments, the law was clarified and affirmed. Bringing at least a handful of Nazi leaders before the bar of justice helped to diminish some of the anger and pain of survivors of persecution and encouraged hope for a more humane world in which perpetrators of such crimes would never be immune from punishment. The number of convictions was not as important as the confirmation of the principles emerging to guide future international behavior of nations and individuals.

The details presented in open court at Nuremberg made plain how an entire nation could be led astray by a ruthless tyrant. Revulsion against the horrors encouraged acceptance of the Charter of the United Nations (UN) and the slow awakening of the human conscience. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted on December 9, 1948; the Universal Declaration of Human Rights, adopted on December 10, 1948; and a growing host of other international agreements gave birth to new disciplines focused on humanitarian law and the protection of human rights everywhere.

The impulse of Nuremberg spread internationally. Trials of Japanese war criminals were based on the IMT Charter. Countries that had been occupied by Nazi Germany also held war crimes trials following similar principles. German courts conducted postwar trials against concentration camp personnel. A central office in Germany directed investigations of war criminals throughout the land. Suspected war criminals who fled abroad were seized and called to account for their prior actions. An ad hoc tribunal was set up by the United Nations Security Council in 1993 to deal with crimes against humanity and war crimes committed in Yugoslavia. A similar tribunal was created in 1994 to cope with genocide in Rwanda. Their decisions built upon the law laid down at Nuremberg. Several new national or international criminal courts are being planned to cope with terrorism and other atrocities in other parts of the world. They all bear the mark of Nuremberg. After many years of difficult negotiation, a permanent international criminal court, widely recognized as "the

missing link in the world's legal order," was sworn into office in the Hague on March 11, 2003.

The many legal fruits that have grown from the seeds planted at Nuremberg reflect the enduring hopes of humankind. But, as seen from the clemency shown to criminals convicted at Nuremberg, the progress of the law does not proceed upward in a straight line or in a political vacuum. The creation of new judicial institutions with universally binding authority on matters of vital concern to many nations is not something that can be achieved quickly or easily.

There have always been those who oppose enforceable international rules as an infringement on national sovereignty. They prefer to rely on their own economic or military might rather than trust any untried new legal tribunals. Without looking for solutions, they point to shortcomings, even though some problems must be expected in every new institution. Opposition to the new international criminal court is, in effect, a repudiation of the principles and goals enunciated at Nuremberg. The historical record shows, however, that despite hesitation and vacillation, the Nuremberg principles live on. A peaceful and humane world requires an improved and enforceable rule of law that applies equally to everyone. The universal acceptance of that principle will be the enduring legacy of the Nuremberg trials.

SEE ALSO Jackson, Robert; Nuremberg Trials; Superior (or Command) Responsibility

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Benjamin B. Ferencz

Organization for Security and Cooperation in Europe

The first Conference on Security and Cooperation in Europe (CSCE) ended with the Helsinki Final Act, signed on August 1, 1975, by the leaders of the thirty-five participating states. Those states included Canada, the United States, the Western European democracies, and the Soviet Union and its Eastern European satellites, as well as a few neutral and nonaligned countries. For Moscow, the main objective of the Final Act was to confirm the postwar status quo, and to achieve political recognition of the territorial conquest of the Red Army and the ideological supremacy of communism. For the members of the Atlantic Alliance, the objective was to ease the political situation in Europe, especially between the two German states, and to underline the principles of the UN Charter.

Evolution from CSCE to OSCE

Long and difficult negotiations from 1973 to 1975 focused on three set of issues, the three "baskets" of the Final Act. The first basket addressed security issues in Europe, the second sought to establish economic, scientific, and technological cooperation, and the last attempted to create a cooperative approach to humanitarian and related issues. The three baskets of issues were diplomatically linked, and compromises were required before general agreement was reached between the countries of the western and eastern blocs. In itself, the Final Act is not a legally binding treaty; rather it is a set of political commitments, adopted by consensus and in a spirit of peaceful coexistence. These political commitments involve a high level of dedication to the universal principles of the UN Charter, including sovereign equality of states and the inviolability of national borders, as well as "respect for human rights and fundamental freedoms."

The rule of consensus and the linkage between the three baskets of the CSCE imposed certain limits to progress in the field of human rights during the first ten years, from 1975 until 1986. The turning point was reached through the leadership of Russian Premier Mikhail Gorbachev, who experimented with domestic reform (*perestroika*) and a new diplomatic openness (*glasnost*). The Conference in Vienna, from 1986 to 1989 made the best of this opportunity by adopting a substantial document on human rights issues, the Vienna Document of 1989. This marked the start of a new and far-reaching agenda that focused on the human dimension of international relations.

The 1990 Summit of Heads of State and Government was organized in Paris to give visible recognition of the new reality in international relations inaugurated by the end of the cold war, freedom for Eastern democracies, and the political triumph of Western values. The CSCE incorporated democratic principles in the Charter of Paris for a New Europe, which was signed on November 21, 1990. The Paris Charter was lauded as the starting-point of "a new era of democracy, peace and unity in Europe." The participatiing states pledged "to build, consolidate, and strengthen democracy as the only system of government of our nations." The Paris Charter created the Office for Free Elections in Warsaw. This was the first standing institution of the CSCE,

now called the Office for Democratic Institutions and Human Rights. It also created a number of decision-making bodies. The Charter called for a summit to be held every other year, with annual meetings of the CSCE Council, consisting of foreign affairs ministers, and regular meetings of senior diplomats as well as "implementation meetings of the human dimension committments" each year in Warsaw. The Warsaw meetings reviewed the record of the CSCE member states' commitments in the field of human rights, democracy, and the rule of law.

The scope of CSCE broadened rapidly after the break up of the Soviet Union and of Yugoslavia. In 2004 there were fifty-five participating states, drawn from a geographical area that stretches from Vancouver eastward to Vladivostok. Its political nature has also changed, with greater emphasis being given to the commitment to democracy, human rights, and rule of law, and mechanisms have been developed for the prevention and settlement of disputes. Its legal status has remained unchanged, but there has been a degree of creeping institutionalization. At the Budapest Summit of 1994, the CSCE underwent a symbolic name change, becoming the Organization for Security and Cooperation in Europe (OSCE, effective January 1, 1995). That summit also saw an organizational innovation, creating the position of Chairman in Office (CIO). The holder of this office is selected from among the foreign ministers of the participating states, serves a one-year term, presides over official meetings, and exercizes personal diplomacy on behalf of the OSCE.

The OSCE is not based on a binding treaty, but on political committments. It requires good faith and the good will of participating states, and as such is hindered from action by its continued reliance on the rule of consensus. Once, in 1992 during the crisis in Yugoslavia, the organization invoked a principle of "consensus minus one" in order to suspend the participation of a member state, the Federal Republic of Yugoslavia, on the eve of the Helsinki Summit. The Russian Federation did not attend the biennial summit meetings held after the Istanbul Summit of 1999, due to its disagreement with the Western democracies over the Chechnya crisis, and its foreign minister strongly disputed the conclusions of the Ministerial Councils in Vienna (2000) and Maastricht (2003), which were issued as statements of the CIO. To achieve consensus, the OSCE's official statements are, of necessity, watered down and legally non-binding. However, the OSCE's assertion of the link between security and human-rights issues, embodied in the concepts of cooperative security, can be an asset to the organization, as is its flexible legal framework, which allows it to adapt and react quickly to new challenges in the international community.

Evolving Commitments

The CSCE arose to promote the goal of peaceful coexistence among the states of Europe, and this orientation explains the absence of any reference to humanitarian law or criminal law in the early years. At the most, the Helsinki Declaration makes a general reference to international law, as follows:

> The participating State will fulfill in good faith their obligations under international law, both those obligations arising from the generally recognised principles and rules of international law and those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties.

Any specific reference to international humanitarian law was precluded, however. Principle I of the Declaration stressed, "refraining from the threat or use of force." On the other hand, Principle VII invokes "the respect for human rights and fundamental freedoms," and specifically mentions national minorities in this regard:

> The Participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.

The CSCE's concern with humanitarian concerns was very narrowly defined, with no mention of humanitarian law as such. In deference to the matters of the Soviet Union and its allies, the word *humanitarian* was used euphemistically, which wanted to avoid employing the vocabulary of "human rights."

The Concluding Document of the Vienna Conference of 1989 put a new emphasis on humanitarian issues, dealing explicitly with commitments "concerning respect for all human rights and fundamental freedoms, human contacts, and other issues of a related humanitarian character." At the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (June 1990) a set of national minority rights was developed for the first time, and greater attention was paid to the rise of racism and aggressive nationalism:

> The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. In this context they also recognize the particular problems of Roma [gypsies].

The states declared their firm, individual intention to combat these phenomena by a number of measures, including the passage of laws designed "to provide protection against any act that constitutes incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism." They further committed themselves to promote understanding and tolerance in the fields of education, culture, and information.

The Paris Charter summed up this political will: "We express our determination to combat all forms of racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds." The communist old-guard putsch of August 1991 against Mikhail Gorbachev, which led to the end of the Soviet Union, had a sobering effect on the October 1991 Moscow Meeting of the Conference on the Human Dimension of the CSCE. In the closing document of that session, the member states "deplored acts of discrimination, hostility, and violence against persons or groups on national, ethnic, or religious grounds."

The sense of emergency within the CSCE was even more evident at the Helsinki Summit of 1992, which addressed the Yugoslavia crisis. On July 10, 1992, the organization released its Summit Declaration, which stated, in part:

> This is a time of promise but also a time of instability and insecurity. Economic decline, social tension, aggressive nationalism, intolerance, xenophobia and ethnic conflicts threaten stability in the CSCE area. Gross violations of the CSCE commitments in the field of human rights and fundamental freedoms, including those related to national minorities, pose a special threat to the peaceful development of society, in particular in new democracies.

The allegation of gross violations deliberately invoked the strong vocabulary of international law. There was no direct accusation against specific perpetrators, but the reference to "aggressive nationalism" was a clear indication of the CSCE's intent.

The Helsinki Summit was the first time that the CSCE made explicit reference to international humanitarian law. The decisions reached at that meeting called for the establishment of a High Commissioner on National Minorities; enhanced the role of the Office for Democratic Institutions and Human Rights (ODIHR), which was in charge of the annual implementation meetings; and reaffirmed the whole range of humanitarian commitments undertaken by member states. A special caveat was added with regard to national minorities, directing the participating states to "refrain from resettling and condemn all attempts, by the threat or use of force, to resettle persons with the aim of changing the ethnic composition of areas within their territories."

After dealing with refugees and displaced persons, the Helsinki Document stressed the importance of international humanitarian law in a number of further provisions. The participating States:

> (47) Recall that international humanitarian law is based upon the inherent dignity of the human person;
>
> (48) Will in all circumstances respect and ensure respect for international humanitarian law including the protection of the civilian population;
>
> (49) Recall that those who violate international humanitarian law are held personally accountable;
>
> (50) Acknowledge the essential role of the International Committee of the Red Cross in promoting the implementation and development of international humanitarian law, including the Geneva Conventions and their relevant protocols;
>
> (51) Reaffirm their commitment to extend full support to the International Committee of the Red Cross as well as to the Red Cross and Red Crescent Societies, and to the United Nations organizations, particularly in times of armed conflict, respect their protective emblems, prevent the misuse of these emblems and, as appropriate, exert all efforts to ensure access to the areas concerned;
>
> (52) Commit themselves to fulfilling their obligation to teach and disseminate information about their obligations under international humanitarian law.

The Moscow Mechanism

The Yugoslavia crisis was the first challenge to the consistency of the CSCE's commitments and to the efficiency of its mechanisms and structures. According to the Moscow Mechanism, participating states could establish fact-finding missions involving a team of CSCE (now OSCE) rapporteurs. This emergency process calls for ten participating states to request such a mission can be formed, if possible with the cooperation of the requested participating state. After convening such a mission, the rules require that an emergency report be prepared and presented in three weeks.

On August 5, 1992, the United Kingdom gained the support of nine other participating states in order to invoke the Moscow Mechanism with respect to Bosnia and Herzegovina and Croatia. The United Kingdom

appointed Ambassador Hans Corell (Sweden) to the mission. Bosnia and Croatia appointed Ambassador Helmut Turk (Austria) as rapporteur. A third member of the mission was Gro Hillestad Thune, a member of the European Commission of Human Rights (Norway). The first mandate of the mission was to investigate reports of attacks on unarmed civilians in Bosnia and Herzegovina, especially in Sarajevo and Goradze, and in Croatia. On September 28, 1992, the mandate was redrafted and broadened to visit, if feasible, areas that may be under the threat of ethnic cleansing.

From September 30 to October 5, the OSCE mission focused specifically on Croatia, working with high level contacts in Zagreb and making onsite visits to United Nations Protected Areas (UNPAs), such as Knin and Vukovar. It presented its report on October 7, 1992, (CSCE communication no. 342). The main conclusion was that atrocities against unarmed civilians and ethnic cleansing were indeed committed in the Republic of Croatia. It attributed these crimes to both sides of the conflict, but singled out the Yugoslavian Peoples Army (JNA), Serbian paramilitary groups and the police forces at Knin as having committed the most serious offenses. The report detailed the means employed for the creation of ethnically pure areas, alleging mass murder and forced deportation, as well as confiscation of property, arbitrary firings from employment, torture, random killings, and incarceration in overcrowded detention camps that lacked adequate food, sanitation, and access to medical care. The effect of these policies, according to the mission's report, was to create "a climate of fear [that] eventually force[d] people to leave their towns and villages."

The fact-finding mission stopped short of any legal qualification of specific "atrocities," instead using the vague wording of its mandate. Although it did specifically allege that the perpetrators were following a "systematic policy" (which is a substantial component of the crime of genocide), it did not go so far as to use the term *genocide*. Instead, it concluded that

> it is beyond any doubt that gross violations of human rights and norms of international humanitarian law, including war crimes and crimes against humanity, have been committed in connection with the armed conflict in the former Yugoslavia. It is also common knowledge that every day atrocities continue to be committed. The evidence is overwhelming and undeniable.

The report took note of Yugoslavia's ratification of the Genocide Convention of 1948 and stressed that "serious crimes such as war crimes and crimes against humanity" are punishable based on the continuing applicability of the Criminal Code of the former Yugoslavia, but the rapporteurs saw no real possibility for an effective prosecution of these crimes at the national level, and concluded that it would be necessary to establish an international ad hoc tribunal to prosecute these crimes.

The mission report called for the formation of an expert committee, with experts drawn from interested OSCE member nations, that would be empowered to draft a treaty to establish a tribunal to try the crimes that the mission had discovered. As stressed in the concluding remarks of the report:

> the international community shares a common responsibility to bring to justice those who have committed crimes in connection with the armed conflict in the former Yugoslavia. The rules enshrined in the relevant international legal instruments should be enforced in order to punish those responsible and to demonstrate the determination of the international community to take action now and in the future.

These concerns were taken up during the third meeting of the CSCE Council—a meeting at the level of Foreign Ministers—in Stockholm, in December 1992. The ministers called upon an organ of the CSCE—the Committee of Senior Officials and the High Commissioner on National Minorities—to address the grave violations ongoing in the former Yugoslavia. This call for greater CSCE involvement in countering the ethnic cleansing and other human rights violations provided the opportunity to stress the responsibility of states and of individuals in regard to international humanitarian law, and to affirm the accountability of governments and individuals for the commission of war crimes and crimes against humanity.

Although the team of rapporteurs was encouraged to continue its work, it was unable to visit Bosnia-Herzegovina. On February 9, 1993, it did, however, transmit an additional report on this country, with a new proposal for an International War Crimes Tribunal for the Former Yugoslavia. In the meanwhile, several other international missions were investigating the gross violations of human rights in former Yugoslavia. During an extraordinary session, the Commission on Human Rights designated its own special rapporteur, Tadeusz Mazowiecki. In addition, UN Security Council Resolution 780 (1992) established a commission of experts, chaired by Frits Kalshoven. Cooperation among these teams of experts helped to build a strong legal case, and the triggering of the Moscow Mechanism was thus instrumental in the ultimate adoption of UN Security Council Resolution 827 on April 25, 1993, instituting the International Criminal Tribunal for Former Yugoslavia (ICTY).

Follow-up to the Yugoslavian Crisis

One year later, December 1993, at the fourth meeting of the OSCE Council in Rome, the same alarm was evident. This time, the organization made a much more direct reference to criminal law, adopting the Declaration on Aggressive Nationalism, Racism, Chauvinism Xenophobia, and Anti-Semitism. Noting the strong relationship between these phenomena and violence, the ministers participating in the meeting

> focused attention on the need for urgent action to enforce the strict observance of the norms of international humanitarian law, including the prosecution and punishment of those guilty of war crimes and other crimes against humanity. The Ministers agreed that the CSCE must play an important role in these efforts. The clear standards of behaviour reflected in CSCE commitments include active support for all individuals in accordance with international law and for the protection of national minorities.

At the Budapest Summit of 1994, the participating states issued a condemnation of the practice of ethnic cleansing and all acts related thereto. They also affirmed their support of the ICTY. Furthermore, the meeting's Summit Declaration addressed the issue of international humanitarian law standards:

> The participating States deeply deplore the series of flagrant violations of international humanitarian law that occurred in the CSCE region in recent years and reaffirm their commitment to respect and ensure respect for general international humanitarian law and in particular for their obligations under the relevant international instruments, including the 1949 Geneva Conventions and their additional protocols, to which they are a party. . . .
>
> They emphasize the potential significance of a declaration on minimum humanitarian standards applicable in all situations and declare their willingness to actively participate in its preparation in the framework of the United Nations. They commit themselves to ensure adequate information and training within their military services with regard to the provisions of international humanitarian law and consider that relevant information should be made available.

During the Lisbon Summit of 1996, the OSCE member states reiterated their condemnation of continuing human-rights violations in the former Yugoslavia. A similar stance was taken in the OSCE's Istanbul Charter for European Security. Russia, embroiled in wars in Chechnya, opposed more specific invocation of international humanitarian law, out of concern that it would itself become vulnerable to prosecution. This, again, demonstrated the inherent limits to action that derive from the OSCE's reliance on consensus and the risk that member states faced of being accused of imposing double standards.

At the annual Implementation Meeting organized in Warsaw by the ODIHR, attendees dealt with the issues of migration, refugees, and displaced persons, as well as problems relating to migrant workers and the treatment of citizens of other participating states. They also discussed the development of international humanitarian law at the very end of the working session. According to the ODIHR agenda, which was prepared in advance for the 2002 Implementation Meeting:

> The presence of internal armed conflicts within the OSCE region (as well as a legacy of international armed conflict) highlights the importance of the implementation of humanitarian law by member states, especially as concerns the protection of civilians and the respect for fundamental non-derogable rights. It is to be stressed that provisions such as article 3 common to the Geneva Conventions and article 4 of Additional Protocol II contain minimum requirements of humane treatment that cannot be derogated from.

In addition, the ODIHR mentioned establishment of the International Criminal Court and the issue of the co-operation with the International Criminal Tribunals for the former Yugoslavia and for Rwanda as topics that might be addressed during the meeting.

New Trends

In fact, the OSCE mechanisms are mainly oriented toward prevention. For instance, the mandate for the High Commissioner on National Minorities, established by the Helsinki Summit in 1992, was described as follows:

> The High Commissioner will provide "early warning" and, as appropriate, "early action" at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but, in the judgement of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability, or relations between participating States, requiring the attention of and action by the Council.

According to this mandate, the high commissioner is specifically charged with taking before a political crisis or civil strife can mature into full-scale conflict, with promoting dialogue, and with gaining the confidence and cooperation of the parties to the crisis or strife. The successes of the first high commissioner, former Dutch Foreign Minister Max van der Stoel, can be measured by the fact that his goodwill and quiet diplomacy helped to avoid the breakout of further conflict among

the newly independent states of Eastern Europe. However, the High Commissioner is expressly prohibited from becoming involved in ongoing, open crisis situations, such as occurred in the former Yugoslavia or in Caucasia. Van der Stoël's successor, Rolf Ekeus, has shown a marked reluctance to take any actions that could antagonize participating states, preferring to rely on personal diplomacy to achieve his goals.

Participating states generally do not use the full range of OSCE mechanisms and institutions to deal with challenge about national minorities. They only invoked the Moscow mechanism in 2002, ten years after it was first developed, after the attempted assassination of President Niyazov of Turkmenistan. The rapporteur assigned to the case was given the specific mandate to deal with the massive repression that followed the attempt. The resulting report stressed the risk of forced resettlement of national minorities, and made a transparent reference to the 1948 Genocide Convention, but as an emergency mechanism, the rapporteur could not assure any practical follow-up of the situation. Nonetheless, the work produced by the OSCE has galvanized the Commission on Human Rights and the UN General Assembly to finally adopt resolutions on the human rights situation in Turkmenistan in 2003, and to order a follow-up study of the situation in 2004.

SEE ALSO United Nations; United Nations Sub-Commission on Human Rights; Yugoslavia

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Emmanuel Decaux

Peacekeeping

Peacekeeping is a process that involves military operations aiming to provide a buffer between warring parties. The principal objective of a peacekeeping mission is to halt armed conflict or prevent its reoccurrence. This is achieved by peacekeepers acting as a physical barrier between hostile parties and monitoring their military movements. Peacekeeping techniques are applied to both interstate and internal conflicts.

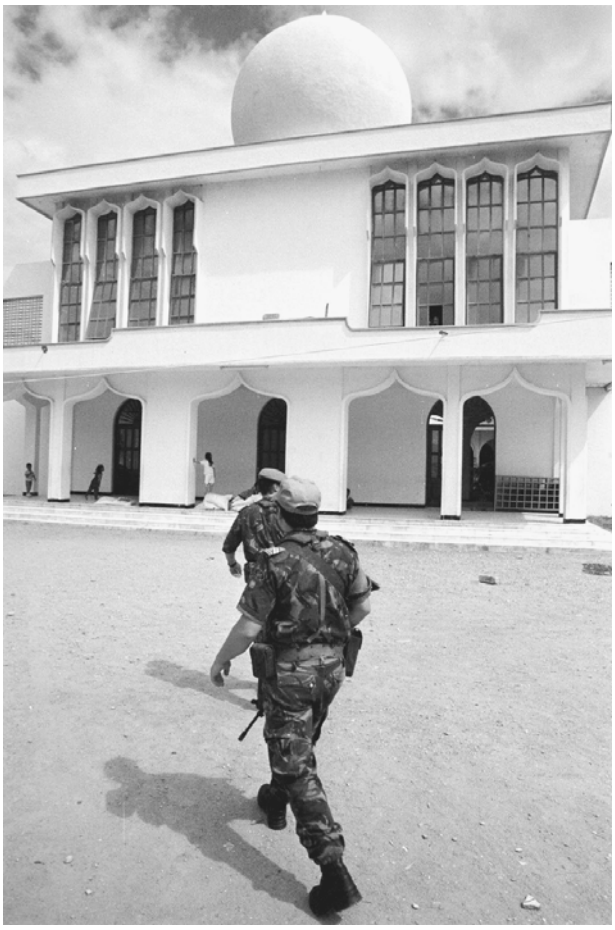
The Nature of Peacekeeping

Peacekeeping is based on the principle that an impartial presence of foreign troops on the ground can ease tensions and allow the achievement of a negotiated solution to a conflict. A critical first step before peacekeepers are deployed is for the United Nations (UN) or another intergovernmental body to obtain an end to fighting and to gain the consent of both parties in the dispute.

The term *peacekeeping* does not appear in the UN Charter. Former Secretary-General Dag Hammarskjold described peacekeeping as falling within "Chapter Six and a Half " of the charter. That is, it falls between traditional methods of resolving disputes peacefully (such as conciliation, mediation, and fact-finding) outlined in Chapter VI and resort to more forceful action (such as economic coercion and military intervention) authorized in Chapter VII.

Peacekeeping is distinctive. It resembles neither traditional means of dispute settlement nor the model of collective security. Peacekeeping compares with collective security only insofar as each technique involves the deployment of military forces. The objective is not to defeat an aggressor, but to prevent fighting, act as a buffer, preserve order, or maintain a cease-fire. Peacekeeping troops are usually instructed to use their weapons only in self- defense. Their role is more closely akin to that of policemen than combat soldiers. To be effective, peacekeeping forces must maintain attitudes of neutrality and impartiality toward the adversaries. Each peacekeeping operation has its particular mandated tasks, but common aims as well—to minimize human suffering and improve conditions for a self-sustaining peace. Thus, although peacekeeping operations have as their core an armed military component, they also employ various civilians, among them police officers, electoral experts, de-miners, human rights monitors, civil affairs specialists, and public information experts. UN peacekeepers normally coordinate efforts closely with field staffs of other UN agencies, especially the Office of the UN High Commissioner for Refugees, the World Food Programme, the UN Children's Fund, and the Office of the UN High Commissioner for Human Rights.

Certain factors contribute to the prospects for a peacekeeping operation's success. One is financing. Peacekeeping is expensive, and it is critical to adequately fund the supplies, equipment, salaries, and administrative costs of an operation. A second consideration is geography. More successful operations occur on flat, desert terrain in sparsely populated areas, where it is easier to observe military movements. Mountainous, jungle, or urban environments greatly complicate the monitoring mission of peacekeepers. Third, mandates for peacekeeping operations must be



United Nations peacekeepers from Portugal patrol the only mosque in Dili, the capital of East Timor, on May 25, 2000, following a series of attacks on the Muslim community. [AP/WIDE WORLD PHOTOS]

clear, and rules of engagement must be realistic relative to the situation. Fourth, peacekeeping forces need a centralized command and control system to facilitate efficient, effective policies. Finally, the peacekeeping forces must be neutral and not work to the benefit of either party in a dispute. Drawing forces from nonaligned countries works toward this end. In all cases the disputants' desire to peacefully solve their differences is critical to the success of any peacekeeping operation.

UN Peacekeeping and Genocide

Since the establishment of the UN in 1945, the Security Council has authorized 56 peacekeeping missions employing more than 800,000 military and police personnel from 118 countries. Of those forty-three UN peacekeeping operations were created by the Security Council after 1988. Fifteen missions remained ongoing in 2004. Since its creation in 2002 the Department of Peacekeeping Operations has shouldered responsibility for providing political and administrative directions for missions in the field.

UN peacekeeping operations between 1945 and 1988 mainly involved the positioning of forces between former belligerents, with their consent, to monitor ceasefire agreements. The close of the cold war in 1989 witnessed the emergence of more multidimensional peace operations, as the Security Council authorized ambitious missions to reduce armed tensions, implement peace accords, and prevent widespread genocidal atrocities within states ravaged by ethnic strife and civil war. Among these multidimensional missions were several UN interventions motivated by humanitarian concerns, including those in Somalia (1992–1995), Bosnia and Herzegovina (1992–1994), Rwanda (1994), Sierra Leone (1997–1999), Kosovo (1996–1998), Liberia (1999–2003), and the Congo (1998–present). Even so, the record of international peacekeeping enjoys only mixed success because ethnic wars often degenerate into massive genocidal atrocities that severely challenge peacekeeping efforts.

In 1992 a U.S., and later UN-led, peacekeeping operation intervened in Somalia to protect international food aid personnel working to save local populations from famine and prevent the collapse of civil governance. When Somali warlords killed eighteen American soldiers in October 1993, the incident prompted the United States to withdraw its forces in early 1994, precipitating the collapse of the entire UN mission. Likewise in Bosnia, the Security Council deployed the UN Protection Force (UNPROFOR) in 1993 to end the bloody civil war between Serbs and Muslims that eventually resulted in the death of some 250,000 persons, mostly Muslims. However, the inability of UN peacekeepers to halt the slaughter of civilians, especially in Sarajevo and Srebrenica, led to their disengagement in 1995 and replacement by NATO troops—the first time a UN force was replaced by a regional organization's troops. The most tragic failure in peacekeeping occurred in Rwanda between April and June of 1994, when the world watched marauding Hutus murder thousands of their own countrymen, mostly Tutsis. The Security Council did not act, and when it did, it was too little, too late. A French-led UN peacekeeping force arrived in late June, as the genocidal massacres ended. In the interim 800,000 victims perished.

UN peacekeeping efforts since 1997 have focused on African intrastate wars, both to limit armed conflict and promote peaceful settlement. In Sierra Leone internal violence broke out in 1997. The UN established the UN Observer Mission in Sierra Leone in July 1998 to disarm the combatants, and although fighting contin-

ued, UN diplomacy facilitated negotiation of the Lomé Peace Agreement that officially ended hostilities in 1999. To implement this agreement and monitor the protection of human rights, UN forces were then increased to six thousand troops.

The deployment of a UN peacekeeping mission to Liberia in 1997 facilitated resolution of a civil war that had been ongoing since 1989, claimed the lives of 150,000 people—mostly civilians—and displaced some 850,000 refugees throughout neighboring countries. Civil turmoil erupted again in Liberia in July 2003, as fighting between government forces and warring factions intensified. In the face of a humanitarian tragedy, a peace treaty was signed in August that halted the violence. This agreement requested that the UN deploy a force to Liberia to support the government's transition and assist in implementing the terms of peace. In September 2003 the Security Council authorized the transport of fifteen thousand UN military personnel to assist in the maintenance of law and order throughout Liberia.

More tragic is the case of the Democratic Republic of the Congo. In 1998 fighting broke out between the Lendu and Hema tribes. The conflict erupted into a brutal civil war that became complicated when local militias were backed by Uganda, Rwanda, Angola, and Zimbabwe, who all sought control over mineral resources and diamonds in the Congo's eastern provinces. In November 1999 the UN dispatched 6,500 peacekeepers to control the violence, with only partial success. Widespread fighting diminished after 2001, but by then more than 3.5 million people had perished, mostly displaced civilians who had starved to death.

Regional Peacekeeping Missions

Some peacekeeping efforts are undertaken by regional organizations. For example, in response to pressure from the United States, in 1994 the North Atlantic Treaty Organization (NATO) authorized air strikes in Bosnia against Serbs who were attacking Muslims. These strikes led to the cessation of hostilities and negotiation of the Dayton Peace Accords in November 1995. During 1995 and 1996 a NATO-led international peacekeeping force (IFOR) of sixty thousand troops served in Bosnia to implement and monitor the military aspects of the agreement. IFOR was succeeded by a smaller, NATO-led Stabilization Force (SFOR) whose mission is to deter renewed hostilities. SFOR remains in place, although troop levels were reduced to approximately twelve thousand by late 2002.

Violence broke out in February 1998 between indigenous Serbs and Albanians in Kosovo. Over the next year 800,000 Kosovar Albanians fled to neighboring countries to escape ethnic cleansing. The refusal of the Serbs to negotiate, coupled with the likelihood of genocidal atrocities, prompted the United States through NATO to launch in March 1999 an intense bombing campaign against local Serbian militias. These air strikes lasted until June, when Serb forces withdrew from Kosovo and the United States, Great Britain, Italy, France, and Germany deployed a combined peacekeeping force of forty thousand peacekeepers to maintain peace and political stability.

The Economic Community of West African States (ECOWAS), supported by the UN, sought to end the 1989 civil war in Liberia. Fighting continued though 1997, when an ECOWAS-brokered peace agreement ended the conflict and established a democratically elected government. Likewise in 1997 the Security Council authorized the ECOWAS Military Observer Group (ECOMOG) to intervene in Sierra Leone's civil war to restore order, followed later that year by a special UN peacekeeping force. By January 1999 twenty thousand peacekeepers were stationed in Sierra Leone and peace had been restored.

Pervasive violence in the Balkans region and in Africa during the 1990s demonstrated the limits of peacekeeping where there is no peace to be kept, as well as the serious political complications for peacekeeping when armed force must be used against local citizens. Nonetheless, peacekeeping can work to preserve order if the parties to a dispute are willing to let it happen. And importantly, UN peacekeeping enjoys the advantages of universality and greater legitimacy compared to similar efforts undertaken by national or regional interests. In the long term, though, deploying peacekeeping operations to stop genocidal violence is not enough. Efforts at peacekeeping must have genuine political, financial, and military support from the major powers, and peace-building efforts must be made to develop stable political institutions, justice systems, and police forces that can maintain civil order and contribute to the creation of a civil society.

SEE ALSO Bosnia and Herzegovina; Humanitarian Intervention; Kosovo; Prevention; Rwanda; Somalia, Intervention in; United Nations Security Council

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Christopher C. Joyner

Pequots

On May 26, 1637, an English military force, supported by Native allies, attacked a Pequot settlement on the Mystic River in Connecticut, and set it on fire. Almost all the Pequots who escaped the flames were killed by the troops surrounding the village. Six to seven hundred Pequots died. Many Pequots who were not in the village at the time were killed later, and others were enslaved. In 1638 the Pequots were forced to sign a treaty officially dissolving their nation. The English forbade the use of the Pequot name.

Whether this incident was a case of genocide has been the subject of much dispute. Frank Chalk and Kurt Jonassohn include it in their history of genocide. Steven Katz has argued that it was not genocide. Michael Freeman has challenged his argument. The dispute turns mainly on the question of whether the English intent was genocidal. This is difficult to determine, but most of the facts of what is usually called the Pequot War are uncontroversial.

Early contacts between Europeans and Native Americans were sometimes friendly and at other times hostile. The origins of their conflicts are often obscure, but probably include cultural misunderstandings and the escalation of minor offenses. Europeans despised Natives as heathens, and feared them as savages and agents of Satan. European attitudes were not uniformly hostile, however, and some thought that the Natives could become good Christians and trading partners. Puritan attitudes were not very different from those of other English settlers, but their conception of themselves as God's elect only intensified their distrust of Native Americans. Native-American attitudes toward Europeans were generally friendly, unless provoked. The English immigrated to America to settle, trade, and/or bring their religion to the heathen. These motives were not inherently genocidal, but they did contain the potential for violence, because many English believed that Natives who obstructed these goals should justly be punished. Some saw English colonists as new Israelites entering the promised land of Canaan, given to them by God, and inhabited by devil-worshippers. This belief had genocidal potential.

The first Puritan colony in New England was established at Plymouth in 1620. In 1630 a new colony was established in Boston Harbor; it rapidly grew during the 1630s. The local Natives welcomed the Boston settlers. Puritan attitudes toward the Natives were ambivalent. On the one hand, they were motivated by both Christian goodwill and the desire to trade. On the other hand, they feared the Natives as wild and untrustworthy savages.

The Pequot War

At the time of their first contact with Europeans, the Pequots occupied the coastal area between the Niantic River in Connecticut and the Wecapaug River in western Rhode Island. In 1622 the Dutch became the first Europeans to trade with them. This trade enabled the Pequots to dominate the other Natives of the Connecticut Valley. In 1633 the Dutch established a trading post on the Connecticut River. They concluded an agreement with the Pequots, according to which the Pequots would allow all Natives access to the trading post. Almost immediately the Pequots broke this agreement by killing some Natives bound for the post. When the Pequot principal *sachem* (chief), Tatobem, boarded a Dutch vessel to trade, he was held for ransom. The Pequots sent the Dutch the ransom. The Dutch sent the Pequots Tatobem's corpse. In response the Pequots killed the captain and crew of a European ship anchored in the Connecticut River.

The Pequots' victims were, however, not Dutch, but English. The captain was John Stone, a smuggler and privateer. In 1632 he had attempted to steal a ship of the Plymouth colony. He went to Boston, from which he was expelled for unbecoming conduct. When news of his death became known, neither Plymouth nor Boston showed any inclination to avenge him. In 1634 the Pequots sent an envoy to the Massachusetts Bay Colony, seeking the friendship of the English. Colony authorities made the surrender of Stone's killers a condition of friendship with the Pequots. The Pequot *sachems* did not accept these conditions, but instead made a payment to Boston for Stone's murder.

Shortage of good land in Massachusetts led to increasing English settlement in Connecticut. In June 1636 a Plymouth trader, Jonathan Brewster, reported that the Pequots were planning an attack. On July 4 the Massachusetts Bay Colony demanded that the Pequots honor the supposed agreement of 1634 that they surrender Stone's killers and pay compensation for his murder. Later that month Captain John Gallop found

When this photo of a young Pequot boy was snapped in 1938, fewer than twenty members of the once rich and powerful tribe survived on two small reservations in northern Connecticut. By 2004, a community of approximately 1,000 Pequots were attempting to rebuild, and reestablish some of its traditions, in the same Mashantucket region of the state. [BETTMANN/CORBIS]

the ship of John Oldham abandoned near Block Island. Onboard he discovered Oldham's dead body. The probable killers were the Narragansetts and the Block Islanders, who were tributaries of the Narragansetts. The Narragansetts returned Oldham's two sons and his possessions to Massachusetts, and made a reprisal raid on Block Island. The Bay Colony nevertheless decided to seek revenge on the Block Islanders and the Pequots. On August 25 a punitive expedition set sail from Boston to take revenge on the Block Islanders and to demand from the Pequots the surrender of Captain Stone's killers and compensation for his death. The expedition found few Native men on Block Island, destroyed various Native possessions, and then set off in pursuit of the Pequots. They were, however, unable to engage them, and, after killing one Pequot, they returned to Boston. In revenge the Pequots attacked English settlers in Connecticut during the winter of 1636 and 1637. A dispute with settlers at Wethersfield led to a Pequot attack in April 1637 resulting in the deaths of nine settlers. A week later the General Court of Connecticut declared war against the Pequots.

Connecticut mobilized a troop of ninety Englishmen under Captain John Mason and about seventy Natives hostile to the Pequots. The troop marched to Narragansett Bay, and then with Narragansett guides headed toward the Pequot settlement on the Mystic River. Mason later wrote that his plan was to destroy the Pequots. The English attacked the settlement, and the systematic massacre of its inhabitants ensued. Pequots who were not in the settlement at the time were rounded up and killed or sent into slavery. The English officially annihilated the Pequot nation as such. English apologists employed Old Testament justifications for their actions, comparing the Pequots to the Amalekites,

whose name was supposed to be eliminated from the world.

The Puritan destruction of the Pequots has been explained as a preemptive strike motivated by fear of Pequot attack. The Pequot threat was, however, exaggerated, and the Puritans' inconsistent attitude about Stone's murder suggests that they had another agenda. The basis of the conflict lay in the complex, competitive relations among various Native groups and Europeans generated by European colonization and trade. The tensions these produced were aggravated by religious and cultural differences. The increasing Puritan demand for land might have brought conflict in the absence of these factors.

The Puritans sought to punish the Pequots severely and succeeded in destroying them in the process. Whether their intent was genocidal is not clear.

SEE ALSO Genocide; Massacres; Racism

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Michael Freeman

Perpetrators

Perpetrators are those who initiate, facilitate, or carry out acts of genocide or crimes against humanity. Genocide and crimes against humanity involve many of the same acts; the distinction between them is primarily that of intent. For genocide, the goal is the elimination of a group in whole or substantial part, whereas for other crimes against humanity, the goal is primarily to render a group powerless. The motivations of the perpetrators in other respects are the same. In what follows, the focus will be on perpetrators of genocide in its various forms, because the study of perpetrators in that context is most advanced.

The Variable Characteristics of Perpetrators

Genocide may involve the forcible transfer of children from the victim group to that of the perpetrators, or systematic rape that is intended to contribute to the disintegration of the group. Perpetrators also inflict on members of the victimized group conditions of life calculated to bring about its complete or partial physical destruction, such as the inducement of famine, deportations into deserts, or sealing victims into disease-ridden ghettos. Although it can be argued that all perpetrators of genocide intend the elimination of a definable human group, it is important to recognize that individual perpetrators may play different roles and bear different degrees of responsibility within the overall genocidal project. Various scholars have dealt with this by contrasting the roles of decision-makers and direct perpetrators, "desk murderers" and "shooters," and ideologues and technicians. Similarly, courts have assigned punishment, not on the basis of a convicted perpetrator's proximity to violence, but rather in accordance to his or her degree of responsibility for it. There are also those who design and manufacture the implements of death, use slave labor, drive the vehicles used to transport victims to their death, or propagandize in order to incite violence, as in Rwanda, where radio broadcasts were used to tell the Hutu that "the graves of the Tutsi are only half-full."

The concept of perpetrator is complicated further by its blurred edges. Numerous Holocaust memoirs mention that the first blows struck against the Jews at Auschwitz were delivered by fellow prisoners. These accounts are filled with descriptions of the brutalities committed by the *kapos* (prisoner-functionaries who helped run the camps). Were these kapos perpetrators? Or, is another term necessary, such as *victim-perpetrator*? Similarly, bystanders might not generally be considered perpetrators, but what if they supplied the weapons, chemicals, or tools used to commit genocide? In an even grayer area, does an individual's inaction qualify him as a perpetrator if that inaction facilitates genocide?

A commonly held view of the perpetrator is that only those who are mad, bestial, evil, or primitive commit genocide. While it is true that madmen and sadists are found among those who commit genocide, it is unlikely that the thousands, and sometimes hundreds of thousands, of perpetrators necessary to carry out genocide are insane. Likewise, if the perpetrators of genocide were invariably mad, no one could be held responsible for the commission of this, the worst crime that can befall a people. The charge that those who commit genocide must be bestial in nature is equally false, for the perpetration of the crime of genocide requires dis-

tinctly human capacities, such as abstraction, symbolization, and organization, in order to envision and carry out the destruction of entire human groups. Humans are the only animals that commit genocide.

The charge that the commission of genocide is something that is done only by primitive peoples is equally untenable. The crime has, in fact, been committed by peoples well-versed in science, technology, medicine, and the arts. Not only that, but in many instances, those who actually initiate and manage the destruction in such societies are often highly educated: professors, doctors, lawyers, skilled technicians. Finally, evil people for the most part are not the source of genocide, but the result: prolonged involvement in killing tends to dehumanize the perpetrator and removes from them any pity for the suffering of the victims. In rare cases, however, hardened criminals are recruited to augment the forces available for killing and rape. This was the case most notably in the Armenian genocide.

The view that perpetrators of genocide and other massive crimes against humanity are utterly different from average folk derives from the human desire to believe that this is a just and orderly world, composed mainly of persons who would harm others only in self-defense. In fact, however, genocide is committed by ordinary persons, more or less normal, more or less moral, who are caught up in a particular set of circumstances.

Contexts and Justifications

Genocide is not inevitable; it occurs because those in power choose to resolve political and social issues by eliminating the groups that are said to constitute the problem. Nor is genocide a discrete act. Rather, it is a process, typically initiated by the state, legitimated by tradition or ideology, carried out through a variety of organizations, and requiring the cooperation of individuals, some of whom may be bystanders, others perpetrators. It most often occurs when the state and society have been weakened by defeat in war, economic collapse, the breakdown of old ideologies, or demands by minority groups for autonomy or independence. Nationalism, new ideologies, demands for security, and the increasing dehumanization of the "other"—usually a subgroup who can be blamed for the current social ills—come to the fore. War is another natural context for genocide: the centralization of power, absence of restraints on the use of violence, a heightened sense of fear, and the pre-existence of organizations dedicated to killing, provide a cover for and justification of the elimination of the targeted group.

Those who initiate genocide do so for a variety of reasons: conquest, revenge, economic gain, monopolization of power, and, where a utopian ideology is involved, as in Nazi Germany and Cambodia, the purification of society leading to salvation for the nation. For individuals who become perpetrators, the motives are also varied and usually mixed. These depend in part on the mode of participation in genocide and the perpetrator's location with regard to the commission of genocidal acts. Some perpetrators act in obedience to orders; others become involved because of peer pressure, fear, careerism, and opportunities for material benefits, ideology, or dedication to a "higher cause." Some are drawn into committing acts that they would otherwise condemn because the circumstances provide them with permission to do so, others are encouraged through role playing, and some "learn by doing," starting with small acts of cruelty that lead to acts of increasing brutality until atrocity begins to seem normal because it has become routine. But whether they are conscripted into their roles or, more commonly, assume them voluntarily, individuals who become perpetrators enter into a continuum of destruction, in which their very behavior transforms their values and beliefs. Moreover, perpetrators operate not as isolated individuals, but as members of groups. Groups provide a shared view of the world and rewards for conformity, both of which facilitate the shedding of inhibitions.

The Role of Authority

The types of groups and organizations most often involved in genocide are authoritarian in structure, provide strong incentives for obedience, and encourage perpetrators to develop a psychological distancing from the victims through an emphasis on bureaucratic routines and the dehumanization of the group under attack. For example, bureaucracy was crucial in the Holocaust, and in less developed forms, it has been important in all of the genocides of the twentieth century. Perpetrators can sit at their desks and impersonally issue orders that send millions to their death. Logistics, communications, and technology used in the commission of genocide or other massive crimes against humanity must all pass through the hands of bureaucrats, who are culpable for their roles in the crimes but remain far from the killing fields or the routes of deportation.

Military and paramilitary organizations are also common institutional structures used to facilitate the perpetration of genocide or crimes against humanity. Such organizations enforce obedience, encourage conformity, provide training in violence, desensitize their members' responses to killing, and provide absolution. In some cases, pre-existing military organizations are used, but new ones may be created specifically for the commission of genocidal acts. Such was the case for the

SS of Nazi Germany, and the creation of the "Special Organization" in Turkey in 1915, whose sole purpose was the destruction of the Armenians.

This latter group was a secret Young Turk organization that controlled elements of the army, police, and local officials, and brought into the killing process thousands of Kurds and Turkish peasants. Most notably, however, it released some 30,000 criminals from jail, placed them under the control of the Special Organization, and gave them permission to murder, rape, and kidnap Armenians. Neither the peasants nor the criminals were under strict control. Rather, they were given permission to work their will on helpless people, with those in charge of the Special Organization knowing full well what that would mean. In contrast, militias and paramilitary groups, along with regular army troops, have played major roles in the perpetration of genocide in East Timor, Bosnia, and Rwanda. In East Timor and Rwanda, many of those in the militia were teenagers; in Bosnia, many were also young, recruited from soccer club hooligans, and some of the leaders were criminals. In each case, members of the militias were trained and armed by the military and had governmental support, but could be officially disavowed, fending off any international criticism.

Numbers of Perpetrators Needed

Genocide of any magnitude requires a sizable number of participants, but the extent to which this is true varies from case to case. The number required is partly determined by the technology that is employed—some forms of genocide are labor-intensive, others less so—and whether or not the victims are concentrated in one area or over a large territory. A further determining factor is the extent to which the victims are able to resist. In addition, some regimes, such as that of Ugandan President Idi Amin, restrict genocidal acts to an elite killing force. Others, such as Ottoman Turkey, Indonesia, and Rwanda, involve the participation of large segments of the population.

The decision to utilize a large number of perpetrators may also be influenced by certain political objectives. Those who initiate genocide may seek to gain support for their actions by allowing elements of society to satisfy their passions and greed at the expense of the victims. Alternatively, by plunging large numbers of the population into murder, the forces encouraging genocide may more tightly bind the perpetrators to the regime. In other cases, such as that of Nazi Germany, the intended magnitude of destruction is so great, and the victims so scattered, that most social and political institutions must be harnessed to the overriding aim of taking life.

Gender and Genocide

During the three thousand years for which genocidal acts have been documented or inferred, perpetrators have been predominantly males. For the most part, women have been involved in subordinate roles, but in rare cases female rulers, such as the first-century Celtic queen Boadicea, have also initiated genocide. One explanation for the relative absence of women from direct participation in genocide is the claim that women are naturally less aggressive and more compassionate. However, twentieth-century women have committed atrocities in Nazi Germany, Cambodia, and Rwanda. It is therefore more likely that women's lesser participation in genocide, historically speaking, is because they have been excluded by males from active involvement in the crimes. This exclusion derives from basic tenets of patriarchal society: women are weak and dependent, and their sexual and reproductive capacities too valuable to risk in war and genocide. In this view, the function of women is to produce life, whereas the function of men (at times) is to take life. Women are viewed as resources and, particularly in societies with small populations, were therefore far too valuable to risk in battle.

In the twentieth century, however, there were three major examples of women directly participating in genocide: in Nazi Germany, Cambodia, and Rwanda. There were some three thousand female SS who supervised the numerous Nazi concentration and extermination camps for women from 1939 to 1945. Most were labor conscripts and few were members of the party. They came from all social classes and occupations, and most appeared normal. Nonetheless, they learned quickly to whip and club their female prisoners, to work them to the point of exhaustion, and to assist in the selection process that sent many victims to their deaths. For the most part, it was the more sadistic women who rose to the top of the women's SS, but there were also female *kapos* who carried out much of the administration of the camps and made beatings and brutality of every sort a part of the inmate's daily existence.

Women were also deeply involved as perpetrators of genocide in Cambodia from 1975 to 1979, but the contrast with female perpetrators in Nazi Germany is striking. First, the Cambodian genocide was directly controlled by the Khmer Rouge, and the entire country functioned as a labor camp. Second, the scale of participation was greater: instead of the approximately three thousand (primarily conscripted) female prison guards in Germany, tens of thousands of Cambodian women served as leaders and guards, and the roots of their participation and commitment were much more varied.

Perhaps the greatest motivator for female (as well as male) Cambodian perpetrators was the need to establish a more secure identity in the face of ongoing warfare. Participation also provided a means of dealing with bewildering changes in government. A further motivation arose from the widely shared fear that Khmer culture was being destroyed by both Vietnamese and Western influence. Cambodian women were involved in the whole process of destruction: enforcing the killing pace of work, maintaining close surveillance over individuals and families, using violence to whip people into line, and direct killing. Moreover, Cambodia presents one of the few modern examples of a woman (Ieng Thirith) being one of the initiators of genocide.

Rwanda's political leaders attempted to involve as much of the nation's Hutu population in the genocide of Tutsi (and Tutsi sympathizers) as possible. Among the initiators of this genocide were at least three women—the wife of the assassinated President and two cabinet members—but many thousands of others joined in the killing, incited the militias to attack, betrayed the hunted, looted the dead, and encouraged men to rape Tutsi women. Some women were coerced into killing, but many joined in enthusiastically. Rwanda is a largely male-dominated society, however, and few women were members of the main organizations that carried out the genocide: the army, police, and militias. But, the women who did participate in the genocide were a cross-section of the country: peasants, teachers, nurses and doctors, nuns, journalists, school girls, local administrators, and even staff members of international aid organizations.

Enlisting the Children

If genocide's perpetrators include women, they also include children. In Cambodia, a large number of those who carried out the genocide were male and female children between the ages of twelve and seventeen. The pervasive role of children in the Khmer Rouge stemmed in part from their availability (the young generally comprise a large part of guerilla movements, worldwide). There was also a strong ideological dimension. In their quest to inaugurate an entirely different kind of society, the Khmer Rouge eliminated distinctions between adults and children.

In Rwanda, on the other hand, young men and, to a lesser extent, teenage girls, were involved in the killing. This was, again, partly a matter of availability—more than half the population was under twenty, and many young people were unemployed, without prospects for the future. Where extreme deprivation exists, material rewards may be all that are needed to bring the young into the killing process. However, in Rwanda it was also a matter of how the genocide was organized. Political parties had formed youth groups to attack opposing political groups, and these groups were later converted into local militias to carry out the genocide.

Whether in Cambodia, Rwanda, or some other place, it has not been difficult for adult perpetrators to recruit children to help with the dirty work. There are a variety of techniques that can be used to turn child members of the perpetrators' group into killers. Some may simply need encouragement, others may be forced into doing brutal acts, sometimes beginning with killing, but always ending there. Children learn by doing, but they also learn by seeing the acts of others. When children commit brutal acts that are sanctioned by authority, and when, over time, such acts become routine; they learn to define morality strictly in terms of loyalty to the group. These children can be seen as victims, but they also are perpetrators. How they are to be legally judged is problematic.

Aftermath for Perpetrators

Few survivors of genocide ever free themselves from the horrors they have experienced. Most perpetrators, however, seem able to distance themselves from the acts they committed and go on with their lives. Nor is there evidence that many suffer from a guilty conscience. Those involved in direct killing are brutalized by the very process, becoming desensitized to the sufferings of others. In addition, many perpetrators of genocide participate in the killing from a distance. These, too, frequently show no remorse. Both the individuals directly, physically involved in the killing and those who participate bureaucratically may overcome remorse through individual psychological mechanisms, such as denial and repression. Further, they can attempt to find excuses for their actions, the main varieties being: "I knew nothing," and "I was only obeying orders." More powerful, however, are techniques of neutralization that combine both excuses and justifications. These include the denial of responsibility (an inability to control the situation, self-defense), denial of the humanity of the victim, transforming the victim into the perpetrator and condemning the condemners, (by asserting that they—victim or condemner—have done worse deeds), and appealing to a higher loyalty—to race, class, God's will, the good society—as the motivation for the violence. All cultures encourage responsibility, but also provide escape routes (excuses, distancing, justification) for offenses both minor and grave. Perpetrators seize upon the cues society provides for neutralizing responsibility, magnifying them to a self-serving extreme. Paradoxically, while many survivors feel guilt for being alive, those who perpetrate

genocide more frequently are able to look back upon their actions with consciences at rest.

Understanding Why

There are many approaches to understanding the behavior of perpetrators and why humans resort to genocide. Psychologists once focused on the "authoritarian personality," but later started focusing on a combination of social identity, culture, and historical context. Political scientists tend to focus on the policy process, institutions, leadership, and international relations. Social science offers three overlapping approaches that help to explain specific portions of the behavior of perpetrators. Structuralism explores how the social environment shapes choices: structures of authority, group dynamics, and bureaucracy. Functionalism, in contrast, is concerned with how particular structures perform various functions. Applied to the study of genocide, it can illuminate the role of various organizations in the process of destruction. Perhaps more important, however, a functional approach can help to illuminate the many purposes that genocide actually serves: physical, material, political, and psychological. For instance, rape may be encouraged to reward the perpetrators while simultaneously terrorizing and shaming the victim group, making resistance to genocide or ethnic cleansing more difficult. It poses a series of questions: Why do perpetrators so often engage in acts of cruelty or perform rituals of degradation? What do these acts mean to the perpetrator? Symbolic interaction theory can also help explain the formation of social identity, the growth of stereotypes, and dehumanization of those who will fall victim to genocide.

All of these approaches and disciplines have their uses, but none is adequate in itself. Moreover, much investigation of perpetrators requires a moral theory that allows distinction between different kinds of responsibility (criminal, moral, political) and acknowledgement of different degrees of responsibility. To arrive at such a moral theory, philosophers must grapple with the fundamental question of the nature of "good" and "evil."

SEE ALSO Collaboration; Memoirs of Perpetrators; Psychology of Perpetrators; Sociology of Perpetrators

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Roger W. Smith

Persecution

In colloquial usage the term *persecution* can refer to any identity-related maltreatment, either of a group or an individual. However, its historical and legal meanings, although still subject to a degree of ambiguity, are more precisely delineated.

Historical Meaning

Throughout history myriad groups have been maltreated because of their identity, with distinctions drawn on such grounds as religion, race, gender, culture, national origin, ethnicity, politics, or socioeconomic status. Persecuted groups have been identified through both positive and negative criteria. At certain junctures people were persecuted because they belonged to a particular group. At others people were persecuted because they did not belong to a particular group, usually that of the persecutor.

A range of different measures, in terms of both type and degree, have been referred to as persecution. This maltreatment has taken a variety of forms—corporeal punishment, material deprivation, psychological trauma, segregation, and other forms of discrimination.

Legal Meaning

Prior to World War II states protested one another's acts of persecution, especially when the victims were a minority group that shared a bond (e.g., religion, ethnicity, or national origin) with the protesting state. In some instances bilateral treaties were concluded between such states to regulate the treatment of a minority population. At times persecution led to, or was at least cited as a justification for, military intervention.

In the early twenty-first century persecution is clearly prohibited by international law. It constitutes a violation of international criminal law as well as human rights law. Although most violations of public international law involve only state responsibility, the commission of persecution, as a crime under international law, gives rise to the notion of individual criminal responsibility. In a legal context the international crime of persecution falls within the broader category of crimes known as crimes against humanity.

International Criminal Law

In 1998 the drafters of the Rome Statute of the International Criminal Court (ICC) reached agreement on a definition of persecution. According to Article 7(2)(g) of the Rome Statute, persecution means "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." However, for much of the twentieth century, despite its prevalence in fact, persecution as a crime under international law escaped precise definition.

Prior to World War II the principle of nonintervention, whereby states were prohibited from intervening in matters essentially within another state's domestic jurisdiction, was thought to pose an insurmountable obstacle to the international criminalization of such conduct.

Persecution first emerged as a specific crime under international law in the charter (the so-called London Charter) of the International Military Tribunal (IMT) at Nuremberg. Article 6(c) of the London Charter empowered the tribunal to prosecute:

> Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

The inclusion of crimes against humanity within the jurisdiction of the IMT was a watershed event in international law because it made punishable conduct that could be perpetrated by state authorities against their own nationals.

However, the cautious drafters were not prepared to depart entirely from the primarily interstate structure of classical international law. Under Article 6(c) of the Charter, persecution would constitute a crime against humanity punishable under the Charter only if it was committed in connection with another crime within the jurisdiction of the IMT (i.e., crimes against peace or war crimes), all of which would have had an international (i.e., interstate) dimension. In practice this meant that the IMT could not punish as such wrongful acts committed prior to the start of World War II.

Although the London Charter failed to provide a definition of persecution, the IMT made clear that the complete exclusion of Jews from German life prior to the start of World War II amounted to persecution. In so doing, it cited the adoption of discriminatory laws, the espousal of hatred toward Jews, discriminatory arrest and detention, the looting of Jewish businesses, the arrest of prominent Jewish businessmen, the confiscation of assets, the burning and demolition of synagogues, the creation of ghettos, restriction of freedom of movement, the imposition of a collective fine, and the organization of pogroms. Nonetheless, the IMT did not enter a conviction for any solely pre–World War II conduct, finding that it was prevented from doing so by the nexus requirement mentioned above.

A significant post–World War II development aimed at preventing persecution was the 1948 adoption of the Convention on the Prevention and Punishment of the Crime of Genocide. Although the Genocide Convention does not define persecution, it criminalizes a particularly severe form of it. Genocide is defined as the commission of certain inhumane acts with the intention of destroying, in whole or in part, a national, ethnical, racial, or religious group.

Extensive nondiscrimination provisions were also included in each of the four Geneva Conventions of 1949, which regulate the treatment of victims of armed conflict. The Fourth Geneva Convention, devoted to the protection of civilians in time of war, provides specific protection against persecution. Article 45 states, "In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs."

The end of the cold war witnessed the rejuvenation of international criminal law and, with it, further elaboration of the criminal prohibition of persecution. The

United Nations (UN) Security Council's creation of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) in 1993 and 1994 spurred the rapid development of this area of international law.

Both tribunals were empowered to prosecute genocide, war crimes, and crimes against humanity. Persecution was mentioned in the statutes of both tribunals as a form of crime against humanity. Although neither statute contains a definition for the crime of persecution, both provide more elaborate definitions of crimes against humanity than was advanced in the London Charter.

Although the definitions for crimes against humanity in the two statutes are not identical, their broad outlines are similar: They both make a distinction between enumerated inhumane acts and contextual elements. The list of inhumane acts is identical—namely, murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecutions on political, racial, and religious grounds; and other inhumane acts. Notably, persecution is the only enumerated act committed on discriminatory grounds. Both statutes require, as a contextual element, that such an act (or acts) be committed as part of an attack against a civilian population.

There are significant differences in the contextual elements of the definition in each statute. Although both definitions require that the enumerated acts be committed as part of an attack against a civilian population, the ICTY statute also requires that the acts be committed during armed conflict. While the ICTR definition of crimes against humanity has no such armed conflict requirement, it does mention discrimination, something absent from the ICTY definition. Under the ICTR definition of crimes against humanity, the attack of which the inhumane act is a part must be discriminatory in nature. Thus, for the crime of persecution to have occurred, it must be shown that the act was persecutory and that the overall attack of which it was a part was also discriminatory. However, although the persecutory act must have been discriminatory on political, racial, or religious grounds, the possible grounds of discrimination for the broader attack also include nationality and ethnicity.

A number of significant advances of particular relevance to the issue of persecution have evolved though the practice of the tribunals. First, the jurisprudence of the tribunals has made clear that the contextual element of armed conflict in the ICTY statute and the contextual element of discrimination in the ICTR statute are merely jurisdictional in nature and do not form part of the definition of crimes against humanity under customary international law. Second, the tribunals have also found that crimes against humanity need not be supported by some larger government policy. Third, in interpreting their respective statutes, both tribunals have elaborated a definition for persecution—essentially, an intentional and severe deprivation of fundamental rights on discriminatory grounds. Fourth, the ICTY has suggested that a single individual can be the victim of persecution, as long as the contextual elements for crimes against humanity have otherwise been met.

As for the range of persecutory maltreatment, the ICTR and ICTY have found that each of the acts enumerated within their statutes' provisions for crimes against humanity may qualify as persecution. In addition, the ICTY has established a "same level of gravity" test for acts not listed within the crimes against humanity provision of its statute. Only acts of comparable gravity constitute persecution. However, under such a test, acts are examined cumulatively; thus, the cumulative effect of even noncriminal acts may be sufficient to reach the same level of gravity as the enumerated acts. In general, crimes involving property are not considered to be of sufficient gravity to constitute persecution, unless they threaten the livelihood of the victim population. Nonetheless, several ICTY judgments have found that the destruction of property can amount to persecution when committed in conjunction with other inhumane acts.

Many of these developments are reflected in the Rome Statute's definition of persecution as constituting a crime against humanity. In line with the findings of the tribunals as to the content of customary law, the contextual elements for crimes against humanity in the Rome Statute include neither a requirement for armed conflict nor one for discriminatory animus. As noted above, persecution is defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." According to Article 7(h) of the statute, the ICC has jurisdiction to prosecute "[p]ersecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender . . . , or other grounds that are universally recognized as impermissible under international law." However, persecution alone is not a crime within the jurisdiction of the ICC, even when the contextual elements for crimes against humanity are met. Recalling the nexus requirement set forth in the London Charter for all crimes against humanity, the drafters of the Rome Statute chose to limit the prosecution of persecution to situations in which persecutory acts are committed "in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court."

Refugee Law

The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, declares in Article 14 that "[e]veryone has the right to seek and to enjoy in other countries asylum from persecution." The 1951 Convention Relating to the Status of Refugees (the so-called Refugee Convention), together with its 1967 Protocol, provides for the implementation of this right by requiring contracting states to afford a range of rights to any individual who

> [o]wing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Further, contracting states must refrain from expelling or returning a refugee "in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." However, as with earlier instruments, the Refugee Convention failed to define persecution.

To alleviate the suffering of groups fleeing persecution, the UN General Assembly established in 1950 the Office of the UN High Commissioner for Refugees. According to its statute, the UN High Commissioner for Refugees is charged with providing international protection, under the auspices of the UN, to refugees and with seeking permanent solutions to the problem of refugees by assisting governments and nongovernmental organizations (NGOs) to facilitate their voluntary repatriation or assimilation within new national communities. This protection takes various forms, including monitoring the treatment of refugees and striving to provide a minimum level of humanitarian relief to such individuals.

Discriminatory Grounds

As is apparent from the provisions cited above, a degree of variation exists among the types of discrimination required to constitute persecution as recognized under current legal instruments. While persecution under the ICTY and ICTR statutes must be committed on political, racial, or religious grounds, the Refugee Convention recognizes persecution on the grounds of race, religion, nationality, membership in a particular social group, or political opinion. The practice of some national courts has included other grounds, such as gender, within the category of "social group."

The statute of the ICC has the most extensive list of grounds, including "political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law." The wording at the end of this provision will enable the list of categories to expand as the international community reaches consensus on additional grounds. The mention of gender makes clear that gender refers only to the "two sexes, male and female, within the context of society." The inclusion of this qualifying phrase appears to represent an attempt by the drafters to prevent the ICC from interpreting gender to include sexual orientation, as a number of other human rights mechanisms have done in considering discrimination based on sexual orientation to constitute a form of sex discrimination.

International Human Rights Law

Although the major human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and their regional counterparts, do not expressly refer to persecution, these instruments provide broad protection from discrimination in general.

Even more extensive protection is provided under the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, and related regional human rights treaties. These conventions provide far-reaching protections encompassing economic and social rights as well as civil and political rights, and penetrating both the public and private spheres. In addition to a guarantee of equality of treatment, these conventions require states to take positive steps toward ensuring that groups experience substantive equality.

Furthermore, human rights treaties provide protection specifically for minority groups. For example, the International Covenant on Civil and Political Rights states that persons belonging to minority groups "shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Nonstate Actors as Agents of Persecution

Although international criminal law, international human rights law, and refugee law are all distinct areas of public international law, there is a dynamic interplay among them. One development that cuts across all three fields is the increasing recognition of nonstate agents of persecution, and attempts to assign account-

ability for their conduct and to provide redress for their victims.

Traditionally, public international law governs relations among states. Notwithstanding the persistence of the classical interstate structure of the international legal system, over the course of the twentieth century international law evolved significantly in its relation to individual human beings. Two phenomena in particular led to astonishingly rapid developments in the substance of international law, and even the very structure of the international legal system. The first is the universal recognition that the protection of human dignity is a proper concern of international law, and the second is the accumulation and exercise of power by nonstate actors. As a result, the expanding lens of public international law has increasingly examined the conduct of nonstate actors.

Although it was unclear whether the London Charter's definition of crimes against humanity could apply to persecution by nonstate actors, the practice of the ICTY and ICTR has made clear that persecution may be committed by nonstate actors, with the ICTY in particular convicting a number of nonstate actors for crimes against humanity. While the Rome Statute requires a policy as a contextual element for all crimes against humanity, such a policy may be a "State or organizational policy," clearly indicating that persecution may be committed by individuals with no connection to the state.

Similarly, national courts have interpreted persecution within the context of refugee law as including inhumane treatment by nonstate actors, particularly when the state has acquiesced to such treatment. Further, various human rights instruments elaborated in the second half of the twentieth century have all been interpreted to encompass, albeit to varying degrees, conduct committed by nonstate actors.

Remedies

A variety of remedies under domestic and international law are available, depending on the jurisdiction in which the persecution occurs whether or not the state involved is a party to any of the above-mentioned treaties.

As for remedies within the municipal sphere, most states have some form of nondiscrimination legislation that may be invoked in domestic courts. Such legislation could include protection from discrimination in a range of fields, from employment and education, to health care and participation in public life. Some states also have hate crimes laws, which provide increased penalties for crimes committed on discriminatory grounds. As most countries are parties to the Refugee Convention, most domestic legal systems also allow for the possibility of asylum for victims of persecution.

On the international level, remedies exist in both international criminal law and human rights law. An increasing number of international criminal justice mechanisms exist, most notably, the ICC. The ICC has potentially worldwide jurisdiction as long as the perpetrator is the national of a state party, or if the persecutory act was committed on the territory of a state party. The ICC is empowered not only to prosecute the perpetrator, but also to provide reparations to victims.

The various human rights regimes discussed here have established monitoring mechanisms that are capable of providing varying degrees of redress to victims. The focus of such mechanisms is the responsibility of the state and its obligation to make reparations for human rights violations suffered by victims. Such reparations may encompass a range of measures, including amendment of domestic law, alteration of existing practices, prosecution of perpetrators, and rehabilitation and compensation of victims.

SEE ALSO Cathars; Catholic Church; Huguenots; Inquisition; International Court of Justice; Jehovah's Witnesses

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John Cerone

Peru

The year 2000 ushered in more than just a new millennium in Peru. It witnessed a return to democracy after years of internal armed conflict and authoritarian rule. It also signaled the beginning of the country's efforts to come to terms with a long legacy of widespread and systematic human rights abuses. Peru's political transition, triggered by the fall of President Alberto Fujimori in 2000, revolved in significant part around how to re-

spond to the terrible crimes against humanity committed between 1980 and 2000 by Peruvian security forces and their principal nemesis, a guerrilla group known as *Sendero Luminoso* (the Shining Path). The ultimate success of Peru's return to peace, democracy, and the rule of law depends in no small measure on whether the perpetrators of the worst crimes can be held accountable.

Peru's civil conflict was a vicious struggle for power between rebel forces, primarily the Shining Path, and Peruvian security forces. According to the Peruvian Truth and Reconciliation Commission, which was established in 2001 to investigate the widespread violations of human rights that had occurred, nearly seventy thousand people were unlawfully killed or forcibly disappeared during the war, virtually all of them civilians. The Truth Commission found that nearly 54 percent of these deaths or disappearances were attributable to the Shining Path guerrillas. Peru's state security apparatus composed of the armed forces, the police, and local "self-defense" committees organized and armed by the state was responsible for 37 percent of the violations. In addition, the victims of Peru's political violence were subjected to the systematic practice of torture by the Peruvian armed forces and national police; the Shining Path also resorted to torture on a regular basis, although not nearly to the same extent. Similarly, state agents were by far the most active perpetrators of sexual violence against women, especially rape, as a method of torture.

Caught between the warring parties, the civilian population bore the brunt of these abuses. It is estimated that of the approximately seventy thousand people killed or disappeared, over 80 percent lived in the most destitute regions of the country. The population most affected was primarily the poor, rural, and predominantly indigenous communities of Peru's Andes region. In fact, three out of every four victims were from this region. These marginalized communities have historically suffered from extreme political, economic, and social exclusion. Peruvian society's biases were clearly reflected in the war's disproportionate impact on its most vulnerable sectors: The Truth Commission found that the vast majority of all victims were lower-class *campesinos* (farm laborers), as well as Andean and Amazonian Indians whose Native language was either Quechua or Ashaninka, not Spanish.

Few dispute that responsibility for initiating the war rests squarely with the Shining Path guerrillas, one of the most savage insurgent movements ever. As part of its Maoist strategy to overthrow the established order, this group systematically targeted local authorities, as well as community leaders and activists, for extermination, often through massacres. Using these brutal tactics, the Shining Path was responsible for more than half of the estimated seventy thousand killings and disappearances tabulated by the Truth Commission, and nearly a quarter of all torture. Its leaders, especially the group's founder, Abimael Guzmán, a former university professor captured by police in 1992, undoubtedly bear the bulk of responsibility for the crimes against humanity committed by this insurgent organization. The only other guerrilla movement in the country, the comparatively small Tupac Amaru Revolutionary Movement, was ultimately responsible for less than 2 percent of all human rights violations occurring during the conflict, primarily the kidnapping of civilians and taking of hostages.

Even so, it is arguable that the cure may have been worse than the disease: The increasingly authoritarian responses of successive civilian administrations caused the military conflict to deepen, leading to serious human rights violations on a massive scale. The Peruvian government under President Fernando Belaunde Terry (1980–1985) was unprepared to counter organized insurgency in the countryside. This led to the declaration of a state of emergency in those provinces most affected by the violence, principally in Ayacucho, and the militarization of counterinsurgency operations in 1982. Significant human rights violations ensued. Nearly a third of all deaths and disappearances during the twenty-year conflict occurred from 1983 to 1984. The Truth Commission determined that the inept government of President Belaunde failed to prevent, investigate, or punish the rampant abuses which transpired during his tenure, adding that this failure was a product of discrimination against Peru's indigenous population and other marginalized sectors.

Belaunde's elected successor as president, Alan García (1985–1990), attempted at first to regain civilian control over the security forces. Simultaneously he adopted policies aimed at undermining the guerrillas' social and political base, not least by preaching official respect for human rights. The worst excesses on both sides diminished. However, several events conspired to plunge Peru back into a spiral of escalating violence. In June 1986 an uprising by political prisoners at El Frontón prison was crushed by the armed forces, resulting in the death and disappearance of hundreds of inmates. This set off a new wave of guerrilla attacks and military successes, which for the first time began to reach beyond the rural regions of the country's interior to include targets in Lima, the capital city.

By bringing terror to urban Peru's doorstep and creating a climate of insecurity throughout the country, the guerrillas succeeded in undermining the civilian

[ALBERTO FUJIMORI]

Alberto Fujimori claims he was born on Peruvian Independence Day, July 28, 1938, in Lima, Peru (some commentators dispute this). His parents emigrated from Japan in 1934. Fujimori studied agricultural engineering at the prestigious *La Molina* National Agrarian University, graduating at the top of his class in 1961. He subsequently earned a masters degree in mathematics from the University of Wisconsin on a scholarship. He was first a professor and then rector of *La Molina*. In 1987 he was elected president of the National Association of University Rectors, an experience that introduced Fujimori to the rough and tumble world of Peruvian politics.

Before launching his underdog bid for the presidency in 1990, Fujimori made a name for himself as the host of a television talk show dedicated to political analysis. In 1989, he founded "Change 90," a new political party with a grassroots approach and populist appeal. In the election run-off against the aristocratic Mario Vargas Llosa, a famous author, the modest Fujimori won a record-setting 60 percent of the vote. In the face of a deepening social and political crisis, President Fujimori seized control of the Peruvian state on April 5, 1992. He suspended the Constitution, dissolved Congress, fired top government officials and judges unsympathetic to him, arrested political opponents, and censored the press. Despite these undemocratic actions, Fujimori's popularity was bolstered by the capture of Abimael Guzm·n, leader of the Shining Path, in September of 1992, and he was eventually reelected in 1995. From 1995 until late 2000, when his government finally collapsed, Fujimori and his closest associates were the object of numerous scandals involving grave human rights violations, corruption, and electoral fraud.

Fujimori's reign ended in November 2000, when he faxed his resignation from Japan where he had been attending a trade conference. The Peruvian Congress rejected the resignation and instead voted to remove him from office for being morally unfit. In September 2001 a judge ordered Fujimori's arrest for murder, serious injury, and forced disappearance in relation to the massacres of La Cantuta and Barrios Altos, which had been carried out by the Grupo Colina, a notorious death squad attached to the National Intelligence Service. Interpol subsequently issued an international warrant for his arrest in connection with these crimes. Fujimori was also indicted in Peru on charges of embezzlement. In 2003 the Truth and Reconciliation Commission found that Fujimori was personally responsible for crimes against humanity committed with his knowledge by the Grupo Colina. It also held him and his government politically responsible for the torture, disappearances, and extra-judicial executions that took place during his ten-year presidency.

It is unlikely that Fujimori will be brought to justice. Japan refused a request by the government of President Alejandro Toledo to extradite him to Peru to face the charges against him. Fujimori became a Japanese citizen, and there is no extradition treaty between the two countries. As of 2004, Fujimori remained in exile in Japan, where he continued to opine on Peruvian politics via his personal website (www.fujimorialberto.com). **ARTURO CARRILLO**

government's authority and reinforcing that of the Peruvian military. By the end of President Garcia's term in 1990, nearly half the national population and a third of its territory were under a state of emergency and subject to the direct control of the armed forces. Restrictions had been placed on civil liberties, institutional democracy, and the independence of the judiciary. These measures, in turn, had fueled a new surge in the number of killings, disappearances, and other grave human rights violations. The Truth Commission established that the government of President García had further contributed to the human rights crisis by attempting to cover up many of the rampant abuses carried out by state agents during this period.

Alberto Fujimori, a political upstart whose populist platform played well with Peru's marginalized masses (see sidebar), was the surprising victor in the landmark 1990 election. President Fujimori further extended military control over the government through a series of draconian legislative and executive initiatives that exacerbated an already dire human rights situation. One of the most controversial measures authorized military courts to try civilians accused of "terrorism," which led to the arbitrary detention and unjust conviction of hundreds of innocent people. Fujimori effectively placed the Peruvian state's security apparatus under the direction of the National Intelligence Service led by Vladimiro Montesinos, his closest advisor. This consolidation of authority allowed Fujimori to carry out in April 1992 the infamous *autogolpe* (self-coup), whereby he directly seized power by suspending the constitution and suppressing all opposition.

Fujimori's autocratic control over the levers of power and the media, coupled with public successes such as capturing the guerrillas' main leaders, allowed him to remain in power until rampant corruption top-

pled his government in 2000. His decade in power was characterized by a progressive deterioration of the rule of law as the regime became more brazen in its abuse of power. A good example is the adoption in 1995 of amnesty laws that shielded all police and military agents from prosecution for any human rights violations committed since 1980 (the law was later annulled). It is no coincidence that the Fujimori government was at the time under intense scrutiny due to several high-profile scandals involving grave human rights violations attributed to government agents. In particular, the government was under national and international pressure to account for two cold-blooded massacres, La Cantuta and Barrios Altos, in which dozens of victims were either assassinated or disappeared by a death squad. It was later revealed that the death squad was a clandestine creation of the intelligence network run by Montesinos on Fujimori's behalf. The Truth Commission held both men individually responsible for these crimes against humanity.

The transition back to democracy after Fujimori's abrupt resignation was initiated by the interim government of Valentín Paniagua, a congressman selected to be the caretaker president. He began by dismantling much of his predecessor's corrupt and oppressive security apparatus. In one of his first official acts, Paniagua established the Truth and Reconciliation Commission with a broad mandate to report on the abuses of the past and make recommendations on how to address them. The Truth Commission was subsequently ratified by President Alejandro Toledo, who was elected in April 2001. In August 2003 the Truth Commission issued its final report, which identified many of the groups and individuals responsible for the worst human rights violations. It was but the first step toward overcoming the impunity that has long benefited the perpetrators of crimes against humanity in Peru.

SEE ALSO Amazon Region; Incas

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Arturo Carrillo

Philosophy

Having survived the Holocaust, Nazi Germany's genocide against the Jews, the philosopher Jean Améry concluded that the Nazis "hated the word humanity" (Amery, 1980, p. 31). They wanted to destroy the idea that all men, women, and children possess shared and perhaps even divinely created origins, which imply basic equality and obligations to respect human life. Instead, Adolf Hitler called for racial purity that would be Aryan or German, and not merely human. According to this ideology, allegedly inferior forms of life—Jewish life first and foremost—threatened German superiority. Genocide eventually became the Final Solution for the Nazis' Jewish question.

Although philosophy often highlights characteristics shared by all persons, its history contains theories that have negatively emphasized differences—religious, cultural, national, and racial. Such theories have encouraged senses of hierarchy, superiority, and "us versus them" thinking in which genocidal policies may assert themselves, especially in times of economic and political stress. If philosophy itself is divided between views upholding that all people are equal members of humanity and others stressing differences between groups as fundamental, how can philosophy contribute to stopping or mitigating genocide?

Philosophy is critical inquiry about reality, knowledge, and ethics. It explores what is, what can be known, and what ought to be. Germany has produced some of the world's greatest philosophers, including Immanuel Kant, G. W. F. Hegel, Friedrich Nietzsche, and Martin Heidegger (1889–1976). Regrettably, neither in Germany nor elsewhere have philosophers done all that they could to protest genocide and crimes against humanity. On the contrary, as Heidegger's case reveals, philosophy can expedite genocide.

Hitler rose to power on January 30, 1933. Three months later Heidegger joined the Nazi Party. On May 27, 1933, he was inaugurated as rector of Freiburg University. Although Nazi book burnings and the dismissal of many non-Aryan academics had taken place a few weeks earlier, Heidegger's inaugural address advocated stepping-into-line with the times, which was at least an implicit embrace of Nazi anti-Semitism. He also stressed that the Führer's leadership was crucial for Germany's future. In February 1934 Heidegger resigned his rectorship, but he never became an obstacle to the Third Reich's genocidal policies.

Living for more than thirty years after Hitler's defeat in 1945, Heidegger neither explicitly repudiated National Socialism nor said much about the Holocaust. Debate continues about his philosophy as well as the man himself. In *Being and Time* (1927) and other major works, Heidegger analyzed human existence, its significance within Being itself, and the need for people to take responsibility within their particular times and places. Arguably, his philosophy includes a fundamental flaw: The abstract, even obscure, quality of its reflection on Being and "authentic" action precludes a clear ethic that speaks explicitly against racism, anti-Semitism, genocide, and crimes against humanity.

If support for genocide has philosophical roots at times, resistance to genocide is also deeply grounded in philosophy. For example, philosophy's history includes defenses of human rights, and genocide is morally condemned because it violates rights, especially the right to life. An important chapter in the development of the philosophical conception of genocide involves Raphael Lemkin (1900–1959), who coined the term *genocide* and spearheaded the drive that led to the United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide (1948). That document sought to define "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such."

Unfortunately, the UN's definition does not make it simple to identify genocide, particularly in its early stages when intervention could stop genocide before it is too late. Identifying genocide depends on determining intent, which can be a complex philosophical issue. If intent is not included in the meaning of words such as genocide or *genocidal*, it would be hard to understand how one might account for the very thing that genocide turns out to be: namely, the conscious targeting for destruction, in whole or in part, of some specific group of people. Nothing, however, makes the concept of genocide more ambiguous than the emphasis on intent that seems unavoidably to be built into it.

Although no perfect definition of genocide or intention is likely to be found, genocide's reality has alerted numerous post-Holocaust philosophers—Emmanuel Levinas and Hannah Arendt, to name only two of the most important—to claim that philosophy's integrity depends on its ability to help bring genocide to an end. Philosophy's best contributions to genocide prevention appear to be in criticisms against racism, anti-Semitism, religious dogmatism, and tyranny and in defenses of shared human rights.

SEE ALSO Genocide

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John K. Roth

Photography of Victims

Photography is a powerful tool for documenting the fate of victims of crimes against humanity. Contrary to verbal testimony, which may have inadvertently changed over time or been deliberately manipulated, and which is subject to personal interpretation, a photograph is a direct registration of reality or, to be more exact, a slice of reality.

Of course, a photograph is never totally objective, subjected as it is to the choices and interpretations its creator decided to make. But it connects with a past reality in a way that verbal or textual testimony never does. For all the written testimonies about Nazi cruelties in World War II, the photographs taken of the concentration camps after their liberation have a historical directness that is impossible to convey verbally.

It was only with the introduction of fast and portable 35-mm cameras in the 1930s that photojournalists could travel with light and practical equipment to document events throughout the world. Photos of victims of crimes against humanity hardly existed before this period.

Photographs of victims are taken with a few purposes in mind. Strictly, they are made to document the

results of crimes against humanity. In this sense they are objective registrations and testimony. At a later stage they can be used as forensic evidence in future war tribunals or criminal investigations.

Second, but more important, they are taken to arouse indignation about situations perceived by the photographer as being unjust and inhumane. The primary objective is to shed light on hidden abuses and to influence and alter public opinion so policy changes will take place. Most photographers go to great lengths and endure physical risks to take such pictures, and undeniably an ethical drive is present in the photographer. This drive emerges from a basic engagement with the less fortunate and victimized people in the world and a strong sense of what is right and wrong.

By choosing to photograph victims, photographers face a moral dilemma: They sometimes feel as if they are preying on the most vulnerable. Elements of voyeurism and sensationalism can creep into their images. Critics often accuse photographers along this line of reasoning. These issues are very subjective, and it is usually the photographer's personal values and taste that decide how they are addressed.

Most photographers and journalists agree that is the photographer's task to portray victims with dignity. A main aim of photos is to arouse not only indignation, but also sympathy and identification. The public is unable to identify with victims who are portrayed as utterly hopeless human beings. The same holds true for photos of a graphic nature. A close-up image of tangled, bloody body parts or decayed corpses can shock viewers to such an extent that they will block the image from their minds. However, the photographer can choose a different point of view and capture an image of a man crying over or a young girl looking stunned at the same graphic scene; such a photo might be taken out of focus or in the distance to be less explicit and shocking. In this way the atrociousness of a crime is not explicitly depicted, but suggested in a manner that is often more powerful. Viewers tend to absorb these kinds of powerful images more easily.

An important obstacle many photographers face is the fact that it is very difficult to document perpetrators at work. From the two largest episodes of genocide in the last decade, those occurring in Rwanda and Bosnia, there exist hardly any images of the perpetrators of those crimes. Only photographer Ron Haviv managed to travel in 1992 with a Serbian death squad (Arkan's Tigers) and document their mission of killing Bosnian Muslims in the town of Bjelina. When these photographs were published internationally and subsequently caused a public fury, the warlord Arkan added Haviv's name to a death list and the photographer was declared persona non grata by the Serbian government.

Sometimes, perpetrators photograph their own acts, for fun, or as grizzly souvenirs, to document their military campaigns. These images are not meant for external publication; mostly they are amateurish in quality. However, when they reach the general public, they are even more shocking.

There are, for instance, gruesome images of Nazis executing rows of prisoners. These were not taken by intrepid reporters, but by Nazi forces themselves. Also worth mentioning are the images captured of executions and cruelties committed by the Revolutionary United Front (RUF) rebel movement in Sierra Leone. The RUF had employed their own photographer to document their actions. A prisoner managed to obtain the original negatives and smuggle them out of the country. They are currently being used as evidence in the Sierra Leone War Tribunal. On a less dramatic scale are the photos taken by Belgian paratroopers in Somalia (1993) and British soldiers in Iraq (2003) maltreating civilians. They were meant as private snapshots, but somehow found their way into the public sphere.

Some images manage to reach iconic status. Of course, it is impossible to say in hindsight that a certain photo changed world history; however, it is undeniable that when contemplating the Vietnam War, the image of a crying girl, on fire, running down the road after a napalm strike by U.S. forces, often comes to mind. In recalling the war in the former Yugoslavia, one is likely to remember the image of starving camp inmates behind barbed wire. For a photographer, it is the greatest honor to not only have taken images that influenced the way world events unfolded, but to also see these same images reprinted over and over again in history books. It is hoped that future generations will learn something from them.

SEE ALSO Films, Holocaust Documentary

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Teun Voeten

Physicians

Usually, physicians are regarded as the guardians of health and lives, but what happens when healing con-

Erika Flocken, medical doctor, at a labor camp in Germany in 1940. Flocken's job was to decide which inmates were fit to work and which were not, with the latter being exterminated. Flocken has put on a facsimile of the armband of the International Red Cross. [CORBIS]

flicts with larger state aims? How do physicians reconcile their Hippocratic oath with a mandate of genocide? Like many other professional groups, doctors are simultaneously members of the social elite and public servants. As such, ruling authorities sometimes use them as agents to provide a legitimizing framework for actions taken by the state. At the same time, doctors are human beings, and as members of a particular society, they are equally susceptible to that society's prevailing social mores and climate. When a state adopts an exclusionary policy of hyper-nationalism, all of its citizens, doctors included, can find themselves on both sides of the divide. Whether as willing participants or as reluctant accomplices, physicians have become involved in the planning and implementation of mass murder in numerous countries.

In 1915 Ottoman Turk physicians conducted medical experiments, participated in mass deportations, and promoted a genocidal ideology that led to the widespread death of the Armenian population. Less than two decades later physicians in Nazi Germany perpetrated similar atrocities in a system that culminated in the Holocaust. Carnage also occurred when Hutu doctors turned against Tutsi patients during the Rwandan genocide. Similarly, an international tribunal charged Serbian doctors with war crimes for their role in ethnic cleansing in Bosnia and Kosovo. Even in situations not necessarily intended as full-scale genocides, doctors have lent their medical expertise in an effort to remove or restrict "undesirable" elements of the population. Medical personnel in Argentina, Bolivia, Chile, Iraq, and elsewhere participated in the torture and death of dissidents and enemies of the state. Additionally, in Britain, the United States, Norway, and Sweden physicians helped to carry out involuntary sterilizations as part of their country's eugenic policies.

Four theories offer differing perspectives to explain how physicians could come to endorse programs so seemingly at odds with their role as healers. The first theory argues that doctors do not abandon medical ethics to follow eugenic or genocidal policies; rather, they reinterpret those ethics to coincide with the dominant and prevailing agenda. Generally, this involves placing the health of the collective ahead of that of the individual. Doctors then become charged with cutting out so-called cancerous elements of the population the same way they would remove cancerous tumors from a sick individual. Physicians are often aided in their actions by state-sponsored propaganda campaigns. The Nazis were particularly effective in promoting this approach through films for public consumption, such as *Victims of the Past* (1937) and *Existence without Life* (1940–1941). These films were designed to convince the population that the elimination of mentally and physically disabled people was not only in their collective best interest, but actually merciful, and furthermore, as in the case of the film *I Accuse* (1941), often the desire of the patients themselves.

The second theory promotes the idea of participation via the "slippery slope," whereby transgressions of the medical, ethical, and societal moral codes begin on a small scale, gradually build on themselves, and eventually spiral out of control. For example, doctors do not start out by killing individuals for the purpose of medical experimentation. Rather, by first defining certain people as inferior and then subhuman, it eventually becomes acceptable to use them as scientific specimens without regard for their rights as human beings.

A third theory argues that physicians participate because they cannot find a way to excuse themselves from such activities without suffering grievous personal, professional, or bodily harm. Their actions are motivated by a fear of losing their license, profession, social standing, or even life. For example, according to one source, Iraqi doctors under Saddam Hussein's regime

were ordered to cut the ears off torture victims or suffer the same fate themselves. In another case, doctors during the Third Reich often faced internment in a concentration camp if they failed to comply with state rules. This theory raises questions about individual agency and choice. Why, when faced with identical situations, do some physicians find a way to circumvent such rules, while others, seemingly, cannot?

Whereas the first three theories are predicated on the idea that (some) physicians accept, or at least do not actively resist, involvement in such programs, a final theory argues that other doctors aggressively seek to participate in genocidal or eugenic programs. Their motivations range from an opportunistic desire for personal or professional gain to an entrenched belief in the advocated exterminationist ideology. Such was the case with National Socialist physician Leonardo Conti. His early membership in the Nazi Party (he joined the SA in 1923) qualified him as a member of the Old Guard. Conti rose through the system to eventually become the senior ranking medical officer in the Third Reich. Additional Nazi physicians who found scientific opportunity in the suffering of others included: Karl Brandt, who, along with Phillip Bouhler, headed the euthanasia program known as T-4; Gerhard Kujath, whose film *A 4½-Year-Old Patient with Microcephaly* (1936–1937) was a product of the regime's euthanasia program for children; Josef Mengele, best known for his infamous twin experiments; Sigmund Rascher, who conducted hypothermia and cold-water testing in Dachau; Heinrich Berning, who starved numerous Soviet prisoners of war in the name of famine experimentation; Carl Clausberg, known for his sterilization and castration experiments; and Kurt Gutzeit, who injected Jewish children at Auschwitz with hepatitis.

SEE ALSO Eugenics

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Lynne Fallwell

Pinochet, Augusto

[NOVEMBER 25, 1915–]
Chilean dictator from 1973 to 1990

Recognized as one of the most ruthless and violent strongmen in the history of Latin America, General Augusto Pinochet's name became synonymous with human rights atrocities during the last quarter of the twentieth century. During his seventeen-year military regime in Chile, his security forces were responsible for the murders of 3,197 Chilean citizens. Of those, 1,100 were "disappeared"—abused to death and buried in still-secret graves, or thrown from military helicopters into the Pacific Ocean. An estimated 30,000 Chileans survived imprisonment and severe torture by agents of Pinochet's secret police—electric shock, beatings, near-drowning, and rape in secret detention facilities. In the mid-1970s, the Pinochet regime also organized a network of secret police agencies (given the code name Operation Condor) that coordinated the repression of groups and individuals who had been identified as opponents of the military governments of the Southern Cone (Argentina, Brazil, Chile, Paraguay, and Uruguay). Condor's methods included secret surveillance, kidnapping, interrogation, torture, and terrorist attacks. International efforts to hold General Pinochet legally accountable for human rights atrocities in Chile and acts of terrorism abroad led to his arrest for crimes against humanity in London in 1998.

Officials of Scotland Yard detained Pinochet on October 16, 1998, while he was recovering from back surgery at a private London hospital. He was served with an arrest warrant filed through Interpol by Spanish judges seeking to extradite him to Madrid to stand trial for "crimes of genocide and terrorism." For more than five hundred days, Pinochet was kept under house arrest in England; legal proceedings against him became a cause célèbre around the world. His detention became a leading symbol of the globalization of justice, and elevated and transformed the principle of universal jurisdiction—the ability of the international community to pursue the prosecution of dictators, torturers, and mass murderers beyond the borders of their home nations—into a precedent for future legal efforts against perpetrators of human rights crimes.

General Augusto Pinochet took power on September 11, 1973, during a U.S.–supported bloody military

General Augusto Pinochet. On May 28, 2004, the Chilean Court of Appeals voted to annul a judgment (by a lower court) that Pinochet suffered from dementia—stripping Pinochet of his immunity from prosecution. The judges found that a television interview was proof the former Chilean president was both lucid and mentally competent to stand trial.[AP/WIDE WORLD PHOTOS]

coup that overthrew the democratically elected Popular Unity government of Salvador Allende. In a country that had a long tradition of civility and constitutional rule, the military takeover was brutal and violent. In the six weeks that followed the coup approximately 1,500 civilians were killed, including some 320 to 360 who were summarily executed, according to U.S. intelligence reports. More than 13,500 Chilean citizens and several thousand foreigners were detained through mass arrests and sent to detention camps. Many of those were brought to Chile's National Stadium, which was transformed from a sports arena into a center for interrogation, torture, and execution. Two U.S. citizens, Charles Horman and Frank Teruggi, were among the hundreds who were killed there.

Born on November 25, 1915, Pinochet entered the military academy in Santiago at age seventeen and rose steadily through the ranks of the Chilean army over the forty years that followed. In late August 1973, he succeeded General Carlos Prats as Commander-in-Chief of the Army. In the months leading up to the coup Prats opposed the overthrow of the elected government; his forced resignation and his replacement by Pinochet enabled coup-plotting to accelerate.

As head of the powerful Chilean army, Pinochet outmaneuvered other commanders of the Chilean Armed Forces who had expected to govern Chile after the coup by way of a rotating leadership within the military junta. In June 1974 Pinochet pressured the other members of the junta to name him "Supreme Chief of the Nation." On December 18, 1974, he decreed himself "President of the Republic"—a title he kept until early 1990, when he was forced to yield power to a new civilian government.

During his seventeen-year rule Chile became a pariah state, internationally condemned for ongoing, systematic violations of human rights. Pinochet played a leadership role in initiating and overseeing many of these atrocities. One month after the coup, he authorized a death squad, led by his close associate General Sergio Arellano, to "expedite justice" in relation to civic leaders of the former Allende government—police chiefs, mayors, local union officials—who had been arrested in the northern provinces after the coup. Using a Puma helicopter, a five-member military team led by General Arellano flew to various northern cities and, at each stop, selected prisoners and shot or bayoneted them in the middle of the night. Over a period of four days, sixty-eight civilians were killed, having committed no crime other than serving in local community leadership roles under the elected Allende government. This series of atrocities became known as "the Caravan of Death."

Members of the caravan team were subsequently integrated into a new secret police force known as the Directorate of National Intelligence (DINA). Pinochet handpicked Colonel Manuel Contreras, a close friend of his in the Chilean military with no background in intelligence, to be director of DINA. United States intelligence reports described Contreras as a "strong character, with intense loyalty to President Pinochet. . . . [H]e will advance only with the personal support of President Pinochet" (Kornbluh, 2003, pp. 160–161). Between 1974 and 1977 DINA expanded into a massive, institutionalized force of repression in Chile, terrorizing Chilean society at every level. DINA agents conducted clandestine raids and arrests; it forced prisoners through a network of clandestine interrogation centers to extract information from them. Many DINA prisoners were tortured to death and then "disappeared." The U.S. military reported from Santiago that DINA was "becoming a modern day Gestapo" (Kornbluh, 2003, p. 160). One informant announced to U.S. officials, "There are three sources of power in Chile: Pinochet, God, and DINA" (Kornbluh, 2003, p. 153).

DINA served as the central pillar of Pinochet's power. It actively eliminated all leftist opposition to his

regime in Chile, and Contreras assigned agents to spy on other military commanders and intimidate anyone who challenged Pinochet's authority. Through executive decrees Pinochet bestowed on DINA the authority to establish a virtual monopoly over repression in Chile. Officially, DINA fell under the jurisdiction of the military junta. In reality, Contreras reported only to—and only took orders from—General Pinochet. Contreras met with Pinochet every morning, at 7:30 AM, to brief him on DINA operations. United States intelligence agents reported: "The President issues instructions on DINA; is aware of its activities; and, in fact, heads it" (Kornbluh, 2003, p. 166).

Pinochet's secret police not only carried out vicious acts of repression at home, but also sought to dispose of opponents of his regime abroad. In September 1974 DINA agents, using a car bomb, assassinated General Prats (Pinochet's predecessor as Commander-in-Chief of the army) who was living in exile in Buenos Aires, Argentina. The bomb also killed Prats's wife. A year later, DINA agents orchestrated the shooting of a leader of the Chilean Christian Democratic Party and his wife in Rome, Italy. In November 1975 Colonel Contreras decided to coordinate efforts with the military regimes of other Southern Cone countries to track down and eliminate dissidents in exile; he invited intelligence officials from Argentina, Paraguay, Uruguay, and Bolivia to come to Santiago and establish what he called an "Interpol against subversion in Latin America." This network of military intelligence services (the aforementioned Operation Condor) carried out violent, clandestine acts of terror in the region and throughout the world for more than five years.

Operation Condor quickly became the most sinister state-sponsored terrorist network in the Western Hemisphere, if not the world. In coordination with neighboring military governments, the Pinochet regime implemented surveillance, kidnappings, brutal interrogations, and the secret detention of political opponents in the Southern Cone, Europe, and even the United States. United States intelligence agencies eventually learned that "a third and reportedly very secret phase of 'Operation Condor' involves the formation of special teams from member countries who are to carry out operations to include assassinations" (Kornbluh, 2003, p. 324). In September 1976, with the assistance of Paraguay, agents of DINA traveled to the United States to undertake what has become the best known Condor plot: the car-bombing assassination of Pinochet's leading critic-in-exile, former Chilean Ambassador Orlando Letelier. That September 21, 1976, car bombing in downtown Washington, D.C., also took the life of Letelier's colleague, 25-year-old Ronni Karpen Moffitt, and was considered at the time to be the most egregious act of international terrorism to ever have taken place in the U.S. capital. Within a week of the assassination, the FBI reported that it had probably been the work of Operation Condor.

In the spring of 1978, when the U.S. Justice Department presented the Chilean military government with clear evidence of DINA's role in the car bombing, General Pinochet personally took the lead in covering up the crime and obstructing U.S. efforts to bring those guilty to justice. The CIA learned that Pinochet was pursuing a multifaceted plan to derail the investigation, which included protecting DINA director Manuel Contreras from prosecution; stalling on U.S. requests for evidence; tampering with witnesses—Pinochet ordered one member of the assassination team who wanted to turn himself over to the FBI to "stay at his post"; and intervening with the Chilean Supreme Court to assure that neither Contreras nor his subordinates would be extradited to Washington. Pinochet, the CIA reported, "has manipulated the Supreme Court judges and now is satisfied that the court will reject extradition of any Chileans indicted" (Kornbluh, 2003, p. 401).

Up to the point of the Letelier-Moffitt assassination, General Pinochet had enjoyed positive relations with the United States. In a private meeting in June 1976, Secretary of State Henry Kissinger said to Pinochet: "[I]n the United States, as you know, we are sympathetic with what you are trying to do here. . . . We want to help, not undermine, you" (Kornbluh, 2003, p. 201). After the assassination, however, President Jimmy Carter held Pinochet at arms length and openly pressed the regime to improve its human rights record. Initially, the Reagan administration supported General Pinochet as a forceful anticommunist ally and a kindred spirit in the furtherance of free-market economic policies. But by the mid-1980s, when the Chilean economy suffered a severe recession and the left wing of that nation began to reemerge as a significant political force despite continuing repression, the United States moved to support what the State Department called a "real and orderly transition to democracy."

In an effort to extend his dictatorship through to the end of the twentieth century, Pinochet called a plebiscite for October 1988. If a majority of Chileans voted "No" (to Pinochet), new elections would be held in 1989 and the military would turn over power to a civilian president. Although Pinochet expected to win, he developed a contingency plan that would go into effect if it appeared that he was losing. "Close supporters of President Pinochet are said to have contingency plans to derail the plebiscite by encouraging and staging acts of violence," one top-secret U.S. intelligence re-

[THE CORRUPT DICTATOR]

For much of his career General Pinochet maintained the image of the incorruptible, if ruthlessly violent, Prussian-style officer. But in July 2004, a financial scandal shattered his carefully honed image as an austere, modest, professional soldier—a reputation that had distinguished Pinochet's career from other Latin American strongmen who were known as much for their greed as their repression.

A U.S. Senate Committee, investigating money laundering and foreign corruption at the Washington D.C.-based Riggs National Bank, uncovered detailed documentation on secret bank accounts Pinochet maintained outside of Chile after he was forced from power in 1990. The Senate investigation revealed that Riggs had opened multiple accounts for Pinochet and "deliberately assisted him in the concealment and movement of his funds while he was under investigation [in London] and the subject of a worldwide court order freezing his assets."

Pinochet's Chilean tax returns record an official income of $90,000 a year. But between 1994 and 2002, he deposited up to $8 million into three personal and three shell corporation accounts created by Riggs officials to hide his wealth. During his long detention under house arrest in London, he drew on these funds even as Spanish authorities seeking his extradition obtained a court order that his assets be frozen. After his return to Chile, Riggs officials arranged for $1.9 million in cashiers checks to be secretly couriered from the United States. At the same time as the Chilean courts declared him mentally incompetent to stand trial on human rights crimes, Pinochet was repeatedly conferring with Riggs officials on the surrepticious transfer of his monies, and personally cashing some thirty-eight checks—each one for the sum of $50,000—at different banks in Santiago.

Revelations of Pinochet's unexplained and hidden wealth, known in Chile as the "Pinocheques" scandal, cost Pinochet his legacy even among those who had benefited from his regime. His supporters in the military, the rightwing media, and Chilean economic elite, all who had backed the general against accusations of murder, disappearances, torture and terrorism, now abandoned him. The Chilean government initiated no less than three official criminal investigations—to identify the source of Pinochet's illicit funds, as well as to determine whether he was guilty of tax evasion.

port stated (Kornbluh, 2003, p. 424). Pinochet would then institute a state of emergency and declare the election "invalid." When his own commanders failed to implement that plan on the day of the plebiscite, Pinochet attempted to get the rest of the junta to authorize the use of the armed forces to seize the capital and nullify the election. The junta refused. The campaign of "No" won.

General Pinochet turned over the presidency to a civilian leader, Patricio Aylwin, on March 11, 1990. Yet, he retained his powerful position as commander of the Chilean armed forces, a post from which he commanded the new civilian government not to pursue any prosecution of the human rights crimes that had been committed under his regime. "The day they touch one of my men the state of law ends," he warned (Constable and Valenzuela, 1991, p. 317). When Pinochet finally stepped down from the military command, in March 1998, he assumed the title of *Senador Vitalica* (Senator for Life), providing himself with additional legal immunity from prosecution inside Chile.

Early judicial cases filed against Pinochet by the families of his victims failed to overcome the legal obstacles his regime had imposed on the Chilean court system. Internationally, however, other avenues were being explored. In 1996, in Madrid, Joan Garcés, a Spanish lawyer and former aide to Salvador Allende, filed a criminal case with a special branch of the Spanish judiciary called the *Audiencia Nacional,* which accepted the principle of universal jurisdiction for offenses such as genocide, terrorism, and other crimes against humanity. For two years, however, Spanish authorities had no way of physically securing the target of their investigation. After Pinochet traveled to London on September 21, 1998, however, Garcés arranged for Judge Baltazar Garzón to send a detention request to Scotland Yard, under the European Anti-Terrorism Convention. A British magistrate signed an arrest warrant for Pinochet on October 16; late that evening, Scotland Yard detectives secured his room at the private London clinic where he was recuperating from back surgery, disarmed his bodyguards, and served him with a "priority red warrant" for crimes against humanity.

The saga of Pinochet's arrest in London lasted sixteen months and caught the attention of the world community. His case was unprecedented: a former head of state detained outside his homeland for extradi-

tion to a third country. Already a recognized symbol of human rights atrocities, Pinochet became the leading symbol of the globalization of justice for perpetrators of such crimes. His arrest fostered hopes for many of his victims and their families that they might finally face him in a court of law. And the international effort to bring him to justice paved a legal path for similar prosecutions against other former dictators and military commanders accused of human rights crimes.

Pinochet lost all legal battles in Britain to prevent his extradition to Madrid. But behind-the-scenes political lobbying by the Chilean government, which found itself under intense pressure from the military to obtain Pinochet's release, and the resistance of José Aznar, the conservative Spanish prime minister who opposed Judge Garzón's effort to prosecute Pinochet in Madrid, appeared to convince British authorities to let Pinochet go. On March 2, 2000, British Home Secretary Jack Straw ruled that Pinochet had suffered a stroke that had resulted in mild dementia and therefore would be released on humanitarian grounds.

Pinochet returned to Chile the next day, believing himself to be finally free of legal threats. Within three days of his return, however, Chilean Judge Juan Guzman filed a legal request to have Pinochet's immunity lifted so that he could be prosecuted for disappearances associated with the Caravan of Death atrocities. On May 23, 2000, Chile's Court of Appeals surprised Chileans and the international community by voting to strip Pinochet of his immunity; the Chilean Supreme Court upheld that decision on June 5. In December, Judge Guzman indicted Pinochet as the "intellectual author" of the Caravan of Death; and in early 2001, for the first time, Pinochet was actually interrogated about his knowledge of and role in those crimes.

But, just as the British had released Pinochet on health grounds, eventually the Chilean courts yielded to the arguments of Pinochet's lawyers that he was "mentally unfit due to dementia" and therefore unable to stand trial for the murders and disappearances in the Caravan case. Pinochet then issued a statement that he was retiring from political life. "I have a clean conscience," he said. "The work of my government will be judged by history" (Kornbluh, 2003, p. 482).

At age eighty-eight, Pinochet did not retire quietly. In November 2003 he gave an interview to the Spanish language television network *Telemundo*, in which he described himself "as a good angel" who should be thanked for his contributions to Chile. Citing Pinochet's lucidity during the interview, Judge Guzman again petitioned the courts to strip Pinochet of his immunity—this time to prosecute him for murders relating to Operation Condor. On May 28, 2004, a Chilean court ruled that Pinochet could indeed stand trial for these crimes against humanity. While it remained likely that Pinochet would still escape justice through a decision of the Chilean Supreme Court to block his prosecution, the Condor case assured that he would not evade the verdict of history.

SEE ALSO Amnesty; Chile; Crimes Against Humanity; Disappearances; Immunity; Universal Jurisdiction

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Peter Kornbluh

Pius XII, Pope

[b. EUGENIO PACELLI, MARCH 2, 1876–OCTOBER 11, 1958]

Italian Pontiff of the Roman Catholic Church, 1939 to 1958

The controversy over Pope Pius XII's alleged silence on the Holocaust is one of the most heated in modern history. Although he was praised by Jewish leaders after World War II and following his death in 1958, Rolf Hochhuth in his play *The Deputy* (1963) accused the pontiff of indifference to the plight of Jews. Hochhuth contended that had Pius XII spoken out in protest against the Holocaust, countless Jews would have been saved. The activities of Vatican-supported individuals and institutions in the postwar rescue of former Nazi officials only added to the criticism. The controversy that ensued pitted papal detractors against papal supporters and has continued unabated into the twenty-first century.

Pius XII's detractors claim that as papal secretary of state (1930–1939) before he became pope, Pacelli's negotiation of a concordat or treaty with Hitler's Germany in 1933 gave prestige to the Nazi regime and destroyed whatever power the Catholic Center Party of Germany still held. In response, the pope's supporters

Named pontiff of the Roman Catholic Church on the eve of World War II, Pius XII remains a controversial historical figure. Many question the Vatican's silence while Europe's Jews perished. [HULTON-DEUTSCH COLLECTION/CORBIS]

observe that Pacelli negotiated the concordat to protect German Catholics against the dictatorial regime, and that the Center Party was already doomed to extinction.

After Pacelli became Pope Pius XII on the eve of the outbreak of war in 1939, and up to the end of the war in 1945, papal detractors argue that he never spoke out in public against the Nazi regime, and even though he knew by mid-1942 that the Germans were operating death camps and killing Jews on a massive scale, he did not publicly protest the Holocaust. Supporters of the pontiff point out that early in the war he condemned atrocities against noncombatants as "actions that call for vengeance in the sight of God." They also direct critics' attention to his address of June 1943 in which he stated, "every one of our public utterances has had to be weighted and pondered . . . in the very interest of those who are suffering, so as not to render their position even more difficult and unbearable than before." Detractors claim that these words were not specific or harsh enough, and that the church's formal excommunication of Hitler (a born Catholic) would have had a significant impact on Catholics in German-occupied Europe. Supporters insist that the excommunication of Hitler would have had no effect on the leader's manic obsession with exterminating Jews, and they question how word of any excommunication might have been able to travel beyond Nazi censors.

Pius XII's reputation has suffered even more blame for his weak response to the Nazi roundup of Rome's Jews in October 1943 when the city was under German occupation. Detractors insist that he should have gone to the Jews' place of imprisonment and demanded their release. Supporters point out that he instructed his secretary of state to threaten a public protest if the roundup continued, even though he feared such a protest would give the Germans a reason to invade neutral Vatican buildings in their search for Jewish refugees.

Detractors and supporters of the pope each cite specific rationales for Pius XII's behavior during the course of World War II. Detractors claim that the pope was an anti-Semite; that he feared a protest would provoke the Germans to destroy Rome; that he favored the Germans over the Allies because of his long residence there as papal nuncio in the 1920s; that he did not want to force German Catholics into a crisis of conscience by making them choose between their church and their state; and that he was so fearful of Soviet Communism that he favored German Nazism as a bulwark against Russian expansion.

Against these specific charges, papal supporters argue that Pius XII did, in fact, try to help Jews by instructing the clergy on how to make their religious houses places of refuge (and that even if no specific document detailing such a policy can be found, the action could hardly have occurred without papal approval), and that no evidence of anti-Semitism on the part of the pope exists. As for the pontiff's alleged fears about the destruction of Rome, the possibility of this event only developed after the German occupation in 1943, which took place more than a year after news of the death camps reached the pope, and thus it cannot have been a motivating factor for his public silence.

Supporters counter the claim that Pope Pius XII favored Germany by pointing to numerous Nazi officials' comments to the contrary, both before and during the war. They call attention to the fact that the pontiff actually agreed to be a conduit between Germans opposed to Hitler and the British government to arrange a compromise peace early in the war. As for the charge that the pope did not want to create a crisis of conscience for German Catholics, papal supporters insist that German Catholics would simply have ignored a papal statement which, in any event, Nazi propagandists

might have transformed into a message of support for the regime.

Against the claim that the pope preferred German Nazism to Soviet communism, his supporters respond that although Pius XII undoubtedly feared the communization of Europe, he viewed the wartime Western alliance with Soviet Russia as necessary to defeat Nazism. Thus, he steadfastly refused German requests to characterize its invasion of the Soviet Union in 1941 as a Christian crusade, and he furthermore counseled American Catholics to support the wartime alliance with Soviet Russia.

The pontiff's supporters offer two reasons for Pius XII's behavior. They proffer that he wanted to serve as a mediator between the warring sides and therefore could not condemn either. Thus, his criticism of the Nazi regime was implicit in order to preserve his neutrality. Papal critics counter that the mediation of the war was unrealistic, given the Allied statement of unconditional surrender and Hitler's unwillingness to compromise.

Supporters point to Pope Pius XII's own recorded statement that a public protest would have made the conflict worse as proof of his main rationale. Detractors, citing the enormity of the Holocaust, ask how the situation could have been worse. Supporters insist that no one outside of its Nazi planners, not even Jews themselves, ever imagined the immensity of the Holocaust, and that Pius XII, thrust into the most difficult position of any pope in modern history, felt a primary obligation to preserve the safety of Catholics in German-occupied Europe.

SEE ALSO Catholic Church; Religion

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José M. Sánchez

Poetry

The Armenian genocide and the Holocaust produced some important and critically acclaimed poets. These poets bore witness to genocide and wrote about exile, grief, and moral outrage.

Poetry of the Armenian Genocide

Siamanto (Adom Yarjanian) was born in 1878 in Akn, Ottoman Empire (present-day Kemaliye, Turkey). He wrote a cycle of poems in *Bloody News from My Friend* (1909) that depict the atrocities of the 1909 massacre of the Armenians when converging Turkish political coalitions and local Turkish citizens killed about thirty thousand Armenians living in Adana province; this was a prologue to the Armenian Genocide of 1915. "The Dance," "Grief," "The Mulberry Tree," and "The Dagger" are graphic, realistic depictions of massacre, torture, and rape. Scholars consider Siamanto a groundbreaking poet because he preceded the British trench poets of World War I and refused to be ornamental, generic, or metaphysical in his writings. During the Armenian genocide, he was one of the 250 intellectuals and cultural leaders arrested in Constantinople on April 24, 1915, and later executed by the Ottoman government.

Along with Siamanto, Daniel Varoujan (1884–1915), was a leading voice of the new generation of western Armenian writers (Armenians of the Ottoman Empire). His early poems embody the recovery of Armenian myths, legends, and folklore that characterized the cultural revival of Armenians in the Ottoman Empire at the turn of the twentieth century. He was arrested by the Ottoman government on April 24, 1915, and later tortured and murdered on August 19. While he was in prison he wrote poems about Armenian agrarian life and a longing for the land. His poem "The Red Soil" depicts the culture of massacre Armenians were subjected to from the time of Sultan Abdul Hamid's massacres of the Armenians in the 1890s through the eve of the Armenian genocide.

Eghishe Charents (1897–1937) was born in Kars, then Russian Armenia (in present-day Turkey). His epiclike poem "Dantesque Legend" deals with his experience of the Armenian genocide during his participation in a resistance movement that took him into northeastern Turkey in order to rescue Armenians. Many other Charents poems deal with the trauma of the genocide.

Vahan Tekeyan (1878–1948), born in Constantinople, was in Cairo, Egypt, when the genocide commenced, and so escaped execution. His selected poems, *Sacred Wrath* (1983), include a number of finely con-

trolled and often elliptically transformed poems of loss, exile, and grief: "On a Sonata by Beethoven" is a meditation on music and exile. "We Shall Say to God," " We Shall Forget," "There Are Boys," "To God," and "Scutari" are highly acclaimed poems about trauma and the meaning of suffering in the wake of genocide.

Poetry of the Holocaust

In the aftermath of the Holocaust, Jewish poets produced a range of important poems that bore direct witness to atrocity, to the aftermath of trauma, and to the metaphysical meaning of suffering. Nelly Sachs (1891–1970) was born into a wealthy family in Berlin. When the Nazis came to power, she barely escaped arrest, and fled to Sweden, where she lived for the rest of her life, writing and translating Swedish poetry. Her career as a poet flowered when she was in her fifties. *In the House of Death* (1947) deals with the suffering of the Jews and the overarching suffering of humanity. *Eclipse of Stars* (1949), *And No One Knows Where to Go* (1957), and *Metamorphosis* (1959) explore suffering, persecution, and exile. She was awarded the Nobel Prize in literature in 1966.

Miklos Radnoti (1909–1944), a Hungarian Jew, was an avant-garde poet and editor before being deported and sent to labor camps in Yugoslavia. On a forced march back to Hungary with some three thousand men, he was shot. When his body was exhumed from a mass grave in 1946, his widow found a notebook full of poems in his pockets that included some of the most powerful poems written about the Holocaust: "Forced March," "Letter to My Wife," "Peace, Horror," "Picture Postcards," and "Seventh Ecologue."

Primo Levi (1919–1987) was born in Turin, Italy, and fought with the partisans in Italy until he was captured in 1944 and sent to the Bunz-Monowitz concentration camp. His professional training as a chemist helped him survive until the Russians liberated his camp in 1945. Although he is most well known for his works *Survival in Auschwitz* (1947) and *The Drowned and the Saved* (1986), Levi was also a poet. His poems bear an austerity and plain style that addresses the concentration camp experience with a unique rhetorical power that does not betray poetic texture. Levi's *Collected Poems* (1984) include "Shema," "For Adolf Eichmann in Jerusalem," "Buna," and "Annunciation," among others. Levi, never able to overcome the psychological burden of his experiences, committed suicide in 1987.

Paul Celan (1920–1970) was born Paul Antschel in Bukovina, a German enclave of Romania, which was occupied by Romanian Fascists and Nazis in the early 1940s. His parents died in a concentration camp, but Celan—who was sent into forced labor—escaped to Paris in 1944 where he settled and continued to write poetry in German. His poems are written with an inventive dissonance that bears his tortured relationship to the perpetrator's language, thus defining him as a major and experimental poet. "Death Fugue," a poem that deals with concentration camp life, may be the most famous poem of the Holocaust. He committed suicide by drowning himself in the Seine in 1970. Selections from his nine books of poems appear in *Poems of Paul Celan* (1970). Other important poets of the Holocaust include Tadeusz Borowski (1922–1951), Dan Pagis (1930–1986), Abraham Sutzkever (1913–), and Gertrud Kolmar (1894–1943).

SEE ALSO Fiction

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Peter Balakian

Pogroms see Cossacks; Ghetto; Persecution; Pogroms, Pre-Soviet Russia; Union of Soviet Socialist Republics.

Pogroms, Pre-Soviet Russia

Communal riots between rival religious and ethnic groups were not unknown in the modern Russian Empire. However, only in 1881 did they resemble a mass movement, with the widespread outbreak of anti-Jewish riots throughout the southwestern provinces of the empire. The name applied to the riots—*pogroms*—came into widespread usage in Russia and abroad, and evolved into a generic term for any attack on an ethnic or religious minority.

The pogroms of 1881 and 1882 are widely regarded as the major turning point in modern Jewish history. Among Jews the pogroms prompted disillusionment with a solution to the Jewish question based on civic emancipation and social integration. They inspired new forms of Jewish politics of a nationalist form, such as Zionism and socialist organizations aimed at Jewish proletarians. The Russian state, in turn, moved away from policies designed to promote Jewish acculturation and integration.

These same pogroms also gave rise to a host of assumptions that became firmly established in the histor-

Survivors of a pogrom at Proskurov, in the Podovia region of Ukraine. On February 15, 1919, Ataman Semosenko commanded a brigade of Cossacks and regiment of Gaidamaks (local band of lawless plunderers) to murder the town's Jews. Barely three hours later approximately 1,500 people lay dead. [BETTMANN/CORBIS]

ical literature: (1) that the pogroms were instigated, tolerated, or welcomed by Russian officials, on either the national, provincial, or local level; (2) that the pogroms were invariably accompanied by atrocities, including rape and murder; (3) that Jews were always passive, unresisting victims, at least until Jewish socialists organized armed self-defense in the early twentieth century; (4) that, especially in the twentieth century, pogroms were an officially inspired effort to divert popular discontent against the Jews, "to drown the Russian revolution in Jewish blood"; (5) that the great wave of Jewish out-migration from the Russian Empire in the quarter-century before the Great War was prompted by pogroms and restrictive legislation. Recent scholarship has questioned all these assumptions.

Pogroms before 1881

Interethnic riots involving Jews in the southwestern port city of Odessa (in the province of Kherson) occurred in 1821, 1848, 1856, and 1871. The first pogroms involved attacks on Jews by Greek commercial rivals; subsequent pogroms were carried out, in the main, by Russian mobs, the so-called barefoot brigade. The Odessa pogrom of 1871 inspired some Russian Jewish intellectuals to question the prospects for Jewish integration and emancipation. There was also a poorly documented pogrom against the Jews of Akkerman (in the province of Bessarabia) in 1865. These attacks entailed vandalism and looting, with only a handful of fatalities.

The Pogroms of 1881 and 1882

On March 1, 1881, Alexander II, the Tsar-Liberator, was assassinated by terrorists from the group Narodnaia Volia (The People's Will). A period of great uncertainty followed and an avalanche of rumors swept over the country. On April 15, 1881, a riot broke out between Christians and Muslims in the provincial town of Baku, on the Caspian Sea. On the same day a tavern brawl in the city of Elisavetgrad (in the province of Kherson) escalated into a serious riot, during which Jewish shops and homes were attacked and looted. News of the anti-Jewish disorders traveled along railroad lines, rivers, and other routes of communication, provoking additional, but less violent, attacks in the countryside and small towns. On April 26 a major riot erupted in Kiev, which lasted for three days and prompted copycat violence all over Kiev Province. A third wave of pogroms began in Pereislav (in the province of Poltava) on June 30.

The outbreak of violence on such a wide scale, in what was seen as a police state, as well as the apparent unwillingness or inability of the authorities to suppress the pogroms, inspired contemporaries to claim that the pogroms had been instigated and organized. Suspicion initially fell on the revolutionaries who had assassinated Emperor Alexander II on March 1, 1881. Although some revolutionary publicists welcomed the pogroms as the beginning of a potential social revolution, for the most part the revolutionaries were ambivalent about the outbreak, which they had neither instigated nor manipulated. Accusations of having instigated the pogroms later fell on such varied culprits as the central government, especially N. P. Ignatiev, the Minister of Internal Affairs; on "Pan-Slav publicists in Moscow" in the pay of the Jews' commercial rivals; or on local satraps, such as the governor-general of Kiev, Podolia, and Volynia Provinces, A. R. Drentel'n, a well-known Judeophobe.

Published and unpublished archival sources reveal that the government took extensive measures to anticipate, prevent, and repress anti-Jewish riots in 1881 and 1882. These efforts failed because of the scarcity and ineptitude of the police, and difficulties attending the use of the army to suppress urban disorders. There is no contemporary evidence for the significant presence of agitators or provocateurs. A number of officials were removed from office because they were judged to have been derelict in suppressing pogroms. Over a thousand *pogromshchiki* suffered some form of punishment for their activities. Despite contemporary claims no evidence exists of a sustained campaign in the press encouraging attacks on Jews because "the Yids have killed the Tsar." Nonetheless, there were widespread rumors among urban mobs to this effect, accompanied by the belief that a special *ukaz* (decree) authorized the crowds "to beat the Jews."

There were approximately 250 pogroms, varying greatly in length and severity. They produced about 50 fatalities, of whom half were *pogromshchiki* killed during the suppression of the riots. There were a number of rapes during the pogroms, but not in the massive numbers claimed by contemporary publicists.

Both Russian officialdom and society depicted the pogroms as a popular protest against "Jewish exploitation" in the countryside. This assumption inspired legislative efforts (the so-called May Laws of 1882) to segregate peasants and Jews by driving the latter out of the countryside. These measures did not prevent additional pogroms in 1882, most notably in Balta (in the province of Podolia), on May 29 and 30. There was also a large pogrom in Warsaw, Kingdom of Poland, on December 25, 1881.

There were serious but one-time pogroms in Ekaterinoslav (1883) and Nizhnyi Novgorod (1884). Labor disturbances in Iuzovka and settlements in the so-called Dnieper Bend occasionally included the looting of Jewish shops.

The Kishinev Pogrom

Kishinev, capital of Bessarabia Province, with a mixed ethnic population of Slavs, Moldavians, and Jews, had a history of minor clashes between Christians and Jews, but nothing to match the scale of the pogrom that broke out during Easter week of 1903, claiming forty-nine victims. Kishinev gained greater notoriety than virtually any other pogrom. The provincial authorities were seen as openly complicit. They failed to censor a local Jew-baiting newspaper, *Bessarabets,* edited by P. A. Krushevan, when it disseminated false reports of a ritual murder carried out by Jews. They took insufficient precautions to prevent or repress holiday violence, despite warnings of potential disorders. They failed to act decisively against the pogrom, allowing it to run for three days. There was a measure of truth to all these charges.

The Kishinev pogrom was also accompanied by claims that the central government had sent agents to the city to organize the pogrom, and that the Minister of Internal Affairs, V. K. Pleve, specifically instructed the local authorities not to use physical force to suppress the anticipated pogrom. No reliable evidence exists to support these claims.

The Kishinev pogrom discredited Russia abroad, scandalized moderate and leftist opinion within the empire, and reenergized all forms of Jewish political activity. Jewish bodies of self-defense were organized and enjoyed some success in a subsequent pogrom in Gomel (in the province of Mogilev), beginning on August 29, 1903.

The pogrom inspired a classic work of poetry by Chaim Nachman Bialik, *The City of Slaughter,* written in Hebrew and Yiddish versions, which did much to enshrine the legends of the Kishinev pogrom, especially the claim that the Jews were passive, nonresisting victims.

The Revolution of 1905

The Revolution of 1905 witnessed the breakdown of legal order all over the Russian Empire, together with the widespread claim in right-wing circles that the Jews were major participants in revolutionary disorders. Consequently, counterrevolutionary or loyalist manifestations often degenerated into spontaneous anti-Jewish violence, as in Odessa (October 19–22) and Kiev (October 19–20), that claimed hundreds of Jewish

victims and resulted in massive property damage. After the Imperial Manifesto of October 1905, right-wing parties, such as the Union of the Russian People, were founded that utilized anti-Semitism as a mobilizing device. Although such groups, the so-called Black Hundreds, carried out small-scale attacks on Jews and assassinated several Jewish political leaders, they were incapable of organizing pogroms on a massive scale. A rogue operation in the Department of Police printed pogrom-mongering proclamations during this period, but such activity, when discovered, was suppressed by S. I. Witte, the chairman of the Council of Ministers. Emperor Nicholas II, while not specifically approving pogroms, viewed them as an expression of support for the regime. Subsequent serious pogroms, such as one in Bialystok (in the Kingdom of Poland) in 1906, arose from local social and political conditions.

The Russian Civil War (1919–1921)

The February and October Revolutions of 1917, the Russian withdrawal from World War I, and the collapse of the imperial government culminated in the Russian Civil War of 1919 through 1921, in the midst of which the fledgling communist government also fought a war with the newly independent Poland (1920–1921). Participants in the Civil War included a broad variety of political, social, and national groups. In the southern and western provinces of the empire extensive hostilities took place in the former Pale of Settlement, where the Jewish population was concentrated. The Civil War was accompanied by levels of anti-Jewish violence never before witnessed in the Russian Empire and unequaled before the Holocaust. The historiography of this period is sharply divided over the causes of and responsibility for the pogroms.

Virtually all armed forces in the conflict carried out pogroms, but only the Red Army punished them in any meaningful way. Forces comprising the anticommunist Whites and anti-Russian nationalists gained an unsavory reputation for pogrom-mongering. The chief White Army in the area, General A. I. Denikin's Volunteer Army, was a major perpetrator of pogroms, despite half-hearted efforts on the part of the central command to maintain discipline. Forces loyal to the Directory, the executive of the Ukrainian National Republic, were especially active in carrying out pogroms. Officially, the Directory, led by S. V. Petliura, condemned pogroms, but had little control over the ill-disciplined, irregular forces that fought in its name. Nor did the Directory have much to gain by forcibly repressing pogrom activity among its troops. These forces, often led by self-styled Cossack commanders or Atamans, carried out numerous, well-documented atrocities against the Jewish population. Despite claims that these outrages were ideologically motivated, designed to punish Jewish support for the Bolsheviks, or a reflection of "traditional Ukrainian anti-Semitism," they appear to have been largely motivated by the desire for plunder. Jews were also victimized by the numerous anarchist bands that roamed Ukraine, including those nominally loyal to Nestor Makhno. The debate over the culpability of Petliura grew sharply after his assassination in Paris in 1926 by Sholem Schwartzbard, who claimed to be avenging the pogroms. Schwartzbard was subsequently acquitted by a French court. The total number of Jewish fatalities during civil war pogroms is disputed, but certainly exceeded 500,000. Immense property damage also resulted.

SEE ALSO Anti-Semitism; Cossacks

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John Klier

Political Groups

A political group exists when people assemble together in order to promote a common ideology and achieve particular objectives in the public, governmental

sphere. Political parties and trade unions are political groups. These days the existence of an opposition party is usually regarded as the characteristic of a democracy itself, as the strength of democracy is to allow political dissent.

Governing elites are likely to use political repression for several reasons. It is often the case that political repression and lack of democratic representation are linked. Government officials use political repression against opponents—real or potential—in order to weaken their capacity to question or offer alternatives to official government policy.

In some situations governing elites view certain political groups as inherently suspect, because the ideology advocated by the group, or its methods, threaten democracy itself. This is the case with respect to fascist movements or terrorist groups. The difficulty here is that categorizing a political group as "antidemocratic" because of the ideology it promotes is very subjective. For example, during the apartheid regime in South Africa, the African National Congress (ANC, the movement of black resistance against racial separatism) was considered a terrorist organization and thus banned. The head of the ANC, Nelson Mandela, spent twenty-seven years in jail for so-called terrorist activities. He was released in 1990 and in 1993 he received the Nobel Peace Prize with the then president of South Africa, F. W. de Klerk. Mandela was subsequently elected president of South Africa in 1994.

The effectiveness of political repression is controversial. Repression can decrease opposition activity, for example, when it limits the ability of opposition groups to mobilize resources and supporters. Conversely, repression can increase opposition activity and harm the popular legitimacy of the political elite. Actors that previously were neutral may decide to engage in opposition, by reaction against repression. Experience has shown that when the level of repression is high, there are fewer activist opponents, but they become more radical: Violent opposition increases, while nonviolent opposition decreases.

The persecution of political groups may lead to the violation of several human rights recognized in the 1966 International Covenant on Civil and Political Rights. These include the right to self-determination; freedom of expression and the right to hold opinions without interference; the right to peaceful assembly; the right to freedom of association, for instance, the right to form and join trade unions; and the right of equality before the law.

When the persecution of political groups reaches a certain threshold—that is, it becomes widespread or systematic, and purposely targets a civilian population—it may qualify as a crime against humanity. Qualifying the persecution of political groups as genocide is more problematic. According to the 1948 International Convention on the Prevention and Punishment of the Crime of Genocide, a crime (such as murder) may constitute genocide only when the person persecuted is targeted because he or she belongs to a "national, ethnical, racial or religious group." This list is limitative, and it is notable that political groups are not included; such an approach was also confirmed by the definition adopted in the Rome Statute of the International Criminal Court (ICC).

Consequently, according to these international conventions, the persecution of people because they belong to a particular political group may not qualify as genocide. Hence, numerous scholars have determined that the massacres perpetrated by the Khmer Rouge in Cambodia from 1975 through 1978, in which about one-fifth of the population was exterminated, cannot be categorized as "genocide" according to the 1948 Convention. It nonetheless certainly qualifies as one of the most horrific crimes against humanity. However, some national laws adopt a broader definition of genocide and include political groups (e.g., Article 211-1 of the French Penal Code, and Article 281 of the Ethiopian Penal Code).

In addition, it remains possible that members of a political party may also share an ethnic, religious, or national identity. For example, in Northern Ireland the Sinn Fein Party assembles mainly members of the Catholic community, while the Ulster Unionist Party is mostly composed of Protestants. In Rwanda the Front Patriotique Rwandais (FPR) is principally composed of Tutsi.

Political groups' oppressors may be prosecuted if their actions qualify as a violation of fundamental human rights, such as the right to freedom of expression. If political persecutions are widespread or systematic, and target civilian population, alleged offenders may face charges for crimes against humanity. In some countries their crimes may also amount to genocide.

In any case, when asylum seekers are likely to be persecuted in their country because of their political opinions, they may benefit from refugee status (Convention Relating to the Status of Refugees Adopted by the United Nations on 28 July 1951).

SEE ALSO Minorities

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Clémentine Olivier

Political Theory

Political theory can help explain elements of gross human rights violations, especially genocide. Liberalism, for example, is helpful in suggesting that liberal democracies typically do not engage in mass murder, nor do they wage war on each other. Genocides and other massive human rights violations generally have occurred during time of war. In its emphasis on the self-defeating character of war and the need for limitations on its conduct, Grotian international legal theory also is helpful. Common gains for the world's communities as the result of liberal international cooperation suggest the constitution of international regimes that would implicitly or even explicitly prohibit mass murder. International legal frameworks for such cooperation typically do just that. The European Union as a prototypical example has increasingly emphasized democracy and the protection of human rights as a condition of state membership. Utilitarianism, especially in John Stuart Mill's (2002) advocacy of governmental noninterference in individual behavior that does not harm others, indicates a strong ethical basis for the prohibition of mass murder.

Theoretical approaches of this type help in establishing conditions that prevent the occurrence of genocide. However, they do not provide an account of the dynamics through which genocide is effected. Among the many varieties of political theory, realism comes closest and is preeminent for its explanatory power in understanding the etiology of genocide. Most important, realism as a theory of international politics sensitizes us to the presence of Realpolitik as state-centered policy in which "success is the ultimate test of policy, and success is defined as preserving and strengthening the state" (Waltz, 1979, p. 117). It is the state-centric aspect of both realism and Realpolitik that helps explain the onset of genocide. The deadliest genocides of the past century have been initiated by the administrative departments of a state.

Three twentieth-century cases of genocide illustrate the importance of Realpolitik: the Armenian genocide of 1915 and 1916, the Holocaust of 1941 through 1945, and the massacre of the Tutsi of Rwanda in 1994. Two variants of Realpolitik are considered. The first is that of brute force in which state officials initiate and direct genocide; all three of the genocides examined were characterized by such behavior. In the second type, referred to as cynical Realpolitik, the interests of another state or international actor, not the perpetrator, are satisfied by the genocide. Effectively, the bystander abets the genocide because of the unique perception of its own interests. This article will emphasize the latter type.

The Armenian Genocide

Germany was a bystander during the Armenian genocide and the most important superpower influencing Ottoman policy. Already during the period of the 1894 and 1896 massacres, the outlines of German policy concerning the Armenians were decisively formed. In November 1898 a policy brief was put forward by the German foreign ministry that became the basis not only for German official reaction to the massacres, but also for the later genocide. Essentially, it stated that the Armenians were crafty and seditious and had provoked the Ottoman authorities. Further, Germany had little, if any, reason to intervene on behalf of the Armenians, especially given the business interests of many German firms in the Ottoman Empire that might be endangered by German intervention. Very early in the day, Realpolitik had become the basis of German policy on the Armenian Question. Only two years after the end of the 1896 massacres, with great pomp and circumstance, Kaiser Wilhelm II visited Turkey, was greeted lavishly by Sultan Abdulhamit II, and the upward trajectory of Turko-German collaboration was firmly established.

Yet this open expression of support by the Kaiser came after the massacres had occurred. How could the Ottomans think that they could massacre 200,000 people, often in the most brutal fashion, without repercussions from interested superpowers such as Great Britain and France? The answer to the question of Ottoman impunity is found in the emerging German presence in Turkey prior to the massacres. Militarily, between 1885 and 1888, huge Krupp cannon were put into place to guard the Dardanelles Straits and the Üatalca defense line north of Constantinople. Upon request, Helmuth von Moltke, the Chief of the German General Staff, sent some of his best officers to reform the army, including General Colmar von der Goltz of later fame as commander of the Ottoman forces in Arabia during World War I.

When the Ottoman government entered World War I on the side of Germany and Austria-Hungary,

Germany became virtually the official protector of the Ottomans. German military leaders like von der Goltz actively encouraged the development of a religiously, if not ethnically, homogenous Ottoman state. German military officers, in fact, participated in the planning and implementation of the 1915 and 1916 deportations, especially of Armenians working on the Berlin-Baghdad railway under German supervision.

The Holocaust

It has been suggested by contemporary historians that the abetting or permitting agent in the case of the Holocaust was the Vatican. There were several elements to the Realpolitik of Eugenio Pacelli, papal nuncio in Munich between 1917 and 1930, Cardinal Secretary of State between 1930 and 1939, and Pope Pius XII thereafter until his death in 1958. Most important was a virulent anti-communism that demanded the subordination even of national Catholic interests for purposes of defeating the larger threat of Soviet-inspired communism.

As Cardinal Secretary of State, Pacelli had the opportunity to formulate Vatican foreign policy. According to commentators, in that position he was decisive in silencing the German Catholic Center Party that could have provided the only coherent opposition to the Nazi Party. The Nazis were seen by Pacelli as the only effective bulwark against the western expansion of communism from its Soviet base.

Left to its own devices, the Center Party likely would have remained committed to a pluralist democracy, as it had committed itself at the beginning of the Weimar Republic. The last functioning chancellor of the Republic, Heinrich Brüning, a leader of the party and a devout Catholic, was thoroughly committed to parliamentary democracy and utterly opposed to concordats with totalitarian regimes. As chancellor, he also had been opposed to Pacelli's notion of a concordat that had centralized papal ecclesiastical authority at the core of German Catholic decision-making instead of local needs and desires. After Hitler's accession to power, Brüning desperately argued against the concordat that would have depoliticized German Catholicism. His opponent had become the leader of the Center Party, Ludwig Kaas, a Jesuit priest and an intimate of Pacelli, increasingly under his influence. Kaas argued that a concordat with Hitler would better serve the German Catholic Church than its continuance as a political minority opposed to Nazism.

With a simple stroke on July 20, 1933, the Reich concordat was signed, the Center Party was disbanded for good, and Hitler expressed the chilling opinion that the concordat would be "especially significant in the urgent struggle against international Jewry" (Scholder, 1987, p. 404). For the sake of erecting a central European bulwark against communism, Pacelli effectively silenced the only potential large-scale opposition to Hitler's violently anti-Semitic program. Additionally, during the Holocaust the Vatican was almost entirely silent in its public statements on the mass murder of the Jews. In December 1942, at the end of a long Christmas radio message, Pacelli, by then Pope Pius XII, did refer briefly to the need to restore a just society, partly because of the deaths of large numbers of people as a result of their nationality or descent. Not mentioned were anti-Semitism, the genocide of the Jews, or the identity of the perpetrators. After the roundups and deportations of Italian Jews in the autumn of 1943, many Catholic institutions in Italy opened their doors to Jews seeking to evade the Nazis. But had the Pope openly condemned the Nazi genocide, many more Christians might have been encouraged to help Jews in distress throughout occupied Europe, Jews might have been more likely to go into hiding because of the assumed veracity of the papal source, and many more lives could have been saved.

The Genocide of the Tutsi

Finally, in the case of Rwanda, France, another European superpower, was the principal agent in establishing a permissive context. In accordance with the Realpolitik model, Rwanda, precisely because of its francophone status and widespread Roman Catholicism, was in the process of inclusion in the French-dominated African community. It would be the first such country not to have experienced French colonial rule. On the negative side, there was potential opposition stemming from anglophone African states, especially Uganda, home base of the Rwandese Patriotic Front (RPF), a Tutsi rebel organization that invaded Rwanda in 1990. According to Gérard Prunier (1995), the French were reacting to the so-called Anglo-Saxon threat. The confrontation between the heirs of "les Anglais" and the French in Africa has been dubbed the "Fashoda syndrome" by Prunier, after the 1898 confrontation between English and French troops in southern Sudan. He asserts that this syndrome is the main reason why France intervened so quickly and so deeply in the Rwandan crisis.

Equally, if not more important, for understanding the genocide in Rwanda is the amount of French military aid and troop training supplied to the Rwandan army. Arms and ammunition had been continually supplied, but beginning in early 1993 as many as twenty tons of material per day were sent. According to both French and Tanzanian military intelligence sources, the RPF offensive stopped short of the Rwandan capi-

tal, Kigali, in February 1993, only because of the presence of French troops in the vicinity.

Officials in France, Belgium, the United States, and the United Nations (UN) were well aware of the possibility of mass killing, yet did little if anything to stop it. France was in the best position to intervene, but did not. Indeed, when President Francois Mitterrand, the intimate of President Juvenal Habyarimana and architect of France's Realpolitik policy in Central Africa, was asked by a journalist about the genocide, he answered: "The genocide or the genocides? I don't know what one should say!" (Prunier, 1995, p. 339), as if there existed a symmetry between Hutu and Tutsi behaviors during that period. One might just as well have argued that the German mass murder of Jews was occasioned by the Jewish mass murder of Germans.

Conclusion

The cynical variant of Realpolitik identified here is a necessary adjunct to the brute force variety. By establishing a permissive context for the genocide, opposition groups both within the targeted state and without are weakened in their resolve to oppose the perpetrators. At the same time the perpetrators are strongly encouraged to wreak their destruction, as was Hitler after the concordat with the Center Party. Agents with either moral or political authority, or both, can be extremely influential in this regard. The theory of realism with its policy adjunct, Realpolitik, sensitizes us to the potential cynicism of international actors having their own state-centric interests.

SEE ALSO Explanation

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Manus I. Midlarsky

Pol Pot

[MAY 19, 1925–APRIL 15, 1998]

Cambodian leader of that country's underground communist party, Khmer Rouge, from 1962; became head of the genocidal regime of Democratic Kampuchea (DK) in 1975 and ruled until his overthrow in early 1979

Pol Pot was born Saloth Sar, in Kompong Thom province, on May 19, 1925 (or 1928). His father, Phen Saloth, owned twelve hectares of land, and had connections at Cambodia's court. Sar's sister was a consort of King Monivong. From age six, Sar lived in Phnom Penh with his brother Suong, a palace protocol officer. He spent a year in the royal Buddhist monastery, and six years in an elite Catholic school. Phnom Penh's inhabitants were mostly Chinese traders and Vietnamese workers. Sar's upbringing was strict, and he had little or no contact with Khmer vernacular culture.

In 1948 Sar received a scholarship to study radioelectricity in Paris (at École Française de radioélectricité). There he joined the Cambodian section of the French Communist Party. He also met Khieu Ponnary, the first Cambodian woman to earn a *baccalauréat* degree.

Sar's fellow students in Paris, Khieu Samphan, Ieng Sary, and Son Sen, remained in his circle until 1996. He chose a racial alias, or, nom de plume: the "Original Cambodian" (*khmaer daem*). Having repeatedly failed his course, he went home in January 1953. King Norodom Sihanouk had declared martial law to suppress Cambodia's independence movement, which was radicalized by the French colonial force and Vietnamese communist influence. Sar's brother Saloth Chhay joined the communists and took him along. After independence in 1954, Sar became a teacher, and two years later he married Khieu Ponnary, on July 14, 1956 (Bas-

tille Day). Sar rose secretly within the Khmer communist movement, and in 1962 became Party leader after his predecessor, a former Buddhist monk, was mysteriously killed. Sar soon thereafter went underground, criticizing Sihanouk's neutrality and Hanoi's support of it.

The "Original Khmer" treasured the Cambodian "race," not individuals or "hereditary enemies," especially Vietnamese. He saw a need for war and secrecy as "the basis of the revolution." He trusted few of the more pragmatic, veteran Khmer communists who had been trained by the Vietnamese. Sar adopted the codename "Pol," later "Pol Pot," but never publicly admitted his real name.

After visiting Mao's China between 1964 and 1965, Sar returned home to launch a rural insurgency in 1967. Three years later, the U.S.–backed general, Lon Nol, overthrew Sihanouk. At about this time, the Vietnam War came crashing over the border as well. Khmer Rouge forces defeated Lon Nol in 1975, and Pol Pot became Prime Minister of the new Democratic Kampuchea regime. The DK evacuated Cambodia's cities, launching a series of political and ethnic massacres, and in 1977, raids on Vietnam, Thailand, and Laos.

Running a secretive party, Pol Pot even came to be called "the Organization" (*angkar*)—a shadowy institution which documents or reported making speeches, or was sometimes "busy working." His wife, Ponnary, went mad. One day in late 1978, a poster bearing Pol Pot's image was put up in a communal mess hall in Kompong Thom. Only upon seeing the poster did his brother, Suong, learn who was running the country. Terrified of being identified as someone who knew too much about his brother, Suong kept quiet about his relationship to the ruler. Two months later, the regime fell to a Vietnamese invasion.

In Thailand in 1988, Pol Pot blamed most of his regime's killings on "Vietnamese agents." However, he acknowledged having massacred the defeated Lon Nol government's leaders and troops, defending his actions by insisting that "[t]his strata of the imperialists had to be totally destroyed." Pol Pot's army continued to wage war from the Thai border until broken by defections and mutinies that occurred from 1996 to 1999. He died in the jungle on April 15, 1998.

Pol Pot never faced trial for his crimes. From 1979 to 1993, the United Nations, at the insistence of China and the United States, legitimized Pol Pot's anti-Vietnamese cause and supported his exiled Khmer Rouge as Cambodia's representatives. In 1999 the UN proposed establishing an international tribunal to judge his surviving accomplices for genocide and crimes against humanity.

SEE ALSO Cambodia; Khmer Rouge

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Ben Kiernan

Prevention

Whenever the crime of genocide or crimes against humanity have occurred, the international community and human rights nongovernmental organizations (NGOs) have asked themselves whether the developments that led to the atrocities could have been anticipated and possibly prevented. They question why no attempts had been made by the state involved, its society, or the international community at large to stop the carnage or events leading up to the genocide. Even if the perpetrators are later brought to justice, their sentencing cannot redress the human tragedy associated with the genocidal acts or the suffering of each individual. In most cases of genocide after World War II, the possibility of human tragedy could have been foreseen. Despite this reality, no fully convincing strategy has yet been designed to effectively prevent genocide. In fact, it remains an open question whether such a strategy can be developed given the complex social, economic, cultural, and psychological issues that may lead to genocide.

Existing means of preventing genocide or of preventing serious and widespread human rights violations that may lead to genocidal acts may be grouped, general speaking, into two categories: procedural and substantive ones. The former embrace all of those techniques developed by human rights institutions, which, for example, provide for the monitoring of human rights situations. The latter embrace nonprocedural obligations of states and individuals, such as the prohibition of incitement to racial hatred or the prohibition of

racist organizations. Providing for criminal prosecution of acts of genocide, related acts, or acts that may create an environment that is or may become a fertile ground for genocide also has preventive effects. The threat of criminal prosecution not only labels certain human behavior as morally and socially unacceptable but also attempts to establish a psychological barrier that may prevent a potential perpetrator from taking criminal action.

All attempts to develop an effective system for eliminating genocide and crimes against humanity face one significant problem. Despite many attempts, there is no agreement on which factors may lead to such acts. Certain scholars have made reference to human destructiveness leading to instinctual aggression, to humankind's intraspecific warfare, and to human destructiveness developing from the fear of death. These attempts to explain the unthinkable are rather academic. The restructuring of the human psyche is not a workable solution, even if warfare or human destructiveness is assumed to be part of the human character. One has to proceed to a different level of assessment, and attempt to answer the question: What are the social, cultural, religious, political, or economic conditions under which instinctual human aggression may find its expression in genocidal or related acts?

Factors Likely to Induce Genocide

There is no single explanation of why a government and a society pursue a policy of genocide or crimes against humanity. In most cases throughout history, genocide or related acts were not the result of sudden decisions but, as with the Holocaust, the result of ideological and political preparation and indoctrination. Particular groups are identified as inferior or somehow unworthy in a given society. Such identification of a group of people may be initiated by that part of the society or the government preparing for genocide. Alternatively, or additionally, the identification of a particular group or groups within a larger community can be the result of an act of self-identification of that particular group or groups with the view to preserve its cultural, linguistic, religious, or historical particularity.

Such self-identification as a group is protected under international law. Under the ever increasing relevance of human rights, the world has become aware of the fact that states are neither ethnically and culturally homogeneous, nor is there any merit in being so. In fact, attempts to create ethnically homogeneous states in the aftermath of the dissolution of the former Yugoslavia have resulted in the term "ethnic cleansing," an activity related to genocide.

The branding of a particular, targeted group as being inferior or dangerous for another part of the community, or the stability of the respective state, is the first clear indicator of a situation that may lead to genocide. Even the development and fostering of negative feelings or stereotypes within a society against individual members of a group just because they are members of that group should be considered a warning signal. It would be naive, however, to believe that only the dominant group in a given society could stimulate misunderstandings and tension; the later targeted group may contribute to feelings of alienation by excluding itself from the society, by conveying an attitude of superiority, by giving the impression of not being loyal to the state it lives in, or by advocating its secession from the given state. Frequently the attempt is made to rationalize the perceived difference or inferiority of the targeted group or the superiority of the dominant group by developing pseudo-scientific theories. This was particularly true for the German policy leading to the Holocaust. The development of such theories and their publication should also be considered a potential precursor to genocidal or related acts.

What is the mechanism that makes the dominant part of a society take action against a particular group? Several historians offer explanations. Individuals such as Leo Kuper hold that material interests may be an important factor in the development of genocide. This may be true in cases where a particular group is occupying an area that is of significant interest for the economic well being of the region or country. This is a situation indigenous groups have faced and are still facing; for example, the repression of the Native Americans or the Australian aborigines was mostly economically motivated. Expelling indigenous populations or even transferring them to other areas may take the form of or may result in genocide.

However, economic interests may have little or no significance in the genocide against targeted groups that are singled out for purely ideological reasons. Economic factors were irrelevant, for example, in the German genocide against Gypsies, which was motivated by pure malevolence and historical prejudices. In fact, prejudices can exist and may even become quite virulent—even in societies where Jews and Gypsies do not play any significant role in the society or where they do not exist at all. Perhaps it is most appropriate to say that aggressive attitudes toward particular ethnic or religious groups are likely to materialize in times of a society's transition, when it faces an identity crisis, or when it is in the midst of economic crisis.

Factors Likely to Prevent Genocide

Having touched upon situations that are more likely to bring about aggression against a particular group in a

given society, it is worthwhile also to touch upon situations that are more immune to such development.

History has shown that the attitude of singling out a particular spectrum of the society develops less in societies that are pluralistic and used to be so. Equally democratic societies are usually less vulnerable to genocide. Given the wave of xenophobic and anti-Semitic attitudes western European countries are facing, it would be credulous to believe that democratic societies are absolutely immune from anti-Semitic, xenophobic, or related attitudes. It is essential that states—apart from their form of organization—are socially and economically stable. All occurrences of genocide in modern times have taken place at times when states underwent significant transitions and thus lost their previous identity, or perceived it as endangered. For example, the progressive disintegration of the Ottoman Empire was one of the causes of the aggression against the Armenian population. Likewise, the destabilization of Germany and Austria after World War I facilitated and fuelled the growth of anti-Semitic feelings.

Genocide only takes place when it is organized by a state, endorsed by state authorities, or approved of by the majority of the dominant members in a society. Therefore, preventive actions either have to strive for the immunization of the society against any attempts to make any group a target for discrimination or suppression, or to provide interventions from the outside if such developments are about to unfold in a given society.

Preventive Measures under the Genocide Convention

The Convention on the Prevention and Punishment of the Crime of Genocide, also referred to as the United Nations' Genocide Convention (1948), refers both to prevention and to the punishment of the crime of genocide, however, the Convention focuses on the second aspect rather than on the first. The concept of prevention is repeated in Article 1 of the Genocide Convention, however, no particular consequences follow. Nevertheless, the punishment of the crime of genocide or even the threat to punish it is meant to have a preventive effect. In that respect the Genocide Convention is not different from national criminal law. Apart from that, some of the acts referred to in Article 3 of the Genocide Convention have a preventive dimension. The prosecution of conspiracy, or of attempts of public incitement to commit genocide, is an attempt to fight future occurrences of genocide. Another preventive element can be found in Article 8. According to that provision, any contracting party may call upon the competent members of the United Nations to take such action as considered appropriate for the prevention and the repression of acts of genocide.

This rudimentary mechanism is all that remained from a more substantial provision in the draft of the Genocide Convention prepared by the secretariat. According to the scholar Nehemiah Robinson, the secretariat draft contained an elaborated prevention mechanism. Article 12 of that text, which was titled "Action by the United Nations to Prevent or to Stop Genocide," stated that, irrespective of the deterring function of penalizing genocide, contracting parties may have the right to call upon the competent organs of the United Nations to take measures for the suppression and prevention of such crimes. The secretariat obligated states to do everything in their competence and support any actions of the United Nations to prevent or to stop genocide. In particular, the United States had some doubts about these provisions whereas the Soviet Union pushed for an even stronger formulation that would have obliged all states to report genocide to the Security Council. The consequence would have been that measures could have been taken in accordance with Chapter 7 of the United Nations (UN) Charter. In 1973 the provision of Article 8 of the Genocide Convention was included in the Convention against Apartheid.

Scholarly opinions differ as to the relevance of Article 8 of the Genocide Convention. Several writers dismiss its relevance. Others, such as Hans-Heinrich Jescheck, have indicated that Article 8 provides the Security Council with a basis to take action, which, in view of Article 2 of the UN Charter, was necessary to include. This argument was based upon the assumption that the Security Council could only act in cases or situations falling under Article 39 of the UN Charter and that genocide or crimes against humanity could not be qualified as such. However, because the Security Council has developed the practice that significant and widespread human rights violations may be qualified as a threat to international security, Article 8 of the Genocide Convention has lost some of its relevance.

Despite these elements that refer to prevention, the Genocide Convention has shied away from providing a genuine mechanism for the prevention of genocide. The reasons for that are open to speculation. The prevailing reason might be the fear that any attempt to set up the respective mechanism would mean an infringement into the internal affairs of a state and an erosion of Article 2, paragraph 7 of the UN Charter as it was understood in 1948. Only the increasing relevance of international human rights standards—which was initiated with the Universal Declaration on Human Rights and the Genocide Convention—has changed interna-

tional law in this respect. Meanwhile it is untenable to argue that serious violations of internationally protected human rights are an internal affair of any given state. The international community of states may intervene or may be under an obligation to take action to redress the situation.

Preventive Measures under Different Human Rights Agreements

The Human Rights Committee, the Committee on Economic Social and Cultural Rights, the Committee on the Rights of the Child, and the Committee on the Elimination of Racial Discrimination have adopted procedures on preventive action. These include early warning and urgent procedures as a guide for the committees' future work concerning possible measures to prevent in a more effective way any violation of the respective conventions. This includes actions taken to prevent genocide, and even a situation that may lead to genocide. This approach was taken upon the recommendation of the UN General Assembly in the context of the Agenda for Peace. As far as conceptuality and the implementation of such procedure are concerned, the Committee on the Elimination of Racial Discrimination has developed the most systematic and far-reaching practice. Like the other human rights treaty bodies, the Committee was particularly induced to establish such a procedure by the events in the former Yugoslavia and in the Grand Lakes Region of Central Africa. The members of the Committee felt that the regular monitoring of the human rights situation in these regions had proven to be inadequate to prevent the occurrence or reoccurrence of genocide.

Preventive actions of the Committee on the Elimination of Racial Discrimination include early warning measures to address existing structural problems that might escalate into conflicts. Such a situation calling for early warning is warranted when the national procedures for the implementation of human rights are inadequate or there exists the pattern of escalating racial hatred and violence, racist propaganda, or appeals to racial intolerance by persons, groups, or organizations, notably by elected or other officials. The criterion for initiating an urgent procedure, according to the decision of the Committee, is the presence of a pattern of massive or persistent racial discrimination.

The reaction in its preventive functions and in response to problems requiring immediate attention are similar under all the early warning procedures. The Committee on the Elimination of Racial Discrimination will first exhaust its advisory function vis-à-vis the respective state party. The Committee may address its concern, along with recommendations for action, to all or any of the following: the state party concerned, the special rapporteur established under a Commission of Human Right Resolution, the Secretary-General of the UN, and all other human rights bodies. The information addressed to the secretary-general may, in the case of urgent procedures, include a recommendation to bring the matter to the attention of the Security Council. In this case the Committee may appoint a special rapporteur.

An important mechanism of a nonprocedural character meant to prevent racial discrimination and genocide is the obligation of states to prohibit hate speech and to ban organizations advocating racial intolerance. The Genocide Convention lacks a provision to address this, although other human rights instruments have addressed issues of hate speech.

Article 7 or the Universal Declaration of Human Rights, adopted the day after the Genocide Convention, contains a rudimentary reference to limitations to the freedom of speech by protecting against the incitement of discrimination. Article 29 of the Universal Declaration further opens the possibility for states to limit the enjoyment of fundamental rights and freedoms, including the freedom of expression, for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just requirements of morality, public order, and the general welfare in a democratic society. This covers limitations on the freedom of speech with the view to eliminate hate speech and hate propaganda as well as a denial of the Holocaust.

A more focused provision obligating states to limit freedom of speech is contained in the Convention on the Elimination of All Forms of Racial Discrimination. The Committee considered this provision to be of prime importance for the implementation of the Convention against racial discrimination. According to the provision, it is mandatory that states not only enact appropriate legislation—which, in fact, means enactment of criminal law—but also ensure that such criminal law is effectively implemented. The said provision equally obliges state parties to the Convention against Racial Discrimination to prohibit organizations with a racist program and make the participation therein a criminal offense. The Committee has frequently emphasized the importance of this provision, although several states have stated that their constitution would not allow them to prohibit and dissolve such organizations. Those state parties that for reasons of their national legal order cannot implement this obligation are called upon to be of particular vigilance. This provision raises particular legal problems in respect to political parties promoting racist ideologies because the dissolution of

political parties may be the means to preserve the domination of a ruling regime. Under the conditions of a democratic society, it may be argued that it is preferable to fight racist attitudes and ideologies within the framework and the means of a democratic discourse rather than through repressive means. Past experience, however, proves that in periods of transition and of economic or political instability this may not be effective enough to protect the society from racial tensions or racially motivated violence.

The International Covenant on Civil and Political Rights also contains provisions providing for the limitation of fundamental rights, including the freedom of expression and of association, which may be used to prevent the incitement of racial hatred or violence. The Covenant recognizes that the human right of freedom of expression is subject to special duties and responsibilities. It imposes an obligation upon states to prohibit any adversarial speech of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence. Further, the Covenant provides for restrictions to the freedom of expression by law necessary to respect the rights and reputations of others or for the protection of national security or of public order. This would cover hate speech and hate propaganda as referred to in Article 20 of the Covenant. Although the European Convention on Human Rights does not include an obligation to prevent hate propaganda, it is held that hate propaganda is not protected by Article 10 of the Convention, which includes freedom of expression. In the *Jersild v. Denmark* case in 1994, the European Court of Human Rights agreed that the freedom of expression provision of the European Convention on Human Rights should be interpreted, "to the extent possible, so as to be reconcilable with its obligations" under the International Convention for the Elimination of Racial Discrimination. The freedom of speech provision in the American Convention on Human Rights is broader than in the other international instruments. However, despite its large vision of freedom of expression, the provision also contemplates the case of racist propaganda. Article 13, paragraph 5, of the Convention is more or less identical with Article 20 of the International Covenant on Civil and Political Rights.

Whereas Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination obliges states to take action against "incitement to, or acts of such [racial] discrimination" the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Declaration on Race and Racial Prejudice addresses the root problem of racial prejudices. It reaffirms that all human beings belong to a single species and are descended from a common stock; they are born equal in dignity and all form an integral part of humanity. The Declaration further emphasizes that all individuals and groups have the right to be different, to consider themselves as different, and to be regarded as such. However, the diversity of lifestyles and the right to be different may not, in any circumstances, serve as a pretext for racial prejudice. Apart from stating these principles and declaring theories on racial superiority or inferiority as being without scientific foundation, the Declaration is moot when it comes to describing actions to be taken by states.

The aforementioned measures discussed are of a "repressive" nature, in as much as they provide for the criminal prosecution of genocide or for the prosecution of preparatory acts as provided for in Article 3 of the Genocide Convention or for the repression of acts that may prepare the political or ideological ground for inter-ethnic strife or intolerance. Less attention has been paid to measures meant to positively influence society, such as education and information.

Positive measures are touched upon in Article 7 of the Convention on the Elimination of all Forms of Racial Discrimination. The Convention does not outline specifically the appropriate actions for states to take. Most social scientists agree the teaching of human rights, in general, and the principles enshrined in the UNESCO Declaration on Race and Racial Prejudice, in particular, should be included into the curriculum of schools at all levels. Many call for curriculum that includes information on the Holocaust and other occurrences of genocide or similar events after World War II. However, it is up to individual states to develop mechanisms that are most suitable for the education of tolerance. The UNESCO Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War (1978) refers to the role mass media may play in stigmatizing genocide.

Conclusion

Democratic societies that perceive themselves as pluralistic and those societies that believe that ethnic or religious pluralism is an enrichment rather than a weakness are less likely to fall under the spell of racist theories. The Genocide Convention is meant not only to prosecute those having committed the crime of genocide but also to prevent the development of genocide. Later international human rights instruments place a heavy emphasis on preventing genocide by providing states with the means to suppress attitudes or

ideologies of racial superiority. Historians agree that more emphasis should be placed on educational efforts; for example, helping children strive for a better understanding of the world's different cultures, lifestyles, and religions. Other historians have suggested an effective system for the protection of minorities.

SEE ALSO Denial; Early Warning

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Rüdiger Wolfrum

Propaganda

Discrimination and its promotion through hate propaganda disturb peace and can pave the way to massive human rights violations such as genocide. Hate propaganda is the public promotion or incitement of hatred against people and identifiable groups and that is likely to result in harm to those targeted. It is directed at persons or groups based on factors such as color, race, religion, nationality, or ethnic origin.

Hate propaganda causes harm to individuals by degrading them, attacking their dignity and sense of self-worth. It also hurts society as a whole, because it destroys social harmony and encourages discrimination and violence, thus creating a hostile environment for the targeted members of that same society. Hate propaganda is defined as a crime in most domestic law systems and in international law.

Propaganda serves to dehumanize the members of the targeted group. It degrades them and stigmatizes them, creating the necessary illusion that the identifiable group is the enemy. Propaganda has more than once contributed to the development of a climate that led to the implementation or toleration of exclusionary behavior, and hate speech has preceded massive physical persecutions. Propaganda is used to trivialize the importance of crimes committed against its targets, it confers a sense of social acceptability and even desirability upon those crimes. This was the case with both the Holocaust and the Rwandan Genocide. Propaganda is the starting point of the progression that leads to genocide. Beginning with limited propaganda directed at an identifiable group, the crime moves to more systematic propaganda, then to state-sponsored hate speech, and finally to the direct incitement to hate, ultimately giving rise to publicly-supported, mass crimes.

The Role of Hate Propaganda in Causing Genocide

Propaganda has a long-term effect. Its repercussions can take years to appear, making it more difficult to regulate than direct acts and overt public incitements to genocide. Propagandist rhetoric dulls the conscience, thus furthering the development of a social psyche willing to tolerate inhumanities. It works to modify people's normal and expected reaction, leading them to accept, rather than condemn, discriminatory behavior. The propagandist uses speech to persuade others to his view, or at least to create a climate in which the oppression he champions is acceptable.

Propaganda legitimizes aggression by conveying the message that something has to be done regarding a targeted group. Genocide requires such a collective agreement among perpetrators and also bystanders. Di-

These two books, from the collection of Hermann Göring, are examples of the anti-Semitic literature that flooded Germany in the 1920s and 1930s. Though his influence had greatly eroded by World War II's end, Göring was one of the earliest participants in the Nazi campaign of propaganda against European Jews. [**HULTON-DEUTSCH COLLECTION/CORBIS**]

rect incitement to genocide is usually not enough, it generally needs to be based on a pre-established ideology, shared by an indoctrinated population. In a culture already inundated with anti-Semitic or anti-Tutsi propaganda, and in which inter-group tensions are high, innuendos about the killing of members of those groups may be enough to instigate violence, eliminating the need for explicit calls to violence. In a context of economic difficulties, social and political turmoil, or during a war, propaganda becomes even more efficient. In such situations people are often disconnected from certain aspects of society, and thus cannot assess the accuracy of what they are being told, allowing propagandists to create rumors and invent "facts" that suit their goals.

The Nazis raised anti-Semitic propaganda to an unprecedented level by turning it into a state-sponsored dogma. Nonetheless, the Nazis based their implementation of propaganda on pre-existing linguistic casuistry. They took well-known, popular anti-Jewish sentiment and systemized it, and in so doing they cleared the way for the devestation of the Holocaust. The Holocaust, in other words, required lengthy propaganda preparation to induce the different actors involved—the perpetrators to commit such actions and the population to be numb vis-à-vis such a catastrophe.

Propaganda was the springboard from which the Nazis launched the Holocaust. Anti-Semitism was disseminated by many, including government representatives such as Josef Goebbels and full-time anti-Semitic propagandists and ideologues such as Julius Streicher, the publisher of the notorious anti-Semitic newspaper *Der Stürmer*. Streicher may not have been a murderer himself, but he created the climate for murder. After

the war, Streicher was at Nuremberg for his propagandist's role in bringing about the Holocaust. Without the climate Streicher established, the court held, the Holocaust would probably never have taken place, because too many would have rejected the orders to execute Jews. Thus, the court suggested that Streicher may have been even more responsible for the crimes than the other defendants who appeared with him in the dock. The final judgment rendered by the International Military Tribunal does not explicitly note a direct causal link between Streicher's publications and any specific murders, but characterizes his work as a poison "injected into the minds of thousands of Germans which caused them to follow the National Socialists' policy of Jewish persecution and extermination." Streicher was found guilty of crimes against humanity because of his propaganda.

Form, Means, Strategy and Diffusion of Propaganda

Hate propaganda takes many different forms. It can be disseminated in public meetings, through radio, television, movies, books, pamphlets, graffiti, government-sponsored messages, telephone messages, gestures, signs or other visible representations. More recently, the Internet has become a popular medium for the dissemination of hate propaganda.

Propagandists prefer simple and clear arguments and descriptions over complex ones. It targets the emotions of its audience, rather than the intellect, and it seeks to build up a disdain for rational dissenting arguments or explanations. Propagandists are often charismatic orators. They tend to use straightforward, colorful language. They employ images, symbols, and evocative examples. Effective racist propaganda is usually couched in simple terms, and touches citizens emotionally through examples and stories to which they can relate. Streicher, for example, used caricature and cartoons to represent Jews, and argued that the hard times that German's were suffering were all caused by the Jews.

Propaganda themes are repeated frequently, preferably using all forms of the media. Exclusionary speeches, constantly repeated, break down the normal resistance of their audiences, and people soon begin to wonder if what is being said about the targeted group might actually be true. Such speeches are not intended to convert their listeners with genuine arguments; rather, they are aimed at creating a kind of emotional and intellectual numbness. As the message spreads through the various media, the messages become so omipresent that their truth begins to appear self-evident.

Key words are repeated to remain in the listeners' minds. The technique is to hit the same themes over and over again, until the audience internalizes the major points. In the Rwanda genocide, a propagandist named Mugesera constantly repeated the warning that Hutus beware that the *Inyenzi* (cockroaches, an epithet used against the Tutsis of Rwanda) and their accomplices. Listeners were gradually conditioned to associate the Tutsis with the Front Patriotique Rwandais (FPR), a rebel faction that was accused of wanting and trying to overthrow the Hutu lead government. By constantly linking the term *Inkotanyi* (infiltrators, a term for the FPR) with *Inyenzi*, he effectively accused all Tutsis of being infiltrators as well. The intent was to blur the distinction between the rebels and Tutsi civilians in order to justify the widespread killing of Tutsis as a preventive measure.

Der Stürmer worked in much the same way. The publication helped the Nazis persuade as many people as possible that first, there was a problem in regard to the Jewish question, and second, that it was absolutely critical to solve it. The concept, reproduced in many different ways, was that the Jews were responsible for all the evils of the world in general, and for Germany's misfortune in particular, and that the world would therefore be better off if all the Jews were wiped out.

Propagandists use various techniques and media to make their statements more appealing. Sex and horror stories in which Jews were portrayed as evildoers were frequently added to *Der Stürmer,* allowing Streicher to sell more copies and reach an even broader audience. The cinema played a central role in the Nazi's propaganda strategy, as well. It reached a large audience and could add the power of visual imagery to the propaganda message. The Nazis spread propaganda by shooting fictional films and false documentaries such as *Der ewige Jude,* depicting Jews in very unfavorable ways. Goebbels himself ordered the creation of such films. Graphic representations, cartoons, and manipulated photographs of the targeted group are also common in the propagandists' arsenal. *Der Stürmer,* in Nazi Germany, and *Kangura*, the anti-Tutsi newspaper in Rwanda, both employed these media. The "Fips" cartoons, which portrayed Jews in the most exaggerated stereotypes, were a regular feature in *Der Stürmer.* In Rwanda, *Kangura* regularly featured cartoons of Prime Ministers Uwilingiyimana, Twagiramungu, and General Dallaire (who lead the UN peacekeeping force), depicting them in unfavorable situations and employing popular stereotypes.

The use of stereotypes furthers the audience's acceptance of propaganda because the images are so familiar. Stereotypes provide the audience with a common denominator. The Nazis based the identification of the Jews on exaggerated physical attributes. Propa-

gandists added to the stereotypes by describing Jews as cockroaches, vermin, rats, and spiders. In *Der Stürmer*, Jews were described as bent-nosed, fat, and having unpleasant features. It then attempted to establish a link between stereotypical impressions of Jews with current or historical events. For instance, *Der Strürmer* accused Jews of conducting ritual murders during which Christians were killed.

In Rwanda, the Tutsis were stereotyped as inherent liars, thieves, and killers. *Kangura* also depicted the Tutsis as biologically distinct from the Hutus and as being consumed by malice and wickedness. Radio Télévision Libra Mille-Collines (RTLMC), the local media outlet, joined in the propaganda effort, accusing the Tutsis of being plotters and parasites, and using the Tutsis' historical domination of Rwandan politics and society as a propaganda tool: Tutsis were still perceived as "the ones who have all the money," a reference to the fact that a Tutsi royalty once ruled Hutus. Tutsi women were stereotyped as tall and slim with a "beautiful nose," thus very attractive to male Hutus. Tutsi women, because of these alleged attributes, were accused of being enemy agents, used by the *Inyenzi* to deprave Hutu men.

Propaganda seeks to reverse normal allocation of the burden of proof, forcing their targets onto the defense. It also seeks to generate the sense of constant threat, so that its audience is forced to be vigilant vis-à-vis the targeted group. By spreading fear, propagandists gather ever larger groups of supporters. *Kangura* persistently conveyed the message that Tutsis intended to conquer the country in order to restore the Tutsi feudal monarchy, subduing all Hutus. *Kangura* repeated that the enemy was among them, waiting to strike, and that the day would come when Hutus would have to defend themselves. RTLMC also played on the public's fear of an armed Tutsi insurrection. In a speech, Mugesera made repeated references to this fear, not to ease it but to inflame it. Mugesera pleaded, "the one whose neck you don't cut is the one who will cut your neck."

The Role of Propaganda in the Holocaust and the Rwandan Genocide

The Holocaust and the Rwandan genocide are two of the clearest examples of propagandist exploitation of racist beliefs among the broader popularion. In both cases, the propagandist's work paved the way to genocide.

Propaganda in Germany

The Nazis exploited racist ideology and economic hardship to influence a nation to persecute a minority. It offered a scapegoat to a population that had been defeated in World War I and was suffering under the burden of a devastated post-war economy. Germany's disastrous situation was portrayed as mono-causal: the Jews were to blame for everything. Anti-Semite propaganda had become common even before Hitler came to power.

The source of much of this early propaganda, the *Protocols of the Elders of Zion*—a famous anti-Semitic document—was widely circulated. It is a work of fiction that allegedly contains the minutes of a meeting held by a shadowy group of Jewish Elders, and sets forth their fictional plan to take over the world. The document employed all the commonly used religious and physical stereotypes associated with the Jews. Judeophobia, inflamed by documents such as *The Protocols*, proved an effective tool for bringing together a broad cross sampling of German society, drawn from religious, intellectual, and political walks of life. That the document was exposed as a fraud in the early 1920s did not stop anti-Semites from referring to it. In fact, it is still used by Holocaust deniers to support their claim that the Holocaust is just another myth created by the world's Jewry to achieve their ultimate goal of global domination.

When the Nazis came to power, propaganda became a government policy, used to create a climate that would support the genocidal plans of Hitler and his followers. Goebbels, serving as the Minister of Information and Propaganda, controlled all of Germany's media outlets and later assumed the same control over media in the occupied territories. Goebbels was the father of propagandist strategies such as the "Big Lie Theory," in which he argued that by repeating lies about the Jews and progressively magnifying these lies, he could increase public acceptance of the lies and mobilize public support for Hitler's policies.

Public boycott campaigns against Jewish businesses were made possible through propaganda. Legislation was passed to isolate and stigmatize all Jews. This was followed by state-sponsored, anti-Semitic propaganda to galvanize the intolerance of the non-Jewish population. This approach led to *Kristallnacht*, an anti-Jewish riot organized by Goebbels. The strategy was extremely successful. Beginning on November 9, 1938, and continuing well into the next day, German citizens who had been exposed to hate propaganda directed at Jews exploded into the streets to burn synagogues, destroy Jewish properties, and kill Jews.

Propaganda in Rwanda

The newspaper, *Kangura,* and the audio-visual media controlled by RTLMC were instrumental in systematically spreading propaganda against the Tutsis. *Kangura*

published cartoons and editorials that inflamed Hutu prejudices against Tutsis, and ultimately published the so-called Hutus' Ten Commandments, which comprised a blanket condemnation of all Tutsis on the sole basis of their ethnicity.

Rwanda's high illiteracy rate meant, however, that *Kangura* could reach only a limited audience. For non-readers, the radio played a significant role both before and during the genocide. RTLMC was used to broadcast orders and detailed information on the positions and names of Tutsis to be killed. United States–based NGOs pleaded to have the airwaves jammed during the genocide, but the U.S. government opposed the idea.

After the genocide was ended, the International Criminal Tribunal for Rwanda (ICTR) brought charges against the management of both the RTLMC and *Kangura.* The court held that both media outlets indulged in ethnic stereotyping in a manner that promoted hatred for the Tutsis, and were thus implicated in the genocide.

Leon Mugesera's Speech

On November 22, 1992, Leon Mugesera made a speech that was repeated on Rwandan radio and in which he frequently uttered incitements to hatred for the Tutsis. In January 1993, an international human rights fact-finding mission to Rwanda found the country in a state of turmoil and agitation provoked in part by Mugesera's speech. Mugesera eventually fled Rwanda to take refuge in Canada, but the Canadian authorities tried to deport him for having committed a criminal act before obtaining his permanent residence. The criminal act to which they referred was the speech he had given, back in 1992.

In his speech, Mugesera claimed that FPR rebels were in secret collusion with all of Rwanda's Tutsis. Mugesera's speech was made two years after the Hutus' Ten Commandments had appeared in *Kangura,* at a time when other propaganda outlets were increasingly active in the attempt to isolate all Tutsis. Mugesera's speech was intended to build upon that propaganda effort, to encourage Hutus to seek out and kill Tutsis, civilian or otherwise, because they were all, in his words, infiltrators and traitors to Rwanda.

The Canadian courts failed to recognize the true meaning of Mugesera's speech, and declined to deport him. The court failed to recognize Mugesera's genocidal intent because he couched his incitements to violence in indirect and figurative language, but the incitement he intended was nonetheless clear to Rwanda's Hutus as a call to mobilize against all Tutsis. The court only considered the literal content of the speech, and lacked the understanding of the social context in which the speech was made. It did not recognize that there was a direct link between the speech and the genocide that ensued eighteen months later. It could not understand that thousands of killers were following orders passed by various means after a propaganda campaign initiated years before. Mugesera was not deported, but the prosecution has filed an appeal to challenge the court's decision.

Legal Issues Facing the Regulation of Hate Propaganda

Measures to eradicate harmful propaganda are controversial. Hate propaganda undermines the humanity of those targeted, but democratic societies are reluctant to pass laws limiting the freedom of expression. Freedom of expression is probably the most universally recognized human right. Most international human rights instruments, as well as numerous national constitutions, contain provisions protecting it. The freedom to express one's opinion constitutes one of the basic conditions for society's progress and for the development of every human being. Unfortunately, such freedom is not always used for the benefit of that society. History, in many circumstances, has demonstrated that harmful propaganda has led to tragic events such as crimes against humanity and genocide. In most cases, propaganda is in fact the prerequisite for such crimes. That is why freedom of speech comes with duties and responsibilities.

Most international human rights instruments and international jurisprudence recognize that language can cause severe social harm, and that the suppression of hate speech is warranted when it is needed to protect other rights, such as equality. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states that freedom of speech may be subject to restrictions when they are necessary to guarantee respect for the rights of others. Similar to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), the ICCPR contains a provision that nothing in the instrument should be interpreted as granting any person the right to engage in an activity aimed at the destruction of any of the other rights recognised by the ICCPR. International bodies such as the European Court of Human Rights have developed a considerable jurisprudence on the limitation of freedom of expression. When faced with restrictions of that freedom, the court views that it is not faced with two conflicting rights, but with a freedom of expression that is subject to a number of exceptions, which, in turn, need to be interpreted narrowly.

There are two opposing approaches concerning the regulation of hate speech and propaganda. The causa-

tionist approach, supported mainly by the United States, requires that a direct causal link be proved to exist between the expression and the harm such expression has allegedly caused. Without that link, there can be no limitation imposed on the freedom of speech. The correlationist approach, supported by a broad international consensus, requires the regulation of hate speech if there is a rational correlation between the expression and the harm that ensues afterward.

Hate Speech Regulation in International Law

The regulation of hate speech revolves around the interplay between and the reconciliation of the freedom of expression and the right of equality. There is an international consensus that hate speech threatens democracy, justice, and equality, which is why so many countries attempt to prohibit it. The Convention on the Prevention and Punishment of the Crime of Genocide declares direct and public incitement to commit genocide is a punishable act, but goes no further, and it omits hate propaganda in its list of crimes. Two subsequent international instruments have gone a step further than simply acknowledging the limits of the freedom of speech by requiring states to penalize hate propaganda.

Article 20 of the International Covenant on Civil and Political Rights states that any propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law. Article 4 of the International Convention on the Elimination of all Forms of Discrimination (CERD) is even more precise. States that are party to the convention must adopt positive measures to eradicate incitement to discrimination, and must declare a punishable offense all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin. The United States signed the document in 1966, but ratified it only in 1994. Ratification was made with reservations to protect the freedom of speech doctrine developed in the United States, thus making the ratification of that point almost pointless.

International jurisprudence recognizes the possibility, even the obligation, of limiting free speech when faced with expressions of negative value, like hate speech. The ICCPR Committee has affirmed the duty of states to restrict the freedom of expression in order to assure the protection of others rights. In a case involving Holocaust denial, which is viewed by France as a subtle form of anti-Semitic propaganda, the committee expressed the view that the prosecution of the defendant, Faurisson, did not breach his fundamental right of freedom of expression.

The European Convention does not contain any specific provision dealing with hate propaganda. In numerous cases, the European Commission of Human Rights has nonetheless excluded hate propaganda from the protection of Article 10, which otherwise safeguards the freedom of speech. For the commission, hate propaganda is contrary to the text and spirit of the European Convention and contributes to the destruction of the rights and freedoms set forth therein.

In two cases, the European Court of Human Rights has dealt explicitly with hate propaganda and has made it clear that hate speech regulation was compatible with the European Convention. Recognizing the utmost importance of the freedom of speech, the court nonetheless agreed that the convention should be interpreted, whenever possible, in a way reconcilable with the CERD, which explicitly prohibits hate speech. Denial of the Holocaust and the justification of pro-Nazi policies were considered to be a form of hate and racist propaganda that was not protected by the free-expression provisions of Article 10 of the convention.

Hate Speech Regulation in Canada

Canada has a comprehensive legal mechanism with regard to freedom of speech and hate propaganda. Article 2 of the Canadian Charter of Rights and Freedoms protects the freedom of speech. Similar to the limitation clauses found in international instruments, Article 1 of the charter recognizes that fundamental rights such as the freedom of expression are nonetheless subject to limits which need to be reasonable, prescribed by law, and justified in a free and democratic society.

Willful public incitement to hatred for any identifiable groups is a criminal offense in Canada. The Canadian Supreme Court upheld the constitutionality of the findings in the case of *Keegstra,* which involved a teacher who had taught that Jews were "child killers," and "treacherous," and that the Holocaust was a myth. The court found that the defendant had abused his right to freedom of speech and recognized the role of the government in penalizing hate propaganda. The court further held that hate propaganda harmed both the targeted persons and groups—by humiliating and degrading them—and society as a whole. It emphasized the long-term harmful influence of propaganda, recognizing that messages of racial discrimination and hatred can remain in one's mind for a long period of time. In other cases, the Canadian Supreme Court has stated that hate propaganda threatens society by eroding the tolerance and open-mindedness that must flourish in a multicultural society committed to the idea of equality.

Hate Speech Regulation in the United States. In the United States, only the narrowest and absolutely necessary restrictions of the freedom of expression are justified. The First Amendment states, "Congress shall make no law . . . abridging the freedom of speech, or of the press." It does not provide grounds by which the government may justify limitations of that freedom.

In most instances, jurisprudence in the United States does not recognize the link between propaganda and the harm that may ensue therefrom. It imposes the demonstration of a clear and present danger before a limitation of free speech may be considered constitutional. Under that test, restrictions can be justified only when violence is clearly likely to arise from the expression, that the danger will occur very soon after the expression, and that no other reasonable means of preventing the violence can be used. It is not sufficient to demonstrate that there is a probability that the expression might cause such violence. The Supreme Court does not recognize the long-term effect of propaganda. The First Amendment may allow legislation to prohibit hate speech that advocates the use of force, but only in very narrowly defined circumstances.

Suppression of expression based on content is generally prohibited in U.S. law, and is considered to be unconstitutional. The Supreme Court has extended this prohibition of content-based regulation, rendering the regulation of speech targeting identifiable groups even more difficult to justify. In a case involving the burning of a cross in an African-American family's yard, the law became involved because the act was listed as a misdemeanor under a local St. Paul ordinance. However, the ordinance itself was found to discriminate against expression based on the content of that expression, and so it was found to contravene the First Amendment. The Supreme Court held the view that only a prohibition of all fighting words would be justifiable under the Constitution, whereas the selective prohibition of racist hate speech and anti-Semitic speeches or displays was unconstitutional. This ruling, along with the imminent threat test and the total lack of recognition of the long-term effect of propaganda, makes the prohibition of hate speech in the United States almost impossible.

The United States believes in an idealized free market of ideas, in which all acts of expression should be allowed to compete. Under this approach, it follows that citizens should be exposed to all sorts of expression. The approach basically considers an expression as a commodity, for it puts hate speech and any other expression on an equal basis, and it considers the opposition between hate propaganda and counter-argument as a legitimate debate. This relies on the premise that truth and reason will always prevail over hate propaganda, and that intolerance can be countered by more free expression. This idealism, however, is questionable in the light of history. Even in two of the most recent cases of hate propaganda, it was not reason but military victory that put an end to the hate speech that characterized Nazi propaganda as well as the Rwandan incitements to genocide.

Racist behavior takes time to gain general acceptance. Even when it does not pose an immediate threat to society, propaganda is the first step leading toward extermination policies. It establishes the basis upon which genocide can later be justified, however inappropriately. Propaganda prepares society for the crimes committed in its name by making the messages it is conveying acceptable to those who are systematically exposed to them. The Holocaust and the Rwandan Genocide are but two examples in which propaganda was allowed, tolerated, and supported, ultimately paving the way to tragic events. This contradicts the philosophy underlying the U.S. policy toward freedom of expression. Unfortunately, there is little historical support for the idea that hate propaganda will simply go away by itself or fall to well-reasoned counterarguments. The more society tolerates hate speech, the more frequent it is likely to become accepted, thus increasing the probability of success of the message that is being conveyed.

SEE ALSO Denial; Der Stürmer; Goebbels, Joseph; Incitement; Radio Television Libre Mille-Collines

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Martin Imbleau

Prosecution

Crimes against the basic principles of humanity are nothing new to the history of mankind. In nearly all

historical cases, investigations never took place, and criminal sentences were never passed on the responsible persons. There was only one conviction in a remarkable case, that of Peter von Hagenbach, in 1474. Charles the Bold, Duke of Burgundy, known to his enemies as Charles the Terrible, had placed Landvogt Peter von Hagenbach at the helm of the government of the fortified city of Breisach, which was located at the French-German Rhine border. The governor, overzealous in following his master's instructions, introduced a regime of arbitrariness, brutality and terror in order to reduce the population of Breisach to total submission. When a large coalition put an end to the ambitious goals of the powerful Duke, the siege of Breisach and a revolt by both his German mercenaries and the local citizens led to Hagenbach's defeat. Hagenbach was then brought before a tribunal initiated by the Archduke of Austria and charged with murder, rape, perjury, and other crimes. The tribunal found him guilty and deprived him of his rank and related privileges. Hagenbach was then executed. This trial is often referred to as the first international criminal law or war crimes prosecution. It kept this distinction until the twentieth century, when the first serious efforts were begun to prosecute and punish persons guilty of international crimes.

World War I Prosecutions

When the Allied and Associated Powers convened the 1919 Preliminary Peace Conference, the first international investigative commission was established. At the conference, Germany's surrender was negotiated and the Versailles Peace Treaty was dictated. This Treaty established a new policy of prosecuting war criminals of the vanquished aggressor state after the end of the hostilities. The legal basis of that policy was laid down in the Paris Peace Treaties concluded by the victorious Allies (Britain, France, Russia, Italy, the United States, and Japan) with the defeated Central Powers (Germany, Austria, Bulgaria, Hungary, and Turkey) in 1919. Four groups of offenses were created: crimes against the sanctity of the treaties, crimes against international morality, war crimes (defined in a narrow sense), and violations of the laws of humanity. The first three offenses were integrated in Articles 227 and 228 of the Versailles Treaty. Crimes against the laws of humanity were omitted from the treaty because the United States of America argued that this offense could not be exactly defined and thus was too vague to serve as a basis for prosecutions. The United States also doubted that there was a universal standard for humanity.

The Versailles Treaty was the first international treaty to recognize individual responsibility for crimes committed against international law. It further recognized that such responsibility could not be limited to individuals of a certain rank or position. Thus, the Allies were able to accuse the former German emperor, William II of Hohenzollern, of having committed a supreme offense against international morality and the sanctity of treaties.

Germany, which had previously passed a national law to implement Articles 228 and 229, passed new legislation in order to prosecute German suspects before its own Supreme Court (the *Reichsgericht*), which convened at Leipzig. The German Prosecutor General had the authority to decide which cases would be brought to trial. In fact, only twelve Germans were prosecuted before the German Supreme Court for war crimes. These so-called Leipzig Trials were widely criticized as a failure because the German authorities appeared to lack the will to seriously prosecute their war criminals. Moreover, the government failed to hand over 900 persons whom the Allies wanted to prosecute. Emperor William II found refuge in the Netherlands and was never extradited. In addition to these obvious shortcomings, however, the Leipzig prosecutions lacked impartiality and objectivity because they only dealt with the crimes of the vanquished. Further, the impact of the prosecutions and of the Versailles Treaty in general on internal German policy was counterproductive because it prepared the ground for a revanchist interpretation of the German capitulation (the famous "*Dolchstoßlegende*") and the rise of the Nazi movement.

Turkey entered World War I on December 2, 1914. In April 1915 the organized homicide of 600 intellectuals, doctors, priests, and lawyers in Constantinople was the beginning of the Armenian genocide. The atrocities committed led to a joint declaration by France, Great Britain, and Russia on May 24, 1915, asserting that all members of the Ottoman Government and those of its agents found to be involved in those massacres would be held personally responsible for the crimes. The British High Commissioner suggested that the appropriate punishment for the Armenian massacre would be to split up the Turkish Empire and prosecute its high officials. Although the newly installed Turkish authorities arrested and detained a couple of the previous leaders, many were later released in response to public demonstrations and other internal pressure. Attempts by Turkish jurists to prosecute the crimes before the national courts were slightly more successful. Several ministers of the wartime cabinet and leaders of the Ittihad party were found guilty of "the organization and execution of crime of massacre."

The Treaty of Sèvres, signed on August 10, 1920, was in many aspects similar to the Treaty of Versailles. It differed, however, in that it specified a list of offenses,

which later were considered as crimes against humanity. However, the Treaty of Sèvres never took effect. It was replaced by the Treaty of Lausanne of July 24, 1923, which included a declaration of amnesty for all offenses committed by the Turkish government and its agents between August 1, 1914, and November 20, 1922.

World War II: Nuremberg and Tokyo Trials

The first series of trials following World War II took place in Nuremberg under the terms of a charter drafted in London between June and August 1945 by representatives of the United States, the United Kingdom, the USSR, and France. The Nuremberg Charter contained three categories of offenses: crimes against peace, war crimes, and crimes against humanity. Article 7 of the Charter excluded defenses based on official position (i.e., no head-of-state immunity), and Article 8 disallowed defenses claiming non-responsibility because the crimes were committed on orders from a superior.

The Tokyo Trials were based on the Charter for the Far East (the Tokyo Charter), which was proclaimed on January 19, 1946, by the Supreme Commander of the Allied Powers, General Douglas MacArthur. This charter, unlike the London Charter that instigated the Nuremberg Trials, was not part of a treaty or an agreement among the Allies. Representatives of the allied nations that had been involved in the struggle in Asia (the United States, Great Britain, France, the Soviet Union, Australia, Canada, China, the Netherlands, New Zealand, India, and the Philippines) formed the Far Eastern Commission (FEC), whose main tasks were to establish a policy of occupation for Japan and to coordinate the Allied policies in the Far East. Part of this policy was the prosecution of the major war criminals. Thus, the International Military Tribunal for the Far East (IMTFE) was created. It was composed of judges, prosecutors, and other staff from the allied nations. It was to prosecute crimes against peace, as defined in the London Charter; conventional war crimes understood as violations of the laws or customs of war; and crimes against humanity. The definition of crimes against humanity differed from that provided in the IMT charter in two ways: First, the IMTFE charter expanded the list of crimes to include imprisonment, torture, and rape. Second, it eliminated the requirement that crimes against humanity had to be committed before or during war to be actionable in court. As with the IMT charter, the IMTFE also excluded defenses based on official position or superior orders.

The prosecution selected twenty-eight defendants, among them former premiers (Hiranuma, Hirota, Koiso, and Tojo), foreign ministers (Matsuoka, Shigemitsu, and Togo), and one colonel (Hashimoto). Sixteen of the convicted persons were sentenced to life imprisonment, seven were sentenced to death, one was sentenced to seven years imprisonment, and another to twenty years in prison. All of those sentenced to hanging were convicted of one or both of the major counts of war crimes in the indictment, namely the ordering, authorizing, or permitting of atrocities, or disregard of duty to secure observance and prevent breaches of the law of war. Five defendants were convicted for a crime against humanity: Dohihara, Kimura, Muto, Itagaki and Tojo.

Post-Nuremberg World War II Trials

The Nuremberg and Tokyo trials were followed by a second series of prosecutions of Nazi leaders, pursuant to Control Council Law No. 10 (CCL10). This law formed the basis for Allied prosecutions in their respective zones of occupation. The most famous proceedings were the twelve that were held before the U.S. court in Nuremberg. One of these was the so-called Doctors Trial, in which twenty-three persons were accused of taking part in the Nazi euthanasia program (*U.S. v. Brandt et al.*). Also important were the proceedings against Generalfeldmarschall Milch (*U.S. v. Milch*) and the trial of the Ministry of Justice officials (*U.S. v. Altstoetter et al.*). The remaining nine proceedings conducted by the United States included one against high SS officials (*U.S. v. Pohl et al.*); the proceeding against Friedrich Flick and five of his employees (*U.S. v. Flick et al.*); the proceeding against twenty-three heads of the IG-Farben-Industrie-AG (*U.S. v. Krauch et al.*); the Balkan Generals Trial (*U.S. v. List et al.*); the "Resettlement or Genocidium Trial" (*U.S. v. Greifelt et al.*); the "Einsatzgruppen Trial" (*U.S. v. Ohlendorf et al.*) against twenty-four heads of the task-forces of the *Sicherheitspolizei* (security police) and the *Sicherheitsdienst* (security service); the proceeding against Alfred Krupp von Bohlen and twenty-four heads of the Krupp-company (*U.S. v. Krupp et al.*); the "Wilhelmstraβen-Trial" against twenty-one ministers, permanent secretaries, gauleiters, high-ranked SS leaders, and other leading persons (*U.S. v. von Weizäcker et al.*) and the trial against fourteen high-ranking officers of the German armed forces (*U.S. v. von Leeb et al.*).

Other important cases have been documented by the UN War Crimes Commission (UNWCC). It was established on October 20, 1943, and its task was to investigate war crimes, collect evidence, and identify the responsible parties, and to inform the allied governments about the cases where a sufficient basis for prosecutions existed. In total, the UNWCC has documented eighty-nine war crimes trials. The documentation was

published in fifteen volumes from 1947 to 1949, under the title *Law Reports of Trials of War Criminals*. However, there are only very few judgments dealing with crimes against humanity.

Apart from these rather well documented cases, there have been other national prosecutions in the immediate aftermath of World War II, either in the occupation zones or in the territory of the allied countries. There is no complete documentation of these cases. Sometimes this lack of documentation was intentional, to avoid subsequent investigations into the fairness of these proceedings. The proceedings instituted by the occupation powers ended a few years after the end of the war. Step by step, the responsibility for the prosecutions was passed along to German courts, despite the negative experience of the Leipzig trials. However, the legal basis of these proceedings soon changed. During the brief existence of the Supreme Court for the British Zone, which functioned from February 9, 1948, to September 30, 1950, the court applied the CCL10 in half of all its cases. Its successor, the renamed German Supreme Court, successfully refused to apply this disliked law by neglecting all unresolved cases until August 1951, when the CCL10 practically ceased to exist (it was formally abolished on May 30, 1956, with the formal ending of the German occupation). The newly autonomous German criminal justice system did not apply the Nuremberg law, but instead imposed the ordinary penal code. This situation was only remedied with the enactment of the German Code of International Criminal Law on June 26, 2002.

Prosecutions of Nazi war criminals still continued within and outside Germany for years after the end of the war. One case is famous as much for its reliance on the concept of universal jurisdiction as for the crimes of its defendant. This was the trial of Adolf Eichmann. Eichmann had been the head of Section IV B 4 of the *Reichssicherheitshauptamt,* an office that resulted from the merger of the security service of the Nazi party and of the security police of the Nazi state. Eichmann organized and coordinated the deportations of Jews to the concentration camps. In 1960 it was discovered that he was living in Argentina. The Israeli secret service, the Mossad, abducted him and brought him to Israel to stand trial for charges under the Nazis and Nazi Collaborators (Punishment) Law. On December 12, 1961, he was found responsible for the implementation of the so-called Final Solution of the Jewish question, an act that fulfilled the requirements of genocide and crimes against humanity. Eichmann was sentenced to death by the District Court of Jerusalem on December 15 of the same year. The special importance of the Eichmann trial lies in the fact that the state of Israel did not exist at the time that he committed the crimes for which he was found guilty. Thus, Israel's jurisdiction could not be based on the right of a conquering nation to administer punishment.

Another noteworthy trial of the years following World War II is that of Klaus Barbie, which was prosecuted in France. Barbie was head of the Gestapo in Lyon during Germany's occupation of France. The French authorities issued an arrest warrant at the end of the war. Barbie was soon arrested, but he subsequently escaped and then disappeared. He was tried in absentia for war crimes and sentenced to death by the Tribunal Permanent des Forces Armées de Lyons. Barbie was found to have taken refugee in Bolivia, and after a long and complicated procedure involving diplomatic pressure was extradited to France in 1983. Meanwhile, new proceedings relating to crimes against humanity had been instituted against him in Lyons in February 1982. He was sentenced to life imprisonment on July 4, 1987. Other cases dealing with the war crimes of Germany during World War II include that of Paul Touvier in France, who was sentenced to life imprisonment on April 20, 1994, by a Crown Court in Versailles; and that of Imre Finta, who was tried in Canada and finally acquitted by the Supreme Court on March 24, 1994.

Modern Trials on the Basis of International Criminal Law

The long and stable period of peace that followed World War II was broken in 1991 by massive violations of international humanitarian law and human rights in the territory of the former Yugoslavia. In reaction to this situation, the UN established the Commission of Experts Pursuant to Security Council Resolution 780. This commission was charged to report on the situation in the former Yugoslavia, and, on the basis of its first interim report, the UN Security Council decided to establish the ad hoc International Criminal Tribunal for the Former Yugoslavia (ICTY) on May 25, 1993.

According to Articles 2 through 5 of the ICTY Statute, the tribunal exercises jurisdiction over grave breaches of the four Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity. The underlying offenses of crimes against humanity include murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial and religious grounds, and other inhumane acts.

Another ad hoc tribunal was formed some three years later. This was the International Criminal Tribunal for Rwanda (ICTR), established by UN Security Council Resolution 955 in July 1994. Its establishment

was also preceded and initiated by a report filed by a commission of experts, much as was the ICTY. The ICTR also exercises jurisdiction over genocide, crimes against humanity, and crimes committed in the course of internal armed conflict.

The creation of ad hoc tribunals by the UN Security Council is not the only way to deliver international criminal justice. As a result of the growing international tendency toward accountability for international crimes, a permanent International Criminal Court (ICC) was established in Rome in 1998, to which nearly one hundred states have signed on as member parties. The first investigations for genocide and crimes against humanity, both codified in the Rome Statute, were begun in the early years of the twenty-first century. Further, new approaches in the conduct of international criminal justice have emerged, either within the framework of a UN Transitional Administration (e.g., in Kosovo and East Timor), or on the basis of bilateral agreements between the UN and a host state (as has occurred in Sierra Leone and Cambodia). In all these cases, prosecutions for genocide and crimes against humanity have taken or will take place. Interestingly enough, the respective court statutes and regulations are essentially based on the Rome Statute of the ICC, and they copy the provisions contained therein on genocide and crimes against humanity. Even the statute of the Iraqi Special Tribunal, established by the Coalition Provisional Authority in 2004, relies on the ICC statute, although the U.S. administration of the time was fiercely opposed to the ICC.

Modern Trials on the Basis of National Law

The international trend towards accountability has been accompanied by a significant number of prosecutions of genocide and crimes against humanity on the national level. Domestic judicial systems have increasingly recognized that these crimes do not belong to the jurisdiction of the territorial states, but rather that they affect the security and well being of mankind as a whole. Thus, national prosecutions are initiated for extraterritorial crimes on the basis of the principle of universal jurisdiction, or other principles that provide for extraterritorial jurisdiction. Austria, for example, has investigated and prosecuted the case of the Serbian Cvetkovic, who was charged with genocide. The ICTY refused to take over the proceedings, so Austria based its jurisdiction on Section 65(1) of the Austrian Criminal Code, which entitled Austria to punish offenses committed abroad if the offender was found within the country's borders and is not extradited to a foreign state.

Belgium has been involved in four cases invoking universal jurisdiction: One, the trial of a Rwandan named Higaniro, ended with a conviction for genocide. In another case, *Aguilar Diaz et al. v Pinochet*, the question arose whether the notion of crimes against humanity, as defined by international law, was directly applicable in Belgium's domestic law. The examining magistrate held that it did, and the Belgium government requested Pinochet's extradition from Great Britain in order to force him to stand trial. (The request was never granted, because Pinochet was released from prison for medical reasons and returned to Chile). A third important Belgian case of universal jurisdiction is *Abbas Hijazi et al. v. Sharon et al.* This case against Sharon was dismissed on February 12, 2002, after the Court of Cassation held him to be immune from prosecution under international law. However, the court allowed the proceedings against Sharon's co-defendants to go forward, even in absentia. Under pressure from the U.S. government, the Belgian government agreed to stop prosecuting international crimes that relied on universal jurisdiction, and in August 2003 the parliament approved an amendment requiring all plaintiffs to be Belgian nationals. As a result, the cases of Sharon's co-defendants were also dismissed.

In the French case of *Javor et al. v. X*, the defendant was accused of genocide and crimes against humanity committed in a Serbian detention camp in the former Yugoslavia in 1993. However, because these offenses did not exist in the French Penal Code prior to 1994, it was held that the prosecution could not go forward. In Switzerland, a Rwandan citizen named Niyonteze was charged with genocide and crimes against humanity, and the German courts rendered five judgments concerning war crimes and genocide committed in the former Yugoslavia: The first judgment was rendered by one of the superior appeals courts of the State of Nordrhine-Westphalia, on December 26, 1997. The accused, N. Jorgic, was sentenced to life imprisonment for eleven counts of genocide, thirty counts of murder, fifty counts of severe physical injuries, and 355 counts of detaining persons against their will. The judgment was confirmed on March 30, 1999, and by the Constitutional Court on December, 12, 2000. Another Serbian offender, N. Djajic, was convicted for aiding and abetting fourteen war crimes of murder on May 23, 1997, by the highest court in Bavaria, Germany. He was sentenced to five years in prison. A further defendant, M. Sokolovic, was sentenced on November 29, 1999, to nine years of imprisonment for aiding and abetting genocide and for committing war crimes. Finally, D. Kuslic was convicted for genocide and murder on December 15, 1999, and sentenced to life imprisonment. The basic legal findings of both these judgments were confirmed on February, 21, 2001.

Other cases have concerned gross human rights violations, among them the forced disappearance of persons, during the military dictatorships in Argentina, Chile, and Guatemala. In July 1996, the Progressive Union of Prosecutors in Spain lodged a criminal complaint against General Augusto Pinochet and other members of the Chilean military junta. The complaint included the offense of genocide. The examining magistrate in that case, Baltasar Garzón, considered himself competent to investigate charges of genocide, terrorism, and torture regardless of the nationality of the victims, although in this case the victims included Spanish citizens. He issued a warrant of arrest for General Pinochet. During a private visit to London, Pinochet was detained by the British authorities pursuant to the Spanish request. The competent Spanish court first confirmed the Spanish jurisdiction on November 5, 1998, dismissing an appeal that challenged its jurisdiction. In a second decision, the court extended the terms of the arrest warrant for Pinochet, which now included seventy-two charges against the general. Pinochet was never extradited, however, and instead was sent back to Chile.

In another case, initiated by Nobel laureate Rigoberta Menchú Tum in 1999 against the former Guatemalan military junta headed by Ríos Montt, Spain's highest court concluded that Spain could not exercise jurisdiction, and affirmed that the jurisdiction of the territorial state (Guatemala) would prevail. Another case, this time against the Argentine naval officers Adolfo Scilinogo and Miguel Angel Cavallo, was still ongoing in 2004. Both of the accused face charges for their complicity in crimes committed during Argentina's military dictatorship, including crimes against humanity. Last but not least, the Nuremberg judicial authorities have undertaken thorough investigations into the murder of two German students—Klaus Zieschank and Elisabeth Käsemann—who were killed in Argentina during the 1970s. The court has issued arrest warrants against high-ranking members of the former Argentinean junta, among them former Generals Jorge Videla and Emilio Massera. The German authorities demanded the extradition of Videla in March 2004.

Domestic courts of the states of the former Yugoslavia have slowly started prosecuting war crimes. Thus, for example, on June 25, 1997, the Osijek District Court in Croatia convicted a Serbian for genocide, charging that he had participated in acts of ethnic cleansing in the village of Branjina during the war. In Bosnia and Herzegovina, war crimes trials have been paralyzed for years, either because the judicial authorities were reluctant to pick up these controversial cases or because of confusion over jurisdiction since the adoption of the new Bosnia and Herzegovina Criminal Code.

Specific Legal Issues

One of the major achievements of modern international criminal law is the evolution of increasingly exact definitions of international crimes. Articles 6 through 8 of the Rome Statute offer an explicit codification of genocide, crimes against humanity, and war crimes. The definitions may not yet be perfect, but they are a considerable improvement over the definitions upon which the Nuremberg, Tokyo, and The Hague trials were formerly based.

Genocide, for instance, was not understood as a separate crime in the Nuremberg trials, although some defendants were charged with "deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people, and national, racial, or religious groups, particularly Jews, Poles and Gypsies." Although the final judgment of the Nuremberg tribunal never used the term explicitly, it described at great length what would later be defined as genocide in the Genocide Convention of 1946. The U.S. Military Tribunals sitting at Nuremberg thus demonstrated the emerging acceptance of the concept. In fact, the indictment and judgment for the Einsatzgruppen trial used the word *genocide* to characterize the activities of the German troops in Poland and the Soviet Union.

The problem with the concept of genocide is that, even though the overt act—the commission of mass killings—is more or less clear, there is a mental requirement that must also exist to qualify the charge of genocide. In other words, the killing or other overt act must be committed in order "to destroy, in whole or in part" a protected group. This entails at least three major problems. First, it turns the offense into a special-intent crime, which necessitates an understanding of the subjective state of the defendant. Second, it is very difficult to prove the specific genocidal intent. For this reason, the Bavarian Supreme Court acquitted Novislav Djajic of charges that he had aided and abetted the commission genocide, because it could not be proven beyond a reasonable doubt that Djajic knew of the main perpetrators' special intent to destroy the group of the Bosnian Muslims who were his victims, nor could it be shown that he himself had such an intent. Finally, it is unclear whether the specific genocidal intent is required of any participant in a genocide, or if it need only be proven for a certain category or group of participants. A perpetrator, whether he or she acted alone and directly, was one of several co-

perpetrators, or participated only indirectly, must always act with specific intent. This also applies to the superior who is responsible for ordering the genocidal act. Minor contributors, especially the mere accomplice who lends physical or psychological assistance (an aider and abettor), need not have acted with specific intent, but need only be aware of the genocidal intent of the main participants in order to bear some criminal responsibility for the act.

The definition of crimes against humanity developed from the older concept of war crimes. The term "crimes against the laws of humanity" was first mentioned in the Paris Peace Treaties, which drew on the so-called Martens Clause contained in the Preamble of the 1907 Hague Convention. The underlying rationale for the 1907 convention was the maintenance of basic principles of the law of nations and the establishment of basic rules of humanity, even in armed conflict and in the absence of other specific rules. The Nuremberg tribunal employed the term without providing a clear theoretical and methodological basis of the concept. To avoid a blatant violation of the principle of legality, which holds that a thing cannot be a crime in the absence of a law that makes it one, the Allies interpreted crimes against humanity as a jurisdictional extension of war crimes. While the prohibition of war crimes was intended to protect civilians during armed conflict between states, the concept of "crimes against humanity" extended this protection to civilians within a particular state, provided that there was a link to armed conflict. Thus, such crimes, if they were committed before 1939, that is, before the Nazi aggression, could not be prosecuted.

SEE ALSO Arbour, Louise; Eichmann Trials; International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia

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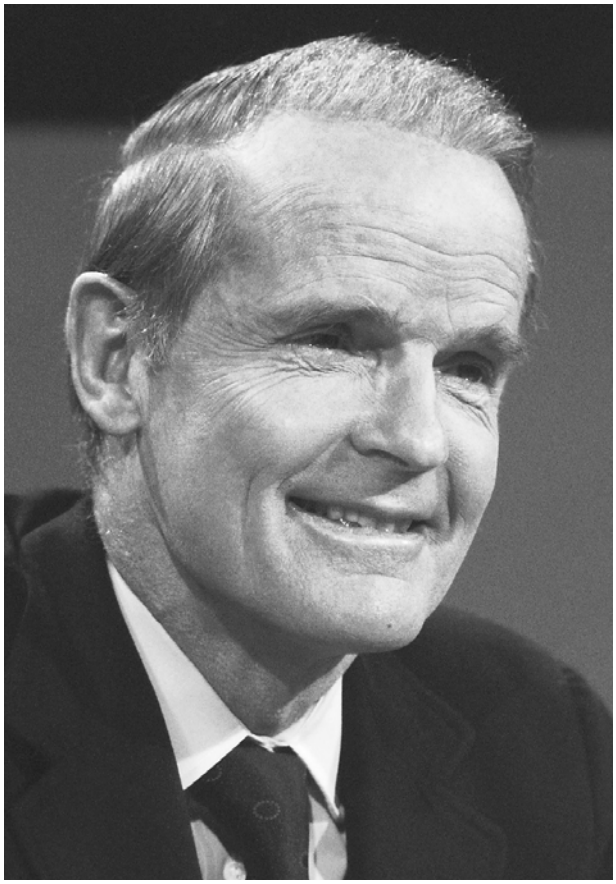
Kai Ambos

Proxmire, William

[NOVEMBER 11, 1915–]
U.S. senator

For nineteen of his thirty-one years as a U.S. senator, William Proxmire made repeated and frequent speeches calling for Senate ratification of the United Nations (UN) Genocide Convention. Representing Wisconsin in the Senate from 1957 to 1989, Senator Proxmire began his prolonged campaign for the Convention in January 1967 at the urging of Milwaukee lawyer Bruno Bitker (1899–1984). Calling the Senate's failure to approve the treaty a "national shame," Proxmire committed himself to "speak day after day in this body to remind the Senate of our failure to act and of the necessity for prompt action" (Power, 2002, p. 79). From this point forward he took a personal responsibility for this issue and persisted for two decades until he prevailed.

As a U.S. senator, William ("Bill") Proxmire was best known for his work on the Senate Banking and Ap-



A beaming William Proxmire, the former Democratic senator from Wisconsin who sponsored the 1986 Genocide Convention Implementation Act that made genocide a criminal act under U.S. federal law. [BETTMANN/CORBIS]

propriations Committees. Over the years he gained a reputation as an outspoken debater with tenacious personal and political commitments. Most of all, Proxmire was known for attacking wasteful and frivolous government spending. Beginning in 1974 he awarded a monthly "golden fleece" award to little-known budget items, which he considered as a "wasteful, ridiculous or ironic use of the taxpayers' money." In his personal life, Proxmire began each day with a four-mile run, and authored a 1973 book on health and fitness. To set an example of frugality, his Capital Hill office regularly returned over one-third of its allotments to the federal budget. Over time the senator's tenacity took the form of never missing Senate votes. He eventually held the record of 10,000 consecutive votes over a 22-year period. This approach to his life and work was needed to win Senate passage of the Genocide Convention.

Treaty ratification requires the votes of two-thirds of senators for approval. Proxmire and his allies Jacob Javits and Claiborne Pell encountered tireless opposition to ratification from a minority led by Sam Irvin and later Jesse Helms. To keep this issue constantly before the Senate, Proxmire gave 3,211 speeches calling for ratification of the Convention, an average of 168 each year. The speeches were pointed reminders to his colleagues made during the Senate's "Morning Hour" before the chamber began scheduled business. More expert in domestic issues than foreign policy, what motivated Proxmire to persist in this effort was his service during World War II, his disdain for the practice of killing legislation in committee without a vote, and daily headlines from Biafra, Bangladesh, Uganda, Kampuchea, and elsewhere bringing news of atrocities and possible genocide.

Finally, on February 19, 1986, the Senate approved the Convention by a vote of 86 to 11, but only with reservations and understandings that Proxmire reluctantly agreed to accept. The implementing legislation became known as "The Proxmire Act," despite the senator's disapproval of the practice of naming legislation for sponsors. On November 25, 1988, only weeks before the fortieth anniversary of the Convention's 1948 approval by the UN General Assembly, the United States deposited instruments of ratification at the UN headquarters. Soon after this, Proxmire retired from the Senate. He announced his treatment for Alzheimer's disease in 1998.

SEE ALSO Convention on the Prevention and Punishment of Genocide; United States Foreign Policies Toward Genocide and Crimes Against Humanity

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James T. Fussell

Psychology of Perpetrators

In the years immediately following the Holocaust, studies tended to associate the horrendous genocidal acts with pathological personalities. This was understandable as it reflected a common social need: If one could attribute the Holocaust to specific bad or insane types of people, the future might seem different. All that was then necessary was to screen out the potential killers and prevent them from completing such evil acts, and the world would become a safe place once again. It took a great deal of human insight from philosophers such as Hannah Arendt and research by social

psychologists such as Stanley Milgram and Phillip G. Zimbardo to understand the so-called banality of evil: that for the most part normal people, sometimes even well-educated people, carried out the industrialized killing of the Jews, Romani, Jehovah's Witnesses, and mentally ill in Nazi Germany. These findings were especially disturbing, as they suggested the conditions in which genocidal acts sprout and spread need to be controlled. Thus, the viewpoint developed that people are not usually born with genocidal mentalities; such a mentality is developed and created by the architects of genocide and their societies. Although this proposition has been mostly offered within the context of the Holocaust, it could be applied to other genocides as well.

When analyzing the question of genocidal mentalities, one has first to consider the architects who carefully plan the process, and usually these are people with sophisticated, although not necessarily formal, psychological understanding. These architects determine how to turn peaceful citizens into vicious killers. They know that most citizens will resist becoming killers, if presented with a choice. The careful planning and subsequent socialization of people into genocidal roles are therefore essential elements in developing genocidal mentalities. In certain genocidal systems the architects initially seek individuals who have a previous record of criminality or sadistic pathological characteristics. Still, massive genocidal acts require many more killers than the available sadists or criminals in a society. Usually, younger men are the first to be recruited, based on the assumption that it is easier to manipulate and train them as killers because they are more receptive to authority figures. But once there are not enough young men, more mature people will also be recruited to carry out genocide (as happened during the Holocaust and also in Bosnia and Rwanda during the 1990s).

In order to socialize ordinary men (such socialization usually occurs with men, although there are exceptions to this rule) to adopt genocidal mentalities, several factors have to be taken into consideration. Ordinary men are usually part of a social and moral network that helps them maintain their humanity toward others and prevents them from becoming involved in inhuman acts. In order to socialize them into becoming murderers, they have to be insulated from their original social network and an alternative network has to be created for the potential killers, composed of men like themselves, led by a genocidal authority. This is not an easy a task to achieve, and therefore careful attention needs to be given to the process that the potential killers are led through.

To successfully achieve insulation, the architects of genocide have to be equipped with strong mechanisms for social indoctrination. They have to maintain full control of the reward and punishment system for the men assigned to conduct the killing. The planners of genocide can provide potential killers with food and social advancement, and they can also decide to kill them if they do not comply with orders. They may even promise potential killers entry into paradise, with seventy virgins waiting for them (as was the case with Muslim suicide bombers in the early twenty-first century). The planners must provide potential killers with a convincing rationale for committing genocidal acts. This rationale should include a moral or positive goal achieved by the genocide (e.g., "purity of the race" and "eliminating the cancer of our nation"), combined with monolithic dehumanization and devaluation of the target population (e.g., "They are bad: the bacteria of our society"). There is usually a paradoxical message in this rationale: The target population is seen as being both strong (the threat) and weak (they can be easily killed), but the clear division between the good (us) and the evil (them) is stronger than this paradox. Ethnic differences can easily be used to develop such a rationale, especially when there is a history of ethnic tension, oppression, and exclusion. As already mentioned, the architects of genocide must devise a careful, gradual process that will enable peaceful citizens to slowly adapt to the mode of becoming killers. And, of course, they have to provide the killers with the technical means to effectively carry out the genocidal acts, which are usually culture-bound, such as the use of chemicals (Zyklon B) in Germany and machetes in Rwanda.

Social Conditions That Support Insulation of Mass Murder

How do the architects of genocide succeed in so completely insulating the designated killers from the rest of their society? It is an easier to achieve this insulation and plan genocidal acts when the society involved is in economic, ethnic, cultural, or military crisis and there is ambiguity in regard to its own future. In a society in which many people have lost their jobs, the religious or cultural belief systems are threatened, people exclude an ethnic group, or where killing or humiliation is a daily occurrence, it is easier to instigate the rationale for a genocidal system, based on insulation, because the rationale for a very strong corrective act and monolithic identity seems to be available and widespread. But even when some of these conditions are lacking, talented planners (e.g., Slobodan Milosevic in former Yugoslavia) found in distant history (the fourteenth century) an event that could be manipulated to trigger such strong sentiments of collective injury and humiliation—especially in an ethnically diverse and tense society—thereby providing the necessary strong

rationale for developing a genocidal process. The exclusion and scapegoating of the target population may have the character of projective identification. This process is known to arise when addressing internal social tensions or conflicts may seem too frightening to openly address.

In many cases, however, such will still not be enough, because moral or religious convictions, or the belief that they are civilized will not allow people to take part in genocidal acts. Therefore, the architects of genocide have to develop a sophisticated system of disinformation, deceit, and cover-up. This manipulation of language, on one hand, creates the necessary insulation of potential killers from their social network and criticism, and on the other, deceives the target population. This is why the slogan *Arbeit Macht Frei* ("work liberates") welcomed new inmates at the entrance to Auschwitz. The Nazi genocide was referred to as the Final Solution, and Jews were shipped to the East for supposed work and resettlement. When the train transports arrived at the death camps, physicians carried out the selection process as if it were based on some medical logic. The perceived healers were made to perform killing acts.

The reason why society at large does not usually resist or oppose such behavior is associated with the careful planning mentioned above. People are mostly not aware of the planning phases of genocide, that is, the deception and disinformation practiced by the architects, together with the sophisticated methods they have used to develop genocidal mentalities. Most people are not aware of the mechanisms of insulation, gradual socialization, and indoctrination used to socialize the murderers. Perhaps, in addition, there is the general human tendency to keep out of trouble, to turn a blind eye, as it were, especially when living in a regime that manipulates and instigates fear of an enemy to account for current crises.

Can quiet citizens suddenly become perpetrators, without a long socialization process? There are several such known cases, especially when the social atmosphere has already legitimized genocidal acts. For example, in Austria toward the end of World War II, several inmates of the Mauthausen concentration camp succeeded in escaping. The people who lived in the villages around the camp had long been aware of the atrocities taking place near their homes and did not mind; perhaps they even supported them. When the inmates escaped, some villagers took their hunting rifles and working tools and ventured into the woods to hunt for the escapees. These individuals had not been trained to carry out genocide, but could participate in murderous acts willingly, because they had been exposed long enough to the genocidal atmosphere of their society. A society steeped in genocidal acts can become genocidal at large, without the socialization mentioned earlier.

The following question could still be asked: What motivates so many people to actively take part in the massive killing during genocide? Besides the socialization described above, is it indifference, fear, or actual hatred, or is it perhaps a combination of all three? Although most scholars agree about fear, scholars such as Daniel J. Goldhagen tend to emphasize the hatred toward the Jews, its long tradition in Germany and other parts of Europe, and researchers such as Charles Browning prefer to emphasize indifference. The Nazis learned how to both manipulate and create the dehumanization of their victims, turning them into scapegoats for the inner contradictions that the perpetrators themselves could not face.

The Paradoxical Morality of Perpretrators

Do perpetrators see themselves as evil criminals? Not surprisingly, the answer to that question usually is no. Perpetrators invariably see themselves as moral people who simply did their job, completed their mission. A number of Nazi perpetrators, in retrospect, argued that they had participated in the killings of Jews and others against their will; otherwise, they or their families would have been in danger. However, such rationalizations often surface when society has already denounced the atrocities the perpetrators committed. Moreover, supportive evidence for this argument does not exist. Goldhagen investigated one hundred cases involving Nazis who refused to participate in the shooting or gassing of Jews and other victims, and determined that nothing had happened to them: They were simply assigned other tasks within the regime.

How could the Nazi perpetrators of genocide and other atrocities maintain a "moral self-image"? In *The Nazi Doctors: Medical Killing and the Psychology of Genocide,* Robert Jay Lifton (1986) claims that they were able to maintain such a positive self-image through the psychological mechanism of doubling: That is, they succeeded in building a kind of inner wall between what they did at the killing site and how they continued to live their personal lives. There were very few people who collapsed during mass executions. One father, a deeply religious person, broke down after witnessing the execution of his Jewish workers near Para via Novo in Belarus. But he was the exception, which suggests that, as a rule, perpetrators learn to live with their atrocious acts. Some need to consume large quantities of drugs and/or alcohol in order to keep going. Others describe the process of becoming involved in

atrocities as breaking through a threshold of sorts. Once they had killed the first person, the next was much easier and later anything was possible.

Interestingly, the Nazis specifically, and genocidal architects in general, paid attention to the potential psychological inhibitions of the executioners. While delivering a speech to the Nazi leadership in Posen in 1943, Heinrich Himmler referred directly to the "psychological hardships" of the executions. He stated that for the executors "This is an unwritten and never-to-be written page of glory in our history" but they would have to keep it secret and steer a middle course between "the task that made us hard" and "cases of human weakness" in relation to their victims (Charny and Rappaport, 1992, pp. 240–241).

After World War II, with the Nazi regime authoritative mental and physical support system gone, how did individual Nazi perpetrators manage to adjust to the postwar democratic government? One might have expected them to become criminals in any postwar society, continuing their former socialization. However, this was usually not the case: The past perpetrators readjusted quite well to the demands of the new social order and tried to conceal their previous participation in genocide. Was that stressful for them? For example, did they return to their religious congregations and confess to their priests about the atrocities they had committed? In one study in which eighty Christian clergy were interviewed, only two perpetrators were identified as having spoken in confession about their experiences during the war. One of these individuals, a former soldier, confessed that after being ordered to do so, he stabbed a six-year-old girl who ran to him from the ruins of the Warsaw ghetto after the Jewish uprising. He admitted that ever since the "brown eyes of this girl never gave him peace" (Bar-On, 1989, p. 196). Perhaps it was not a coincidence that he chose as his confessor a priest who was the son of a famous perpetrator. Two aspects of this confession are important:

1. There was a "double wall" between the perpetrators and their social surroundings that helped the former to maintain a conspiracy of silence about the atrocities they had committed in postwar Germany.
2. The perpetrators developed a kind of "paradoxical morality" after the war. Most of them did not become postwar criminals and were even attentive to the moral upbringing of their own children. With regard to any atrocities they committed, however, they usually only maintained a vivid memory of a single act about which they felt guilt and shame. With the help of this single memory they established a sense of their own humanity and repressed the memory of all the other atrocities in which they had been involved. Had they recalled more, they would have faced the danger of moral disintegration and collapse.

SEE ALSO Explanation; Political Theory; Sociology of Perpetrators

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Dan Bar-On

Psychology of Survivors

Jewish survivors of the Holocaust were the first group of genocide victims to be systematically examined. Having an opportunity to follow their postwar adjustment for sixty years has enabled the rest of humanity to clearly understand the lifelong effects of such personal and group trauma.

Survivors of genocide are forever transformed. They speak of having lived three lives: their life before the genocide, their life during the genocide, and their life after the genocide. These individuals have experienced a shattering of basic human assumptions—that the world is safe, and that others will extend care and protection.

Memories of their terrifying experiences may involuntarily intrude on a daily basis. The sights, smells, and sensations associated with past trauma can be vividly recalled. At the same time survivors of genocide wish to move on with their life as rapidly and fully as possible. With many tragic exceptions they are successful at gathering the shattered remnants of their pregenocidal self, grafting them onto a postgenocidal self, and leading a relatively normal existence. However, unlike other victims of emotional traumas who wish to bury their past encounters with evil, survivors of genocide are committed to memory and the remembrance of all those who were lost.

Individuals who undergo extreme stress are often more psychologically vulnerable to future blows than nontraumatized persons. Furthermore, with increasing age survivors of genocide have more time to ruminate about past horrors, and this may diminish an already fragile sense of safety. On the other hand, many survivors of genocide develop an extraordinary life-long confidence in their ability to persevere through any adversity ("I survived *that,* I can survive anything!").

The most striking aftereffect of genocidal trauma is an ongoing, perennial sense of vulnerability. When asked "How did you survive?" most survivors answer, "Luck." Such a response acknowledges that many stronger and craftier people did not last, and that those who experienced countless close calls made split-second decisions based on little information, and witnessed the death of others who were less fortunate. The attribution of luck, may, however, have subtle implications. If one believes one is alive simply or mostly because of luck, one may live with considerable uneasiness. Just as life was given by chance, capriciousness may snatch it away.

Early reports on the impact of massive psychic trauma experienced by Holocaust survivors offered an extremely bleak picture. In 1964, after years of clinical experience in diagnosing and treating concentration camp survivors, William Niederland, a psychiatrist and a refugee from Nazi Germany, published a landmark study proclaiming the existence of a survivor syndrome. He listed a host of symptoms manifest in individuals who had survived Nazi persecution. They included chronic anxiety, fear of renewed persecution, depression, recurring nightmares, psychosomatic disorders, anhedonia (an inability to experience pleasure), social withdrawal, fatigue, hypochondria, an inability to concentrate, irritability, a hostile and mistrustful attitude toward the world, and a profound alteration of personal identity.

Other mental health professionals reported that survivors were overwhelmed by indelible and grotesque images of death. Survivors often isolated themselves because they believed no one could understand the horrors they had endured. They had been immersed in a different reality, the world of the *Lager* (camp), a world that would be absolutely incomprehensible to others. A sense of alienation naturally ensued.

The bleakest psychological snapshots of survivors of genocide are often taken soon after their ordeal, when the imprints of previous blows are most palpable, and when the individual has not yet accepted and adapted to a new life bereft of all those who were lost forever. However, most survivors suppress their post-trauma symptoms as they desperately want to get on with life once again, to look forward, not back. Indeed, the story of survivors of genocide is an example of human resilience and the primal desire to live as fully as possible.

It is important to note that, even when available, the great majority of genocide survivors never seek psychiatric treatment. Some survivors fear the transformation of a self-image predicated on a feeling of the uniqueness of one who has survived and conquered death to one who is mentally ill, from one who is unusually strong to one who is damaged. In addition, survivors do not wish to closely examine the compartmentalization of their past for fear of it spilling over uncontrollably onto their present reality. While fear, rage, and grief lurk in the background, the survivor attempts to keep him- or herself in the foreground, moving ahead to life and farther away from death. Survivors may unconsciously fear being blamed by a psychotherapist or other mental health professional for particular actions, or for their inactions during the genocide. Survivors are also convinced that no one who did not live in the midst of the genocide can possibly understand the motivation for their situational behavior or the psychological effects of those experiences.

Many victims of genocide suffer from what clinicians refer to as post-traumatic stress disorder. Having experienced intense fear, helplessness, and horror, these individuals live with recurrent, distressing recollections of the events, nightmares, flashbacks to past events that are felt so keenly it is as if they are occurring in the present, an oversensitivity to environmental cues reminiscent of the trauma, profound feelings of being different and subsequent estrangement from those who have not undergone savage cruelty, and a hypervigilence about new assaults on their person. Indeed, because their view of fellow human beings has become such a pessimistic one, victims of genocide assume that further brutalization is only a matter of time.

In order to truly understand the innocent victim of heinous crimes, one must know and appreciate the details of their experiences. Not all victims of a particular genocide endured the same brutalities or witnessed the same horrors. For example, during the reign of the Khmer Rouge in Cambodia, children were sometimes forced to kill their parents. In general, those parents whose children are genocidally murdered are often deeply impacted as well. The relationship of the perpetrator to the victim is important in determining the victim's reaction. In Rwanda the assaults were more devastating because they often came from neighbors and colleagues, people known to the sufferers.

Young children may be particularly vulnerable to the effects of violence because their coping mechanisms are undeveloped and their slight stature increases their sense of vulnerability. Traumatic effects may include anxiety, nightmares, fears of being alone, aggressive behavior, regression in toilet training and language, in addition to an inhibition of their natural drives for autonomy and the exploration of their environment. Very young children, in particular, require secure, sensitive, responsive caregivers in order to establish a basic sense of security and trust in the world. Without that foundation they may find it difficult to establish meaningful attachments later in life. If their parents were victims of genocide, these mothers and fathers may be too preoccupied with their own losses to provide these psychological essentials. During the genocide adolescent victims may psychologically fare somewhat better than adults because they do not fully appreciate the gravity of the situation and succeed in denying the improbability of survival. Even in perilous times teenagers are prone to feeling invincible and anticipate an unending life.

In addition to their permanently changed sense of self, survivors of genocide may have other experiences of uprootedness as well. Physical dislocation from their communal roots creates an additional loss of familiarity, continuity, and sense of security. Many of those who were religiously devout before the trauma lose a critical anchor and source of strength, namely their faith in God and that higher power's ability to protect and provide justice. On the other hand certain spiritual precepts may soften the blow. For example, a belief in karma may induce the calming sensation of inevitability.

Finally, one need not be personally brutalized in order to be traumatized. Witnessing violence perpetrated against another innocent may arouse intense fear and helplessness. One assumes, "If it could happen to that person, it could happen to me."

Survivor Guilt

Survivor guilt is the term used to describe the feelings of those who fortunately emerge from a disaster that mortally engulfs others. On an irrational level these individuals wince at their privileged escape from death's clutches. Guilt is the penance they pay for survival. Moreover, this penance contributes to them remaining mired in their hellish past.

Survivor guilt is most marked soon after the traumatic event. It is difficult to maintain an awareness of guilt feelings for a protracted period, particularly when one is keenly motivated to move forward with one's life. Most likely to feel the protracted discomfit of survivor guilt are those whose children were murdered while they felt powerless to intervene. Survivors not only torture themselves with memories of what they did in order to survive, but also what they failed to do in order to help others.

Survivors are haunted by the question: Why me? Often they are convinced that the best did not survive, and, they, therefore, are less deserving of life. Sole surviving members of a family are more likely to experience survivor guilt than those who were left with a parent or sibling.

Innocent human beings crave acknowledgment of the unwarranted pain induced by others. However, those survivors of genocide who did not experience the worst genocidal brutalities often inhibit themselves from speaking of their ordeals. This deference to those who survived worse circumstances prevents them from receiving any recognition of their suffering.

Transmission of Trauma

The traumatic impact of genocide extends beyond the victim to at least one succeeding generation. All children of survivors of genocide are affected in some manner, although the effects widely vary in their form and intensity. The debilitating effects of genocide on the second generation are clearly not as consuming as they

may be for those who had direct contact with persecution. There is, moreover, a relationship between the severity of traumatic aftereffects on the parent (particularly the mother) and the child. The greater the pain evidenced by the parent, the more likely it is to infect the child.

Expectations of further assault are communicated by survivors to their children. The irrational, frightened reactions of survivors to seemingly benign stimuli may produce a generalized uneasiness in their offspring. Survivors' pessimistic view of humanity often induces mistrust and exaggerated fears in their children, particularly their daughters. Moreover, survivors' attempts to shield their children from anticipated harm can lead to an unhealthy overprotectiveness and interfere with the normal separation process that must occur between parent and child.

Survivors of genocide may look to their children to compensate for their losses. Survivor mothers, in particular, may live vicariously through their daughters. In an attempt to psychologically move away from the catastrophe as quickly as possible and begin a new life, survivors may enter poorly matched marriages, thereby increasing the pressures on their children to provide gratification to their parents. Preoccupied with their tragic past, survivors may have little empathy for the everyday, normal tribulations of their children ("You think that's a problem?"). For some survivors their depression, emotional numbness, and fear of future losses may prevent them from forging a deep, loving bond with anyone, including their own sons and daughters.

Survivors may inhibit the normal rebelliousness of their children by explicitly referring to their past ("How could you do this to me after all I have been through?") or using the implicit plea of their ongoing symptoms. Children of survivors may despair at not being able to relieve the pain of their parents or compensate for their losses. Not surprisingly, many children of survivors display an ambivalence when relating to their parent's traumatic past. Depression may result from an overidentification with the parent. On the other hand, in an attempt to shield themselves from the pain and vulnerability of a survivor, children may be prone to guilt feelings if they attempt to sever themselves from any psychological connection to the genocide.

It is of singular importance to the survivors of genocide that their losses and the cruelty to which they were subjected be recognized. When the perpetrators of genocide are brought to justice, the profound sense of injustice experienced by the survivor may be somewhat attenuated. Conversely, when there is no retribution, the psychic wounds of survivors fester even more. Unfortunately, the traumatic effects of genocide clearly extend even beyond the individual and the family. They infect group identity and perpetuate an ongoing sense of grievance and defensiveness as further assaults are expected. For survivors of genocide the world will never feel safe again.

SEE ALSO Collaboration; Psychology of Perpetrators

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Aaron Hass

Psychology of Victims

When one enters a new situation, one looks for familiar signposts to provide direction for the appropriate adaptive behavior. However, the concentration camp was a universe that had never before been encountered or imagined. Because of the camp's incomparable nature, the inmate's initial reaction on arrival was generally one of disorientation. The Nazis' deliberate strategy of having transports arrive in the middle of the night, clubbing prisoners out of the cattle cars into the blinding glare of spotlights, and terrorizing them by the sounds and sight of vicious barking dogs added to this disorientation.

Those who were not selected for death on arrival were immediately stripped of their individual identity. All inmates had their body hair shaved, were handed striped uniforms, and given a number to replace a name. Chronic starvation and hard labor soon contributed to a similar appearance. Daily humiliations due to unsanitary conditions, overcrowding, and beatings by the guards defined the inmate's existence. This degradation was purposeful as it reduced prisoners to an animal-like state, reinforcing the belief in their captors that they were, indeed, subhuman and deserving of such treatment. In general, Jews from Eastern Europe-

an locations who had already endured a prolonged period of extreme deprivation were able to adapt more quickly and effectively to the camp's hardships than those arriving from Western Europe, where persecution had not been as severe prior to their deportation.

Inmates were subjected to recurrent episodes of terror. At the *appel* (roll call) each morning, selections were made to determine who would be killed and who would be spared. Inmates were continually exposed to the beatings and torture of other prisoners, thereby enhancing their sense of personal vulnerability. The senselessness and arbitrariness of these attacks provoked further feelings of powerlessness and dread. Bizarre and contradictory demands by their captors fueled the inmate's fear and impotence. For example, one had to appear as clean and healthy as possible in order to be allowed to live and provide slave labor for another day, and, yet, the means to achieve that appearance were absent. Inmates frequently resorted to washing themselves with their own urine.

Inmates seized any opportunity to increase their chance of survival. They had to find an edge. Procuring a job indoors might shield one from harsh weather conditions. It became imperative to find some way to augment one's daily rations as the limited amounts of food allotted could not sustain an individual over a prolonged period, particularly in such arduous circumstances. Although some survivors have described an utterly selfish, "every man for himself" mentality in the camps, others have emphasized that they would not have emerged alive had it not been for a relationship they forged with another inmate, which provided physical and emotional sustenance.

The inmate had to remain hyper-alert, in order to both avoid further difficulty and pounce on any possible advantage. Emotional numbing was also adaptive. Allowing oneself to feel sadness or terror would have produced internal weakness and the possibility of paralysis in an environment that required quick thinking and nimble behavior. The expression of rage might have resulted in mortal punishment.

In order to escape the continuous onslaught of humiliation and terror, the prisoner sought succor, and even pleasure, in fantasy. Pleasant fantasies of prewar family life were common. Due to the fact that prisoners were often abruptly separated from family members either during round-ups, deportations, or selections on arrival at the camps, they clung to the hope and fantasy of being reunited with them. Some inmates seized restful moments and retreated into a spiritual frame of mind.

In an environment in which death was omnipresent and life hung by a tenuous thread, the inmates found ways to bolster some sense of control over their fate. Small decisions (e.g., "Should I eat my ration now or save it for later?") took on exaggerated psychological significance. Petty victories (e.g., securing an extra piece of bread) over the concentration camp system were inordinately relished. Small pleasures became magnified.

In order to tolerate their dreadful ongoing condition, inmates had to find powerful reasons to continue. They hoped to reunite with family. They committed themselves to bear witness for all those who could not. They refused to allow the extinction of the Jewish people. A few dreamt of revenge. Some of those who could not find a powerful enough reason to endure the continuous assaults on their person impaled themselves on the camp's electrified fence. Others simply became passive, and this stance doomed them. Fatalism was fatal. The profound apathy of this group could be seen in the familiar, vacant stare of the prisoner who was referred to as a *musselman*. Inmates immediately recognized such an individual as not long for this world.

Human beings can endure much pain and suffering if they know that a reasonable end point is in sight. For the concentration camp inmate, unfortunately, a Thousand Year Reich seemed increasingly evident. (Indeed, toward the end of the war rumors of the approaching Russian army immediately buoyed spirits in the camp.) To combat this demoralizing factor of indefiniteness, inmates adopted a short perspective of daily survival. To assess the possibility of survival for months or years would have produced demoralization. They also utilized the powerful psychological defense mechanism of denial. Inmates had to deny the overwhelming odds against their survival. "If I keep working and do not bring attention to myself, I will survive," the inmate repeatedly intoned.

Even after one survived the initial life-or-death selection on arrival, the concentration camp system of hard labor, meager rations, and horrific conditions was designed to kill that same inmate within a relatively brief period of time. In the end certain personal qualities—resourcefulness, flexibility, vigilance, the ability to make split-second decisions based on little information, physical hardiness—were necessary in order to outlast the tormentors until the day of liberation. Having (or pretending to have) a useful skill helped make one seem momentarily indispensable. But, because opportunities for effecting the environment were so limited, one had to rely, to a great extent, on intra-psychic coping mechanisms such as denial and retreating into fantasy to diminish the horrific impact of one's world. Yet, despite all these necessary personal qualities and coping strategies, survivors will say that the over-

whelming, critical factor in determining whether one inmate would die and another would live until liberation was luck: not being in the wrong place at the wrong time, not being capriciously assaulted by a sadistic guard, not being subjected to the mortal whim of your captor, or not being confined to conditions akin to the worst in hell. This realization of the capriciousness of life and death remained with survivors after liberation and, understandably, impacted their post-Holocaust approach to life and view of humanity.

SEE ALSO Psychology of Perpetrators; Psychology of Survivors

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Punishment

Although nations speak out strongly against the crime of genocide and crimes against humanity, these same nations have done very little to punish individuals accused of committing such heinous acts. Prosecution and the subsequent penalties imposed for genocide and crimes against humanity, while gaining momentum through international support, remain rare. Practice is sparse, but a significant shift is evident in attitudes toward the applicable penalties for genocide and crimes against humanity since these acts were first punished in 1946.

Purposes of Punishment

Scholars and criminologists describe two main purposes of punishment—utilitarian and retributive. The first includes attempts at deterrence and incapacitation, whereas the second focuses more on the notion of just deserts or the ancient pronouncement of "an eye for an eye." Theoretical approaches to punishment have been studied and advanced by such renowned scholars as Hugo Grotius, Cesare Beccaria, Immanuel Kant, Jeremy Bentham, Michael Foucault, and John Rawls.

Beccaria believed that the certainty of some punishment, in whatever form, was more likely to deter future criminal acts than the imposition of a severe punishment. The key to deterrence under Beccaria's view was assurance that a swift punishment would follow the criminal act. Beccaria, a utilitarian, advocated immediate and proportionate sentences. Punishment, to be just and effective, could be only as severe as necessary to ensure that others would not commit similar offenses. Bentham and Grotius were also advocates of the utilitarian approach.

In contrast to Beccaria's philosophy, Immanuel Kant adhered to retribution as a basis for punishment. Under Kant's theory, those who committed crimes deserved to be punished. In fact, Kant believed that those who committed crimes needed to be punished. One of the more common justifications for the death penalty is retribution. Retributivists believe that those who murder deserve to die. A modern disciple of the retributive theory is Andrew von Hirsch. And, in modern application, the International Criminal Tribunal for the Former Yugoslavia (ICTY) quoted Kant during the sentencing proceedings for General Radislav Krstic, reminding spectators that, as Kant believed, if justice is ignored, life on this earth has no value.

In truth many punishments reflect more than one approach. Some punishments even adopt a rehabilitative component recognizing that convicts are often reintegrated into society on completion of their sentence. The most recent example, the Rome Statute establishing the International Criminal Court (ICC), combines the utilitarian and retributive approaches to punishment. At least one punishment theory scholar, Nigel Walker, has noted that consideration of mitigating and aggravating factors in sentencing suggests a retributive theory of punishment. Both current United Nations (UN) tribunals, the ICTY and the International Criminal Tribunal for Rwanda (ICTR), embrace the notion of aggravating and mitigating factors in determining sentence. The ICC likewise envisions a penalty scheme that assesses both aggravating and mitigating factors for sentencing purposes.

Prohibitions and Penalties in Law

Throughout recorded history, there have been many pronouncements and declarations calling for prosecution and punishment of acts constituting genocide and crimes against humanity. These pronouncements, however, have not always had the force of law or the agreement of all nation-states. In the seventeenth century Hugo Grotius, considered by many to be the father of international law, published *The Law of War and Peace*. In this major work Grotius discussed the nature of punishment as it relates to crimes committed during war and devoted an entire chapter to those penalties that might be appropriate for punishing individual war

criminals. Although many describe Grotius's approach as utilitarian, he defined punishment generally as signifying "the pain of suffering which is inflicted for evil actions." Grotius dedicated a great deal of his penalty chapter to comparing the divine right to punish with human law and the laws of nature. He clearly disfavored revenge as a motive for punishment, underscoring that such a basis is "condemned by both Christian teachers and heathen philosophers." However, Grotius emphasized the proportionality component of utilitarian punishment, reminding his readers that "[i]t is undoubtedly one of the first principles of justice to establish an equality between the penalty and offense."

The first national code defining crimes of war and applicable penalties was a direct by-product of the American Civil War. Upon witnessing the atrocities committed on the battlefield during that conflict, Professor Charles Lieber was inspired to draft a code of conduct for soldiers during warfare. This code was officially adopted as General Orders 100: Instructions for the Government of Armies of the United States in the Field and unofficially became known simply as the Lieber Code. The Lieber Code presented an extensive list of prohibited behavior during war—including applicable penalties—and was adopted by President Abraham Lincoln in 1863. Thereafter copies of the Lieber Code were distributed to the American military and it became the governing law for all U.S. soldiers. Under the code soldiers who committed atrocities on the battlefield or against an enemy civilian population could be subjected to severe penalty, including death.

Crimes against humanity and genocide have been clearly outlawed in treaties and many domestic legal systems since the late 1940s. The 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention), which entered into force on January 12, 1951, does not specify what measure of punishment is appropriate for crimes defined under the Convention. Rather, the Convention outlaws genocidal acts, conspiracy to commit genocide, incitement to commit genocide, and attempts to commit genocide. Article V specifies that contracting parties shall provide the "necessary legislation to give effect to the provisions of [the Convention], and in particular, to provide effective penalties for persons guilty of genocide." No definition of "effective penalties" is given.

Similarly, the four Geneva Conventions of 1949 do not identify any penalties for violations arising under these treaties but merely outlaw acts that qualify as "grave breaches," that is, war crimes. These early attempts at proscribing international crimes did not explicitly provide a clear list of possible penalties or proffer any guidance regarding what penalty scheme would be acceptable. Instead, tribunals and courts could resort to any penalty scheme deemed just—including, frequently, penalties of death.

Modern international law illustrates a change in approach regarding punishment for international crimes. In 1993 and 1994 the UN created two ad hoc international tribunals to punish crimes committed in Yugoslavia and Rwanda. The statutes creating the two tribunals strictly limit punishment to terms of imprisonment. This modern approach was followed in the Rome Statute creating the ICC. Article 77 of the Rome Statute limits penalties for violations committed under the statute to prison terms and possible fines.

Although the death penalty has been discarded by most nation-states and is a prohibited penalty before the modern international tribunals, including the ICTY, ICTR, and ICC, certain domestic statutory schemes still permit resort to capital punishment for crimes of genocide and crimes against humanity. Thus, the question of whether the death penalty is an available option for the punishment of genocide or crimes against humanity depends on the character of the tribunal involved. The most stark example of this distinction can be seen in the disparity of punishment between the ICTR and the domestic Rwandan courts. Defendants facing justice before the ICTR are protected from capital punishment by the ICTR statute. In contrast, individual defendants tried domestically by Rwandan courts have been sentenced to death. The Rome Statute prohibits resort to capital punishment and, thus, no ICC defendant will be, or can be, sentenced to death.

Historical Punishment

The first recorded international adjudication for war crimes, including allegations of rape and murder, involved Sir Peter von Hagenbach. Von Hagenbach was tried and found guilty by what many scholars believe was the first international tribunal established to address atrocities committed during war. In 1474 a panel of international judges convicted von Hagenbach. In sentencing, the court not only condemned von Hagenbach to death, but also stripped him of his title as knight and took from him all the privileges attendant to his rank. Thus, the first international tribunal for war crimes imposed the first international death sentence and a penalty that focused on the shameful nature of the crimes, by depriving von Hagenbach and his family of the privileges to which they had been previously entitled by virtue of his title.

Nearly four hundred years later humanity witnessed the second major punishment imposed for crimes committed during war. In 1865 Captain Henry

Russian guards in formation outside Berlin's Spandau Prison, where former Nazis Rudolf Hess, Albert Speer, and Baldur von Shirach were incarcerated after their 1946 conviction by the International Military Tribunal at Nuremberg. Spandau was demolished following Hess's death. [HULTON-DEUTSCH COLLECTION/CORBIS]

Wirz, a Swiss-born doctor and solider in the Confederate Army, was prosecuted and convicted by a controversial military commission following the U.S. Civil War. Wirz was held responsible for overseeing the operations of the Andersonville Prison, officially known as Camp Sumter, in Andersonville, Georgia. Under his command many prisoners perished as a result of extremely poor conditions. The indictment also charged that Wirz was directly responsible for the murder of thirteen individuals at Andersonville. Upon conviction for murder in violation of the laws and customs of war, Wirz was sentenced to hang for his crimes and was later executed.

The evolving doctrine relating to punishment for war crimes and crimes against humanity appeared to take a very severe and unyielding approach, but few individuals faced prosecution or punishment. This sporadic approach toward prosecution and punishment is most clearly illustrated in the aftermath of World War I. The Treaty of Versailles signed on June 28, 1919, officially brought the war to an end. It reserved an entire section, Section VII, and four distinct articles, Articles 227 through 230, for the issue of "penalties." Furthermore, Article 227 explicitly provided that the former German Emperor, Kaiser Wilhelm II of Hohenzollern, was to be publicly arraigned "for a supreme offense against international morality and the sanctity of treaties." The treaty envisioned the creation of an international tribunal to prosecute the Kaiser and military commissions for the prosecution of "persons accused of having committed acts in violation of the laws and customs of war." No specific penalties were set forth or identified in the section on penalties. Rather, the treaty simply called for penalties "laid down by law."

Kaiser Wilhelm II would never be punished for his alleged crimes. The lesser defendants covered by Article 228 of the Treaty of Versailles were effectively protected from punishment when the Allied forces delegated the responsibility for trying these individuals to the defeated nation of Germany. The Allied forces initially demanded that 896 Germans face trial for their crimes and misdeeds committed during World War I. Germany balked at the extensive list and ultimately agreed to prosecute a mere twelve individuals.

The Supreme Court of Germany at Leipzig tried the twelve persons accused of committing crimes during war. Three of them were convicted, while the remaining nine were acquitted of all charges. The three convicted war criminals received the following sentences: six months, ten months, and two years in prison. It is doubtful that these sparse convictions and equally terse penalties embodied the criminal solution proposed in the Treaty of Versailles.

The most renowned international tribunal to prosecute war crimes, crimes against humanity, and crimes against peace was undoubtedly the Nuremberg Tribunal. Nuremberg, officially known as the International Military Tribunal (IMT), was established to assess the criminal responsibility of the main architects of World War II. Created and governed by the Charter of the International Military Tribunal, which was annexed to the London agreement on August 8, 1945, the Nuremberg Tribunal prosecuted only twenty-three individuals—including one defendant in absentia.

Of the twenty-two defendants physically present and facing justice at Nuremberg, eighteen individuals were indicted for crimes against humanity and sixteen were found guilty. The IMT took a very stern approach toward penalizing the convicted, as twelve of the sixteen were sentenced to death by hanging. Despite cries of "victor's justice," many scholars note that Nuremberg represented an improvement over Joseph Stalin and Winston Churchill's unsuccessful pleas for summary execution. The remaining four convicts received prison sentences ranging from life imprisonment (one

defendant) to twenty years (two defendants) to a sentence of fifteen years in prison (one defendant). When one compares the gravity of sentences handed down at Nuremberg, it is notable that those who were not convicted of crimes against humanity were all spared the death penalty, with two individuals receiving life sentences (Rudolf Hess and Erich Raeder) and one (Karl Dönitz) receiving a sentence of ten years.

The Allied forces undertook additional prosecutions of Germans for crimes against humanity and other offenses of war pursuant to Control Council Law No. 10. Of 185 defendants in seven cases alleging crimes against humanity, seventy-eight individuals were convicted. The sentences imposed ranged from death (twenty-four defendants) to life imprisonment (eighteen defendants) to various prison terms between twenty-five and five years. Not all the death sentences were carried out. Furthermore, although numerous prison sentences were also imposed (eighteen life sentences, two sentences of twenty-five years, nine sentences of twenty years, nine sentences of fifteen years, twelve sentences of ten years, one sentence of eight years, two sentences of seven years, and one sentence of five years), most defendants were released well before their sentences had been fully served. Historian Peter Maguire reported that the majority of sentences imposed under Control Council Law No. 10 were paroled between 1949 and 1958—barely a decade after the end of World War II.

War crimes committed by the Japanese in the Pacific theater also resulted in the creation of an international military tribunal—the International Military Tribunal for the Far East, more commonly referred to as the Tokyo Tribunal. The Charter of the Tokyo Tribunal was proclaimed by U.S. General Douglas MacArthur without major deviation from the Nuremberg Charter. Similar to the punishments imposed at Nuremberg, the Tokyo Tribunal meted out seven death sentences (General Doihara Kenji, Baron Hirota Koki, General Seishrio Itagaki, General Kimura Heitaro, General Matsui Iwane, General Muto Akira, and General Tojo Hideki) and eighteen prison sentences. The main dispute at Tokyo was not the guilt of the defendants, as all were convicted on at least one count, but rather, the nature of the punishment handed down to each defendant.

At Tokyo, unless a defendant was found guilty of committing a crime against humanity, the tribunal only imposed a punishment involving prison. It assessed sixteen life sentences and two lesser sentences of twenty and seven years, respectively. The seven death sentences imposed were carried out on December 23, 1948, at Sugamo Prison. Those who were not sentenced to die remained at Sugamo until their paroles between 1949 and 1955. Here, just as at Nuremberg, the defendants were initially punished with relatively severe sentences. But also as with the individuals convicted at Nuremberg, those punished were often not required to serve their entire sentence. Of the eighteen individuals sentenced to imprisonment, all, except the six who died in prison, were released prior to the expiration of their respective sentences.

There were secondary prosecutions in Japan following the Tokyo Tribunal just like those conducted under Control Council Law No. 10 in Europe. Although the statistics for these tribunals are more difficult to catalogue, penalties imposed did not differ markedly from either those meted out at Tokyo or those imposed under Control Council Law No. 10. The two most common penalties included death sentences and prison sentences. And, as occurred with the other World War II tribunals, very few individuals were required to serve out their initial sentence and, if not executed quickly, either received a reprieve or were paroled from prison early.

Thus, the historical approaches to punishment can best be summarized by the sentences imposed at Nuremberg and Tokyo. Of those individuals who were convicted of crimes against humanity committed during World War II, most were given a sentence of death. Of those whose crimes were of a lesser character, however, most defendants were burdened with a prison sentence of some length that was partially served out at either Landsberg or Spandau Prison in Germany or Sugamo Prison in Japan. In both instances most prison terms were paroled within a decade after prosecution, well before the sentence would otherwise have expired.

The Modern Approach Toward Punishment

Two notable domestic prosecutions of Nazi defendants involved Klaus Barbie and Adolf Eichmann. Both were tried by domestic courts for crimes against humanity. A French court convicted Barbie of crimes against humanity and sentenced him to life in prison. He remained in a French prison until his death in 1991.

The trial of Eichmann is one of the most renowned in history. Eichmann fled Germany after escaping from an American prisoner-of-war camp. He was later kidnapped by Israeli officials while living in Argentina under a false name. Once the fervor regarding Eichmann's abduction diminished, he was tried under a 1950 Israeli law for crimes he committed during World War II. The Israeli law permitted prosecution for crimes against humanity and crimes against the Jews despite the fact that such acts had been committed several years prior to the creation of the state of Israel. Under many punishment schemes the application of a

law to acts that occurred prior to its adoption constitutes an impermissible ex post facto application of law. Israel, however, did not interpret its law in this fashion. In December 1961, Eichmann was found guilty of all counts against him and sentenced to the same fate suffered by many at Nuremberg—death by hanging. Less than one year later his sentence was carried out by Israel.

In contrast to the spectrum of penalties available under domestic sentencing schemes, neither the death penalty nor any other form of corporeal punishment is available under any of the modern international tribunals—the ICTY, ICTR, or ICC. This limit represents a clear deviation from the historical efforts to punish crimes against humanity, where the death penalty was a common feature. Rather, both the ICTY and ICTR penalty schemes are specifically limited to terms of imprisonment. The language governing penalties is virtually identical under the ICTY and ICTR statutes. Both statutes provide initially that "[t]he penalty imposed by the Trial Chamber shall be limited to imprisonment." Thereafter, both statutes admonish that "[i]n determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the [domestic] courts [of Yugoslavia and Rwanda, respectively]." The second paragraph under these penalty provisions, Article 24 of the ICTY statute and Article 23 of the ICTR statute, provides that "[i]n imposing the sentences, the Trial Chamber should take into account such factors as the gravity of the offense and the individual circumstances of the convicted person." The Rules of Procedure and Evidence for both tribunals permit terms of imprisonment up to and including a life sentence. Rules 100 through 106 are related directly to penalties but provide very little additional guidance in relation to sentencing. Rule 101 provides only generally that the Trial Chambers should take into account both aggravating and mitigating circumstances in pronouncing sentence. Although the governing articles on punishment prohibit the imposition of fines or resort to corporeal punishment as a penalty, an explicit provision is made for the return of wrongfully obtained property or proceeds occurring as a result of the criminal conduct.

Another interesting distinction between the World War II tribunals, domestic prosecutions, and the modern-day UN tribunals is that there are no prearranged or permanent prison facilities for individuals convicted by the ICTY, ICTR, or the ICC. Rather, under the governing statutes, individuals convicted of crimes before these tribunals will be transferred to a cooperating state that has signed an agreement with the respective tribunal for the purpose of enforcing sentences. During its first ten years, eight Western European nations signed sentence enforcement agreements with the ICTY: Italy (1997), Finland (1997), Norway (1998), Sweden (1999), Austria (1999), France (2000), Spain (2000), and Denmark (2002). In addition, Germany has entered into two ad hoc agreements with the ICTY to accept particular prisoners (Dusko Tadic and Dragoljub Kunarac). No North American, South American, Eastern European, Middle Eastern, Asian, or African country has agreed to accept prisoners sentenced by the ICTY.

The ICTR has an identical protocol for placing convicted individuals in the domestic prisons of cooperating states. Much like the paradigm at the ICTY, the countries that have agreed to accept ICTR prisoners are regionally restricted and include only African nations. For socio-cultural reasons the ICTR has specifically stated a preference for placing ICTR convicts with African states. During the ICTR's first ten years only three African nations (Mali, Benin, and the Kingdom of Swaziland) have agreed to accept its prisoners. Thus far only Mali has actually received ICTR convicts and, as of 2003, just a total of six prisoners.

The sentencing range for those finally convicted of genocide, crimes against humanity, and war crimes by the ICTY is between three and forty-six years in prison. Six individuals have received sentences of less than ten years, including Zlatko Aleksovski (seven years in prison—sent to Finland to serve his sentence), Damir Dosen (five years in prison—sent to Norway to serve his sentence), Drazen Erdemovic (five years in prison—sent to Norway to serve his sentence), Dragan Kolundzija (three years), Milokica Kos (six years in prison), and Zdravko Mucic (nine years in prison—released early after serving two-thirds of his sentence). All individuals whose sentences were less than ten years were released from custody on or before the ICTY's tenth anniversary.

In contrast three individuals have received a sentence of forty years or longer (General Tihomir Blaskic, Goran Jelisic, and Radislav Krstic). Only one individual, Milomar Stakic, has received a life sentence from the ICTY. Three individuals have received sentences of twenty years or longer: Radomir Kovac (twenty years), Dragoljub Kunarac (twenty-eight years), and Dusko Tadic (twenty years). Two individuals have received eighteen year sentences from the ICTY: Hazim Delic and Vladimir Santic. Two individuals have received sentences of fifteen years: Esad Landzo and Dusko Dikirica. The remaining five prisoners have been sentenced to terms ranging from twelve years (Drago Josipovic and Zoran Vukovic) to eleven years (Biljana Plavsic, the only female convicted by the ICTY) to ten

years (Anto Furundzija and Stevan Todorovic). In many respects these sentences are similar to, although slightly less severe, than those meted out by the judges enforcing Control Council Law No. 10 in postwar Europe. The main distinction between the ICTY and the World War II tribunals is that no one appearing before the ICTY will receive the death penalty because this practice is not permitted under modern international tribunals. However, much like the World War II tribunals, individuals convicted by the ICTY stand a very solid chance of actually serving less time than the punishment initially imposed against them. In fact, several have already been granted early release by the tribunal.

From this small sampling before the ICTY, there is little information that can be gleaned about international sentencing policies. The ICTY and ICTR statutes both suggest that "[i]n imposing sentences, the Trial Chambers should take into account such factors as the gravity of the offense and the individual circumstances of the convicted person." This vague statement has not yielded any consistent pattern in actual sentencing practices. Rather, the tribunal must grapple with some of the most heinous crimes ever committed and carefully delineate a punishment meriting three years as opposed to ten as opposed to eighteen as opposed to forty. Because none of the main architects or perpetrators of the Yugoslavian genocide have yet been convicted, it may be entirely reasonable that only one ICTY defendant has received the most lasting punishment, life in prison. This sentence remains on appeal and may be changed.

In comparison, the ICTR, which is nearing its tenth anniversary, has issued eight final convictions against individuals for genocide, crimes against humanity, and war crimes. The sentencing range for persons convicted before the ICTR is between life in prison and twelve years' imprisonment. ICTR penalties seem more severe than those imposed by the ICTY. For example, five of the eight individuals convicted have been sentenced to life in prison: Jean-Paul Akayesu, Jean Kambanda, Clement Kayishema, Alfred Musema, and George Rutaganda. In contrast to the ICTY with its minimum sentence of three years, the minimum punishment imposed by the ICTR has been twelve years in prison. Furthermore, while the ICTY has sentenced six individuals to prison terms of less than ten years, the three ICTR defendants not receiving life sentences have been sentenced to twelve (George Ruggiu), fifteen (Omar Serushago), and twenty-five (Obed Ruzindana) years in prison. One possible explanation for the deviation between the ICTY and ICTR is that both statutes permit the Trial Chamber to consider the domestic sentencing practices in the applicable nations—the former Yugoslavia and Rwanda. Although the Balkan nations have been reluctant to pursue any consistent course for domestic prosecutions, Rwanda has aggressively prosecuted and punished individual defendants for the country's 1994 genocide. Of the domestic Rwandan convictions occurring between December 1996 and January 2000, 15 percent of all defendants (roughly 370 individuals) have been sentenced to death, 32 percent of defendants (approximately 800 individuals) have been sentenced to life in prison, and 33 percent of defendants (approximately 830 individuals) have been sentenced to prison terms of varying lengths. The remaining 20 percent of domestic defendants (approximately 500 individuals) have been acquitted and, thus, received no sentence.

It is difficult in studying both the ICTY and ICTR to discern a clear mandate regarding international punishment for genocide and crimes against humanity. If the crimes committed in these regions were similar, one would expect some similarity in the courts' sentencing practices. A clear omission before both tribunals is any reference to gradations of punishment—penalties that become increasingly severe based on the crime committed and its underlying circumstances. There is not always a readily defensible or easily explainable reason why one individual received twelve years for participating in genocide while another defendant received life in prison. Both tribunals are permitted by their governing statutes to consider mitigating and aggravating factors in pronouncing sentence. The tribunals have considered a defendant's role in the crime, the defendant's position of leadership or authority (if any), the depravity of the crime, and the status of the victim (such as women, children, the elderly, or other vulnerable victims) as aggravating factors in determining sentence. Likewise, the tribunals have accepted the following as mitigating factors: the defendant's cooperation with the prosecutor, the defendant's lack of authority or position, the defendant's plea of guilty in saving tribunal resources, the defendant's family and personal circumstances, any acceptance of responsibility, and any expression of remorse.

Contemporary international tribunals have not, by either custom or statute, placed any consistent sentencing range on crimes falling within their jurisdiction. Rather, because there is no set range for crimes against humanity or genocide, despite the fact that such gradations or sentencing ranges appear in nearly every domestic punishment scheme, sentencing remains a discretionary exercise delimited only by the tribunals' governing statutes. Because the international community has not definitively placed any one crime, such as genocide, at the top of the hierarchy for sentencing

purposes, tribunals have often pronounced their punishment without reference to any standard international penalty scheme. In certain instances judges could provide a more severe sentence for crimes against humanity than might be imposed for genocide despite the much greater intent that is required to secure a prosecution for genocide. Thus, it is difficult to project with any certainty what sentence lengths will be imposed by either tribunal as they assess the guilt of the numerous individuals still awaiting prosecution.

The Future

The penalty scheme embraced by the ICC underscores the movement toward more standardized punishment—prison and fines only. Although the Rome Statute does not create gradations for crimes committed or provide any solid guidance relating to punishment, the law established by its predecessor institutions (the IMT at Nuremberg, the Tokyo Tribunal, the ICTY, and the ICTR) should shed some light on the punishment of future atrocities. As prosecutions for these heinous acts increase, there is a greater likelihood that the penalties will become more certain and the bases for punishments more consistently articulated and applied. However, until these international tribunals establish a more structured approach to punishment, future defendants can be sure of only one thing—an international conviction for genocide or crimes against humanity will, at most, result in a prison term to be determined by an international court. A fine or the opportunity for reparations may follow, but international law only allows for penalties that begin with imprisonment.

Rule 145 of the ICC Rules of Procedure and Evidence provides some measure of guidance in determining sentences. First, Rule 145 states that the court shall "[b]ear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under Article 77 must reflect the culpability of the convicted person." Next, Rule 145 mandates that the court "[b]alance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime." The court is further admonished to consider the following factors, although they are not specifically labeled as either mitigating or aggravating factors: the extent of damage caused—especially in relation to the victims and their families; the nature of the unlawful behavior and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of time, manner, and location of the crime; and the individual circumstances of the offender, especially as they relate to the individual's age, education, and socioeconomic status.

In addition to the litany of variables listed for consideration in punishment, Rule 145 further requires that the Court shall take into account, as appropriate:

(a) Mitigating circumstances such as:
  (i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;
  (ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;
(b) As aggravating circumstances:
  (i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;
  (ii) Abuse of power or official capacity;
  (iii) Commission of the crime where the victim is particularly defenseless;
  (iv) Commission of the crime with particular cruelty or where there were multiple victims;
  (v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3; [and],
  (vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

Under the ICC sentencing paradigm in Article 77(b), a life sentence may only be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating factors.

The ICC provides hope that punishment for crimes against humanity and genocide will serve one of the underlying purposes of punishment—deterrence. It would be a welcome advancement if humanity no longer needed a tribunal to evaluate the guilt of individuals accused of committing acts of genocide or crimes against humanity. However, for those future cases in which a just punishment must be meted out, there now exists a permanent international body capable of rendering justice. And, for sentencing purposes, there increasingly exists a body of comparable cases and maturing, although still rudimentary, statutory guidance for judges to rely on in assessing proper penalties.

SEE ALSO International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Prosecution; War Crimes

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Meg Penrose

Racial Groups

Even if from a medical and biological point of view, all of humankind belongs to one race, namely the human race (as the UNESCO Declaration on Race and Racial Prejudice [1978] emphasized), all human beings belong to a single species and are descended from a common stock. Legal and political language use the term *races* in the plural sense in order to cover different ethnicities or geographically characterizable subgroups, such as Caucasians, Africans, Mongoloids. Because of the well-established (but erroneous) custom, political and legal language is still using this term.

Racism

Racism as a policy is more than the affirmation or the recognition of special human characteristics linked to color, facial characteristics, or other visible specificities. Racism as a policy attributes a distinct legal status to certain members of a society. Racism can be manifested *inter alia* in the postulation of an alleged "superior race," having more rights than others, but also as the complete or partial denial of rights to special human subgroups.

Different religions have different approaches to the diversity of humankind: Certain religions recognize the distinct legal status of certain human groups; other religions, like Judaism and Christianity, are rooted in the divine unity of humankind. According to the Bible, God said, "Let us make man in our image, after our likeness" (Gen. 1:26). Nevertheless, racism occured in several Christian states during their history.

For the common perception of the term *racism,* one can refer to the United Nations (UN) International Convention on the Elimination of All Forms of Racial Discrimination (1965) which states that "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous" and that "there is no justification for racial discrimination, in theory or in practice, anywhere."

Racism can be manifested in several forms, from the violation of minority rights to segregation and apartheid to genocide, with genocide being the most extreme form of racial hatred. Genocide aims not only to oppress a people group, but to achieve the complete destruction of distinct human communities.

Apartheid policy in South Africa aimed to perpetuate the white minority's power over black masses by denying blacks' political rights. When Afrikaans recognized that they could not maintain this policy which was condemned by the international community, they sought escape through the bantustan policy, which created "homelands" according to tribal appartenance. The alleged citizens of these homelands were considered immigrant workers in the key cities and plantations of South Africa. The United Nations appealed at that time with the strongest terms against the recognition of the bantustans as sovereign states. When apartheid was abolished, Nelson Mandela established a well-functioning compromise that involved cooperation between blacks and whites and between the different black communities.

Racism often has deep roots. The persecution of racial groups in some African states is partly due to their

colonial heritage. The colonial powers often used enthic groups as the local administrative staff and as the auxiliary force of the police and the army. The life of these tribal communities became very threatened once sovereinty had been granted to the country. In Rwanda, the Tutsis were considered traitors by the formerly more oppressed Hutus, who formed the ruling majority of the new country. Until the 1990s, harassment, intimidation campaigns, and pogroms were organized by the Hutu elite. In Nigeria in the 1960s, the Ibos unsuccessfully attempted to secede by creating Biafra, a decision which ended in genocide-like bloodshed. During the same period even the anticolonialist freedom fighters were organized, despite the official name of their organization in Angola or Zimbabwe. After the country was liberated from colonial oppression, the organizations entered into armed conflicts between themselves, especially when governmental power was monopolized by one of them. Inherited artificial boundaries have generally nothing to do with ethnic and linguistic realities, and the imported and imitated nation-state concept contributed to the maintenance of the animosity in Africa. Religious differences between Christians, Muslims, and Animists often contribute to wounds remaining unhealed.

Fighting Racism

Several documents related to the fight against racism have been adopted by the United Nations, and some of them are of binding nature. Two examples are the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). Other documents are recommendations of the UN General Assembly (i.e., the Declaration on the Elimination of All Forms of Racial Discrimination [1963]) or of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), such as the Declaration on Race and Racial Prejudice (1978); the Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War (1978).

The United Nations has defined its focus on fighting racism: the fight against apartheid and institutional segregation, the promotion of the media in the destruction of sometimes deeply rooted stereotypes, and the reduction of economic and social differences. Therefore, these documents proclaim not only the resolute fight for the eradication of racism, but they also emphasize the importance of affirmative action in order to enhance the standing of the disadvantaged group and achieve genuine equality among all people.

Since the time that apartheid became abolished, the attention of the United Nations and other international organizations turned to the fight against anti-Semitism and racial intolerance, the victims of which are often immigrant workers. They have also sought to fight against racism against the Roma community in Europe, as well as the indigenous peoples all over the world, but especially in America and Asia.

The importance of good education and career motivations are emphasized by the international organizations, with the aim of diminishing the dependence of these communities on per capita subsidies, which is an underlying cause of overpopulation in underdeveloped countries in the Third World.

The need to correct the failures of the nation-state concept in Africa is of utmost importance. In the 1990s and 2000s, so-called "transitional justice" programs have been introduced in several African (and South American) states—traditional battlefields of genocide—to show them how they were manipulated and to teach them how to prevent the renewal of racial hatred and of ethnic conflict. In the transitional justice programs, truth-seeking seems to be more important to victims than the penalization of petty offenders. However, this does not negate the necessity for the trial and punishment of the instigators of crimes, including those members of the government or armed forces who may have been responsible.

SEE ALSO Ethnic Groups; Minorities; Racism

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Péter Kovács

Racism

Once considered an objective scientific theory of difference within human populations, racism has become regarded as an ideology of social domination and exclusion on the basis of biological and genetic variation. The scientific basis of racism has been largely discredited, but the ideas that human populations can be divided into distinct groups based on phenotype, that the culture and behavior of these groups is determined by genetic differences, and that biological difference justifies the dominance of certain races over others remain widely influential.

Racism often figures prominently in the ideologies that justify and promote genocide and other crimes against humanity. Dominant social groups commonly use racial categorizations to differentiate other social groups and justify their exclusion and marginalization. The belief that personality and social behavior are linked to biology and therefore are unalterable makes physical removal or annihilation the only possible means of solving the perceived problem of undesirable social groups.

Scientific Racism

The idea that human populations can be divided into distinct racial groups based on physical differences dates back many centuries. Modern racism, however, is distinguished by the assumptions that racial categorizations are scientifically valid and objective, and that personality, mental ability, and social behavior of individuals within racial groups are biologically determined. Racial prejudice and discrimination may be based on various factors, but racism focuses explicitly on the hereditary and immutable nature of social difference. Racism blames the subordinate and exploited status of certain racial groups on genetic inferiority.

The roots of modern racism lie in the late Medieval period, when Jewishness came to be regarded as an issue of ancestry rather than belief and black skin was seen as a curse that doomed Africans to mental and cultural inferiority. Because racism regarded Jewishness and blackness as unalterable biological facts, it followed that Jews and blacks could never be reformed and integrated into civilized society. Racism thus justified the expulsion and massacre of Jews in Spain beginning in 1492, and the subsequent persecution of Jews in other countries. It also justified the enslavement of millions of Africans in the trans-Atlantic slave trade. The British came to excuse their domination of Ireland, in part, by depicting the Irish as an inferior race who would benefit from British rule.

During the Enlightenment, race became a focus of scientific analysis, as biologists and anthropologists sought to develop objective measures for differentiating between peoples. Yet the study of race was never truly objective, because race scientists were deeply influenced by the assumption that Caucasians were more evolved than other races and that Western civilization was superior to all others. The measurement of physical attributes of various racial groups, phrenology, the quantification of intelligence, and other supposedly objective tools were used to explain the biological sources of the preconceived inferiority of non-white groups and to justify their colonization and domination by Europeans.

Comte Arthur de Gobineau's 1855 "Essay on the Inequality of the Human Races" popularized the idea that social differences were linked to biology, and inspired extensive scientific study of the biological roots of social distinction and identity. Francis Galton, adapting Darwin's ideas on evolution to the study of human development, argued in 1869 that selective breeding could be used to create a superior race of human beings. He coined the term *eugenics* for this idea, which later influenced the development of Nazism and other genocidal ideologies.

Racism and Genocide

The idea that group identities are fixed and that group characteristics are rooted in biology has often been used to justify crimes against humanity. Minority groups have commonly faced exclusion and discrimination on the basis of their language, religion, or other cultural factors, but when cultural differences are regarded as natural and therefore immutable, more drastic and violent responses become more defensible. Viewing other racial groups as not simply different but inferior effectively dehumanizes them, making violence against them more acceptable.

Racism influenced the development of the institution of slavery in the Americas in the sixteenth and seventeenth centuries, shaping an emerging distinction between indentured laborers from Europe and and those who came from Africa. The status of European indentured servants gradually improved, while Africans lost rights and benefits, until slavery became an institution uniquely imposed upon those of African ancestry.

Does race exist? Scientific studies of DNA sequences give way to the conclusion that it does not (that the term, as applied to the human species, has no concrete meaning). Here, in 1941, German officials use calipers to take measurements of a man's nose, which will then be used to calculate his race. [HULTON-DEUTSCH COLLECTION/CORBIS]

The assumption that black people were inferior, even subhuman, justified the extreme brutality of the slave trade, in which Africans were captured and shipped across the Atlantic in terrible conditions, leading to the deaths of millions. Even after the elimination of slavery, ideas of racial superiority continued to justify the social, political, and economic dominance of whites or those with more European ancestry in the United States, Brazil, the Caribbean, and South Africa, the denial of rights to black people, and atrocities such as lynching.

Racism also justified colonialism and the massacre and subjugation of native populations by colonial powers throughout much of the world. Viewing Native Americans as a different, sub-human race allowed Spanish colonizers to feel justified in enslaving and slaughtering them in Central and South America, wiping out entire native peoples. The belief in racial inferiority likewise allowed colonists in North America to displace, subjugate, and kill Native Americans. Colonial conquest of Asia and Africa was promoted as a moral obligation for Europeans, the "white man's burden" to bring civilization to supposedly inferior races. When indigenous populations resisted conquest, these same ideas of their inferiority were used to justify the use of brutal force against them, as in the German extermination of the Herero in Southwest Africa from 1904 to 1907. Africa was colonized after ideas of scientific racism had become widely accepted, and this powerfully shaped colonial policy on the continent. In particular, the British and Belgians understood ethnic group differences in racial terms, and discriminated

among their colonial subjects on the assumption that certain "tribes" were better at ruling, others at fighting, and others at laboring.

Within Europe, scientific racism transformed the nature of anti-Semitism, providing scientific justification for the exclusion and persecution of Jews. These ideas reached their peak in the ideology adopted by the National Socialist Party in Germany. The idea that Jews were not simply believers in a different faith but were a different race whose supposed negative characteristics, such as greed and cunning, were biologically programmed excluded the possibility of conversion, assimilation, or reform. Because Nazis regarded the Jewish race as inherently dangerous to Aryan civilization, their complete extermination was posited as the only possible "final solution" to the "Jewish problem," ultimately justifying the massacre of six million Jews. Ideas of racial inferiority and the need to preserve Aryan racial purity were also used to justify the Nazi extermination of an estimated 400,000 Roma people, pejoratively known as Gypsies.

Racism has served as a factor in more recent genocides as well. In the early 1990s, Serbian and Croatian leaders in the states of the former Yugoslavia depicted Muslims not simply as a religious minority but as a non-Slavic racial group, related to the much-hated Turks, who had to be eliminated from the territory in order to purify it. Such beliefs were used to justify ethnic cleansing and ethnic massacres in Croatia and Bosnia and Herzegovina. In Rwanda, German and Belgian colonizers understood the Hutu, Tutsi, and Twa as three distinct racial groups, an artificial interpretation of ethnic differences that Rwandans themselves came to internalize. Colonial policies regarded the minority Tutsi as a superior Hammitic race and gave them control over the rest of the population. A Hutu uprising just prior to independence transferred power to Hutu hands, transforming the Tutsi into a persecuted minority. Hutu extremists ultimately used the idea that the Tutsi were a separate race whose origins lay outside Rwanda to dehumanize the Tutsi and justify the mass slaughter of more than 500,000.

SEE ALSO Anti-Semitism; Eugenics; Genocide; Holocaust; Nationalism

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Timothy Longman

Radio

Radio was one of the great forces behind social and political mobilization in the twentieth century. Joseph Goebbels, one of Adolf Hitler's earliest and most enthusiastic supporters, understood the potential power of this media. When Hitler rose to power in 1933, he appointed Goebbels as his minister of propaganda; in this role, the latter displayed his talents, particularly where radio broadcasts were concerned. Under Goebbels's leadership the Nazis subsidized the production and distribution of millions of cheap radios in order to strengthen their grip on the population. Goebbels's first radios were deliberately designed with a limited range so that they would not pick up foreign transmissions. At the beginning of World War II over 70 percent of all German households owned a radio, the highest percentage in the world.

The extent to which Nazi radio broadcasts played a clear role in preparing and then swaying German public opinion toward the extermination of the Jews is hard to evaluate. Like the press or cinema, radio was one of the media used to diffuse anti-Semitic themes. In the early years of the Nazi regime the radio called for a boycott of Jewish shops. However, not a single radio program with a specific theme of anti-Semitism was designed. Entertainment programs did not include such messages. Of course, speeches given by Hitler and other Nazi leaders containing angry passages condemning the Jews were routinely broadcast on the radio. On the eve of Kristallnacht (Night of broken glass) on November 9, 1938, Goebbels used the radio to urge the German public to pillage Jewish shops and burn down synagogues. During World War II the Nazi media repetitively depicted Jews as devilish characters responsible for the soon worldwide conflict but they continued to keep their extermination a secret.

Some fifty years later the radio was used in a much more direct way to set the stage for and then perpetrate genocide in Rwanda. Within the context of civil war, initiated in October 1990 by the Tutsi-dominated Rwanda Patriotic Front (RPF), Hutu extremists decided to create their own radio station. Their intention had been to counteract the RPF broadcasts (Radio Muha-

bura) and those of the official national station (Radio Rwanda) the latter was indeed considered too moderate and had simply become an outlet for the new multiparty government by 1992. This project, driven by the historian Ferdinand Nahimana who had been dismissed from the Rwandan Office of Information (ORINFOR) that supervised Radio Rwanda, commenced in April 1993 with the creation of Radio Télévision Libre Mille-Collines. This new station was formally independent, but in fact influential politicians belonging to the president's entourage, some of them related by marriage, supported it. As in Nazi Germany, many cheap radio receivers were distributed to the population in different regions of the country. Starting in August 1993 the station broadcast rousing Zairian music popular among Rwandans, and the station became rapidly renowned. RTLM presented itself as an interactive radio station, giving listeners the opportunity to speak to the Hutu people by calling into the station.

This broadcasting format was new to Rwanda at that time. RTLM attracted the populace with its candor and humor, but its ideological message was clear: It was the voice of the Hutu people, victims of the profiteering elites, of calculating Tutsis and those who betrayed the Hutu cause. After the Hutu president of Burundi, Melchior Ndadaye, was killed on October 21, 1993, RTLM programming became still more aggressive. All day long the station repeated a political jingle that prompted its audience to wait: "We have hot news," the broadcasters would proclaim, and when the news was finally diffused, listeners would hear a series of vicious anti-Tutsi slogans. Several times a day the station also broadcast songs written by the Hutu extremist Simon Bikindi.

Immediately after the assassination of the Rwandan president, Juvenal Habyarimana, on April 6, 1994, RTLM openly called for the massacre of Tutsis, Hutu opponents, and even Belgian peacekeepers. Hutu extremists used their radio station to ridicule those in the local administration who called for calm. From April to June 1994 RTLM helped mobilize the Hutu population in support of the killing of the Tutsi minority. The radio station even dared to name the Tutsis who remained to be killed. For the first time in history radio was used to directly perpetrate genocide.

The role of radio in the killings must not be overestimated, however. Numerous massacres were committed without the direct influence of RTLM. Military officers, militia leaders, and mayors who supervised Hutu peasants on the ground played a crucial role in organizing the population to kill. Nevertheless, it is evident that radio, the main media in a country where newspapers are hardly read and television remains in short supply, played an important role in the diffusion of racist anti-Tutsi ideology. RTLM provided Hutu extremists with a useful communications tool that reinforced their political influence over the people. Radio can be a most formidable weapon, in particular when introduced to a population already weakened by fear. Words conveyed over the radio may thus turn deadly.

SEE ALSO Incitement; Propaganda; Radio Télévision Libre Mille-Collines; Rwanda; Television

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Jacques Semelin

Radio Télévision Libre Mille-Collines

The anti-Tutsi newspaper *Kangura* and Radio Télévision Libre Mille-Collines (RTLMC), known as the Hate Radio in Rwanda, are recent examples of hate propaganda that paved the way to genocide. The role of both media was examined by the International Criminal Tribunal for Rwanda (ICTR) in the trial of Ferdinand Nahimana, Jean-Bosco Barayagwiza, and Hassan Ngeze, better known as the *Media* trial.

In Rwanda, the ratio of illiterate people was significantly high. Radio, therefore, was the medium with the broadest reach. During the Rwandan genocide, the radio became the sole source of news, but it was also the voice of authority for most people. Rwandans listened to RTLMC (also known as "Radio Machete") everywhere, including at roadblocks during the killings. Messages transmitted by radio were readily taken at face value and orders issued during the broadcasts were followed.

RTLMC was created in June 1993. Ferdinand Nahimana was its founder and director, and Jean-Bosco Barayagwiza was his second in command. RTLMC was owned predominantly by members of the party of the president of the Republic, Juvenal Habyarimana. They were surrounded by influential Hutus, including the close entourage of the president and his wife. Simon Bikindi, a famous anti-Tutsi singer, and Kantano Habimana were the radio's most famous presenters. Officially, RTLMC was an independent radio station, but its

tight ties to the government made that independence little more than a cosmetic claim. Ironically, the incorporation document of the radio states that the purpose of RTLMC was to create harmonious development within the Rwandan society.

RTLMC broadcasts accused the Tutsis of being plotters and parasites, and it used the Tutsis' historical domination over the Hutus, as well as the fear of an armed Tutsi insurrection to mobilize the Hutu population. RTLMC broadcasting was like a drumbeat, calling on listeners to take action against the *Inkotanyi* enemy ("infiltrators," a name often given to the Front Patriotique Rwandais, or FPR) and their *Inyenzi* accomplices (*inyezi,* which means "cockroach," was an epithet often hurled at Tutsis). A call by the radio to take up arms against "infiltrators" was clearly intended to be understood as a call to take up arms against all Tutsis. RTLMC sometimes used a more direct approach, naming individuals that it falsely accused of being FPR members, which led to their being killed. RTLMC once broadcast a false claim that the FPR planned to assassinate Hutu leaders. This announcement triggered the killing of hundreds of Tutsi civilians in the Bugesera region. RTLMC was also instrumental in the negative perception of the United Nations among Rwandans, and issued a direct call to attack and kill the UN peacekeepers, including General Dallaire.

RTLMC advised its listeners to identify Tutsis by examining their physical appearance, to "look at their small noses, and then break them." After April 6, 1994, RTLMC broadcast more and more virulent calls for violence and explicitly urged its listeners to exterminate the Tutsi from the surface of the earth. Listeners were encouraged to kill so that future generations would only be able to guess what Tutsis looked like. The on-air personalities advised their audience that they should kill Tutsis even if they were already fleeing. The Militias followed these orders.

Before and during the genocide, all inside Rwanda, as well as many who lived abroad, were aware of RTLMC's direct incitement to violence against Tustis. It nonetheless pursued its broadcasting without much interference.

Kangura

Kangura was an anti-Tutsi publication, and one of the most virulent media voices promulgating ethnic hatred. Hassan Ngeze was *Kangura*'s founder, owner, and editor in chief. He was also in charge of the overall management of the paper and thus controlled its content. *Kangura* promoted the fear of Tutsis among its Hutu readership. *Kangura* contributed to the climate that led to the genocide by publishing numerous explicit threats and messages inciting people to exterminate the Tutsis.

Direct incitement to violence and extermination of the Tutsis were frequent themes in *Kangura* articles. The paper warned readers to wake up, to be firm and vigilant against the Tutsi scourge. *Kangura* described the Tutsis as "bloodthirsty" and exhorted the Hutu to have no pity for the Tutsis, simply to kill them. *Kangura* frequently used its articles to imply Tutsi complicity with the FPR, which was another of its common targets. A *Kangura* article even incited the Hutu population to kill UN peacekeeping soldiers, prophecying that this would cause the UN to pull out of Rwanda. The prophecy went on to predict that Tutsi blood would then flow freely, and that all Tutsis would be tortured to death and exterminated. This scenario would later become reality.

A central piece of *Kangura*'s propaganda was the Hutus' Ten Commandments, a compendium of discriminatory behaviour against Tutsis. Tutsis were invariably portrayed as the enemy, as evil and dishonest, and Tutsi women were said to be enemy agents. The imperative style employed in *Kangura*'s articles unequivocally called upon the Hutus to take action against the Tutsis.

In one of its issues, *Kangura* rhetorically asked which weapons Hutus should use to conquer the *Inyenzi* once and for all. Accompanying the article was a drawing of a machete. This was perhaps the most graphic expression of the paper's genocidal intent. Many Tutsis were killed when *Kangura* published lists of people whom it referred to as *Inkotanyi,* asking readers to send information on those mentioned in the lists.

The ICTR Judgement and Direct and Public Incitement to Commit Genocide

The *Media* trial before the International Criminal Tribunal for Rwanda (ICTR) raised important legal principles regarding the role of the media, which had not been addressed at the level of international criminal justice since Nuremberg. The ICTR investigated the accountability of those who directly and publicly incited Rwanda's Hutu population to commit genocide, but it also looked at those who controlled such media.

The ICTR found that *Kangura* and RTLMC made the same propaganda endeavor, conveyed the same message, and publicly promoted each other. *Kangura* openly identified itself with RTLMC and worked with the radio to acquaint the station's listeners with its ideas. Barayagwiza served as the link between the two media outlets. The accused once made a public appearance together at a stadium in Kigali. There they urged the crowd to listen to RTLMC and pleaded that the

radio should be used to disseminate the Hutus' empowerment ideas and to fight against the *Inyenzi*. RTLMC broadcast many of the speeches given during that public appearance. The ICTR found that the meeting and the RTLMC report on it generated an atmosphere of hostility toward the Tutsis.

The power of the media to create and destroy human rights implies a very high degree of responsibility. For the ICTR, those who control media such as *Kangura* and RTLMC are accountable for the consequences of their programs. As two of the RTLMC Steering Committee's most active members, Nahimana and Barayagwiza were deemed responsible for the radio's overall management. Nahimana and Barayagwiza had the power to stop transmissions and change the content of the programs, but they did not exercise that power. In fact, Nahimana was happy that RTLMC had been instrumental in "raising awareness," that it was effective in the incitement to violence.

In the *Media* trial, Nahimana and Barayagwiza were indicted for their role at RTLMC, whereas Ngeze's indictment was mainly with his work at *Kangura*. All were found guilty of genocide and of direct and public incitement to commit genocide. The ICTR found that the writings of *Kangura* and the broadcasts of RTLMC constituted conclusive evidence of the genocidal intent of the accused. For the tribunal, genocide is a crime so serious that direct and public incitement to engage in it must be punished, even in cases where such incitement fails to produce the desired result. The mere potential of the communications media to cause genocide is enough to turn it into incitement. The ICTR recognized that the death of President Habyarimana was the trigger that precipitated the killings, but it viewed the work of the RTLMC and *Kangura* as the bullets in the gun. The ICTR also held that there was a causal connection between the broadcast of the names of Tutsis who were subsequently killed.

The ICTR also found Barayagwiza and Nahimana guilty of superior responsibility. This was an historic development in international criminal justice. The ICTR found that their roles in controlling RTLMC's programming, and their failure to take the necessary measures to prevent the killings instigated by RTLMC, as further elements of their guilt. The tribunal thus recognised a positive obligation to prevent direct and public incitement to commit genocide.

SEE ALSO Incitement; International Criminal Tribunal for Rwanda; Propaganda; Radio

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Martin Imbleau

Rape

In the period immediately following World War II, when the London and Tokyo Charters attempted to establish a list of crimes against humanity, rape was not explicitly mentioned. In contrast, the underlying crimes of extermination, persecution, and enslavement were expressly included as part of the unlawful acts committed against a civilian population. Whether sexual assaults, in particular rape, could be manifestations of crimes against humanity under the Nuremberg and Tokyo Charters is usually answered in hesitant or dumfounded terms. International criminal scholars, however, such as Cheriff Bassiouni, contend that rape was indeed subsumed in the explicit, residual crime of "other inhumane acts." the last category of crimes against humanity as listed in both the London and Tokyo Charters. International lawyers, such as Patricia Sellers and Kelly Askin, assert that rape not only could constitute at least a part of a crime against humanity, but that the Nuremberg Tribunal accepted evidence of sexual violence as valid in the prosecution of crimes against humanity.

Although the fact is frequently ignored, evidence of rapes and other sexual abuse was introduced by the French and Russian Allied prosecutors at the Nuremberg Tribunal. Witnesses testified about rapes committed by German soldiers in occupied France and on the Russian front. Testimony also informed the judges about sexual abuse, male and female, including sterilization experiments, in Nazi concentration camps. The Nuremberg Judgment specifically addressed crimes such as the killing of prisoners of war, the persecution of Jews, and the deportation of individuals to serve in slave labor programs but, unfortunately, did not refer even once to the crime of rape or other sexual violence. In an apparent effort to explain their decision, the judges observed that, in the section of the judgement that dealt with wars crimes and crimes against humanity, "the evidence was overwhelming in its volume and detail." They proposed, therefore, to deal with the multitude of atrocities quite generally, noting that "every conceivable circumstance of cruelty and horror" had been perpetrated. The judges distinguished, rather hastily, the difference between war crimes and crimes against humanity in their analysis of the "overwhelming" evidence, and they found that:

> [I]nsofar as inhumane acts charged in the indictment and committed at the beginning of the war,

In an overgrown field in Djakovica, Kosovo, the discovery of the remains of an Albanian girl believed to have been raped and then killed by Serbian troops. July 1993. [TEUN VOETEN]

> did not constitute War Crimes, they were all committed in execution of, or in connection with, the aggressive war, and therefore constituted Crimes Against Humanity.

To the extent that the rapes and other forms of sexual violence inflicted upon German civilians, or civilians of other nationalities, were not judged to be traditional war crimes, the Tribunal condemned such conduct as inhumane acts under crimes against humanity. The failure to expressly include rape among the listed crimes against humanity, together with the paucity of clearer judicial explanation on how sexual assault evidence was characterized, has contributed to the continuing myth that rapes and other sexual violence evidence were not pursued at Nuremberg.

At the Tokyo Tribunal, prosecutors submitted harrowing evidence of rapes committed by the Japanese forces in Nanking and other Chinese cities. The evidence also confirmed that rapes, sexual mutilations, and forced sexual intercourse between prisoners occurred frequently. Even though the Tokyo Charter provided for crimes against humanity, the Tokyo Tribunal judges held that all the atrocities committed by the Japanese forces, including the rapes, constituted war crimes. The crimes against humanity provision was not relied upon, probably because initially, crimes against humanity were thought to apply to acts committed against one's own civilian population. The Japanese, unlike the Nazis, were not accused of committing crimes against Japanese citizens. Moreover, crimes committed by the Japanese against peoples they subjugated in Korea and Taiwan were not prosecuted at all, even though they fit the criteria of crimes against humanity. Hence, the Tokyo Tribunal judges employed traditional theories of war crimes in their legal analysis of rapes and other sexual violence.

Control Council Law No. 10 and the Subsequent Nuremberg/Tokyo Trials

After the major Axis criminals were prosecuted at Nuremberg and Tokyo, the minor Axis war criminals, in

Alice, a 20-year-old Liberian woman and rape victim, in 2003. In August 2003 media outlets around the world reported that Liberian rebels and government soldiers were assaulting thousands of girls and women under the cover of war. Victims said that, as Charles Taylor's regime was crumbling, fighters on both sides regarded the female civilian population as the spoils of war—and wished to exploit the general anarchy before peacekeepers arrived. [AP/WIDE WORLD PHOTOS]

both Europe and the Pacific theatre, were tried by military courts set up by the Allies in their respective occupations zones. In what is commonly referred to as the "subsequent trials," minor criminals faced charges in the British, Polish, French, and American military courts. Within the U.S. Army occupation zone, these proceedings were established and governed by Control Council Law No. 10. Its provisions proscribed crimes against peace, war crimes, and, importantly, crimes against humanity. For this latter criminal category, the definition reads as follows:

> Crimes Against Humanity. Atrocities and offenses, including but not limited to murder, extermination, deportation, imprisonment, torture, rape, or other inhumane acts committed against the civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

Control Council Law No. 10, unlike the Nuremberg and Tokyo Charters, expressly names rape as a type of crime against humanity. In its strictest sense, however, the law was national military law, decreed to aid in the administration of foreign occupied lands. It was not international law per se, and differed to some extent from the law applied at the International Military Tribunals.

These subsequent trials, held in the occupied sector governed by Control Council No. 10, did not produce as great a wealth of jurisprudence as was generated during the trial of Nazi doctors who performed medical experiments or the trial of the industrial producers of the Zyklon B gas that was used in the concentration camps. There was little jurisprudence on rape, although several cases did roundly condemn other forms of sexual abuse, such as forced sterilization, as inhumane acts prosecutable under the heading of crimes against humanity. The significance of Control

Council No. 10 in regard to rape, therefore, lay not in straightforward jurisprudence on the subject, but rather in its clear acknowledgement, so soon after the Nuremberg and Tokyo Charters, that acts of rape could be considered a crime against humanity.

In the Far East, the trails were held to prosecute minor war criminals. In one of these, the U.S. military court charged Japanese General Yamashita for multiple crimes, including rapes committed in the occupied Philippines. In the Dutch Batavia trials in Indonesia, other defendants were prosecuted for forced prostitution. Consistent with the factual and legal holdings of the Tokyo Tribunal, these subsequent trials condemned the rampant commission of rape as a category of war crimes.

In 1950, at the direction of the General Assembly Resolution 95, the International Law Commission produced the Nuremberg Principles to codify the offenses contained in the Nuremberg Charter. The Commission set forth the verbatim text of crimes against humanity as drafted into the Nuremberg Charter. Unfortunately, rape was omitted from this list, even though Control Council No. 10 was still in force. As a result, the legacy of World War II regarding the classification of rape as a war crime remained ambiguous.

The Modern Recognition of Rape as a Crime Against Humanity

The concept of crimes against humanity is one of the few international crimes that has never been grounded in a treaty. Unlike the crimes of apartheid, torture, or genocide, all of which are replete with conventions devoted to their legal terms, there existed no convention establishing internationally agreed upon terms of crimes against humanity, until the adoption of the Rome Statute of the International Criminal Court in 1998. As a result, the modern understanding of crimes against humanity derives from its incorporation into national laws and, more recently, its ubiquitous insertion into the statutes of international courts and tribunals. A notable example of a domestic provision which includes rape among its list of crimes against humanity is found in the law of Bangladesh.

In 1971, East and West Pakistan fought a bloody war of secession, which resulted in the creation of an independent Bangladesh. During that armed conflict, tens of thousands of women were reportedly raped. In 1973, the newly formed Bangladesh legislature published Act XIX to set forth the legal basis upon which to prosecute Pakistani prisoners. Its provision on crimes against humanity read:

> Crimes Against Humanity: namely; murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape, or other inhumane acts committed against any civilian population or persecution on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated.

This legislation exemplifies the ongoing evolution of the legal concept of crimes against humanity. Like Control Council Law No. 10, the law includes rape and torture among recognized crimes against humanity, along with additional proscriptions outlawing abduction and confinement.

The aftermath of Pakistan's 1971 war did not, however, include the prosecution of rape as a crime against humanity. Instead, an eventual political agreement was reached whereby Pakistan recognized Bangladeshi independence in exchange for the return of its prisoners of war. This agreement derailed any hope of prosecution. A pervasive lack of political will to prosecute international crimes in general, and rapes in particular, created a dearth of jurisprudence on rape as a crime against humanity during the latter half of the twentieth century. Only with the establishment of the ad hoc tribunals for the former Yugoslavia and Rwanda did rape as a crime against humanity receive diligent international attention and concerted enforcement.

In 1991 the disintegration of Yugoslavia devolved in to an armed conflict during which thousands of acts of sexual violence were committed, most notably the rape of detained Bosnian Muslim and Bosnian Serb women. The worldwide media and women's rights and other human rights movements vociferously urged the United Nations to condemn the rapes. Without hesitation, the UN Security Council issued Resolution 820, condemning "the massive, organized and systematic detention and rape of women and reaffirmed that those who commit . . . or order . . . the commission of such acts will be held individually responsible." In 1993, the Security Council established the ad hoc International Criminal Tribunal for the Former Yugoslavia to investigate, prosecute, and judge criminals from all sides of the conflict. The Secretary-General's Report to the Security Council detailed the nature of rapes and sexual violence that occurred during the armed conflict and explained its rationale for placing crimes against humanity within the Yugoslav Tribunal's jurisdiction.

> Crimes against humanity refer to inhumane acts of a very serious nature, such as wilful killing, torture, or rape, committed as part of a widespread or systematic attack against the civilian population . . . such inhumane acts have taken the form of so-called "ethnic cleansing" and widespread and systematic rape and other forms

> of sexual assault, including enforced prostitution.

The ensuing Article 5 of the Yugoslav Statute explicitly enumerated in subsection (g) rape as a crime against humanity.

In 1994, Rwandan ethnic tensions devolved into genocide. The Secretary-General of the United Nations drafted the Statute of the Rwanda Tribunal and included an express provision for rape as a crime against humanity under Article 3(g). The inclusion of rape in the Article 5 of the Yugoslav Statute, and in Article 3 of the Rwanda Statute highlighted the international community's acceptance that the crime formed a part of the customary law that binds all states, even though it had no basis in any formal treaties. The UN's inclusion of rape as a crime against humanity within both statutes signaled the Security Council's intent to ensure that the perpetrators of rape in Rwanda and Yugoslavia would be prosecuted under international law.

Since 1950, the International Law Commission, the body that penned the Nuremberg Principles, had been tasked by the United Nations General Assembly to draw up a Draft Code of Crimes Against Mankind. In 1996, as a result of the Yugoslav and Rwanda Statues, the Commission inserted rape into the crimes against humanity provision of the Draft Code and finally redressed its omission in the Nuremberg Principles.

By the late 1990s, the universal acceptance of the legal concept of crimes against humanity spurred its incorporation into several other statutes of international tribunals. The Rome Statute, which governs the jurisdiction of the International Criminal Court, was signed in 1998 and ratified in 2003. It is the first truly international treaty, drafted to prosecute international crimes (even when they were not generated by a war) or genocide. Article 7(g) of the Rome Statute proscribes a panoply of violent sexual offenses under the heading of crimes against humanity. Included among these offenses are "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other from of sexual violence of comparable gravity." The International Criminal Court, a permanent body with prospective jurisdiction (the ability to judge international crimes committed in the future), included several explicitly described forms of sexual violence under the heading of crimes against humanity. Prosecutors and judges will eventually be able to rely upon these provisions when prosecuting a widespread or systematic attack against civilians.

The ad hoc tribunals constituted under the Sierra Leone Special Court, the Panels of East Timor, and the anticipated Extraordinary Chambers in Cambodia, have also revisited the concept of sexual assault as a crime against humanity. As a direct outgrowth of the Rome Statute's broader definition of sexual violence, two of the courts have incorporated rape and a selection of other sex-based crimes into their crimes against humanity provision. For instance, Article 2 of the Sierra Leone Special Court includes rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence as crimes against humanity. Section 5 of the United Nations Transitional Administration in East Timor Regulation 2000/11 incorporated the Rome Statute's list of crimes against humanity verbatim, thus including sexual offenses as prosecutable by the East Timor Special Panel. The proposed Extraordinary Chambers of Cambodia, the subject of tense political negotiations between the national leaders and the United Nations, includes rape as the only sex-based conduct explicitly listed under crimes against humanity.

Jurisprudence of Rape as a Crime Against Humanity

In 1998, the Rwanda Tribunal delivered its first judgment, in the case against Jean-Paul Akayesu. Mr. Akayesu was the highest-ranking political official in a commune where about 2,000 Tutsis were slaughtered by a Hutu political militia group called the Interhamwe. During the killings, many Tutsi women fled their homes and sought sanctuary at the communal headquarters where Akayesu presided. The women pleaded with Akayesu to protect them from the oncoming massacre. Testimony revealed that the women were subjected to rapes, gang rapes, and sexual humiliation. The acts often preceded their deaths.

The *Akayesu* Trial Chamber pronounced a detailed opinion based on the rape testimony it heard. The judges cited the testimony of a Tutsi witness identified as JJ, who asserted that

> she was taken by force from near the [municipal office] into the cultural centre . . . in a group of approximately fifteen girls and women. In the cultural center, they were raped. She was raped twice. Then another man came to where she was lying and he also raped her. A third man then raped her, she said, at which point she described herself as near dead.

The Trial Chamber also heard from a Hutu woman, identified as PP, who observed the rape of Alexia, a Tutsi. Witness PP testified that "one person held her neck, others took her by the shoulders, and others held her thighs apart as numerous Interhamwe continued to rape her—Bongo after Pierre, and Habarunena after Bongo."

The Trial Chamber concluded that the sexual assault described in the testimony constituted rape under Article 3, the crimes against humanity provision of the Rwanda Statute. It also found these incidents of sexual violence to constitute an act of genocide, under the prohibition of "causing serious bodily or mental harm to members of the group." In finding Mr. Akayesu guilty, the Trial Chamber, for the first time in international law, undertook to define rape:

> The Chamber must define rape, as there is no commonly accepted definition of this term in international law. While rape has been defined in certain national jurisdictions as non-consensual intercourse, variations on the act of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual.
>
> The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.

Mr. Akayesu was sentenced to life imprisonment for genocide and crimes against humanity, including the relentless rapes committed upon Tutsi women by the Interhamwe.

The jurisprudence of the Yugoslav Tribunal developed along parallel lines with that of its sister tribunal in Rwanda, yet its conception of rape was distinctly different. In a 1998 case, against an individual named Furundzija, the Yugoslav Tribunal employed a more mechanical definition of rape, treating it as a war crime.

In 2000 a Trial Chamber heard a case against Kunarac et al., in which three Bosnian Serbs were charged with rapes, torture, and enslavement. During the trial it was revealed that hundreds of Bosnian Muslim women and girls had been caught up in the military takeover of the town of Foca, in eastern Bosnia. The women were held in a series of Serb-run detention centers. Some were eventually expelled, but others were held by individual Serb soldiers and forced to serve as their personal, sexual slaves.

Each of the accused was found guilty of rape as a crime against humanity under Article 5 of the Yugolsav Statute. They were all sentenced to terms of imprisonment, ranging from sixteen to twenty-eight years. In rendering its decision, this time the Trial Chamber set forth a definition of rape that placed it within the category of crimes against humanity:

> The actus reus of the crime of rape in international law is constituted by: 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) the mouth of the victim by the penis of the perpetrator, where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances. The mens rea is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.

This definition combines the mechanical terms employed in the Furundzija case with new considerations. Specifically, the Kunarac definition adds the requirement that the sexual intercourse occur without the victim's consent, and that the perpetrator be aware of the absence of consent.

In the Kunarac Appeals Decision, the Appeals Chamber offered extensive clarification on the meaning of lack of consent as an element of rape as a crime against humanity. It stipulated that the conditions of the rape must be such that true consent is not possible. Moreover, it rejected the ground of appeal put forth by the defendant, who argued that resistance to rape had to be "continuous" or "genuine." The appellate court concluded that:

> the Appellants were convicted of raping women held in de facto military headquarters, detention centres and apartments maintained as soldiers residences. As the most egregious aspect of the conditions, the victims were considered the legitimate sexual prey of their captors. Typically, the women were raped by more than one perpetrator and with a regularity that is nearly inconceivable. (Those who initially sought help or resisted were treated to an extra level of brutality). Such detention amounted to circumstances that were so coercive as to negate any possibility of consent.

Even though the Furundzija/Kunarac definition of rape resembles the definition used in many national laws, it is designed for application in periods of armed conflict or in the context of crimes against humanity. Accordingly, any allegation of the possibility of consent must take into account the military, social, and political upheaval that prevail in such circumstances. In order to prove that a victim-survivor of rape did not consent, it is crucial to introduce evidence of the actual circumstances of the offense. Elements such as abduction and detention of civilians can be invoked to show the perpetrator's awareness of inherently coercive circumstances. This broad approach to evidence of consent also reflects the original intent of procedural Rule 96, which is in force at both tribunals. Rule 96 discounts consent as a defense against the charge of sexual assault and rape if a victim has been subjected to or threatened with violence, duress, detention, or psychological oppression.

The definition of rape as a crime against humanity at the Rwanda Tribunal has incorporated the Furundzija/Kunarac approach since 2003. In the Rwandan case of *Prosecutor v. Kajelijeli*, the Trial Chamber noted that, "given the evolution of the law in this area . . . the Chamber finds the [Furundzija/Kunarac] approach of persuasive authority."

Another important stage in the evolution of rape as a crime against humanity is exemplified by findings of the Yugoslav Tribunal. This is the development of a gender-neutral orientation, which acknowledges that men and boys can be subjugated to rapes. In 2004, in the *Prosecutor v. Cesic*, the Trial Chamber sentenced Bosnian Serb Ranko Cesic to eighteen years in prison for committing ten camp killings and for committing rape upon two brothers. The Trial Chamber found the following:

> Regarding the sexual assaults, the factual basis indicates that the victims were brothers, who were forced to act at gunpoint and were watched by others. . . . [t]he assault was preceded by threats and that several guards were watching and laughing while the act was performed. The family relationship and the fact that they were watched by others make the humiliating and degrading treatment particularly serious. The violation of the moral and physical integrity of the victims justifies that the rape be considered particularly serious as well.

Until recently, the recognition of rape as a crime against humanity that protects both males and females has not been clearly articulated in international jurisprudence. Rapes involving male victims will notably require a different development of the factual basis for rapes. For example, the forced sexual penetration commonly performed in the rape of males was often not physically committed by the accused. Instead, such rapes usually involve two male victims who were directed by the accused to assault one another. Another common element of male rapes in this context is the public nature of the assault. It may be the case that the prosecution of male rape will entail the use of different standards to demonstrate lack of consent than that employed in cases of female rapes.

Future Trends

The initial concept of crimes "repugnant to the principles of humanity" gradually stimulated the development of crimes against humanity. From rape's rather hesitant debut within the crimes against humanity provision after the World War II International Military Tribunals to its uniform acceptance by the beginning of the twenty-first century, many men, women, and children have endured rapes committed as part of attacks on civilian populations. The body of judgments that condemn rape as a crime against humanity have helped to close a legal loophole that resulted from earlier understandings of the offense, which consigned it to the category of war crimes. As the concept evolves, the prohibition of rape under crimes against humanity may become more readily enforcible.

The establishment of the permanent International Criminal Court, the mixed national and international courts, and the ongoing issuance of judgements from the ad hoc tribunals raise valid expectations that the interpretation of rape as a crime against humanity will constantly evolve. Under the International Criminal Court, rape is presently defined as an act in which:

> The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
>
> The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

The definition borrows from the substantive jurisprudence of the Yugoslav and Rwanda Tribunals and certain aspects of the procedural safeguards of Rule 96, but it still leaves room for further challenges and development. Issues still to be addressed include the concept of genuine consent, and determining when, other than the presence of force or coercion, a person may be deemed incapable of giving that consent. It might be argued, for instance, that incapacity may be due to age. A further issue lies in the clinical specificity of the definition currently in use, which singles out penetration by a sexual organ of the anal or genital opening. It might be argued that other parts of the body are subject to rape or capable of being an instrument of rape. The answers will be shaped by the horrible conduct of future perpetrators, as well as by the legal deliberations of judges.

SEE ALSO Crimes Against Humanity; International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; War Crimes

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Patricia Viseur Sellers

I am setting forth the above in my personal capacity. This article represents neither the policies of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia nor the United Nations.

Ratification see International Law; Proxmire, William.

Reconciliation

Reconciliation can refer to a condition in which there is a restoration of wholeness—a bringing together of that which has been torn apart. However, the term reconciliation may also be applied to a process: Those that have been divided by destructive conflict and enmity begin to forge new relationships that hold the promise and seeds of a shared future. The first dimension of a reconciliation process addresses the painful trauma of the past; the second focuses on those that have been divided acquiring the hope necessary to anticipate some kind of shared future. In all instances different circumstances will result in different types and degrees of reconciliation.

The bereaved and dispossessed can never recover that which they have lost, but they can learn to live with their sense of personal and collective loss. For the sake of future peace, this is particularly vital for societies emerging from terrible experiences such as genocide.

The relative success of community efforts to deal constructively with the legacy of fear and hatred that divides it appears to depend in the first instance on three factors:

1. Truth: The perpetrators are prepared to acknowledge their guilt and publicly validate the historical experience of the victims' pain and suffering.
2. Security: The degree to which survivors can orientate themselves toward the future is crucially dependent on their sense of security and corresponding freedom from fear of a return of violence and abuse.
3. Justice: Individual and collective culprits must move beyond acknowledging their guilt and show evidence of being prepared to suffer punishment and/or make reparations.

To these three factors three contextual variables should be added:

- Time enables people to learn how to live with the scars that remain from past events.
- A moral culture of the victims-survivors, which emphasises the interdependency linking all together as part of a common humanity, better equips them to become reconciled to their losses and orientated toward some kind of future coexistence.
- Sustainable reconciliation processes require complementary changes in those political, economic, and social institutions that provided the structures within which the crimes of the past were perpetrated.

Reconciliation after Genocide?

A brief review of some of the postgenocide processes of the last century indicates that there is no common pattern to reconciliation efforts.

Armenian Genocide

Armenians throughout the world agree that there can be no reconciliation with Turkey or the Turkish people until they acknowledge their culpability in the campaign of extermination against the Ottoman Empire's Armenian population during World War I. Various states around the world have acknowledged the crime committed against the Armenians, but there has been no indication that the Turkish authorities are prepared to make the gesture necessary to initiate some kind of reconciliation process.

Cambodian Genocide

Since the overthrow of the Khmer Rouge regime in 1979 Cambodians have struggled to come to terms with their legacy of autogenocide. The challenge Cambodians face is to become reconciled with each other and their own history. For many the principal response to the horrors of the past has been an attempt to simply forget them; some justify such an approach by referring to the beliefs of Buddhism and the moral imperative to avoid "the spirit of revenge," while others are driven by the fear of a return of violence should efforts be made to bring the main perpetrators to trial. This social amnesia was initially facilitated by agreements and amnesties proffered by the Cambodian political elite to the surviving Khmer Rouge leadership in order to preserve a fragile peace within the country. However, with the passage of time and in the face of internal and external

pressure the Cambodian regime eventually reached an agreement with the United Nations in 2003 for the establishment of a tribunal to try the surviving senior Khmer Rouge leaders. Many Cambodians continue to ask, though, "Why did we do this to ourselves?"

Rwandan Genocide

Since the Rwandan genocide of 1994 a range of initiatives has attempted to address its legacy and build a new future. Some of the main organizers of the slaughter have been brought before the International Criminal Tribunal for Rwanda. By 2001, however, there were still some 120,000 people in Rwanda's prisons awaiting trial for genocide-related offenses. In response the new Rwandan regime began to introduce a form of community-based justice by adapting the traditional conflict resolution process of *gacaca.* The aim was to promote reconciliation. It is too early to pass judgment on this initiative. However, as historian Mahmood Mamdani has so clearly pointed out, Rwanda's key dilemma remains one of building a democracy that can incorporate a guilty majority alongside a bitter and fearful minority in a single political community. At present to be a Hutu is to be a presumed perpetrator to whom the pursuit of justice seems like victors' revenge. According to Mamdani, the prime prerequisite for reconciliation and a common future in Rwanda is a form of political justice whereby Tutsis relinquish their monopolization of political power rather than continue to hold on to it out of fear of the majority.

Germany and the Holocaust

Following the mass murder of European Jewry and the displacement of the majority of those that survived at the outset, little was done to acknowledge the horror of the slaughter or to create the spaces necessary for survivors to tell their stories. Justice was confined to military trials, internal purges of collaborators in formerly occupied countries, and a de-Nazification program in Germany. Monetary reparations were made to Israel, but the dominant concern seemed to be ensuring that such crimes against humanity would never reoccur. In time, however, interest in the Holocaust grew. In Germany and beyond there are museums, national days of remembrance, educational programs, and many other forms of memorializing the Holocaust. The result has been an expansion of the space available for dialogue within and between the communities that were once so divided. Thus, two generations after the genocide the acknowledgment of the historic crime and the suffering of its victims and survivors, along with efforts at restitution, have helped Jewish communities around the world make a distinction between the culpability of past perpetrators and contemporary generations—a perception necessary for the creation of a shared future in postgenocide societies.

SEE ALSO Armenians in Ottoman Turkey and the Armenian Genocide; Cambodia; International Criminal Tribunal for Rwanda; Reparations

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Andrew Rigby

Refugee Camps

A refugee camp is a place where people who flee their country to escape persecution, armed conflict, or political violence, can (in principle) live in safety. Over thirty-nine million people worldwide live as refugees or internally displaced persons (IDP). Not all of them gather in camps. Some are settled among the local population, and some try to seek asylum in other countries. However, the majority of the world's refugee population finds an immediate, if temporary, protection in camps.

Refugee camps are usually close to borders of the country in which the refugees originate and are established by host countries or an international organization, such as the United Nations High Commissioner for Refugees (UNHCR) or the International Committee of the Red Cross (ICRC). Some camps are carefully planned, but others emerge spontaneously, out of necessity, despair, and destitution, without taking fundamental considerations such as geography, resources, policy, or economy into account.

Camps are an essential element of the humanitarian response to refugees. They are a temporary solution to a crisis, and they allow most refugees to remain in safety until it is possible for them to go back to their homes or move on to more permanent resettlement. Unfortunately, certain camps take on a permanent

Children are often the largest group displaced by conflict. At this refugee camp in Khoja Bahauddin, Northern Afghanistan, they look to an uncertain future. October 2001. [TEUN VOETEN]

character, and some refugee populations are born, live out their lives, and die in their camp. This is the case of Palestinian refugees.

The creation of a refugee camp frequently results from an armed conflict in which the civilian populations suffered and feared for their lives. It is not rare that such persecutions constitute crimes against humanity or crimes of genocide. Refugee camps give rise to complex situations, especially when their residents are still confronted with danger. Because of the coexistence of enemy combatants, or of people from different ethnic groups who have a stake in the conflict, violence is a frequent occurrence in the camps. The conditions of containment are also favorable to the development of organized crime.

Furthermore, camps are not always protected from external attacks, which may constitute the continuation of the crimes against humanity or the genocide they were fleeing. Because refugee camps are temporary in nature, host countries are often eager to close them as quickly as possible. This raises the possibility that refugees may be forced to repatriate to places where they are still in danger and where they fear falling victim to crimes against humanity or of genocide.

Camps May Protect Against Crimes Against Humanity and Genocide

The causes of refugee flows are as diverse as they are numerous. At times, however, those causes may, in themselves, constitute a crime of genocide or a crime against humanity. In such cases, the establishment of a camp presents new and complex challenges. Such camps tend to be quantitatively larger and are likely to result in a dangerous exposure for the residents. The post–cold war era has given many tragic examples of this.

Between 1988 and 1996, nearly three million Iraqi Shiites and Kurds streamed toward the borders of Iran and Turkey, piling up in camps. Hundreds of thousands of ex-Yugoslavs were expelled from their homes and persecuted as a result of ethnic cleansing conducted in the region between 1992 and 1995. The phenomena repeated itself with the Albanian Kosovars in 1999. In 1994 more than two million Rwandans also fled a genocide that killed over 800,000 people, seeking shel-

ter in camps in Zaire, Tanzania, and Burundi. Protracted political situations have led to the creation of permanent refugee residents in other countries: the Palestinians, for example, make up half of Jordan's population.

Camps and Insecurity

Camps are often cities built of mud, wood, corrugated iron, and plastic sheeting. The weak, poor, sick, old, young, or female are often very vulnerable to stronger, more predatory camp residents. Host countries are reluctant to police the camps, so protection is rarely available. Refugees who are already fragile, or who become weak because of the living conditions of the camp, may easily be targeted. Rape, assassination, forced prostitution, beatings, and overall intimidation inside the camp are commonplace, as is hunger.

International aid is very much a part of the camps' organization. Despite the hard work of relief agencies, however, the people living in a camp often lack nearly everything they need to create a semblance of normal life. Sometimes, when camps become permanent, they no longer receive a full share of international emergency relief. Food shortages and water deficiencies put refugees' survival into question. Because there are no employment program or agricultural opportunities, camp residents are often forced into complete idleness, which can have devastating consequences on their mental health.

Often refugees bring the seeds of the conflict they are fleeing with them into the camps. When camps contain combatants, they have been targeted by enemy forces, who believe the camp is providing their foes with assistance and protection. In addition, local populations may resent the foreign aid offered to refugees, who often receive more than they ever will. Almost everywhere, refugee camps are likely to be run by resistance factions, which can forcibly recruit refugees into guerrilla armed forces, as well as for sex or labor purposes. Furthermore, they often divert international assistance, including food, water, and medical supplies, to their own uses.

Enrollment in armed militias or organized crime, as well as random crime and violence, are easily increased by the circumstances of the refugee camps. People living in the camp are uprooted and destabilized. The majority of them are women and children, many have little education, and most have lost all their possessions. Many have lost family members, and they frequently suffer psychological ailments due to stress and grief. These conditions are extremely favorable to clashes, abuse, wrongdoings, and violent and criminal behaviors.

In Afghanistan, warlords began arming refugee camps as soon as the international peacekeepers arrived in Kabul in 2001, in order to fill the power vacuum and keep their profits from drug trafficking and smuggling. In Morocco, the Polisario (a political movement) has used a refugee camp in southwest Algeria—fully equipped and supplied by international assistance—as military headquarters and a detention center for their prisoners of war. Sometimes, though not always, host countries, assisted by international agencies, will relocate camps farther away from their borderlands, in order to separate genuine refugees from combatants.

Attacks on the Camps

Given the right circumstances, military attacks on refugee camps are very easy to mount. Target populations are all gathered in one place and are in an extremely vulnerable situation because the camps are generally not protected by police or military forces. In September 1982, for instance, the Palestinian refugee camps of Sabra and Chatila were destroyed, and more than 2,000 Palestinians, including children and women, were tortured, raped, and killed by the Lebanese Phalangist militia allied to Israel, after Lebanon had been invaded by Israel.

In 1995 and 1996, in eastern Zaire, the Rwandan Patriotic Front and President Kabila's forces mounted successive attacks on Hutu refugee camps. Hutu militias were using their own camps as a staging ground for attacks against nearby Tutsi communities. The attacks on the Hutu refugee camps resulted in their dismantling. As many as 700,000 Rwandese returned from their camps to Rwanda; others went west into the forest and often died of disease or hunger.

After the Camps: The Issue of Return

Among the durable solutions promoted by UNHCR, repatriation is often considered best. According to UN policy, refugees are uprooted people whose ties to their birthplace, culture or identity, have been broken, so whenever it is possible to do so in safety and dignity, they should be repatriated. Despite the voluntary repatriation standard set by UNHCR, humanitarian agencies and refugees often have to deal with forced repatriations, as occurred in the camps that harbored Rwandan refugees. The UNHCR participating in the dismantlement of the Rwanda refugee camps, which constituted a forced repatriation. It has been severely criticized for its role in this action.

The Russian intervention in Chechnya caused human rights violations of an exceptional gravity. The ensuing destruction of villages, military attacks on mar-

ketplaces, and the bombing of refugee corridors probably amount to crimes against humanity. Strong pressures were applied to force Chechens out of their refugee camps, including beatings, aggressions, murders, vanishing bodies, arrests, repeated military interventions, blocked humanitarian aid, and degrading living conditions. Since April 2002, the stress has grown and some of the camps are being closed. One such camp is called Bart, which is one of three tented camps for Chechens in Ingushetia, and which was officially closed on March 1, 2004. The residents have no choice but to return to their home communities, where they still fear persecution and where no protection is available. The UNHCR does not operate in Chechnya, as Russian authorities consider this conflict to be a domestic matter.

Most of the time, refugee camps provide at least a basic degree of protection against crimes against humanity and genocide. However, their residents are extremely vulnerable, due to their location, their overcrowding, the scarcity of resources available, and the continuing political troubles of their country of origin, not to mention those of the host country. They also are essentially a temporary emergency measure that must lead to more permanent solutions, such as voluntary repatriation, integration in the host country, or resettlement in a new country. If the residents are forced to wait too long, the refugee camps may come to represent the worst of the political situation that the refugees were fleeing. Protracted refugee situations result in camps remaining in place for years or even decades. Sometimes, when repatriation becomes possible, refugees return to a place that is very different from the one they once left.

SEE ALSO Refugees

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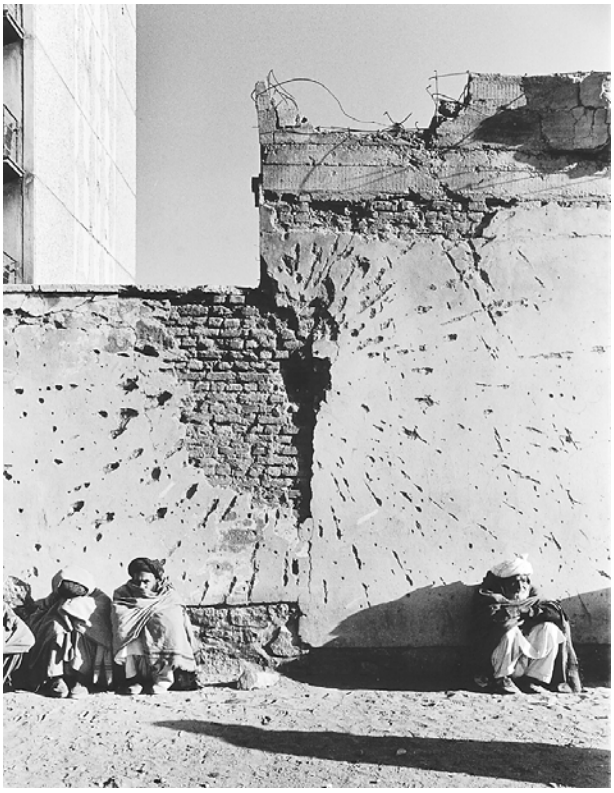
Refugees

Refugees have always existed, but the establishment of the international community's responsibility to provide protection to and solutions for refugees only dates back to the League of Nations. After the Armenian Genocide of 1915 and the Russian Revolution of 1917, refugees became, for the first time in modern history, an issue for the world community. In 1921 the League of Nations created the Office of the High Commissioner for Refugees, headed by Fridtjof Nansen. He established the "Nansen passport," which provided refugees with an official identity and recognizable status, and enabled them to start afresh. Nansen's mandate was subsequently extended to other groups of refugees, including the Armenians in 1924, and Assyrian, Assyro-Chaldean, and Turkish refugees in 1928. Nansen's successor, the American James McDonald, resigned late in 1935: He believed that a large-scale human tragedy was unfolding in Nazi Germany, one that the Office of the High Commissioner for Refugees was ill-equipped to stop because the international community remained unwilling to help fleeing Jews. Despite international conferences (in Evian, Switzerland, in 1938 and Bermuda in 1943) and the creation of an Intergovernmental Committee on Refugees to address the growing problem, only limited numbers of Jews were saved from the Holocaust. The fact of thirty million persons uprooted by war and the world community's comprehension of the full scale of Nazi atrocities did, however, lead to the development of institutions with more authority to deal with the plight of refugees (Kushner and Knox, 1999).

The United Nations Relief and Rehabilitation Administration (UNRRA), founded in 1943 to provide relief to areas liberated from Axis powers, returned some seven million displaced persons to their countries of origin and provided camps for approximately one million refugees unwilling to be repatriated. UNRRA was replaced by the International Refugee Organization (IRO) in 1946. Conceived as a temporary agency, the IRO attempted to find permanent solutions for the 1.5 million refugees remaining on the European continent, but was quickly hampered by the cold war, unable to operate in the Soviet-occupied zone in Germany. IRO terminated its work in 1952 and was succeeded by another temporary organization to aid the remaining refu-



Afghanistan has been a war zone for twenty-four years. In the 1990s, owing to near-constant fighting between the Taliban and the Northern Alliance and the proliferation of landmines, many citizens of rural Afghanistan (mostly nomads) fled the countryside and took shelter in Kabul. In this photo, refugees with blankets sit against a wall that had been part of the former Soviet embassy there. [TEUN VOETEN]

gees in Europe, the Office of the United Nations High Commissioner for Refugees (UNHCR). The UNHCR was created in January 1951 and has remained in existence ever since, with its mandate renewed every five years.

Evolution of the Definition of *Refugee*

In the period between World War I and World War II the League of Nations defined refugees according to group affiliation, specifically in relation to their country of origin. For instance, the definition of a Russian refugee adopted by the Office of the High Commissioner for Refugees in May 1926 included "any person of Russian origin who does not enjoy, or who no longer enjoys the protection of the government of the Soviet Union and who has not acquired another nationality" (Kushner and Knox, 1999). This group definition inspired much dissension over which refugee groups should be assisted. Germany opposed the notion of aid to Jews and dissidents fleeing the Third Reich and deliberately hindered responses to their exodus in the 1930s. After World War II pressure for a universal definition of refugee gathered momentum, leading to the definition included in the 1951 UN Convention Relating to the Status of Refugees (the so-called Refugee Convention), which emphasized the causes of flight. The Refugee Convention, still the standard benchmark for establishing refugee status, defines a refugee as "a person who, . . . owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (Article 1A[2]). The defining event is one's physical presence in a foreign land in order to secure protection from persecution in another country.

The Refugee Convention was modified by the 1967 Bellagio Protocol that removed the limitations that restricted the scope of the refugees in time and geography (in Europe who had fled as a result of events occurring before 1951). The Refugee Convention delineates the content and conditions of refugee rights that must be respected by a host state. The cornerstone of refugee protection is the principle of "nonrefoulement," stating that "no Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." This principle applies to all refugees, whether or not they have been recognized as such by a host state, and, indeed, many historians have concluded that Article 33 has achieved the status of customary international law in that it is a reflection of state practice and recognized by states as legally binding.

Challenges to the Definition of *Refugee*

The Refugee Convention has not gone unchallenged since its adoption. First, it has often been regarded as irrelevant. For example, falling outside the mandate of the UNHCR are "internally displaced persons" (IDPs), people who flee for the same reasons as refugees, but do not cross an international border. By not actually leaving their country of origin and therefore remaining at the mercy of their persecutors, IDPs are generally more vulnerable than refugees outside their homelands who are the beneficiaries of international protection and assistance. The principle of territorial sovereignty prevents "humanitarian interventions" to assist and protect them.

Second, the word *persecution* is not a precise legal term and many countries have tried to evade their international obligations by narrowly interpreting the

Chechnyan women depart from the ruins of Grozny, their capital. April 1995. [TEUN VOETEN]

definition of refugee. It should be noted that the Refugee Convention does not prescribe any obligation with respect to the means for determining refugee status. In practical terms a state that refuses to determine the status of refugees will be in breach of its obligations to protect refugees under international agreements concerning refugees, but it remains free to decide, on a discretionary basis, how it will fulfill its substantive obligations (although international human rights law also limits a state's freedom of action in certain areas; see Goodwin-Gill, 1989). This has resulted, on the one hand, in some European states excluding individuals who flee situations of generalized violence and civil war, such as in Sri Lanka, or persecution by nonstate actors, such as guerrilla groups in Colombia, or situations of state breakdown, such as in Somalia or Afghanistan.

During the 1990s, Germany, for example, refused to recognize as refugees the almost 400,000 Bosnians living there, in spite of their clear need for protection, as they were deemed to be victims of civil war, not of persecution per se. The UNHCR did not officially protest, as Germany was providing the Bosnians with a measure of protection. At the same time France refused to recognize as refugees the numerous Algerians who fled the civil war in their homeland, declaring that persecution meant victims of government-sponsored violence. The Algerians were, in fact, mainly victims of violence committed by Islamist fundamentalists against whom the government was fighting. French authorities very often provided them with no protection whatsoever, save not returning them to Algeria.

On the other hand, some countries, such as Canada, have recognized this new climate and suggested a teleological interpretation of the refugee definition, by focusing on not only individualized persecution by the infrastructure of state authorities, but also situations of generalized violence and persecution by nonstate actors. As such, they follow the lead of two important regional legal instruments that updated the international definition of refugee by expressly extending it to victims of generalized conflict and violence, when the state is unwilling or unable to protect them: the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (the so-called OAU Convention) and the 1984 Latin American Cartegena Declaration on Refugees (the so-called Cartagena Declaration). The OAU Convention

notes that "the term *refugee* shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality." The Cartegena Declaration includes "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."

Third, in spite of its numbers, the persecution of women has often been viewed as falling outside the purview of international protection. The UNHCR and other humanitarian organizations agree that 80 percent of refugees and displaced persons are women and children, many of whom have experienced rape and sexual violence in their countries of origin before fleeing. In spite of the high levels of abuse, persecution, and vulnerability for women and children, according to Nahla more than 75 percent of the refugees seeking asylum in industrialized countries are men. Indeed until recently, a woman's ability to seek protection from her own state was tenuous. One writer has characterized the use of violence against women in developing states as a "global holocaust," a situation tantamount to "the systematic genocide of Third World women" (Wali, 1995, p. 339). In international criminal case law and the 1998 Rome Statute of the International Criminal Court (ICC), systematic rape gained the status of a war crime and crime against humanity. This should help justify refugee status for women victims of violence, as Canada has already recognized (Immigration and Refugee Board, 1993).

The debate surrounding the complexity of determining refugee status has to be understood in light of the overall objective of all modern-day industrialized states to reduce the number of asylum claims to be processed by any refugee determination system. Several mechanisms aimed at better controlling and preventing migratory flows now coalesce to achieve a clear cumulative effect. Either they aim at the return as soon as possible of the maximum number of persons who have entered the territory and made a claim of asylum (maximization of removal mechanisms, accelerated procedures in the refugee status determination system, alternative national protection regimes of more limited duration and scope than that of the Refugee Convention, reduction of lawyers' assistance, suppression of appeal procedures, safe third-country agreements, readmission and asylum-sharing agreements, etc.), or they attempt to prevent asylum-seekers from even reaching a state's borders (visa requirements, reinforced border controls, carrier sanctions, training of carrier and airport personnel, short-stop operations, police cooperation, readmission agreements, immigration intelligence gathering, etc.).

A concrete example of this phenomenon is the Bosnian refugee crisis brought on by that country's civil war and Germany's protection of the Bosnians residing there through the establishment of an alternate protection regime. The 1995 Bosnia peace plan turned the spotlight on the Bosnians living in Germany in identifying them as *geduldet* ("tolerated" foreigners) allowed to remain in Germany at least until March 1996. The German government granted these Bosnians only temporary protection status and expressly disallowed their application for refugee status: The purpose of this policy decision was for Germany to avoid the restrictions of any international obligations and secure the freedom to treat the Bosnians as it saw fit. This precarious status, in turn, facilitates their return to Bosnia as soon as materially possible and spares Germany the somewhat permanent nature of refugee status generally associated with the Refugee Convention. It results in unequal levels of protection: Several years after fleeing Bosnia, on the expiration of their temporary protected status (decided by the host country's authorities at will), it will be difficult for individuals to provide evidence of their well-founded fear of persecution were they to return, and to demonstrate that they should be awarded refugee status. Most Bosnians would therefore be returned quickly (forcibly if necessary), and this was the ultimate objective of German policy.

Refugees are to be protected even if they have committed certain crimes in their country of origin. However, some crimes are so horrendous that they justify the exclusion of the perpetrators from the benefits of refugee status, as stated in Article 1F(a) of the Refugee Convention: genocide, war crimes, and crimes against humanity. In this sense the perpetrators are considered "undeserving of refugee protection" (Lisbon Expert Roundtable, 2001, p. 1). Other reasons for exclusion clauses include the need to ensure that fugitives from justice do not avoid prosecution by resorting to the protection provided by the Refugee Convention, and to protect the host community from serious criminals. The purpose of exclusion clauses is therefore to deny refugee protection to certain individuals, while leaving law enforcement to other legal processes. The tension between the need to avoid impunity and the need for protection has been sometimes questioned: The refugee crisis following the Rwandan genocide dramatically illustrated the international community's lack of pre-

In the shadows of the border between Tanzania and Rwanda, those who escaped their death at the hands of the Tutsi gather at this makeshift refugee camp. [TEUN VOETEN]

paredness in establishing procedures to deal with refugees who had committed international crimes in their country and later taken control of refugee camps abroad through intimidation and access to international assistance.

Conflicts in Liberia and Sierra Leone in the late 1990s sparked another exodus of civilians. Failure to implement exclusion again compromised the civilian nature of refugee camps, put refugees at risk, and fostered impunity. The crisis in West Africa confirmed the findings from Rwanda and revealed tensions between the rights of refugees and security of countries at war. It was clear, in all these situations, that if the refugees were to be protected effectively in instances of mass influx, exclusion of war criminals and perpretrators of massive human rights violations or crimes against humanity would have to be approached in a consistent manner. At the same time, at the other end of the spectrum, the rights of refugees in other parts of the world were also being threatened by the way in which exclusion was applied within individualized refugee determination procedures. In those contexts an overly broad interpretation of exclusion constituted a convenient "one-size fits-all" approach to unwanted applications.

An urgent need exists for benchmarks to steer decision makers between these two extremes, as well as a growing recognition of the need to interpret Article 1F(a) within the context of different, rapidly evolving sources of international criminal law (the Rome Statute, the statutes of the two ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, and other instruments of international humanitarian law), refugee law, and human rights law. Specific avenues and complementary security strategies for refugees, from camp size and location to military intervention, must be taken into account.

The search for solutions, such as excluding some people from refugee camps, is a clear sign of the overwhelming complexity of the modern world. Given the new emphasis placed on civilian populations as instruments in warfare and the flow of displaced persons generated by contemporary conflicts, the definition of refugee within the Refugee Convention remains continuously challenged. The experience in the Great Lakes

region of Central Africa (Burundi, Congo, Uganda, Rwanda) also raised a host of questions related to the role of humanitarian actors in complex emergencies, in particular those having to do with the relationship between humanitarian action and political/security interests. For example, can humanitarian action increase insecurity? How do humanitarian actors reconcile the different parts of their mandate that may come into conflict?

Controversial Role of the UNHCR during the Rwanda Genocide

The mass movements of population linked to widespread human rights abuse are not a new phenomenon in the Great Lakes region, but they have reached unprecedented proportions since the 1994 genocide in Rwanda, which claimed as many as one million lives. In its aftermath two million Rwandese fled their country for Zaire, Tanzania, and Burundi, and set up refugee camps. These, however, were the scene of widespread violence, which provoked fear and instability in host countries and compromised humanitarian assistance efforts. In the worst moments of the Rwandan genocide, thousands of refugees were slaughtered, settlements were destroyed, and refugees were again compelled to flee, into the Zairian forests or toward Rwanda. The presence in the refugee camps of soldiers who had actively participated in the genocide, and who were in a position of authority over the population, was one of the main obstacles preventing the safe and voluntary return of refugees to Rwanda. Indeed, those who wished to return home were often threatened by camp leaders and pressured into changing their minds.

Faced with this terrible situation, the UNHCR organized, in 1996, forced repatriations and the dismantling of camp facilities. A key issue was the applicability of the principle of nonrefoulement: Refugees were frequently sent back to their country of origin against their will and were, for a number of reasons, unable to actually make a decision whether to return or not. Furthermore, there were no reliable mechanisms to ensure that human rights were protected in the event of a mass return. The role played by the UNHCR has come under great criticism by humanitarian organizations that contend it was not appropriate for a protection agency to provide a political solution to the crisis. Others still believe that it was the best course of action, given the exceedingly complex and insecure situation and the international community's overall lack of support.

SEE ALSO Humanitarian Law; War Crimes

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Rehabilitation

Victims/survivors of genocide, crimes against humanity, and other serious violations of human rights and international humanitarian law often suffer physical and

psychological effects, sometimes long after the traumatic events. Massive trauma causes such diverse and complex destruction that only a multidimensional, multidisciplinary integrative framework can adequately describe it, and only such an approach can optimally treat its effects. Typical reactions may be powerful negative feelings, painful physical sensations, or horrific imagery of the events. Many studies document the serious, chronic, sometimes life-long, and even multigenerational effects of massive trauma, including fear, paranoia, depression, anxiety, and personality changes. Starvation, untreated disease, experiences of persecution, psychological shock (or numbing), and head injury may interfere with the recall and verbal description of traumatic experiences.

Although ordinary stressful life events tend to release a strong need for sharing, victims/survivors of extreme traumatic events often encounter a societal imposed silence and thus share neither their experiences nor the aftermath. One study of torture victims by Weisaeth and Lind found that fewer than one out of ten victims disclosed details of their experiences to their close relatives. Even when released from captivity, victims continue to suffer stress over, for example, possible recapture or reprisals from agents of the state who had violated their human rights in the first place. The pervasive conspiracy of silence following trauma is detrimental to survivors' familial and sociocultural (re)integration and healing. It intensifies their already profound sense of isolation and mistrust of society, and makes the task of mourning their losses impossible. Further, survivors' rehabilitation can never be fully achieved if the society in which they live continues to tolerate serious or systematic human rights violations.

However, the needs of victims will require understanding more than their perceptible symptoms. Understanding their specific experience of physical and psychological trauma, the nature of the crime, and their cultural, economic, personal, and group historical backgrounds is also necessary.

Medical and trauma practitioners recognize that approaches to treatment must reflect the victim's personal experience of physical and psychological trauma. Experts, many of whom are vicariously traumatized by survivors' experiences, emphasize a holistic approach in which trust and the doctor/patient relationship are critical. Treatment strategies are most effective when they utilize local sources of social, cultural, and organizational support. Rehabilitation following egregious violations of human rights must not only address the traumatized individual, but also the family, local community, society, nation, and the international community. The individual needs to know that society as a whole acknowledges and understands what has happened. A true healing process includes apology, reparations, education, commemorations, and other ways of acknowledging what has taken place.

Genuine rehabilitation must include redress and justice as well as the restoration of dignity to the victim/survivor, and must be established in a sociopolitical context in which the experience and pain are shared by the larger society. The story must be told accurately, the public records secured, and mechanisms for monitoring and preventive intervention established to ensure nonrepetition and break the intergenerational chain of transmission.

It is increasingly recognized that impunity for perpetrators contributes to social and psychological problems and impedes healing by adversely affecting bereavement, inducing self-blame, and eroding society's moral codes. Justice denied exacerbates the victim/survivor's psychic wounds. Impunity for the wrongdoers becomes an additional traumatic factor that renders closure impossible and leads to a loss of respect for law and government, and an increase in crime. Further systematic exploration of how survivors experience efforts to bring perpetrators to justice and provide compensation, and how these efforts impact healing, is needed.

Despite the widespread recognition of the importance of physical and psychological treatment to aid the recovery process and restore the dignity of victims, their number far exceeds the available services, even in the most developed countries. Often services that do exist come too late. In many of the countries emerging from mass conflict, the few available programs are usually transitory, have not been well integrated into the health and social services sectors of the countries, and are often externally financed. As a result, many laudable initiatives are not sustainable and may not be able to address the long-term and often multigenerational needs of victims of mass trauma. In other cases the special needs of trauma victims have not been dealt with separately and what general services exist are not tailored to meet their needs.

The plight of victims of the worst crimes has created an international impetus to develop a legal framework to guarantee respect for their rights. In 1985 the United Nations (UN) General Assembly unanimously adopted "the Victims' Charter," the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It galvanized support for the recognition of the rights of victims, in particular their rights of access to justice and redress, restitution, compensation, and assistance. This led to the UN Commission on Human Rights' appointment of an independent expert to further study the issue of victim redress. As of 2004

the draft of the basic principles and guidelines on the right to remedy and reparation for victims of violations of international human rights and humanitarian law is under discussion for adoption by the Commission. Most recently the Rome Statute of the International Criminal Court has recognized that justice serves not only a retributive but also a reparative function; it enshrines victims' rights to restitution, compensation, and rehabilitation and provides the Court with a mandate to give effect to these rights.

Significant strides have been made in recognizing the rights of victims of the worst crimes, and there is an increasing appreciation of the complexity of their needs. However, much remains to be done to realize these rights and provide those who have suffered the most abominable crimes with the critical multidimensional and multidisciplinary help they need.

SEE ALSO Compensation; Reparations; Restitution

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Yael Danieli

Religion

Religious people are not only the victims of mass killings, they also can be the perpetrators of violence. Although it would be much too simplistic to suggest that religion causes genocide and crimes against humanity, it nevertheless is true that religious people, prompted by religious motivations and employing religious symbols, have committed mass atrocities. A long tradition of this exists in Europe, with early examples being the Crusades, the destruction of Jewish communities and the Inquisition's bloody assaults on the Cathars of Montsegur and Montaillou.

Although religion has been implicated in mass killings, there is often a reluctance to acknowledge its role; indeed, religions themselves typically deny their complicity. In fact, it is even controversial to suggest the role that religion and religious communities may have played in atrocities. For example, the Nazi state is typically portrayed as atheist; religious people of the period are often considered either as heroes, such as Dietrich Bonhoeffer and the clergy who spoke out against Adolf Hitler, or as victims, such as the Jews and Jehovah's Witnesses. Generally, accounts do not emphasize the fact that the vast majority of those who committed the crimes against humanity were Protestants and Catholics. Thus, the Holocaust is depicted in terms of Nazi crimes and not crimes committed by Christians. In the twenty-first century, however, the historical literature has increasingly focused on the role of Christian anti-Semitism underlying the Third Reich and the role of military chaplains providing spiritual comfort to the perpetrators of crimes. (Simultaneously, as allies of

[WITCH-HUNTS]

The persecution and often murder of persons reputed to be "witches" is a phenomenon found in many less advanced societies. The witch-hunt was relatively widespread in Europe from about the sixteenth century. In more modern times, the term has been used to describe attacks on and purges of persons identified with certain political views. A link between the historic witch-hunts of unconventional women in seventeenth-century America and the post–World War II attacks upon public figures with left-wing views for alleged communist sympathies is the theme of a classic work of modern theater, *The Crucible* (1953), by Arthur Miller.

European witch-hunts were associated with the religious turmoil of the fifteenth through seventeenth centuries that brought the Reformation. They were no doubt also influenced by the social and economic transformations of those times. European witch-hunts appear to have begun to decline with the Peace of Westfalia, signed in 1648 after thirty years of war—probably because of the climate of religious tolerance that the treaty encouraged. Nor could such primitive views broadly survive in the intellectual ferment of the Enlightenment.

Many Christian denominations, both Catholic and Protestant, encouraged belief in the existence of witches and witchcraft. A widely circulated publication, *Malleus Maleficarum,* which appeared in 1486, promoted the fear of witches, who were usually poor, rural, and single women. Two years earlier, Pope Innocent VIII issued a bill titled *Summis desiderantes,* which allowed the Inquisition to pursue witches and witchcraft as enemies of Christianity. According to the *Malleus Maleficarum,* "[A]ll wickedness is but little to the wickedness of a woman . . . What else is woman but a foe to friendship, an unescapable punishment, a necessary evil, a natural temptation, a desirable calamity, domestic danger, a delectable detriment, an evil nature, painted with fair colours. . . . Women are by nature instruments of Satan—they are by nature carnal, a structural defect rooted in the original creation" (Accessed at http://www.malleusmaleficarum.org/index.html).

Victims were portrayed as being evil and unclean. Subsequent feminist analysis of witch-hunts explains them as campaigns to challenge rebellious role models for women. Some men were also victims of these witch-hunts, sometimes because they attempted to protect the women who had been targeted. Nevertheless, because most alleged victims were women, some have described these witch-hunts as "gendercide."

The witch-hunts were generally provoked by campaigns of denunciation often initiated by children or nuns. Those who were accused were then tortured until they confessed, although some died in the process. Show trials were often held, and convictions generally resulted in capital punishment. Historians believe that anywhere between 50,000 and 200,000 people were killed in the European witch-hunts.

The most famous witch-hunts in America took place in the Puritan community of Salem, Massachusetts, in 1692. The Salem witch-hunt began when two Puritan women, Abigail Williams and Betty Parris, accused the slave of Samuel Parris of the practice. The slave girl was named Tituba, and was either of aboriginal American or African origin. Quickly, the campaign became hysterical, and for many in the community the only way to avoid an accusation was to become an accuser.

Although the European witch-hunts are the best documented, many societies have engaged in similar campaigns of persecution directed against women and men believed to have supernatural powers. In a famous judgment on capital punishment in June 1995, South African judge Albie Sachs described how the death penalty, though not generally employed in pre-colonial southern Africa, was practiced in the case of alleged witchcraft.

The contemporary usage of the term *witch-hunt* describes the purges of communists, communist sympathizers, and persons with left-wing views, principally in the United States, in the early years of the cold war. Academics, film producers, diplomats, and journalists often lost their jobs as a result of the anti-communist witch-hunts of the 1950s led by Senator Joseph McCarthy of Wisconsin. At the height of the witch-hunt, in 1953, Communist Party members Julius and Ethel Rosenberg were executed for espionage, the only time that capital punishment has been used for that crime during peacetime. For further reading, see Farrington, Karen (1996). *Dark Justice: A History of Punishment and Torture.* New York: Smithmark; Gragg, Larry (1992). *The Salem Witch Crisis.* New York: Praeger; Klaits, Joseph (1985). *Servants of Satan: The Age of the Witch Hunts.* Bloomington: Indiana University Press; and Levack, Brian P. (1995). *The Witch-Hunt in Early Modern Europe,* 2nd edition. New York: Longman. **WILLIAM A. SCHABAS**

Nazi Germany, many Catholic clergy in Croatia during World War II bore responsibility for supporting the Ustashe in the killing of Muslims, a circumstance that the Roman Catholic Church continues to deny or downplay.)

The Bosnian genocide provides a different type of example. In Bosnia, unlike Nazi Germany, state political and military leaders intentionally employed Christian religious language and symbols to stimulate popular violence and justify military slaughter. Although studies of Bosnia may suggest, for example, that the ethnic cleansing of Muslims was a "result of the political contest behind the wars, not ethnic or religious hatreds," (Woodward, 1993, p. 243), it is far more likely that political leaders deliberately manipulated religious imagery from Serbian history to suggest Orthodox Serbs were innocent victims of Muslim atrocities. (Sells, 1996, 2001). Many within the Slavic Orthodox churches continue to insist that the Serbs were the real victims and deny their complicity other than some understandable but limited overreactions in a "civil war."

As yet another example, the Rwandan genocide did not break out along religious lines, but religious institutions and personnel were used to promote the massive killing of Tutsi by Hutu. There have been many reports of Hutu religious leaders urging Tutsi to seek sanctuary in churches against rampaging Hutu mobs, only to learn that the supposed sanctuary was simply a planned gathering place to make the slaughter of the Tutsi more convenient for the perpetrators. Further, high officials in the Catholic Church of Rwanda allegedly participated in the organization of the genocide, in this case against other Catholics who were Tutsi. As in the other examples given here, the Protestant and Catholic churches have been reluctant to acknowledge the roles of their local leaders in the violence.

Although religious beliefs certainly are not necessary to prompt mass killings, as the history of Stalinist Russia, Maoist China, and Pol Pot's Khmer Rouge demonstrate, religion can play an important role in providing perpetrators with a sense of a God-ordained mission to cleanse the world of evil, offering solace to those who commit violence, or justifying actions taken by others. In this way, when religion provides a rationale for zealotry, religious people can be seduced into becoming murderers—just as in cases of religiously inspired terrorism and other forms of religiously inspired violence.

Religion does not, of course, play only a negative role in atrocities. Many courageous religious leaders have found spiritual inspiration that has moved them to sacrifice their lives in defense of others. Though less known than the stories of killings, devout and committed religious believers have risked and lost their lives sheltering Armenians in Turkey, Jews in France, Belgium, and the Netherlands, and Muslims in Bosnia and Serbia. Religion also can play a valuable—and sometimes decisive—role in reconstruction and reconciliation after the atrocities end.

SEE ALSO Catholic Church; Religious Groups

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T. Jeremy Gunn

Religious Groups

Religious groups are one of the four groups identified for protection by the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide. In order to convict an individual of genocide, according to the Genocide Convention, it must be proved that the accused committed one or more of the specific acts prohibited (such as killing or causing serious bodily harm) and that the act was "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such" (Article 2). The same components of "intent" and "religious group" mentioned in the Genocide Convention also appear in the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY; Article 4.2), the Statute of the International Criminal Tribunal for Rwanda (ICTR; Article 2.2), and the Elements of Crimes of the International Criminal Court (ICC; Article 6). The elements of crimes section additionally provides that the targeting of persons on the basis of their belonging to a religious group constitutes the "crime against humanity of persecution" (Article 7[1][h]), and

that the humiliation or degradation of "religious personnel" is a violation of the "war crime of outrages upon personal dignity" (Article 8[2][c][ii]).

The meaning of "religious group" and "religion" within international law and the Genocide Convention is more complicated than might at first be imagined. In fact, the difficulty of identifying when the intent to destroy a religious group, either in whole or in part, has occurred illustrates some of the underlying difficulties of interpreting the meaning of the Genocide Convention, whether in strictly legal terms or within the context of public language where the word "genocide" is often used rhetorically to describe an atrocity.

For example, did the massive killings by the Khmer Rouge in Cambodia constitute genocide? The strict legal application of the Genocide Convention aside, the killing of between 2 and 3.5 million Cambodians would certainly qualify as an egregious case of genocide in ordinary human discourse. But when subjected to legal analysis, can it be questioned which "national, ethnical, racial or religious *group* [emphasis added], as such" the perpetrators intended to destroy in whole or in part? The vast majority of those killed were the Khmer people—the same national and ethnic group that perpetrated the killings. Most observers would identify the clearest case of genocide within Cambodia as the annihilation of the Cham Muslims, a religious group, who were targeted with particular vengeance. However, does it make sense to conclude that the millions of Khmer people killed were not victims of genocide and that only the Cham were because they experienced a higher percentage of victims (although numerically smaller)? Although Buddhists were not targeted per se, the Buddhist clergy was. Should the Buddhist clergy then be considered a "religious group" within the meaning of the Genocide Convention?

It is also complicated, and sometimes controversial, to suggest that a particular people were marked for extinction in whole or in part because of their religion. For example, approximately two million southern Sudanese died in the last fifteen years of the twentieth century as a result of the policies and actions of the government in Khartoum. Were the southern Sudanese victimized by northern Muslims because of their religious affiliation (principally indigenous religions and Christianity), racial and ethnic differences, or historical and economic reasons? Did Saddam Hussein, modern-day Iraq's former leader, target Kurds and Marsh Arabs (*Mad'am*) for reasons of religion, politics, or economics?

Although the answers to the Cambodian, Sudanese, and Iraq questions trigger (or not) a discussion of the applicability of the Genocide Convention, such questions are purely academic to the victims of executions, rampages, and starvation.

Regardless of the applicability of the Genocide Convention, the religious divide between perpetrators and victims is frequently a salient characteristic of mass killings. Principally Muslim Turks either killed, forcibly converted, or exiled Christian Armenians. Although the Nazi state was officially atheist, the vast majority of those responsible for operating the death camps and exterminating Jews were born, raised, and died Christians. Orthodox Christian Serbs killed Bosnian and Albanian Muslims. The atheist Chinese state executed Tibetan Buddhists. In each of these cases, of course, there were other victims. Muslim Turks who tried to rescue Armenians also were executed as sympathizers. Romani, homosexuals, political dissidents, Christian clergy, and the physically and mentally handicapped also were victims of the Nazi death camps. In other cases of mass violence, though not typically identified as cases of genocide, similar hostilities are often provoked by government officials and executed by crowds, as in Gujarat, India. Thus, in many cases of genocide and mass killings, religion serves as a marker of differences.

Despite the importance of religion in many (though certainly not all) cases of genocide and crimes against humanity, historians and other commentators often have the tendency to emphasize the ethnic characteristics of the victims, as opposed to their religious characteristics. This reluctance may in some cases result from misapprehension about the meaning of the victim's religion to the perpetrators. It is important to understand that with regard to religious discrimination, persecution, and violence, there are three aspects of religion which should be differentiated: religion as belief, religion as identity, and religion as way of life. The first of these pertains to spiritual beliefs or theological opinions, and adherence to doctrines and teachings. Religion as "identity" refers to the community into which one is born regardless of one's individual beliefs or observance of sacred rituals. According to this view, people might believe that all Turks are Muslim, all Poles are Catholic, and all Russians are Orthodox. "Way of life" refers to religion and its manifestations in rituals, diet, and social activities. Although these three aspects are not mutually exclusive, and they can be interrelated in the minds of the religious person and the persecutor alike, genocide and crimes against humanity emerge most commonly within the context of religion as identity. Victims are targeted most directly because of who they are rather than what they believe or what they do. In Nazi Germany a Jew could not escape brutalization by simply renouncing his or her be-

liefs, or maintaining a secular lifestyle. While a religious group is likely targeted because of its despised identity, its beliefs and way of life may well serve as the signals that inflame the hostility initially aroused because of identity.

SEE ALSO Minorities; Persecution; Religion

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Reparations

The term *reparations* usually refers to the measures that a state must take after it violates a rule of international law. Reparations can also apply more generally to remedying all wrongs, whether committed by a state and its agents or by private parties. Reparations for genocide and crimes against humanity will usually require remedial action by both individual perpetrators and the state involved because such acts are illegal under international and national law. Human rights law and humanitarian law also impose a duty on states to take reasonable measures, or in legal terminology to "exercise due diligence," to prevent violations of human rights by private persons. If the state fails to do so, it will be responsible for providing reparations.

In an early international court case, the Permanent Court of International Justice called the obligation to make reparations for an unlawful act "a general principle of international law" and part of "a general conception of law" (Factory at Chorzów [*Germany v. Poland*], 1928 P.C.I.J. [ser. A], no. 17 at 29 [September 13]). This reflects the fact that all legal systems require those who cause harm through illegal or wrongful acts to take action to repair the harm they have caused.

In addition, human rights treaties and declarations adopted by the United Nations guarantee individual victims the right to a remedy, that is, access to justice and reparations in national proceedings. The Universal Declaration of Human Rights, Article 8, proclaims that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or laws." This guarantee would, of course, include remedies for criminal acts that violate guaranteed rights. The International Covenant on Civil and Political Rights contains a similar guarantee in its Article 2(3). The UN Human Rights Committee overseeing compliance with the covenant has stated that when acts of torture occur, for example, a government is

> under a duty to . . . conduct an inquiry into the circumstances of [the victim's] torture, to punish those found guilty of torture and to take steps to ensure that similar violations do not occur in the future. The committee also has called for investigation and prosecution in cases involving arbitrary executions and disappearances. All these acts constitute types of reparations for the wrong done.

The aim of reparation is, where possible, to restore the situation that would have existed had there been no wrongful act. This means to wipe out all of the consequences of the act and try to reestablish the situation that in all probability would have existed if the act had not been committed. Restitution means to restore exactly the preinjury status. If this is not possible, full compensation equivalent to restitution may be required. Satisfaction is an additional set of remedies designed for noneconomic losses, such as harm to dignity. Most important, the wrongful act must cease.

One widely accepted purpose of reparations is remedial justice, to undo the wrong done to an injured party. Reparation is thus designed to put the injured party in the same position as if no wrongful act had occurred, without respect to the cost or consequences it may have for the wrongdoer. Reparations may also serve to punish and deter wrongdoing or aim at reconciliation and inducing positive future behavior.

Procedures for Claiming Reparations

The issue of reparations for genocide and crimes against humanity is complex because the acts usually involve simultaneous breaches of national and international law by individuals and states. Reparations may be owed by both the state and the individuals responsible, and claims may be made by survivors at either the national or international level. Taking together the traditional law of state responsibility, human rights law, and international criminal law, claims for reparations

can be presented in one of five ways: (1) The state of nationality of the victims could bring a claim on their behalf against the state responsible for the wrong; (2) the victims may be able to bring a claim against the responsible state in an international human rights tribunal; (3) victims may bring claims against the responsible state in national judicial or administrative bodies; (4) victims may present their claims against the individual perpetrators in an international criminal court; and (5) the victims may make a claim against the individual perpetrators in a national civil or criminal proceeding.

In nearly all instances, reparations are first claimed through administrative or judicial procedures within a state. International law requires that such procedures be followed before a case can come to an international body. This is known as the *doctrine of exhaustion of local remedies*. Those who have been wronged may sue the wrongdoer for civil remedies or seek to have the perpetrator prosecuted according to criminal law. If the wrongdoer is an agent of the state, a special law and/or process may govern or restrict the right to sue. Many government officials have immunity from lawsuit for their official acts. In such instances, the state itself may have an obligation to make reparations to the injured party.

At the international level, reparations may be sought either by one state bringing a claim against another or by individuals filing a petition against the state committing the wrong. There are presently no international courts in which an individual can sue another individual for reparations, although it may be possible for victims of abuse to seek reparations from perpetrators convicted by the International Criminal Court (ICC).

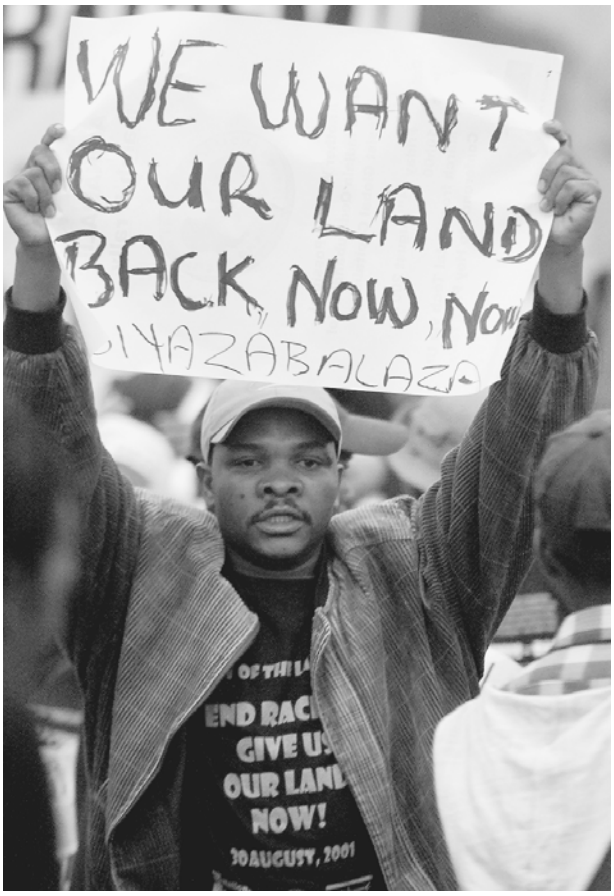
Interstate claims for reparations on behalf of their nationals have a long tradition, especially at the conclusion of a war. Most of the experience with reparations in international law concerns postwar agreements to settle claims, whereby one state may pay large amounts of compensation to another state. The recipient then should use the funds to redress the injuries to its nationals. A provision of the Treaty of Sèvres concluded between the Allies from World War I and Turkey in 1920 provided for the restitution of property of Armenians killed by the Turks. At the conclusion of World War II, Article 14 of the September 8, 1951, peace treaty between the Allies and Japan "recognized that Japan should pay reparations to the Allied Powers for damage and suffering caused by it during the war."

Once local remedies have concluded, individuals who do not obtain redress may be able to bring claims directly against their own governments or another state in a human rights tribunal. It is necessary that the state involved be a party to the human rights treaty establishing the tribunal to which the individual seeks access and in some instances the state must separately accept the jurisdiction of the tribunal. Each human rights treaty usually specifies the rights that are protected and the types of reparations that the tribunal can award the individual whose rights have been violated.

In the twentieth century Menominee feared that, without federal protection, their tribal lands would pass into the hands of non–Native Americans. On December 22, 1973, U.S. President Richard Nixon signed the Menominee Restoration Bill, and in April 1975 the lands of Menominee County (Wisconsin) reverted back to reservation status. In this photo from the same time period, U.S. Secretary of the Interior Rogers Morton shakes hands with Ernest Neconish, elder statesman of the Menominee. [AP/WIDE WORLD PHOTOS]

Types of Reparation

Restitution is intended to restore the victim to the situation that existed before the violations occurred. In many cases of international crimes, particularly genocide, this will not be possible. Even if restitution is possible in theory, the individual perpetrator may not be able to provide it and the state will have to take on responsibility for the crime. Restitution may include restoration of liberty, legal rights, social status, family life and citizenship, return to the place of residence, resto-



Demonstrator at the United Nations World Conference Against Racism, August 31, 2001. Some 6,000 delegates gathered in the coastal city of Durban, South Africa, where a diverse range of human rights issues, including reparations for past atrocities, were discussed. [REUTERS/CORBIS]

ration of employment, and return of property. When restitution cannot be provided, compensation and/or satisfaction must substitute to remedy the harm that has been done.

Compensation is often inadequate, and the more serious the harm, the more compensation as a remedy becomes a problem. Criminal conduct harms not only the victim, it also undermines the rule of law and societal norms. For this reason, compensation is inevitably a second-best response when prosecution and restitution prove impossible to achieve. However, for many crime victims, damages are important. Compensation supplies the means for whatever part of the former life and projects remains possible and may allow for new projects. In cases where the perpetrator is made to pay, compensation also reflects a moral judgment of wrongdoing. Clearly, for survivors of genocide and crimes against humanity, large amounts of money may be necessary to place victims in the same position of relative satisfaction that they occupied before certain events took place.

Compensation should be provided for any economically assessable damage resulting from the wrongful acts. Widely acceptable compensable losses include physical or mental harm, including pain, suffering, and emotional distress; lost opportunities, including education; material damages and loss of earnings, including loss of earning potential; harm to reputation or dignity; and costs required for legal or expert assistance, medicines and medical services, and psychological and social services. Rehabilitation costs are also normally provided, including future medical and psychological care as well as legal and social services. Full reparations should include attorneys' fees and costs incurred in bringing a claim. If not, individuals will not be fully restored to their preinjury state.

As part of satisfaction, appropriate mechanisms also are needed to confront and process trauma and abuse, facilitating closure rather than repression. Dealing with grief, anger, and rehabilitation takes time. Victims may harbor deep resentments that if not dealt with could result in vigilante justice and retribution. The long-term mental health of individual victims and society as a whole may be threatened if adequate treatment and rehabilitation are not provided. States and international organizations have introduced a variety of nonmonetary measures to respond to these needs in redressing genocide and crimes against humanity.

International and National Claims

Some victims of genocide and crimes against humanity committed during wars have received restitution or compensation negotiated between states. Germany created a system of compensation for Nazi genocide and crimes against humanity. From 1939 onward, those who had escaped from countries overrun by the Germans demanded compensation for property and monies taken from them. Some argued that in addition to individual compensation, a collective claim must be presented for reparations to the Jewish people for the property whose owners were unknown or dead, for institutions and communities that had been destroyed or had vanished, and for damage done to the very fabric of the Jewish people's existence. On September 29, 1945, Chaim Weizmann presented the four Allied powers (France, Great Britain, United States, USSR) with the first postwar Jewish claims, which later became the basis of the claim for the state of Israel (of which Weizmann served as its first president): (1) restitution of property; (2) restoration of heirless property to representatives of the Jewish people to finance the rehabilitation of victims of Nazi persecution; (3) transfer of a

percentage of all reparation to be paid by Germany for rehabilitation and resettlement in Palestine; and (4) inclusion of all assets of Germans formerly residing in Palestine as part of the reparations.

The first Allied statement on restitution and reparation (January 5, 1943) announced that the governments reserved all their rights to declare invalid any transfers of property or title of property in territory under German or Italian control, whether the transfers were effected by force or by quasilegal means. The Paris Reparations Conference (November 9–December 21, 1945) accepted the principle that individual and group compensation should be paid to the victims of Nazi persecution in need of rehabilitation and not in a position to secure assistance from governments in receipt of reparations from Germany. Receipt of rehabilitation funds would not prejudice a later claim for compensation. Restitution would apply to identifiable property that had been seized during the period of conquest with or without payment. Indemnification was to be paid for objects of an artistic, educational, or religious value that had been seized by the Germans, but that could no longer be restored to their rightful owners.

The Paris Reparations Conference agreed on several points concerning individual claims, including priority to claims of the elderly and indemnification for damage to vocational and professional training. Claimants who could prove they had been held in concentration camps would receive an overall sum of 3,000 deutsche marks as compensation for deprivation of liberty. The conference set a cap of 25,000 deutsche marks for damage that occurred before June 1, 1945. Another 450 million deutsche marks were paid to the Conference on Jewish Material Claims against Germany, a common holding for twenty-three Jewish organizations, for the settlement of Jewish victims living outside Israel. Finally, a special fund of 50 million deutsche marks was created for nonpracticing Jews.

Successive German compensation laws and agreements were enacted and concluded between 1948 and 1965, including a 1952 treaty between the Federal Republic of Germany (FRG) and Israel. The preamble to the 1952 agreement noted that "unspeakable criminal acts were perpetrated against the Jewish people" and that Germany agreed "within the limits of their capacity to make good the material damage caused by these acts." It also mentioned that Israel had assumed the burden of resettling many destitute Jewish refugees. Article I stated that "the Federal Republic of Germany shall, in view of the considerations herein before recited, pay to the State of Israel the sum of 3,000 million Deutsche Marks."

Between 1959 and 1964 Germany concluded treaties with thirteen European states providing for the payment of 977 million deutsche marks for injury to the life, health, and liberty of their nationals. It also agreed to further contributions: with states in Eastern Europe for the victims of pseudo-medical experiments (122 million deutsche marks) and to the UN High Commissioner for Refugees (57 million deutsche marks). In terms of domestic law, the culmination of German reparations can be found in the Federal Law on Reparation (the *Bundesentschaedigungsgesetz*). Under this law, various categories of damage are provided for anyone who was oppressed because of political opposition to National Socialism, or because of race, religion, or ideology, or who suffered in consequence loss of life, damage to limb or health, loss of liberty, property, or possessions, or harm to professional or economic prospects.

In 1990 the former East Germany, in a unilateral declaration, offered the World Jewish Congress the sum of $100 million. The total sums paid by Germany in reparations for the actions of the Nazi regime during World War II amount to some 103 billion deutsche marks.

Other persons and groups who have suffered from crimes against humanity, including those used as slave laborers during World War II, have attempted to sue governments or companies to obtain reparations. Japanese Canadians have asked the Canadian government for redress, apology, and the revision of history books with regard to their World War II relocation and detention. Italian Canadians have done the same. Asian women who were forcibly detained as sex slaves by the Japanese military have demanded redress. Former prisoners of war and civilians also seek compensation for the forced labor they performed in Germany and Japan. The lawsuits have generally been unsuccessful, either because they are barred by World War II peace treaties or because the governments involved have immunity from lawsuits. In contrast, banks, museums, art dealers, and governments in several countries have faced claims from victims and their heirs for the restitution of money and works of art stolen during World War II. Problems of proof and conflicting local laws make it difficult to resolve the claims, but many have proven successful or have led to negotiated settlements.

In contrast to the extensive international law and practice on state reparations, there is very little in law or practice on obtaining reparations from individual perpetrators in international proceedings. Before the Rome Statute of the ICC, no international criminal tribunal was expressly authorized to award victims reparations other than restitution. The Security Council

resolution establishing the ad hoc International Criminal Tribunal for Rwanda (ICTR) promised to ensure that violations would be "effectively redressed," but the statute of the ICTR limits redress to restitution as a punishment additional to, but not as a substitute for, imprisonment. Neither it nor the statute for the ad hoc Tribunal for the Former Yugoslavia empowers the courts to award compensation or measures of rehabilitation to victims of the crimes being prosecuted, but both statutes foresee the possibility of compensation to victims by national courts in national proceedings.

In contrast to the limited mandates of the ad hoc tribunals, the statute of the ICC expressly includes the possibility for victims to obtain reparations from convicted criminals (Rome Statute, Article 75). The court has discretion to order the perpetrator to provide the victim "restitution, compensation, rehabilitation and other forms of remedy." Nonmonetary awards such as an apology also could be involved. Recognizing that many of those convicted of international crimes may be poor or without any assets, Article 79 of the Rome Statute establishes a trust fund "for the benefit of the victims of crimes within the jurisdiction of the Court" and "of the families of such victims."

Apart from international criminal courts, international tribunals for the protection of human rights may hear cases, judge violations, and afford reparations. Such human rights cases cannot be brought against individuals, but only against the state responsible for the violations. The European Convention for the Protection of Human Rights and Fundamental Freedoms, which went into effect on September 3, 1953, was the first to create an international court for the protection of human rights and a procedure for individual denunciations of human rights violations. The European Court of Human Rights renders judgments in which it may afford "just satisfaction" to the injured party, including compensation for both monetary losses and nonmonetary (moral) damages. In the European Court of Justice of the European Union, individual claimants may plead for an award of damages or other remedies for the violation of fundamental rights. Such rights form an integral part of the general principles of law the court is required to apply. In the Western Hemisphere, the American Convention on Human Rights adopted by the Organization of American States establishes an Inter-American Court of Human Rights that has broad power to order reparations on behalf of victims of human rights violations.

Satisfaction and guarantees of nonrepetition are the most problematic forms of reparations in the context of international crimes and individual responsibility, although some types of satisfaction are inherent in the criminal process: Cessation normally results from the arrest, trial, and conviction of the perpetrator. Disclosure of the truth should occur during the trial. More difficult is the question of locating killed or missing persons and obtaining an official declaration or judicial decision restoring the dignity, reputation, and legal and social rights of the victim and close associates. These forms of redress may not be possible through the criminal prosecution of individual perpetrators. Commemorations of and tributes to the victims also are matters for state action rather than for individual perpetrators.

The prosecution of those committing international crimes is a form of reparation. The obligation on states to prosecute or extradite those accused of genocide, crimes against humanity, and war crimes exists in several international agreements, including the Genocide Convention, the Geneva Conventions of 1949, and the 1977 Protocol I to the Geneva Conventions. Global and regional conventions against torture impose a similar duty. These agreements require states to cooperate with each other in the investigation, prosecution, and adjudication of those charged with the crimes covered under the agreements and the punishment of those convicted. In 1971 the UN General Assembly affirmed that a state's refusal to cooperate in the arrest, extradition, trial, and punishment of persons accused or convicted of war crimes and crimes against humanity is "contrary to the United Nations Charter and to generally recognized norms of international law." The commentary to the Geneva Conventions also confirms that the obligation to prosecute is "absolute" for grave breaches committed within the context of international armed conflicts.

A key role of prosecution is to establish an authoritative record of abuses that will withstand later revisionist efforts. The emphasis in criminal trials on full and reliable evidence in accordance with due process usually makes the results more credible than those of other, more political proceedings, including truth commissions. The chief prosecutor at Nuremberg said that the documentation of Nazi atrocities was one of the most important legacies of the trials. The Nazi actions were documented "with such authenticity and in such detail that there can be no responsible denial of these crimes in the future and no tradition of martyrdom of the Nazi leaders can arise among informed people."

Right to Reparations

UN human rights bodies have considered the issue of ensuring remedies to victims of atrocities, including genocide and crimes against humanity. In resolution 1988/11 of September 1, 1988, the Sub-Commission on Prevention of Discrimination and Protection of Minori-

ties recognized that all victims of gross violations of human rights and fundamental freedoms should be entitled to restitution, fair and just compensation, and the means for as full a rehabilitation as possible for any damage suffered. In draft principles submitted to the UN, one study proposed that states must act "to prevent violations, to investigate violations, to take appropriate action against the violators, and to afford remedies and reparation to victims. Particular attention must be paid to the prevention of gross violations of human rights and international humanitarian law and to the duty to prosecute and punish perpetrators of crimes under international law" (Van Boven, 1996, p. 1). Principle 4 calls on every state to ensure that adequate legal or other appropriate remedies are available to all persons claiming that their rights have been violated.

In 1985 members of the UN adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The declaration details the types of reparations due to crime victims in national law. Principle 8 states that, when appropriate, restitution should be made to victims, their families, or dependents by offenders or the third parties responsible for their behavior. This includes the return of property and may include compensation for harm or loss suffered. Restitution may be considered as a sentencing option in criminal cases in addition to other sanctions. Because cases often involve state agents or officials acting in an official or quasi-official capacity, paragraph 11 provides that victims should also receive redress from the state. Paragraph 12 requires states to endeavor to provide financial compensation to victims who have sustained significant injury as a result of serious crimes, when compensation is not fully available from the offender or other sources. When persons have died or become incapacitated as a result of such victimization, their families or dependents should be compensated financially. For this purpose, states should establish or strengthen national funds to compensate victims. In addition, victims should receive the necessary material, medical, psychological, and social assistance through governmental, voluntary, community, and indigenous means. Finally, attention must be given to victims who have special needs because of the nature of the harm inflicted or other factors that may disadvantage them in some way.

In practice, reparations may be difficult to obtain. The UN has thus created a voluntary fund for victims of torture and a voluntary fund for victims of slavery and slavelike practices. These funds finance programs that provide medical, psychological, social, or legal assistance to victims and their relatives. Examples of this include the establishment of treatment centers, meetings of experts, aid to child victims, publications, legal assistance, and economical and social rehabilitation. Although these funds do not serve the purpose of making the perpetrators redress the harm they have caused, the money collected is used with the aim of ensuring some relief for those who are victims of the acts specified.

SEE ALSO Compensation; Restitution

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Reproduction

The widely accepted belief that genocide only entails killing members of a racial, religious, national, or ethnic group misconstrues the multiple ways that genocide is perpetuated. Article II of the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide (hereafter referred to as the Genocide Convention) underscores the reality that genocide can be accomplished by other acts, independent of or along with killings. The infliction of serious physical or mental harm to members of a group, or the transfer of children from one group to another, suffices, under certain conditions, as an act of genocide. Likewise, Article II(d) of the Genocide Convention seeks to prevent, suppress, and punish those who would "impose measures intended to prevent birth within the group." This provision verifies that by impeding a group's ability to reproduce and thus denying the physical existence of its members, even prior to their birth, a group can be destroyed in whole or part.

German Laws on Racial Purity

In the mid-1930s Germany enacted a series of laws, ostensibly to ensure the physical health of its citizens, but

in reality, to oversee the purity of "the German race." The idea that the political state should be composed of a single race or unique people intertwined several political and pseudo-scientific theories. The Enlightenment philosophy of the 1700s exalted the natural rights of man. Eighteenth-century European revolts against the monarchy and American revolts against colonialism were heavily influenced by Enlightenment philosophers who advocated the restructuring of political states according to the true nature of the democratic individual.

In the mid-nineteenth century ethnologists, influenced by Charles Darwin's theories on the biological origin of the species, tried to determine the historical origins of the races. In the 1850s Arthur de Gobineau, horrified by the decline of French society, proposed a racial theory to explain the evolution of human societies. In his *Essay on the Inequality of the Human Race*, Gobineau maintained the existence of three unequal races: white, yellow, and black. The white race was superior to the others, while the black race was inferior to the white and yellow races. Each race also possessed inherent intellectual abilities. A race's physiological traits, such as prominent noses among the white race, supposedly revealed immutable values. Gobineau concluded that the major threat to human society and the harbinger of a civilization's degeneration was mixed-race procreation.

In the late nineteenth century Houston Stewart Chamberlain, an Englishman residing in Germany, disseminated the "scientific" idea that among the white races, only the Teutons stood at the pinnacle of racial evolution. Chamberlain touted the Teutons, also called Aryans, as an ancient, noble, pure-blooded race. He believed that Teutons had, over the centuries, developed a "race-soul" that biologically rendered them morally, spiritually, and creatively superior. Chamberlain's findings nourished a genre of romantic-political myth about the Aryan race and prompted some Germans to believe that they were pure descendants of the Teutons. Inspired by Chamberlain's race-based premises, ethnologists eagerly unearthed certain linguistic and semiotic proof of the longevity and original purity of the Aryan race.

By the 1930s, when the Nazi Party assumed power in Germany, eugenics, the science of selective biological breeding, became a political goal under the guise of health regulations, euphemistically termed racial hygiene. Consequently, the state regulated reproductive capacity with the aim of preserving national purity by suppressing racial impurity. Initially, German racial hygiene laws affected persons who were racially recognized as German, but who comprised part of the less desirable segments of German society.

In July 1933 the Law for the Prevention of Genetically Diseased Offspring provided for the sterilization of an individual if he or she suffered from genetically determined illnesses, including feeblemindedness, schizophrenia, manic depression, epilepsy, Huntington's chorea, genetic blindness or deafness, and severe alcoholism. Commonly known as the Sterilization Law, it signalled a direct reversal of German policy that, until the 1930s, had strictly forbidden sterilization procedures. Germany justified its reversal, in part, by citing the example of other civilized countries such as Denmark, Norway, Czechoslovakia, Hungary, and the United States that permitted sterilization of the criminally insane or feebleminded.

In the first year after the Sterilizations Law was promulgated, genetic health courts, staffed by physicians, secretly administered and authorized over 56,000 sterilization procedures. In November 1933 the German state passed the Law Against Dangerous Career Criminals that required the castration of sex offenders. On July 26, 1935, a supplemental ordinance, authorizing forced abortions for women who were genetically unfit but who had already conceived and thus fell outside of the scope of the original sterilization edict, became law.

By the mid-1930s Germany asserted that only a subsection of Germans could be recognized as racially pure or Aryan. As a result in 1937, the genetic health courts, together with the Gestapo and state police, began to enforce the restrictive birth policy against mix-raced individuals. Under the *Rheinlandbastarde* policy, they secretly authorized the sterilization of some five hundred persons of mixed German and African ancestry. Reference to non-Aryans increasingly meant all Jews, even those who were German citizens. In 1938 a law provided for Jewish women to abort their pregnancies solely based on their new racial status.

By 1939 these sterilization policies ensured that over 400,000 Germans, either mixed-raced, Jewish, non-Aryan, or mentally or physically infirm underwent forced sterilization. The sterilization procedures included tubal ligation, vasectomy, x-ray exposure, or hysterectomy. The policies were a precursor to the Nazi euthanasia laws, which became law at the start of World War II. The euthanasia laws decreed that the outright killing of potential parents of undesirable offspring was preferable to regulating their ability to reproduce. Euthanasia was regarded as the ultimate means of ensuring racial and national purity.

The Nazi sterilization policies complemented another set of reproductive edicts that were collectively

referred to as the Nuremberg Laws. In September 1935 the Reich Citizenship Law mandated that only full-blooded Germans were entitled to citizenship, whereas Jews would only be considered residents of Germany. Also in September of that same year the Law for the Protection of German Blood and German Honor proscribed marriages and sexual relations between Jews and non-Jews illegal. In October 1935 the Law for the Protection of the Genetic Health of the German People required couples to submit to premarital medical examinations to check for any of the illnesses sanctioned in the 1933 Sterilization Law; when deemed necessary, these marriages were prevented.

Whereas the sterilization policies mandated surgical interventions to stop reproduction, the Nuremberg Laws racially "declassified" individuals in declaring that they were not of German blood. They outlawed sexual contact between racially superior Germans and those termed racially denigrated. It is thus easy to understand why these measures, namely sterilization or compulsory abortions, segregation of the sexes, or obstacles to marriage, concerned the drafters of Article II(d) of the Genocide Convention.

A third set of reproductive policies introduced in the mid-1930s compelled German women considered to be racially Aryan to procreate, by offering pro-birth incentives. The German state awarded mothers of four or more children bronze, silver, or gold medals. It also provided loans of up to one year's salary to persuade women to leave the workforce and return home. Aryan women were encouraged to bear children out of wedlock. Infertility became recognized as grounds for divorce. A system of disincentives discouraged Aryan types from remaining childless. A penalty tax was levied on Aryans who had married and not procreated within five years. Stiff fines and prison sentences were meted out to physicians or others who performed abortions on Aryan women.

These birth incentive policies purported to rectify "the disproportionate breeding of inferiors, decrease the rampant celibacy of the German upper classes and control the threat posed by working women, liberated from the household" that the state viewed as detrimental "to the reproductive performance of the family." Although Article II(d) of the Genocide Convention refers to measures that prevent births, these countermeasures, to stimulate births among the Aryan population, unambiguously illustrate the fact that the Nazi sterilization policies and Nuremberg Laws did function as measures imposed to regulate all births.

This complex system of reproduction policies, based on the state's concepts of race and nation, must be grasped to understand the potential scope of Article II(d). Incongruously, when Japan, India, and Iraq became German allies in arms during World War II, the non-Aryan racial and political treatise was not directed against them.

Eric Weitz, in *A Century of Genocide Utopias of Race and Nation*, observed that "slippage from the nation as a political community to the nation as a racial community became more prevalent when culture, not political rights was made the defining element in the formation of a nation" (2003). In the early twenty-first century ethnic, national, or religious identity might fall prey to subjectivity, as did racial groupings under the Nazi government. One need only reflect on white Australian immigration policies between the 1940s and 1970s, the former apartheid regime of South Africa, or the expulsion of Asian-descended Ugandans from their homes in the 1970s to comprehend the twentieth-century's malleable concepts of race and nation.

Article II(d) and World War II Cases

The potential breadth of Article II(d)'s prohibition is also rooted in the egregious forced labor programs and concentration camp experiments of World War II. Germany invaded Eastern Europe in 1939 and established forced labor programs, using Polish and Russian workers of both sexes. The Allied military trials of minor Nazi officials made clear that the Third Reich built into its forced labor policies measures intended to prevent birth among non-Aryan workers. In the *United States v. Greifelt et al.*, the defendants were leading officials in the SS Main Race and Settlement Office and the Repatriation Office for Ethnic Germans. The SS Main Race and Settlement Office devised the following measures for foreign workers:

> Comprehensive sterilization of such men and women of alien blood in German agriculture who, on the basis of our race laws—to be applied even more strictly in these cases—have been declared inferior with regard to their physical, spiritual and character traits.
>
> A ruthless but skillful propaganda among farmworkers of alien blood, to the effect that neither they nor their children, produced on the soil of German people, could expect much good; in other words, immediate separation of parents and children, eventually complete estrangement; sterilization of children afflicted with hereditary disease.

Charged with crimes against humanity and war crimes for "compelling abortions on Eastern workers" and "preventing marriages and hampering reproduction of enemy nationals" Griefelt and all but one of the defendants were pronounced guilty and sentenced to imprisonment of up to twenty-five years.

In *Poland v. Höss*, the defendant, commandant of the Auschwitz concentration camp, was charged with the persecution of Poles and Jews, a crime against humanity, as well as war crimes against Soviet prisoners of war. Under the command of Höss, camp personnel performed medical experiments on the male and female prisoners. Data were collected to quantify the most effective means to castrate men, sterilize women, or terminate pregnancies. The castration experiments employed high dosages of x-rays that caused infertility together with severe burns on prisoners' genitalia, physical debilitation, mental stress, and often the death of the victims. The pregnancy experiments involved the premature terminations of pregnancy, including injecting pregnant women with typhus-infected blood and then artificially provoking labor. The Polish tribunal found Höss guilty and sentenced him to death.

In 1961 Israel prosecuted former Nazi Adolf Eichmann for devising measures intended to prevent childbearing among Jews in the Theresienstadt (in Czech Terezín) ghetto. The court found, however, that Eichmann was not involved in the imposition of measures to prevent births as an act of genocide. It held that the primary intent of forbidding births and interrupting the pregnancies of Jewish women in the Theresienstadt ghetto was to exterminate Jews and not prevent births. The court drew a distinction between the intent of cruel medical procedures and that of measures intended to prevent births as proscribed in Article II(d).

The three cases are instructive. The *Greifelt* case demonstrated the actual measures executed by Nazi racist ideology to prevent births among foreign forced laborers. The *Höss* and *Eichmann* cases revealed the gruesome nature of medical procedures performed on camp inmates who were already condemned to death. The experiments conducted at Auschwitz were not performed to prevent births among the inmates, but rather, they served to perfect any future measures to restrict births. The medical procedures cited in the Eichmann case were a first step in the extermination of Jewish inmates. Even though the medical experiments and other acts did not represent the imposition or execution of measures to prevent births among inmates, a frighteningly direct ideological link exists between Nazi sterilization policies, the Nuremberg Laws, and the camp experiments. Auschwitz and Theresienstadt were precursors of what would have become even more draconian measures to prevent births among non-Aryans had the Third Reich triumphed.

Legal Background of Article II(d)

On December 11, 1946, the General Assembly passed Resolution 96(I). It defined genocide as a denial of the right of existence of entire human groups and "[a]ffirmed that genocide is a crime under international law which the civilized world condemns." Resolution 96(I) was a declaration of principles that guided the drafting of the Genocide Convention. Another historical forerunner to the Genocide Convention was the Draft Convention for Genocide prepared by the UN Secretariat. The Draft Convention divided genocidal acts into three subcategories: the physical, biological, and cultural. Article I(2) of the Draft Convention characterized biological genocide as "measures aimed at extinction of a group of human beings by systematic restrictions on births, without which the group cannot survive." Methods cited to accomplish this form of genocide were sterilization or compulsory abortions, segregation of the sexes, or obstacles to marriage.

An ad hoc committee revised the Draft Convention and proposed language for Article II(4) that proscribed "imposing measures intended to prevent births within the group." The eventual Genocide Convention adopted the ad hoc committee's language. The final wording abandoned the terms "biological genocide" and "restricting births" and made no direct references to measures such as sterilization, compulsory abortions, or obstacles to marriage, or to the systematic allocation of work to men and women in different locations. Still, the drafters' objective in crafting Article II(d) was to shield groups from these very acts. The essential aspect of Article II(d) is that it condemns, as an act of genocide, measures intended to prevent births within a racial, national, religious, or racial group.

Commentary on Article II(d)

In 1949 Nehemiah Robinson wrote an early noteworthy commentary on the Genocide Convention. He focused on two aspects of Article II(d): the number of births that must be prevented and the range of acknowledged measures to prevent births. He addressed the first aspect as follows:

> Subparagraph (d) may in practice give rise to the problem whether the intention must be to prevent *all* births within the group or is it sufficient that it relates to *some* births only [emphases in original]. Although this subparagraph speaks not of restriction but prevention, it must be admitted that the intent of partial prevention suffices since the requirement of total prevention would conflict with the definition of Genocide as relating not only to the group as a whole, but also to a part of it.
>
> [T]he factual extent of prevention should be of no import once it is established that it was imposed on members of the protected groups only (1949).

Robinson observed that the number of actual births prevented is relevant only in terms of whether the intention was to prevent, even partially, the births within a group.

In Robinson's second commentary on the Genocide Convention, written in 1960, he reiterated the view that the "the actual extent of prevention may not be decisive once it is established that it was imposed . . . with the intent of destruction." Among contemporary historians, William A. Schabas writes that "Article II(d) of the Convention does not make a *result* [emphasis in original] a material element of the offence. The *actus reus* consist of the imposition of measures; it need not be proven that they have actually succeeded" (2000). Hence, a common interpretation of Article II(d) is that quantity or actual numbers of unborn members of a group is not required to establish an act of genocide. Such statistics could, however, demonstrate that the measures imposed were intended to prevent births and that they were effective.

Robinson's other observation in the 1949 commentary expressed the view that the Genocide Convention purposely implied a nonexhaustive range of measures which could satisfy Article II(d), noting that "the measures imposed need not be the classic actions of sterilization; separation of the sexes, prohibition of marriages and the like may achieve the same results" (p. ?). In his second commentary, written in 1960, Robinson added that other measures could be "equally restrictive." Schabas and Otto Triffterer agree with Robinson's remarks that Article II(d) does not limit the types of measures which can be imposed to prevent births within a group.

The language of the treaty leaves open for debate the scope of what could be considered "measures imposed with the intent to prevent births." During the prolonged period before the United States ratified the Genocide Convention, the phrase "intent of measures imposed" provoked controversy and remains polemical. The modern debate is linked to the historical circumstances that prodded the writing of Article II(d).

U.S. Ratification and Article II(d)

The United States was one of the original signatories of the Genocide Convention in 1948, but the U.S. Senate only gave advice and consent to ratification in 1987, after bouts of indifference, defiance, and finally adherence. The acceptance of Article II(d) was contentious. Some senators questioned whether government-sponsored birth control programs used overwhelmingly by African Americans, Hispanic Americans, or Native Americans might be construed as an act of genocide within the context of Article II(d). They pointed to a thesis of African American genocide that questioned the motives behind proposed legislative bills to authorize involuntary or punitive sterilizations, or the real objectives of legalized family-planning programs and abortion laws as acts of genocide. Black Brazilians voiced similar concerns in the 1970s about state policies that favored a reduction in the number of Black Brazilian births. U.S. proponents of ratification countered such arguments by emphasizing that government-sponsored birth control and family planning programs are voluntary, not compulsory, and they do not aim to destroy any group within the United States.

Another issue of concern for lawmakers considering the ratification of Article II(d) was the history of medical experiments in the United States, notably the Tuskegee syphilis experiment. Between 1930 and 1950 U.S. government officials intentionally withheld the diagnosis of syphilis from a sampling of African American men, all the while diligently but silently recorded the progression of their disease, including the inevitable side-effect of sterility. The officials did not medically treat the men to alleviate or stop the disease. Some senators raised concerns that such acts would constitute violations under Article II(d). Proponents of the Genocide Convention insisted that such medical experiment policies had come to a halt by the 1960s.

Qualms about the United States' racist past and its vulnerability to charges under the Genocide Convention had been voiced from the outset of the Convention's existence. Raphael Lemkin, in the 1950s, had attempted to quell these American fears by observing that "in the Negro problem the intent is to preserve the group on a different level of existence, . . . but not to destroy it."

In 1986 the United States officially ratified Article II(d) as well as other provisions of the Genocide Convention. The Senate, however, expressed general reservation about the terms of the Convention, indicating that the United States could refuse the compulsory jurisdiction of the International Court of Justice (ICJ) if another state accused it of violating the Genocide Convention.

Article II(d) and International Criminal Tribunals

Several international tribunals have included Article II(d) of the Genocide Convention verbatim in their statutes. The ad hoc International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), as well as the Special Panels of East Timor, have jurisdiction over alleged acts of genocide that involve the imposition of certain measures to prevent births. As of 2003 cases tried before these international tribunals have not included prosecutions fort measures intended

to prevent births. The *Akayesu* judgment, issued by the ICTR in 1998, however, held that measures under Article II(d) "should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages."

On another matter, the *Akayesu* judgment abruptly departed from Robinson's list of measures, which argued that forced births could not be viewed as a measure to prevent births. The ICTR stated that in patriarchal societies, the rape of women during times of war could be construed as the enemy's attempt to impose their ethnic identity on any newborn children. The Trial Chamber opined that:

> [A] measure intended to prevent births within a group is a case where during a rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will not consequently belong to the mother's group.

Similarly, in 1996, the ICTY had held, in a preliminary proceeding against former Bosnian Serb president Radovan Karadzic, that the "systematic rape of women in some cases is intended to transmit a new ethnic identity." The *Akayesu* judgment also observed that a psychological component to the prevention of birth could operate to violate Article II(d) safeguards:

> [T]he Chamber notes that measures intended to prevent births within a group may be physical, but can also be mental. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.

The ICTR *Akayesu* judgment is considered obiter dicta, meaning that its interpretation lay outside of the relevant factual and legal issues in the actual case before the judges. In *Kayhishema and Rutaganda*, the second judgment issued by the ICTR, the Trial Chamber concurred, again in obiter dicta, with the interpretation of Article II(d) that had been voiced in the *Akayesu* case. Schabas acknowledged the potential absurdity of the judicial views that classify rape as a measure to prevent births; however, he also recognized that a sober reading of Article II(d) lends itself to the contemplation of any measures as long as the intent to prevent births is present. Infliction of rapes, sexual mutilations, and any other actions that transfer the ethnic identity of the child to a group other than the mother's, or that intentionally discourage or restrict future procreation feasibly, lies within Article II(d). Triffterer noted the potential judicial relevance of these ICTR findings and the influence they might exert on the interpretation of the Rome Statute of the International Criminal Court (ICC).

Biological Weapons and Article II(d)

Speculation about other potential "measures imposed to prevent births within a group" remains lively. Several propositions, related to wartime scenarios, are repeatedly raised, such as biological or chemical warfare or rape-induced AIDS as acts that could contravene Article II(d).

The Genocide Convention does not explicitly cite military weapons as a type of measure intended to prevent births within a group. Even though the Draft Genocide Convention employed the term "biological genocide," its use was unrelated to biological or chemical warfare, as those terms were utilized in World War I to denote the deployment of mustard gas against enemy soldiers. Modern armed conflicts have employed biological or chemical agents against enemy soldiers, civilian populations, or the environment to defoliate jungle terrain. Scientific research acknowledges the existence of the short- and long-term affects of these chemical or biological agents on male and female reproductive abilities. Exposed female populations exhibit higher rates of spontaneous abortions or miscarriages and the birth of terminally ill or severely disabled children. Exposure to chemical and biological weapons has prompted some men and women to forego childbearing, due to their fear of conceiving mentally or physically disabled offspring. Could the use of biological or chemical weapons be a means to prevent births within a group, or similar to the medical experiments performed in concentration camps during World War II, if the primary intent is to kill the population and not to prevent their reproductive capacity?

Analogous observations have been raised in regard to women raped by AIDS-infected soldiers during wartime. Sexually transmitted diseases that eventually kill the offspring of women who were raped could be seen as measures intended to prevent births. Women may make an anguished decision not to reproduce in order to refrain from bearing terminally ill children. The mental trauma that the ICTR cases refer to, which could cause victims of rape to forsake procreation, might apply to individuals exposed to chemical or biological agents, or sexually transmitted diseases. Either act could lead to the decision not to give birth. If the intent behind deploying biological weapons or ensuring the transmission of fatal sexually transmitted diseases, such as AIDS, includes destroying a religious, racial, ethnic, or national group, in whole or part, by preventing births, such measures clearly run afoul of Article II(d).

Conclusion

Genocide, the denial of the right of existence of entire groups of human beings, often erupts during vast polit-

ical or military upheavals. Certain acts of genocide, however, can exist and flourish when—ostensibly non-wartime—policies are aimed at eliminating racial, religious, national, or ethnic groups. Policies supporting racial purity or nationhood, as when transformed into measures to determine who should live and procreate, are acts of genocide. Whether prompted by legislation, or overseen by politicians, doctors, lawyers, or cruel camp commanders, these are acts of genocide. Like massive extermination or killings, the intent to suppress a group prior to its birth and reduce or decimate the membership to a designated purpose is a fundamental crime, one that the Genocide Convention, as recognized in Article II(d), seeks to prevent or punish.

SEE ALSO Nuremberg Laws; Rape

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I am setting forth the above in my personal capacity. This article represents neither the policies of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia nor the United Nations.

Rescuers, Holocaust

In wartime Europe, the appearance of gentiles who rescued Jews signaled an opposition to German policies of Jewish annihilation. Saving Jews violated German laws, endangering the rescuers' lives and the lives of their families. Because anti-Jewish measures were introduced in different places at different times, with varying degrees of ruthlessness, the presence of gentile rescuers also varied with time and place. Yet, each country under the German occupation had some people who risked their lives to protect Jews.

Importance of Rescuers to Jewish Survival

Practically all of the Jews who survived the war by living in the forbidden Christian world had benefited from some kind of aid. Exact figures of those who risked their lives to save Jews are elusive. Most researchers agree that those who protected Jews were but a small minority. They also agree that the number of these rescuers by far exceeds the 20,205 gentiles who were recognized as Righteous Among the Nations according to the January 1, 2004 compilation put together by Yad Vashem, the Holocaust Martyrs and Heroes Remembrance Authority.

Yad Vashem was established in Israel in 1953 as a memorial to European Jewry who perished during World War II, and as a tribute to those non-Jews who selflessly risked their lives for them. Most Holocaust publications about gentile rescuers concentrate on those whose aid was based on altruistic motives and those who received recognition from Yad Vashem. In Nechama Tec's 1986 study, *When Light Pierced the Darkness*, which considered the cases of more than three hundred Jews who survived on the Aryan side and almost two hundred altruistic gentile protectors, more than 80 percent of the Jewish survivors were found to have benefited from altruistic gentile aid.

According to Tec, most gentiles had to overcome a variety of barriers before they were able to rescue Jews. The outer and most serious obstacles to Jewish rescue were the German legal prohibitions against such aid, and a corresponding legal obligation to report all known efforts to save. In Eastern Europe, particularly in Poland, helping Jews was a crime punishable by death. By contrast, in Western Europe, German punishments for the protection of Jews, was vague. However, if a rescue attempt was discovered, it often led to the incarceration of the rescuers in a concentration camp, or even to the rescuer's murder.

Additional barriers to the rescuing of Jews grew out of anti-Semitism. Most anti-Semites objected to providing aid to Jews. This hostility extended to gentile protectors, as well. Finally, in depth interviews with gentile rescuers has revealed that many of them had to overcome their own, often unconscious, internalized anti-Semitism.

The Story of Two Rescuers

Given these obstacles, who within the gentile population was most likely to stand up for the persecuted

Visitors regard a 1994 museum exhibit on German businessman Oskar Schindler. Owner of enamel works outside the Krakow ghetto, Schindler saved the lives of approximately 1,200 Polish Jews by falsifying factory records, listing the trades of his workers as those deemed essential to the Nazi war effort. [TODD A. GIPSTEIN/CORBIS]

Jews, who traditionally were perceived as "Christ killers" and who, for many still unexplained reasons, were routinely blamed for every conceivable ill? What propelled these altruistic rescuers toward such life-threatening activities?

Attempts to apply conventional classifications to the individual gentiles who became altruistic rescuers yield heterogeneous results. Two examples illustrate this diversity. In wartime Warsaw, a young Polish factory laborer named Stanislawa Dawidziuk, who had not completed elementary school, shared a one-room apartment with her husband (a waiter) and her teenage brother. In 1942, at her husband's request, Stanislawa agreed to add to their cramped quarters Irena, a woman whose looks betrayed her Jewish background. A Polish policeman named Laminski brought Irena to the Dawidziuks' household. At the outset, Irena was only expected to stay overnight, but Laminski could find no other place for her to go. One day stretched into weeks, and Stanislawa's husband objected to Irena's continued presence in the apartment. He refused to endanger his life for a Jew, but Stanislawa could not turn away their uninvited guest. She knew that Irena's appearance in the street would lead to her arrest and murder. After a stormy quarrel, the husband left, never to return, not even when his wife gave birth to their son.

In contrast, Laminski continued his visits to Stanislawa and Irena, supplying them with food and protection. Despite many close calls, Stanislawa never even considered sending Irena away. They became devoted friends, comforting each other. After the Warsaw Uprising in 1944, the Germans evacuated almost the entire locale population. The rumor was that mothers with small children would be spared. Because Stanislawa was worried about Irena's "Jewish looks," she insisted that Irena should claim the baby as her own, and thus avoid deportation. In the end, however, both she and Irena stayed in the apartment.

After the war, Irena left for Israel, where she died in 1975. Stanislawa remarried, gave birth to another son, and worked in the factory until her retirement. In 1981, Stanislawa was honored with a Yad Vashem distinction that named her a "Righteous Among the Nations." She died in 1991.

Another non-Jewish rescuer, Sempo Sugihara, was the Japanese consul at Kovno (present-day Kaunas, in Lithuania). When the city fell to German expansion and was made part of Poland, Sugihara became aware of the Jewish plight in the summer of 1940. For humanitarian reasons, Sugihara issued Japanese transit visas to Jewish refugees without checking the validity of their supporting documents. The holders of such visas could travel to Japan through the Soviet Union if they were able to pay the fare in U.S. dollars for the trip across Siberia. When the Japanese foreign ministry learned about Sugihatra's aid to Jews, they ordered him to stop, but Sugihara continued to issue visas. He worked non-stop for twelve consecutive days, enlisting the help of Jewish refugees, and he was still issuing visas while boarding his train for Berlin, on August 31. Sugihara estimated that he had distributed 3,500 transit visas.

In Tokyo, Sugihara was fired. He had a hard time finding work, and was forced to move from one job to another. Only in 1985, old and bedridden, when Sugihara was officially designated by Yad Vashem as a "Righteous Among the Nations," did the Japanese press give extensive coverage to his selfless wartime aid to Jews.

Altruistic Rescuers: Characteristics and Motivations

In *When Light Pierced the Darkness*, Tec compared a large group of gentile protectors in terms of their social class, amount of education, political involvement, degree of anti-Semitism, extent of religious commitment, and friendship with Jews. None of these characteristics served as predictors of rescue. These gentile rescuers came from all walks of life, and varied greatly in terms of their education, politics, religion, friendship with Jews, involvement with anti-Semitism, and most other conventional ways of classifying individuals. However, when these rescuers' life styles and pastimes were examined at a close range, the results yield a cluster of six shared characteristics and motivations. These characteristics and motivations can be viewed as a set of interrelated explanations or hypotheses.

One of these shared characteristics can be characterized as individuality or separateness. It shows that these gentile altruistic rescuers did not fit into their social environments. Those who are on the periphery of their community, regardless of whether they are or are not aware of their separateness, are less likely to adhere to the community's expectations and values than those who are well integrated into their environments.

With individuality comes a higher level of independence, which is another of the significant characteristics shared by altruistic rescuers. In turn, freedom from social constraints and a high level of independence creates opportunities to act in accordance with personal values and moral precepts, even when these are in opposition to societal expectations. This is the third characteristic that altruistic rescuers have in common.

In Tec's study, some gentile altruistic rescuers were unaware of their individuality. Nonetheless, they spoke readily about their self-reliance and the need to follow their personal inclinations. Thus, nearly all of the altruistic gentile rescuers (98%) saw themselves as independent. Additional support for this finding comes from Jewish survivors, most of whom described their protectors as independent and as being motivated by special personal values. Another quality often mentioned in the testimonies and memoirs of survivors, one that comes close to independence, was the rescuers' courage. An overwhelming majority (85%) described their helpers as courageous.

With the rescuers' view of themselves as independent came the idea that they were propelled by moral values that do not depend on the support and approval of others but rather on their own self-approval. Again and again, they would repeat that they had to be at peace with themselves and with their own ideas of what was right and wrong. Closely related to their moral convictions were their long-standing commitments to the protection of the needy. This commitment was expressed in a wide range of charitable acts that extended over long periods of time. Evidence about their selfless aid also came from survivors, who describe their rescues as good-natured, whose help to the needy was a long-established character trait.

There is some continuity between the rescuers' history of charitable actions and their protection of Jews. That is, risking their lives for Jews fit into a system of values and behaviors that included helping the weak and the dependent in general. This analogy, however, has its limitations. Most disinterested actions that benefit others may involve inconvenience, even extreme inconvenience. Only rarely would such acts demand from others the ultimate sacrifice of his or her own life. In fact, for these altruistic rescuers, in wartime there was a convergence between historical events demanding ultimate selflessness and their already established predisposition to help.

For example, Marie Baluszko an outspoken peasant who protected many Jews, said: "I do what I think is right, not what others think is right." At first she did not see that her aid to Jews was an extension of a tradition that involved helping the poor and the destitute. When questioned further about her reasons for aiding

Jews, Baluszko was somewhat at a loss for answers. Instead, she asked: "What would you do in my place, if someone comes at night and asks for help?. . . One has to be an animal without a conscience not to help." After a pause, she continued: "In our area there were many large families with small farms; they were very poor. I used to help them; they called me mother. . . . When I was leaving the place people cried. I helped all the poor, all that needed help" (Tec, 1986, p. 165).

Baluszko's reactions suggest that we tend to take our repetitive actions for granted. What we take for granted we accept. What we accept, we rarely analyze or wonder about. In fact, the more firmly established patterns of behavior are, the less likely are these to be examined and analyzed. In a sense, the constant pressure of, or familiarity with, ideas and actions does not mean that we know or understand them. On the contrary, when habitual patterns are accepted and taken for granted, this may impede, rather than promote, understanding.

Closely related to this tendency is another one. Namely, what we are accustomed to repeat we don't see as extraordinary, no matter how exceptional it may seem to others. Thus, the rescuers' past history of helping the needy may explain, at least in part, their modest appraisal of their own life-threatening actions. This modesty was expressed in a variety of ways. In Tec's study, most of the rescuers (66%) perceived their protection of Jews as a natural reaction to human suffering, and almost a third (31%), insisted that saving lives was nothing exceptional. In contrast, only three percent described the saving of Jews as extraordinary. This kind of an attitude, shared by the majority of gentile rescuers, was often expressed as follows: "All of us looked at this help as a natural thing. None of us were heroes; at times we were afraid, but none of us could act differently" (Tec, 1986, p. 169).

The six characteristics and conditions shared by gentile altruistic rescuers can be summarized as follows:

1. Individuality or separateness, an inability to blend into their social environments;
2. Independence or self-reliance, a willingness to act in accordance with personal convictions, regardless of how these are viewed by others;
3. An enduring commitment to stand up for the helpless and needy reflected in a long history of doing good deeds;
4. A tendency to perceive aid to Jews in a matter-of-fact, unassuming way, as neither heroic nor extraordinary;
5. An unplanned, unpremeditated beginning of Jewish rescue, a beginning that happened gradually or suddenly, even impulsively; and
6. Universalistic perceptions of Jews that defined them, not as Jews, but as helpless beings and as totally dependent on the protection of others.

Additional Kinds of Gentile Rescuers

Historical evidence shows that most Jews who survived the Holocaust by living illegally on the Aryan side had benefited from the protection by altruistic gentile rescuers. History shows that, in addition to the altruistic rescuers, there were gentiles who rescued Jews for other reasons.

One of these groups can be called "paid helpers." These were gentiles for whom the protection of Jews was a commercial undertaking. Without payment, such rescues would not have happened. The other group consisted of gentiles who had previously been open, avid anti-Semites. This group of rescuers felt that their hostility to the Jews was partly responsible for German destruction of Jews. They felt that their anti-Semitism contributed to the systematic murder of the Jewish people. Most of these anti-Semitic rescuers were also devout Catholics who, by saving Jews, hoped to atone for their sins.

Jewish Holocaust Rescuers

This category is distinctive in that the rescuers were not gentile. There is scattered evidence of Jews who, although they were targeted for annihilation, had selflessly helped others. An emergent interest in Jews as rescuers has not yet yielded systematic research. Nonetheless, there are some questions that can be profitably asked. How do Jewish rescuers compare to their non-Jewish counterparts? Did the kind of help offered by Gentile and Jewish rescuers vary? If so, how?

During World War II, among the variously persecuted groups, the Germans specifically targeted the Jews for humiliation, followed by annihilation. The realization that all Jews were slated for murder probably affected people's perceptions about them. Deprived of all rights, reduced to the most dependent and degrading position, the Jews were easily perceived as helpless victims, even before they were sent to their deaths. For many people, the belief in the supremacy of the drive for self-preservation, leads us to assume that, when faced with a death sentence, people will concentrate on their own survival rather than on the survival of others.

Closely connected to this expectation is the fact that, during the Nazi era, the perception of Jewish helplessness and humiliation overshadowed all of the victims' other attributes. Certainly, gentile rescuers saw in

their Jewish charges only haunted and persecuted human beings. It was, in fact, just this perception of Jewish suffering that prompted the rescuers to give aid.

However, overlooking Jews as rescuers reinforces the perception that those who face overpowering threats are incapable of helping themselves and, by extension, of offering protection to others. Common sense and some available facts seem, at first, to justify such conclusions. When exposed to extreme dangers, people are often paralyzed into inaction. Whether this occurs is, in part, contingent on the extent to which people define a situation as hopeless. Fighting for oneself and for others requires hope. Hope wanes with grave dangers. Danger and no hope often add up to no struggle. Some individuals who have been sentenced to death give up hope. Even heroic revolutionaries, when captured, have usually gone to their executions without opposition.

However, even the slimmest of hopes can inflame the desire to live, making it an all-engrossing preoccupation. Still, a strong personal desire to live need not be translated into a willingness to protect others from becoming victims. Yet, despite all these arguments, there is concrete historical evidence of persecuted Jews who took on additional perilous duties to save others.

In *In the Lion's Den and Defiance*, Nechama Tec examines the question of Jewish rescuers. Her work is guided by the hypothesis that the more threatening a situation is, the greater is the need for compassion, mutual help, and cooperation. Mutual help and cooperation appear under a variety of guises.

In extremis, distinct forms of mutual help and cooperation appear to be intricately connected to the quality of life and survival. These complex associations, however, await future explorations. Even partial answers to questions pursued through this future research promise fresh insights, insights reaching beyond specific times, places, and circumstances.

SEE ALSO Altruism, Ethical; Holocaust; Wallenberg, Raoul

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Nechama Tec

Residential Schools

Residential schools in Canada were based on the Carlisle Indian Industrial School model founded in 1879 by Lieutenant Richard Henry Pratt in Carlisle, Pennsylvania. The aim of such a schooling system was the forced assimilation of aboriginal people into the colonial society. This was to be achieved by wiping out their past ethnic and cultural associations and replacing them with European ones. Driven by a kind of missionary zeal, Pratt believed it was important to remove all aspects of being aboriginal from the child and to immerse that child, as a kind of baptism, into white socialization. The duty to "civilize" lay on the shoulders of the white man. This was rationalized as a viable alternative to war and the slaughter of people. In spite of this rationalization, however, economic considerations were their actual driving force. Trade with the aboriginal peoples in the United States had begun to diminish, and was replaced with a scramble by white settlers to lay claim to aboriginal lands. To facilitate this, aborigines were herded onto reservations, enabling the white settler community to claim the "new" territories. It was thought that residential schools would assist this process, because assimilation would make the taking of lands easier, at little or no financial cost to the settler communities.

The Rationale

In the nineteenth century, Canada adopted a policy of assimilation of all aborigines into the Christian culture of the white settlers. Church organizations were enlisted in the effort, and became enthusiastic and active participants in this system. Children were taken from their homes on the reservations and compelled to attend residential schools because "the influence of the wigwam was stronger than that of the [day] school," in the

words of the Davin Report of 1879 which is contained in the report to the Royal Commission on Aboriginal People in 1991.

As was true in the United States, the Canadian plan was actually motivated by economic considerations, specifically, by the prospect of creating a hard-working labor force. Aborigines were often stereotyped as lazy drunkards. The residential schools were to be cure these deficiencies by teaching aboriginal children industrial or domestic skills. Boys were taught such subjects as agriculture, carpentry, shoemaking, printing, blacksmithing, and tinsmithing. Girls were taught general household chores such as sewing, shirt making, knitting, cooking, laundry, ironing, as well as dairy farming. In addition, students were expected to engage in practical work in many of these areas of instruction, providing yet another source of free labor.

Implementation

In order to ensure that there were sufficient numbers enrolled in all the residential schools, the Minister for Indian Affairs determined which school each student would attend. However, the children of Protestant and Roman Catholic parents could insist that their children attend a school run by representatives of their own faith.

Upon entering the schools, children were stripped of all aspects of their traditional way of life. For instance, their long hair was cut to conform to European styles, and their traditional dress was replaced by European-style clothing. They were taught to view the world through the prism of European values and beliefs. They were expected to abandon their native language and speak only in English (or French, in the schools established in Quebec). All of this was considered essential to the "civilizing" process, by which aboriginal children would ultimately be assimilated into Canadian society.

The Results

After education was completed, the plan called for the integration of residential school graduates into the broader Canadian society, so as to prevent any return to the reservation and further backsliding. Most attempts at placing the graduates of this system were a failure, however, because the system made no effort to eradicate the widespread anti-aboriginal prejudice of white Canadians. Unwelcome among white Canadians, most of the aboriginal graduates of the residential schools did return to the reserves, only to find that their European-style education had rendered them misfits in that society, too.

The industrial school model was eventually replaced by a new type of boarding school, the model for which attempted to overcome the problem of student placement in society after graduation. Graduates were sent to model settlements where they were supplied with land, farming equipment, and housing materials, and were expected to create a new community for themselves. That scheme was soon abandoned as a failure, however, and the failure was blamed on allegations that the graduates lacked sufficient motivation. The model settlements were replaced by a new scheme which granted residential school graduates a loan and limited agricultural materials for individual use.

By the time residential schools were finally abandoned, it was apparent that this type of social engineering was unlikely to succeed. At its peak in 1931, the residential system had grown to 80 residential schools, located throughout Canada. While it is unclear how many children passed through the residential school system, one estimate suggests that one-third of all aboriginal children between the ages of six and fifteen were in residential schools during the 1930s. Other estimates place the figure closer to fifty percent.

The Royal Commission Report

In 1991 the Royal Commission on Aboriginal Peoples was assigned the task of examining the social, economic, and cultural situation of the aboriginal peoples of Canada. This included a full examination of residential schools through oral testimonies from inmates and employees, as well as archival research.

The findings of the Royal Commission were published in 1996. The report documented widespread physical, sexual, and emotional abuse within the residential school system. It also reported that the schools routinely disparaged the traditional culture of their students, and that children were punished for speaking their own language or for practicing their own religion and culture. The Royal Commission's report went on to confirm that the system's goal of forced assimilation had "an inherent element of savagery," at its core, expressed in such phrases as "kill the Indian in the child."

The Royal Commission's report dealt with the traumatic effects that the residential schools had on the children, their communities, and on succeeding generations. Aboriginal people and professional consultants alike testified that the schools bred social maladjustment, family breakdowns, suicide, alcoholism, domestic violence, and the loss of parenting skills. This last item is significant, for without parenting skills, the schools' graduates had severe difficulty in raising their own children. In the residential schools, children learned that adults often exerted power and control through physical abuse. When they became parents they had no other parenting model to fall back upon,

and so inflicted abuse on their own children. This ultimately set up a vicious cycle, which continued in succeeding generations.

The Canadian Government's Response

The Royal Commission further demonstrated that the churches and the Canadian government had been aware of some of the documented abuses for some time. Many reports from school inspectors corroborated the pattern of abuse. The Commission went so far as to find the department guilty of neglecting the children and breaching its duty of care. It noted that, although church organizations assumed responsibility for actual instruction, the department of Indian Affairs was charged with administering the schools and funding their construction and maintenance. However, the residential schools were always under-funded and badly administered. Because each school's funding was determined by the number of students enrolled, there was a strong incentive to take in more students than the school could properly hold. This resulted in severe overcrowding, which in turn led to high rates in death from diseases like tuberculosis.

In response to the Royal Commission Report, the Canadian government issued a Statement of Reconciliation in 1998. In it the government acknowledged that the Canadian residential school system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their own heritage and cultures. The government further accepted the key role it had played in the development and administration of the schools. Children who were the victims of sexual and physical abuse were singled out for special mention. The statement included the Canadian government's explicit apology to all the victims of the residential school system. In addition, the Minister of Indian Affairs announced the availability of $350 million for community-based healing, earmarked for those who suffered the effects of physical and sexual abuse.

No monetary compensation was offered for individual victims, however. In reaction, victims of the residential school system turned to the Canadian courts. By June 1998, approximately 1,000 lawsuits were filed. It is estimated that by early 2004, more than 5,000 people may have entered into litigation for damages against the Canadian government. It has also been reported that by March 1999, some $20 million had been spent by the Canadian government in settling residential school claims. It is not clear how the state is likely to deal with these cases in the future, however. It may opt for out-of-court settlements in order to avoid setting legal precedent for the concept of monetary reparations.

Residential Schools and the Crime of Genocide

Although the term *genocide* was raised during the hearings of the Royal Commission, the remark was dismissed as a "rhetorical flourish," It can be argued, however, that this dismissal was at least premature. Article III of the Convention on the Prevention and Punishment of the Crime of Genocide defines genocide to include the causing of serious bodily or mental harm to members of a national, racial, or religious group, and the deliberate infliction on the group of conditions of life calculated to bring about its physical destruction in whole or in part.

Using this definition, most of the criteria can be substantiated from the testimony presented before the Royal Commission. The difficulty lies in establishing the element of intent. It can be argued that residential schools were not calculated to bring about the physical destruction of the aboriginal people, but might instead have been a well-intentioned plan for the good of the people that went awry through inept administration and implementation. The Royal Commission appears to lean to this view. Nonetheless, the Commission's report does call for further public inquiry, the establishment of a university for aboriginal peoples that would be dedicated to researching and documenting the residential schools, and compensation for community-based healing programs. These recommendations appear to aim at arriving at some kind of truth surrounding the residential schools with a view to implementing a program of action.

Some, however, charge that the Royal Commission's recommendations are dilatory tactics intended to frustrate those who seek to resolve the damage done by the residential schools. In this view, the aims and objectives of the residential school plan were clearly calculated to destroy the cultural and physical life of Canada's aboriginal peoples and to replace the traditional way of life with a new set of values that were more acceptable to the white people. As a direct consequence of this policy, the residential schools brought about the physical destruction of most of Canada's aboriginal peoples, and, according to this perspective, the actions of the Canadian government did, in fact, constitute genocide.

The Australian Experience:

In her article "Squaring the Circle: How Canada is Dealing with the Legacy if its Indian Residential Schools Experiment," Pamela O'Connor draws attention to the striking similarity between the Australian aboriginal "stolen children" experience with Canada's residential school system. The assimilation of indigenous children in Australia was undertaken under child

welfare laws supposedly to protect aborigines. It called for the permanent separation of aboriginal children from their families and communities, placing them in the care of foster homes, church missions, state- or church-run children's homes, boarding schools, and workplaces. Many of the children who were removed were brought up in complete ignorance of their aboriginal identity, parentage, or community affiliations.

In 1995 the Australian government asked the Human Rights and Equal Opportunities Commission to conduct a national inquiry into this situation. After conducting hearings around the country, the Commission reported in 1997 that the policy of assimilation through the forced removal of aboriginal children had given rise to gross violations of human rights law. The Commission's recommendations included reparations through a government cash-compensation scheme and an apology to Australia's aboriginal peoples.

The Australian government, however, has refused to apologize or to pay compensation. Instead, it proposed to spend $63 million on the preservation of records, language and cultural maintenance programs, family reunification services, counselling, therapy, and vocational training for victims of its policy of forced removal. It is thought that the refusal to pay reparation may be based on the fear of opening a torrent of claims against the state. The Australian response, like that of the Canadian government, is defensive and appears to be aimed at minimizing future claims of liability. Neither government, however, has effectively denied the legitimacy of the complaints of their respective aboriginal victims.

SEE ALSO Canada; Indigenous Peoples

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Vinodh Jaichand

Resistance

Resistance is one of the most controversial and emotional issues associated with the Holocaust and other genocides. The overwhelming scope of the Holocaust raised the question, How could so many people be murdered? Initially, writers proposed that it could only happen if the victims allowed it to happen through their own powerlessness. The phrase, "Jews went like sheep to the slaughter," as described most famously in the writings of Hannah Arendt, and later adopted by Raul Hilberg, summed up the early opinion that Jews offered little or no resistance. Later research, however, demonstrated that the issue was perhaps not the lack of resistance but how resistance was defined and, equally important, not why there was so little but how there was so much resistance that actually occurred.

Jewish Resistance during the Holocaust

The overwhelming might of the Nazi machine, together with local collaborators, made large-scale armed resistance impossible. Jews were isolated, with little arms or training, often disoriented by the progressive stages of the Final Solution and physically beaten down and systematically starved. Furthermore, most were primarily burdened by communal or familial responsibility and feared to act in the face of brutal Nazi reprisals. This limited the options of the more settled and older members of the community. Thus, in the ghettos, younger Jews—often those who had been members of the prewar Zionist youth movements—usually carried out armed resistance. The most famous resistance was the uprising in the Warsaw ghetto, where a small number of Jews held out for almost a month. Other ghettos where Jews fought back included Vilna and Kovno in Lithuania and Bialystok, Kracow, and Czestochowa in Poland. According to some estimates, there were more than sixty ghettos in the Baltic areas that had underground resistance groups.

Jewish resistance was eventually found in the midst of the death camps, under the worst possible conditions. In camps such as Sobibor (August 1943) and Treblinka (October 1943) armed revolts caused both camps to stop functioning (Sobibor immediately and Treblinka after a few months). In Auschwitz-Birkenau another revolt (October 1944) resulted in the destruction of at least one gas chamber. This revolt was carried out by the Sonderkommando, the Jewish prisoners who were forced to work in the gas chambers and crematoria and who were supplied with gunpowder smuggled by women inmates from their slave labor in munitions factories.

Outside of the camps and ghettos Jewish resistance appeared as a form of partisan or resistance movements. However, in many cases, particularly in Eastern Europe, the Jewish units were not only forced to operate separately but also hunted and targeted by local resistance units, such as the Armia Krajowa in Poland. These Jewish units were often denied arms by both the

Jewish fighters lie dead. The fiercest resistance to the Nazis occurred in the Warsaw ghetto, where members of the Jewish Fighting Organization (*Zydowska Organizacja Bojowa*) pelted the tanks of entering German troops with hand grenades. It took the Nazis twenty-seven days to destroy the ghetto and snuff out resistance. [USHMM]

national underground movements and the Allies, and they often had to protect themselves from these national units as well as the Nazis. Nonetheless, there was resistance, which usually took two forms. The first was offensive and consisted of attacks against Nazi forces and installations, or against places that could harm the Nazi war effort (such as trains, bridges, and telephone wires). The second was defensive and consisted especially in the formation of "family camps"; Jews who had succeeded in escaping the Nazis and had fled into the dense woods of Eastern Europe could find refuge in these camps, which were run and defended by Jews. The most famous of these camps was the Bielski otriad, which saved more than 1,100 Jews in Belorussia. An estimate of the number of these partisans in the East puts the figure at about 30,000.

In Western Europe, such as in France and Belgium, some separate Jewish groups did operate, but many of the Jews who were active in the resistance contributed in the context of the national underground. This was also the pattern with other lands, such as Slovakia, Yugoslavia, Italy, and Greece.

Whether resistance only involves fighting and violence is another question. While some scholars dismiss all forms of nonviolent or spiritual resistance, others such as Tzvetan Todorov have pointed out that nonviolence does not mean nonresistance to evil. In contrast to Hilberg and his followers, they advance the idea that as Yehuda Bauer put it, "one resists without using force" (2001, p. 120). Scholars are still exploring the precise definition of the term *resistance,* but various actions that fit into the definition might include smuggling food in opposition to Nazi decrees, establishing medical efforts to provide for the community, and continuing religious, educational, and cultural activities. Forms of these activities all took place in the ghettos and camps, and all were based on the idea of working to attempt to survive until liberation, thus depriving the Nazis of their goal of creating a Europe that was *Judenrein* ("free of Jews"). These actions also defied the

Nazi attempt to define Jews as *Untermenschen* ("subhuman"), by affirming Jewish self-definition. In religious terms, in a reversal of the traditional term *Kiddush Ha-Shem* (literally "Sanctification of the Name" in Hebrew, referring to the obligation to accept martyrdom in certain conditions), a rabbi in the Warsaw ghetto put forward the commandment of *Kiddush Ha-Hayyim,* the "Sanctification of Life," as a religious obligation.

Resistance during Other Genocides

While resistance during the Holocaust is the best documented and most discussed example of resistance to genocide, it is not the only example. And as each example of genocide in history has its own unique features, so too do the other examples of resistance. But the lack of specific studies and detailed documentation hampers the discussion of other examples of resistance. For example, Soviet archives have only become accessible since the end of the cold war. Their availability gives historians the opportunity to compare Joseph Stalin's gulags to the Nazi concentration camp system, but significant differences do exist. While even in the midst of the gulag, at the height of Stalin's terror (and immediately after his death in 1953), there existed a network of anti-Stalinist and anti-Soviet activities that included strikes, protests, underground newspapers, and, ultimately, armed revolts in 1942, 1953, and 1954 that involved thousands of inmates. Resistance by refusal to work would have been futile in a Nazi system that existed to provide death, not products.

Also, while the myth of the impossibility of escape from the Gulag was one that was popularized by many, including survivors such as Alexander Solzhenitsyn, others, such as the scholar Anne Applebaum, have pointed out that thousands did escape, especially in the early years of the Gulag. For example, Applebaum cites official Soviet statistics: in one year alone (1947), 10,440 prisoners escaped and only 2,894 were recaptured.

While there is not a specific account of Tutsi resistance to the Hutu genocide, reports of resistance have surfaced. Philip Gourevitch described Bisesero as being "the only place in Rwanda where thousands of Tutsi civilians mounted a defense against the Hutus who were trying to kill them" (1998), and he also described nonviolent rescues by individuals. As the war crimes tribunals continue their prosecutions in 2004, more evidence of both resistance and rescue are being documented.

Ultimately, resistance to genocide on a large scale can only succeed with assistance either from significant segments of the local populations or with international assistance. Failing that, resistance can save some, but its more lasting value might exist in giving the threatened group a sense of pride and self-determination, even in the sense of choosing the time, place, and method of their death, and in leaving a lasting legacy both to the survivors and to those who will come later. And, it is this sense of self-determination that can be a basis for rebuilding the family and community with a sense of group self-worth and shared humanity, both of which are necessary for the ability to not forget and to stand as equals among others.

SEE ALSO Bystanders; Perpetrators; Rescuers, Holocaust

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Mark Weitzman

Responsibility, State

The law of State responsibility is the chapter of international law that concerns the breach by a State of one or more of its international obligations. In international law, responsibility is the corollary of obligation; every breach by a subject of international law of its international obligations entails its international responsibility. The law of State responsibility defines when an international obligation is to be held to have been breached, as well as the consequences of that breach, including which States are entitled to react, and the permissible means of that reaction.

Unlike national laws, wherein different rules often apply according to the source of the obligation breached (e.g., contract law, tort law, criminal law), international law does not concern itself with the source of the obligation that is breached; in principle (and unless otherwise specifically provided) the same rules apply to the breach of an obligation whether the source of the obligation is a treaty, customary international law, a unilateral declaration, or the judgment of an international court.

In August 2001 the International Law Commission (ILC, a body of legal experts set up by the United Na-

tions [UN] General Assembly in 1949 to codify and progressively develop international law) completed its Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), a project on which it had been working for more than forty years. The aim of the articles is to codify the generally applicable rules of State responsibility.

It should be noted that the ARSIWA are envisaged as laying down general rules that apply in default of any more specific rule applicable to the obligation in question. In some cases, special rules may apply to an obligation (either as a result of the formulation of the rule itself, or because the obligation in question forms part of a special regime); for instance, it is possible that a particular obligation may be subject to a special rule requiring fault or damage before there is held to be a breach, or it may be that the category of States entitled to react is wider than the default position under the ARSIWA. This is the principle of *lex specialis* (to the extent that special rules are applicable and inconsistent with the rules contained in the ARSIWA, the special rules will prevail and displace the more general rules).

The Elements of State Responsibility

The starting point of the articles is that "every internationally wrongful act of a State entails the international responsibility of that State" (Article 1, ARSIWA). The act or omission of a State will qualify as an "internationally wrongful act" if two conditions are met. First, the act or omission must constitute a breach of an international obligation, or, as the articles put it, must be "not in conformity with what is required" by the international obligation (Article 12, ARSIWA). This implies that the obligation in question must be binding on the State at the time of the conduct, which is said to constitute a breach. Second, the act or omission must be "attributable" to the State.

The general rule is that a State is not responsible for the acts of private individuals. The State is of course an abstract entity, unable to accomplish any physical act itself. Just as in domestic law corporations act through their officers and agents, so in international law the State normally acts through its organs and officials. The first, and clearest, case of attribution is that of the organs of the State (e.g., police officers, the army) whose acts are attributable to the State even in instances where they contravene their instructions, or exceed their authority as a matter of national law (Article 7, ARSIWA). No distinction is made based on the level of the particular organ in the organizational hierarchy of the State; State responsibility can arise from the actions of a local policeman, just as it can from the actions of the highest officials, for instance a head of state or a foreign minister. Nor is any distinction made upon the basis of the separation of powers; State responsibility may arise from acts or omissions of the legislature and the judiciary, although by the nature of things it is more common that an internationally wrongful act is the consequence of an act or acts of the executive. Second, the rules of attribution cover situations in which individuals, not otherwise State organs, are exercising "elements of governmental authority" at the time that they act (Article 5, ARSIWA). Third, acts of private individuals are attributable to the State if those individuals are acting on the instructions of the State, or under its effective direction or control (Article 8, ARSIWA). Fourth, in exceptional circumstances in which there is an absence or default of governmental authority, the acts of private individuals may be attributable to the State if those individuals, in effect, step into the breach and perform necessary governmental functions (Article 9, ARSIWA).

With regard to certain obligations, a State may incur responsibility even though actions have been carried out by private individuals, because the essence of the obligation was to ensure that a given result occurred. For instance, if a foreign embassy is overrun by a mob, or harm is done to diplomatic staff by private individuals, as occurred with the U.S. embassy in Tehran during the Iranian revolution of 1979 to 1980, a State may incur responsibility, even if those individuals act on their own initiative. Equally, under Article V of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the obligation of a State to punish those responsible for genocide earlier on related to genocide may be breached in instances in which a State fails to punish any person responsible for the genocide, "whether they are constitutionally responsible rulers, public officials, or private individuals." There is probably a similar rule in general international law in relation to crimes against humanity. In both cases, the basis of responsibility here is not the attribution to the State of the acts of the individuals; it is the failure by the State as an entity to comply with the obligations of prevention and prosecution incumbent on it.

A somewhat anomalous instance of attribution is that covered by Article 10 of the ARWISA. As was noted above, in the normal course of events, a State is not responsible for the acts of private individuals; *a fortiori*, it is not responsible for the acts of insurrectional movements, because, by definition, an insurrectional group acts in opposition to the established state structures and its organization is distinct from the government of the State to which it is opposed. However, Article 10(1) ARSIWA provides that "the conduct of an

insurrectional movement which becomes the new government of a State shall be considered an act of that State under international law." Article 10(2) provides for a similar rule with respect to an insurrectional movement that succeeds in establishing a new State within the territory of a pre-existing State. The effect of the rule is to attribute retrospectively the conduct of the movement in question to the State. In the case of a successful insurrectional movement, the acts of the movement are attributed to the State as if the movement had been the government at the time of its acts, even though, if the insurrection had failed, no attribution would be possible. In the case of the establishment of a new State, the effect is even more drastic because acts are attributed to the State retrospectively to a time when it did not yet definitively exist.

Except in this case, there is no established machinery for attributing collective responsibility (e.g., for war crimes, genocide, or crimes against humanity) to an armed opposition group. In such circumstances individual responsibility is the only possibility at the international level of ensuring a degree of responsibility for criminal acts.

Certain circumstances may serve to preclude the wrongfulness of a breach of international law by a State, in much the same way that defenses and excuses work in national criminal law. In international law these are termed "circumstances precluding wrongfulness" (Part One, Chapter V, Articles 20–27, ARSIWA). For instance, the consent of the state to which the obligation was owed will prevent the breach being wrongful, as will, under certain restrictively defined conditions, force majeure, distress, and necessity. The fact that a State acts in legitimate self-defense in accordance with the Charter of the United Nations may preclude the wrongfulness of an act. Finally, a State taking countermeasures (defined as the nonperformance of an obligation in response to a prior wrongful act of another State, in order to induce that State to comply with its obligations) may mean that what would otherwise be a breach of an international obligation is not in fact wrongful. However, quite apart from the strict procedural conditions with which the taking of countermeasures is hedged, it should be noted that certain obligations may not be the object of countermeasures. Among these are the obligation to refrain from the threat or use of force, obligations for the protection of fundamental human rights, obligations of a humanitarian character prohibiting reprisals under peremptory norms of general international law (*jus cogens*). This last limitation in fact applies generally to circumstances precluding wrongfulness: it is never possible to plead that a breach of a peremptory norm was justified.

The Content of International Responsibility

Upon the commission of an internationally wrongful act, new legal obligations come into existence for the State responsible for that act. First, that State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. Reparation may take one of three forms: restitution, compensation, or satisfaction (or some combination of them). Traditionally, restitution has played the primary role, although in instances in which restitution is materially impossible, the injured State may have to content itself with compensation or satisfaction. Second, the responsible State is under an obligation to conclude the internationally wrongful act if it is continuing, and in an appropriate case, may be required to make assurances and guarantees of non-repetition.

The ARSIWA mark a decisive step away from the traditional bilateralism of international law and toward what has been called "community interest" in the provisions dealing with the States that are entitled to react to the breach of an internationally wrongful act. Traditionally, only the State that was directly injured, or in some way "targeted," by the breach of an international obligation could demand reparation. In addition, although any state could take unfriendly measures that did not constitute the breach of an international obligation owed to the State at which they were directed (retorsion), the taking of countermeasures was commonly understood as being limited to these "injured States."

The first major move away from the strict bilateralism of international law was the judgment of the International Court of Justice in the *Barcelona Traction, Light and Power Company Limited (Belgium v. Spain)* case. In that case, the court stated:

> [A]n essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes* (*ICJ Reports 1966*, p. 3 at 32 [para. 33]).

In the next paragraph, the court went on to state that "such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination." This distinction between obligations of which only the injured State may complain, and those in the observance of which a wider community of States have

an interest, is reflected in Articles 42 and 48 ARSIWA, although it should be stressed that the latter provision is undoubtedly one of the clearest examples of progressive development to be found within the articles. It seems indisputable that all other States have an interest in the observance by other States (and individuals) of the prohibitions of genocide and crimes against humanity. However, the exact implications of this interest require further working out in the light of State practice.

The Rise and Fall of the Notion of State Crimes

The ILC proposal, as adopted on first reading in 1996, sought to introduce the notion of "international crimes" of States. However, there were major flaws with the proposal, despite the strong support they received from some writers and from some groups of States. Their major deficiency was that they did not envisage anything even approaching a form of sanction in keeping with the normal domestic conception of crime; this was crime without punishment.

In addition, there were none of the other trappings that one would expect with a penal form of responsibility. For instance, there was no adequate definition of the internationally wrongful acts that constituted State crimes (in order to comply with the principle *nullum crimen sine lege*), nor was there any system for objective and impartial investigation on behalf of the international community of the facts alleged to constitute a State crime. Perhaps most tellingly, there was no system of due process in relation to the trial of State crimes, nor was there envisaged the establishment of a forum having compulsory jurisdiction over the crimes and the States alleged to have committed them. Rather the notion of crime was to be grafted onto the existing decentralized system of enforcement, with all of the possibilities of abuse and misuse that this implied.

On the other hand, certain limited consequences above the normal regime of responsibility attached to the concept of crime. For instance, in the case of State crimes, all other States were to be regarded as injured and could thus invoke responsibility, and it was generally accepted that there was an obligation incumbent on all other States not to recognize the consequences of a crime.

The notion of State crimes, and its consequences, caused a great amount of controversy, and created deep differences of opinion within the ILC. Some members took the view that the label crime was merely a pejorative way of describing the category of very serious breaches of obligations of concern to the international community as a whole, and that the solution was to remove the language of crime, while retaining the consequences that were accepted as constituting part of contemporary law. In the end it was this approach that prevailed; in 1998, the concept of "international crimes of States" was set aside, and was ultimately dropped from the text that was adopted on second reading. The excision of the language of crime was one of the major factors contributing to the unopposed adoption of the ILC articles in 2001.

The Relationship between State Responsibility and Individual Responsibility

The relationship between State responsibility and individual responsibility has until recently been a neglected issue, principally due to the late development of international individual criminal responsibility.

In 1947 the International Military Tribunal at Nuremberg stated that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced" (*Trial of the Major War Criminals before the International Military Tribunal*, Vol. 1, p. 223). This statement says much about perceptions of the international legal system in the immediate aftermath of World War II; however, insofar as it seems to assert that observance of the rules of international law prohibiting atrocities can only be achieved through the prosecution of individuals, the assertion no longer holds true.

During the 1990s a number of inter-State cases alleging *State* responsibility for violations of the international rules concerned with the outlawing of atrocities were brought before the International Court of Justice. Some of these cases, in particular those between the States that had emerged after the disintegration of the Socialist Federal Republic of Yugoslavia (*Bosnia and Herzegovina v. Yugoslavia* [Serbia and Montenegro], 1993 onward; *Croatia v. Yugoslavia*, 1999 onward), concerned situations involving allegations of genocide and crimes against humanity that were concurrently the subject of investigation and prosecution of individuals before the International Criminal Tribunal for the Former Yugoslavia (ICTY). Other cases (*Democratic Republic of the Congo* [D.R.C.] v. *Rwanda* [1999–2001; New Application: 2002–ongoing]; *D.R.C. v. Uganda* [1999 onward]; *D.R.C. v. Burundi* [1999–2001]) alleged, among other things, violations of the 1948 UN Genocide Convention, serious violations of human rights, and war crimes that had not been the subject of international prosecution, although one should note the issuance by a magistrate in Belgium of an international arrest warrant for the foreign minister of the D.R.C. in relation to a charge of "serious violations of international humanitarian law"; the International

Court of Justice held that under international law a sitting foreign minister enjoys absolute personal immunity and inviolability, and that therefore Belgium was in breach of its international obligations (UN International Court of Justice, *ICJ Reports 2002, D.R.C. v. Belgium, Arrest Warrant of 11 April 2000*, p. 3).

At the preliminary objections stage of the case (mentioned above) between Bosnia and Serbia-Montenegro, the respondents argued for a restrictive interpretation of the jurisdictional provision contained in Article IX of the 1948 UN Genocide Convention. Article IX provides as follows:

> 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 for 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.

Serbia-Montenegro argued that the provision only conferred jurisdiction on the court in relation to responsibility for failure to comply with the obligations to *prevent* and *punish* genocide, as contained in Articles V, VI, and VII of the convention, and not to State responsibility for violations of the substantive prohibition of genocide contained in Article III. Accordingly, it was argued, as the jurisdiction of the court is based on consent, the court had no jurisdiction in relation to the allegations made by Bosnia and Herzegovina of violations of the prohibition of genocide by individuals whose acts were attributable to Serbia-Montenegro.

The court dealt with the point briefly, observing:

> [T]he reference in Article IX to "the responsibility of a State for genocide or for any of the other acts enumerated in Article III," does not exclude any form of State responsibility. Nor is the responsibility of a State for acts of its organs excluded by Article IV of the Convention, which contemplates the commission of an act of genocide by "rulers" or "public officials" (*ICJ Reports 1996*, p. 595, at p. 616, para. 32).

Accordingly, it held, a dispute existed between the parties on this point, as well as on the "the facts of the case, their imputability, and the applicability to them of the provisions of the Genocide Convention," and was sufficient to its jurisdiction (*ICJ Reports 1996*, p. 595, at p. 616, para. 33). Two points bear emphasizing. First, the argument of Serbia-Montenegro did not have as a necessary premise that State responsibility for actual acts of genocide attributable to a State does not exist; rather, the argument was that State responsibility of this type did not fall within Article IX. Second, the decision of the court at the preliminary objections stage of the case did not definitively decide whether breach of the 1948 UN Genocide Convention by an individual necessarily involves State responsibility if the relevant acts are attributable to a State, as the only hurdle that had to be surmounted was whether there was a dispute between the parties as to the interpretation or application of the convention. However, the tone of the court's judgment seems to suggest that State responsibility does arise in these circumstances, and this would be consistent with general principle.

Conversely, the ICTY has made reference to State responsibility in elucidating the law relevant to the international criminal responsibility of individuals. In the *Furundzija* case the Trial Chamber held that the international legal norms prohibiting torture arising from human rights law and international humanitarian law "impose obligations upon States and other entities in an armed conflict, but first and foremost address themselves to the acts of individuals, in particular to State officials or more generally, to officials of a party to the conflict or else to individuals acting at the instigation or with the consent or acquiescence of a party to the conflict" (para. 140). As a consequence,

> Under current international humanitarian law, in addition to individual criminal liability, State responsibility may ensue as a result of State officials engaging in torture or failing to prevent torture or to punish torturers. If carried out as an extensive practice of State officials, torture amounts to a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, thus constituting a particularly grave wrongful act generating State responsibility (para. 142).

It is therefore now generally accepted that a single act can give rise to "two distinct types of responsibility coming under mutually autonomous legal regimes" (Dupuy, 2002, p. 1098). The ILC intentionally left the question of the interplay of the two bodies of law open for future development, inserting a saving clause as Article 58, ARSIWA, which reads, "These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State." Similarly, the Rome Statute of the International Criminal Court (ICC) provides in its Article 25(4) that "[n]o provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law."

However, although the rules constituting the general-framework of State responsibility and international criminal responsibility may constitute distinct bodies of law, there are inevitably certain overlaps or points

of contact between the two systems due to the fact that at the root of both are the same norms of substantive international law, that is, those prohibiting anyone from committing genocide, crimes against humanity, and so on.

Most obviously, for instance, it is clear that an individual cannot be found guilty of genocide if he did not have the "specific intent" to "destroy in whole or part, a national, ethnical, racial, or religious group, as such," required by Article II of the 1948 Genocide Convention. Equally, in seeking to establish State responsibility for genocide, it seems clear that at least one person, if not more, whose acts are attributable to the State should have the requisite specific intent. In this sense, the 1948 Genocide Convention operates as a *lex specialis* in relation to the generally applicable rules of international law, in which *culpa* or intention is not generally required.

Second, although the definition of genocide is not expressed in such terms, the logistical and organizational structures necessary for the commission of the crime inevitably involve State or para-statal structures. A person who murders a single person on the basis of the national, ethnic, racial, or religious group to which that person belongs does not commit genocide, even though it may be that he would murder all of the members of the group if he could, and thus arguably has the required specific intent. A certain amount of concertation is necessary, and there is a certain threshold of scale both for genocide and crimes against humanity (of which, ultimately, genocide is a species).

In relation to crimes against humanity, Article 3 of the Statute of the International Criminal Tribunal for Rwanda (ICTR) requires that the acts have been committed as part of "a widespread or systematic attack against any civilian population on national, political, ethnic, racial, or religious grounds," whereas Article 5 of the Statute of the ICTY, which only requires that the acts have been committed "in armed conflict, whether international or internal in character, and directed against any civilian population" has been interpreted by the ICTY as requiring that there be a widespread or systematic attack. In similar fashion, Article 7 of the Rome Statute of the ICC imposes the slightly different requirement of "a widespread and systematic attack directed against any civilian population" in its definition of crimes against humanity. As with genocide, the requirement of "a widespread or systematic attack" implies an element of scale or of planning, and will in most cases involve structures and apparatus that will normally only be disposed of by a State or by an armed opposition group, although proof of a plan or policy is not a necessary part of the definition of the crime.

It was for reasons of this kind that the ILC included in its articles a provision dealing specifically with the issue of responsibility for what are termed *composite acts*—that is, acts wherein the gist of the wrong is the combination of individual acts that are not in themselves necessarily wrongful or criminal as a matter of international law. Article 15 of ARSIWA provides as follows:

> 1. The breach of an international obligation by a State, through a series of actions or omissions defined in aggregate as wrongful, occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.
>
> 2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

According to the commentary, this has specific application to crimes against humanity and genocide.

> Even though it has special features, the prohibition of genocide, formulated in identical terms in the 1948 Convention and in later instruments, may be taken as an illustration of a composite obligation. It implies that the responsible entity (including a State) will have adopted a systematic policy or practice. According to Article II(a) of the Convention, the prime case of genocide is "killing members of [a national, ethnical, racial or religious group]" with the intent to destroy that group as such, in whole or in part. Both limbs of the definition contain systematic elements. Genocide also has to be carried out with the relevant intention, aimed at physically eliminating the group "as such." Genocide is not committed until there has been an accumulation of acts of killing, causing harm, etc., committed with the relevant intent, so as to satisfy the definition in Article II. Once that threshold is crossed, the time of commission extends over the whole period during which any of the acts was committed, and any individual responsible for any of them with the relevant intent will have committed genocide (Crawford, 2000, pp. 141–142).

The Distinction between Commission and Failure to Prevent or Punish

The 1948 UN Genocide Convention distinguishes between the basic prohibition of genocide and conduct ancillary to genocide—incitement, conspiracy, and so on (defined in Articles II and III), and the question of prevention and punishment (addressed in Articles I, IV, V, and VI). Persons committing genocide (whether

or not State officials) are to be punished. The State is under an obligation not merely to enact laws prohibiting genocide (Article V), but also to prevent and punish actual violations occurring within its territory. Thus, there is a distinction between the criminal act, which is committed by individuals and is punishable accordingly, and the State's obligation to prevent and punish—failure to do which is not as such criminal, but amounts to a breach of an international obligation. In the *Application of the Genocide Convention* case, as noted already, Yugoslavia (Serbia and Montenegro) argued that the only obligation that had been incumbent upon it under the convention was to prevent genocide and punish acts of genocide occurring on its territory; the court rejected this argument, affirming that the jurisdictional provision did not exclude "any form of State responsibility" (*ICJ Reports* 1996, pp. 595, 616). The court left to the merits phase of the case the question of the scope of the obligations under the convention, and accordingly the extent of State responsibility falling within the jurisdictional provision. However, leaving aside the technicalities of jurisdiction, the better view is that—whether under the convention or as a matter of general international law—a State is responsible for any act of genocide committed by one of its organs or by other persons whose conduct in the relevant respect is attributable to the State.

As indicated by the *Bosnia* case, it is arguable that, in these as in other respects, there may be a distinction between on the one hand the scope of responsibility (and accordingly of jurisdiction) under the convention, and on the other the scope of the obligations, and of responsibility under general international law. For example, national jurisdiction to try persons suspected of genocide is limited by Article VI to genocide committed on the territory of the implicated State. It is inconceivable that jurisdiction is so limited under general international law, given such developments as the extension of national jurisdiction over international crimes in general (including crimes less serious than genocide).

SEE ALSO International Court of Justice; International Law; Reparations; Restitution

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Restitution

Restitution is generally associated with the idea of returning something lost or stolen to its legitimate owner. In international law, however, the notion of restitution is linked with the issue of state responsibility. In this sense, restitution is one of the forms through which a state may discharge its obligation to provide reparation for the harm caused by its wrongful acts. More precisely, the term is used, in international practice, in at least two senses. In the strict sense, it signifies the return of unlawfully taken property to the original owner. In the broad sense, restitution (or, in its Latin version, *restitutio in integrum*) is the re-establishment, as far as possible, of the situation that existed before a wrongful act was committed.

Restitution as a Form of Reparation under International Law

A broad consensus exists among the international community preferring restitution over other forms of reparation under international law. This view is in line with the essential goal of reparation, which, according to the

Permanent Court of International Justice's holding in its famous *Chorzów Factory* decision (1928), "must, so far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed."

It follows that restitution—which most closely conforms to that goal—is to be preferred over compensation and other forms of reparation whenever possible, unless the injured party renounces it. This primacy of restitution has been embedded in the articles on the responsibility of states for internationally wrongful acts, adopted on second reading by the United Nations International Law Commission (2001). Even advocates of this primacy, however, recognize that it is not unconditional, and they accept that compensation should be preferred at least when providing restitution would, in a situation involving two states, put a burden on the responsible state that is out of all proportion to the corresponding benefit for the injured state.

Restitution for Gross Human Rights Violations Amounting to Genocide and Crimes Against Humanity

The principles of restitution have been developed in the context of interstate relations. With the development of international human rights law and humanitarian law, however, some have come to believe that if individuals are the direct and ultimate holders of substantive rights under international law, they must also enjoy international remedial rights for obtaining redress when their rights have been infringed. The issue of reparation, including that of restitution, plays a prominent role in this context.

Although there is no reason for excluding the primacy of restitution with regard to gross violations of human rights, its usefulness may be limited, in practice, by the specific type of harm caused by these kinds of wrongs. In effect, genocide and crimes against humanity cause harm, first and foremost, to immaterial and unique interests, such as dignity, personal integrity, and liberty. These cannot be restored to their original status once they are impaired.

Restitution is most suitable and appropriate with regard to violations of property rights, such as illegal or arbitrary expropriations. However, this does not mean that the role of restitution with regard to crimes against humanity is only marginal. In fact, the most invasive attacks on property are often linked with gross human rights violations. Genocide, for instance, may be accompanied by the destruction of houses and the pillage of goods. Furthermore, the destruction, plundering, and pillage of private property can by themselves amount to crimes against humanity or war crimes. This may occur, for example, when the dispossession or destruction is achieved through blatant discriminatory measures, or with the intent of persecuting a group or a collectivity, or when it is "committed by pressure of mass terror." However, a number of practical and political factors may hinder the concrete possibility for the victims to get their property back. This is particularly true with regard to two types of highly politicized restitution claims: those related to historical injustices and those connected with armed conflicts.

The former type of claim relates to serious impairments of human rights committed in a distant past, at a time when they possibly did not even constitute a breach of the existing law. The specificity of these claims lies in the fact that they are arguably based on moral grounds, rather than on the legal responsibility of the state involved. This is one of the reasons why this type of claim is generally dealt with in the framework of political settlements, rather than in the courts. The huge lapse of time passed since the occurrence of the injury poses an additional major obstacle for restitution in these cases. Properties are often destroyed or no longer identifiable, their economical destination may be irreversibly changed, or they may have been transferred to third parties acting in good faith. Under these circumstances, restitution of full ownership is often a virtually impossible option. This situation is well illustrated by land restitution claims put forward by indigenous communities for historical dispossessions.

Restitution claims connected with armed conflicts are complicated by the fact that the dispossessions often take place in conjunction with ethnic cleansing and land occupation with a view to annexation. Here, restitution may still be materially possible but politically unrealistic, particularly when it would mean the return of huge numbers of forcibly displaced persons to territories that have passed under the control of the same group who forced them to flee. In this context, property restitution can hardly be seen as an absolute goal but needs to be reconciled with other, concurring goals, to be settled in the framework of political negotiation.

Restitution in the Framework of International, Treaty-Based Judicial Mechanisms for the Protection of Human Rights

The substantive duty to provide reparations is reinforced in the context of judicial mechanisms of protection, where international courts are vested with the power to adjudicate both on the merits of allegations and on remedies. The potential of remedies, however, may be partly frustrated by the courts themselves

if—on the basis of a restrictive interpretation of their remedial powers—a timid, low-profile approach to reparation is taken. A quite restrictive approach is adopted, for instance, by the European Court of Human Rights, which is generally reluctant to order specific remedies. However, it seems to be more audacious when it comes to infringements of property rights. The court has occasionally ordered states to return unlawfully seized properties to the former owners, thus affirming the primacy of restitution. The fact remains, however, that even in property cases, the court is not always prepared to order reparation to take place on the basis of restitution.

The Inter-American Court of Human Rights, enjoying broader remedial powers than its European counterpart, handed down a landmark judgment in 2001 in the *Awas Tingni* case. The Court found that Nicaragua had violated the rights to property and judicial protection of the members of the Mayagna (Sumo) community of Awas Tingni, an indigenous community located on the forested area of Nicaragua's Caribbean coastal region. For reparation, the Court ordered the government to take various measures to recognize, protect, and enforce the community's historical title on its ancestral land and resources. Although restitution was not an issue as such, the decision shows the potential of human rights mechanisms in cases of large-scale operations of dispossession that affect whole communities.

Unlike international state responsibility, the international responsibility of individuals has traditionally been conceived as being criminal in nature. Accordingly, the focus of international justice, as administered by international criminal tribunals, has centered on imposing penalties to the perpetrator, rather than on affording redress to the victims. Over the years, however, the view has gradually emerged that the international responsibility of individuals must include some obligations of a civil nature in respect of the victims.

The Rome Statute of the International Criminal Court (1998) recognizes the right of the victims to reparation in general and to restitution in particular. Article 75 of the statute enables the ICC to "make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation." It remains to be seen whether the ICC will, in practice, be able to make an effective use of the power thus granted to it.

Restitution outside the Framework of International Adjudication

Most reparation claims relating to gross human rights violations have been dealt with through political agreements reached outside of the typically adversarial procedures of judicial litigation. These agreements often include the setting up of specific procedures and ad hoc bodies to process individual claims.

In the late 1990s groups of Holocaust survivors have provided the impetus for establishing important reparations programs in Germany, Austria, Switzerland, and other European countries, to provide comprehensive solutions to the quest for reparation for damages incurred as a consequence of or in relation to events that happened during the Nazi era. Because of the legal and material hurdles accompanying restitution, however, most of these reparation programs have been designed to provide financial compensation rather than the restitution of the original property. A notable exception is the General Settlement Fund, established in Austria in 2001. This program comprises a specific procedure for the return of property wrongfully taken in Austria during the Nazi period. Restitution, however, is only possible under the condition that the property concerned was owned by the Austrian federal government at the moment when the fund was established.

Another example of Holocaust-related restitution is provided by the Claims Resolution Tribunal. The tribunal was established through a class action settlement in the United States, by an agreement between two Jewish associations and the Swiss Bankers Association. The tribunal is tasked with providing restitution to the legitimate owners of the assets they deposited with Swiss banks before World War II and which have remained dormant since then.

Restitution of property has also been a key element of the South African democratic transition. Individuals and collective entities that were dispossessed of property during the apartheid regime on the basis of racially discriminatory laws or practices, have the right to receive restitution of that property or equitable redress. Various organs and procedure, including a Land Claims Court and a Commission on Restitution of Land Rights, have been established to give effect to the victims' right to restitution.

Finally, the Dayton Peace Agreement of 1995, dealing with the situation in Bosnia and Herzegovina, paid special attention to the issue of restitution. It established a Commission for Displaced Persons and Refugees (subsequently renamed Commission for Real Property Claims of Displaced Persons and Refugees), which was mandated to receive and decide reparation claims relating to forcible dispossessions in Bosnia and Herzegovina during the war. Under the terms of the agreement, claimants had the right to choose between a return of the property they lost or to accept "just compensation in lieu of return." Similarly, some years later,

the Housing and Property Directorate and Claims Commission were established in Kosovo (1999) for dealing with claims of individuals who had lost property as a result of discriminatory laws enacted under the Slobodan Milosevic regime or in connection with the conflict of 1999.

SEE ALSO Compensation; Rehabilitation; Reparations

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Ríos Montt, Efraín

[JUNE 16, 1926–]
Former dictator of Guatemala

On March 23, 1982 a coup of the Guatemalan Army set the stage for the massacre of over 75,000 people between 1982 and 1983. General José Efraín Ríos Montt was president of the military junta established by the coup, and in 2004 he and five other commanding officers remain charged with crimes against humanity and crimes of war.

Ríos Montt began his career in 1946, quickly rising through the military ranks to oversee the counterinsurgency campaign of the late 1960s and peasant insurgency in the eastern provinces, in which an estimated 10,000 people were killed by the army. After serving as Army Chief of Staff (1970–1974), he ran for office as the presidential candidate of the Christian Democratic Party in 1974. On March 23, 1982, a movement led by young officers within the military asked Ríos Montt to rid the country of corruption, this while he was being paid by the extreme right to prepare a revolt and head a military junta to fight a prolonged war against the guerrillas. With a new National Plan of Security and Development, referred to as "a process of national reconstruction," a state of siege was declared, all constitutional rights suspended, special secret tribunals established to try a variety of crimes, congress and all political parties banned. The massacre, to last some eighteen months, commenced in April 1982.

The 1999 UN-directed Historical Clarification Commission (CEH) Report found that the Guatemalan state and its agents (i.e., the army high command) was institutionally responsible for "acts of genocide." It distinguishes between a policy of genocide intended to exterminate a group in whole or in part and acts of genocide when "the goal is political, economic, military or whatever other such type, and the method that is utilized to achieve the end goal is the extermination of a group in whole or in part" (Vol. 2, p. 315). This distinction is based on two facts: in the epoch of greatest repression, 1)13 percent of those killed in the violence were non-Mayan (*ladino*), and 2) it was believed the Maya served as a social base for the guerrilla in certain

Former Guatemalan dictator Efraín Ríos Montt presides over a session of Guatemalan congress on March 20, 2001, in Guatemala City. The next day, Rios Montt said he would not step down from his position, despite orders from Guatemala's highest court. Court members issued the order after Rios Montt and several other lawmakers modified a law on liquor. **[AP/WIDE WORLD PHOTOS]**

areas; hence, those killed suffered not for their membership in an ethnic group but for being stigmatized as guerrillas.

This finding for institutional responsibility is highly significant as it focuses on the structures and apparatuses of repression and not just on the offenses of individual officers, as occurred in the eventual prosecutions in Argentina, among other countries.

Moreover, on August 9, 2000, President Alfonso Portillo acknowledged the institutional responsibility of the Guatemalan state arising from a "breach of the obligation imposed by Article 1 of the American Convention to respect and ensure the rights enshrined in the Convention" in ten cases before the Inter-American Commission on Human Rights. This acknowledgment prompted the commission to take up a petition submitted by the Human Rights Office of the Archdiocese of Guatemala and the International Human Rights Law Group that held the Guatemalan state responsible for not respecting and ensuring basic human rights.

Criminal cases brought before the Guatemalan Supreme Court have charged Ríos Montt and his high command (1982–1983), as well as Lucas Garcia and his high command (1978–1981), with genocidal acts on behalf of survivors and families of massacre victims. These cases are based on witness testimonies as well as numerous documents, including the 1997 Guatemalan Archdiocese REMHI Report as well as the CEH Report.

Not only has Rios Montt violated massive human rights, but he has also debilitated the structures that seek to uphold them. For example, the Guatemalan constitution clearly states that no one involved in a coup d'etat may run for president; however, in August 1990 Ríos Montt attempted to do just that, asserting that the law did not apply to him. On March 4, 1991, Ríos Montt filed a complaint against the Guatemalan government with the Inter-American Human Rights Commission, alleging that in declaring his candidacy for the presidency unconstitutional, judicial, legislative, and executive officials had in their resolutions and actions violated the American Convention on Human Rights. Ríos Montt further argued that a provision in one of the early Guatemalan peace agreements of Esquipulas in 1987 states that all who had participated in the conflict would be declared free of political crimes.

The Guatemalan Supreme Court again ruled against Ríos Montt's candidacy in 1995. In 2003, as President of the National Congress, he was permitted to register as a presidential candidate by the Constitutional Court, packed with his political supporters. When the Supreme Court upheld the constitutional ban, mobs of the general's Guatemalan Republican Front Party rampaged through the center of Guatemala City, attacking judges and journalists who had opposed Ríos Montt's candidacy. The Constitutional Court overturned the Supreme Court decision a week after the riots—further debilitating Guatemala's democratic institutions.

By only placing third in the November 2003 presidential elections, Ríos Montt lost his parliamentary immunity and became the centerpiece of the campaign against impunity, headed by families of the victims of the massacre. The Popular Social Movement, which comprises dozens of organizations in Guatemala, asked the two remaining presidential candidates in the 2003 elections to pledge to bring the former general to trial for genocide, and not grant him immunity in exchange for votes, which they agreed to do.

SEE ALSO Argentina; Guatemala

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Jennifer Schirmer

Romania

After the coup of August 23, 1944, in which King Michael ordered the arrest of Romania's pro-German dictator, Ion Antonescu, Soviet troops entered Bucharest and found an interim Romanian government ready to negotiate peace. From the armistice Joseph Stalin fashioned a legal framework for the Soviet Union's political and economic domination of Romania; he secured this through the imposition of rule by the Romanian Communist Party (RCP). On March 5, 1945, a pro-Soviet government came to power and used the country's political structure, trade unions, and educational system to make Romania completely subservient to the Soviet Union. A vital step was the dissolution of the major democratic parties in the summer of 1947, and the indictment and imprisonment of their elderly leaders, Iuliu Maniu and Constantin Bratianu, as "agents of Britain and the United States." Both died in communist prisons, along with many of their associates. Their trial was followed by the enforced abdication of King Michael on December 30, 1947.

The RCP moved swiftly to transform Romania, following the Soviet model and employing Stalinist norms and practices. All private enterprises were nationalized in June 1948, and in March 1949 the ownership of land was completely removed from private hands without compensation. The confiscated land was used to create state farms or organized into collectives. Peasant resistance to collectivization resulted in some 80,000 imprisonments, with 30,000 peasants tried in public. Collectivization was finally completed in 1962.

Police terror is an intrinsic feature of totalitarianism, and communist rule in Romania confirmed this. The destruction of an existing society and the creation of a new one were achieved by a single mass party composed of an elite and dedicated membership whose objectives were central control and direction of the economy, a technologically perfected monopoly of the media, and complete direction of the armed forces. The Communist Party assigned to the secret police (Securitate) the task of removing the so-called enemies of the regime and those classes of the population who were considered an obstacle to centralized control of the economy. Communist leader Gheorghe Gheorghiu-Dej initiated this program in 1945. Nicolae Ceausescu inherited it in 1965.

On December 17, 1989, Nicolae Ceausescu, shown here, ordered his security forces to fire on antigovernment demonstrators in the city of Timisoara. The demonstrations soon spread to Bucharest, and on December 22 Ceausescu and his wife fled the capital in a helicopter, but were captured and taken into custody by army officers. Ceausescu and his wife were hurriedly tried (for mass murder and other crimes) in a special military tribunal, and shortly thereafter went before a firing squad. [AP/WIDE WORLD PHOTOS]

The Securitate's most potent weapon was fear, and the depth of its inculcation in the Romanian population was the principal reason for its success. In Romania police terror was used in two stages: first, to eliminate opponents in the drive to consolidate power and, second, to ensure compliance once revolutionary change had been effected. The first stage, broadly speaking, encom-

passed the years from 1945 until 1964, when there was a period of general amnesty for political prisoners, and the second ran from 1964 until December 1989, the date of Ceausescu's overthrow. There was a noticeable relaxation in the degree of repression exercised by the regime after 1964, which resulted from Gheorghiu-Dej's need for internal support following his political rift with the Soviet Union. Until the final year of the Gheorghiu-Dej era terror was inflicted on the whole of Romanian society, in the search for actual or potential opponents of totalitarian conformity, and many citizens began to feel as if they were being personally hunted down. After 1964 Romanians were marked by a deep-rooted fear of the government, rather than the terror exercised by the Securitate, and the Ceausescu regime, for all its appalling abuses of human dignity and disrespect for human rights, never repeated the tactics of mass arrests and wholesale deportations that were a feature of most of Gheorghiu-Dej's rule.

Repression under Gheorghiu-Dej

The Securitate was the blunt tool of repression of the Communist Party. It was established according to a Soviet blueprint and under Soviet direction. In the building of a people's democracy, the Securitate were called on to eradicate existing political institutions and social structures. Police coercion and intrusion became part of everyday life and a feature of existence that generated pervasive fear, a state of mind which revolutionized not just society's structures, but also personal behavior. In public places the furtive whisper became second nature. Fear induces compliance and is therefore a tremendous labor-saving device. Records indicate that in 1950, two years after its creation, the number of officers and other personnel in the Securitate totaled almost 5,000. In 1989 this number had risen to 14,259, according to figures published after the revolution in December of that year. These numbers do not include the army of informers whom the Securitate, by exploiting fear, was able to recruit. By the same token, it was a mark of the Securitate's success in instilling fear that Romanians came to widely view so many of their fellow citizens as active collaborators with the Securitate, and but a small part of the larger network of officers and informers. The Securitate became as much a state of mind as the instrument of national terror. At the time of the 1989 revolution there were alleged to be more than 400,000 informers (out of a population of 21 million) on the Securitate's books.

The Communist Party set the machinery of terror in motion to carry out the mass deportations of Serbs and Germans living in the area of the Banat adjacent to Yugoslavia. These groups were considered a security risk when tension between Yugoslavia and Romania grew following Marshal Tito's rift with Stalin in June 1948. The deportations began in the summer of 1951: 40,320 persons were targeted, more than half being former landowning peasants. They were moved by train and truck to the southeastern part of Romania. The deportees were only allowed to take what belongings they could carry, and on arrival they were allocated makeshift clay-walled huts with straw roofs in special settlements. Others, even on the Securitate's own admission, were literally deposited in the middle of nowhere. The same reports talk of a lack of drinking water, but despite such deprivations, the deportees erected simple houses of clay and wood, and coaxed the soil into producing crops.

Romania's principal ethnic minority, the Hungarians of Transylvania (numbering approximately 1.6 million in 2002), escaped the fate of the Serbians and Germans of the Banat. The contiguity of Hungary coupled with the size of the Hungarian minority made, and continues to make, the treatment of the Hungarian minority a sensitive issue for both states. During the communist period integration or, as Ceausescu often termed it, *homogenization*—an extension of the strategy of consolidation of the newly enlarged state pursued by Romanian governments in the interwar period—was accelerated by the drive for industrialization undertaken by the communist regime after 1948. It increased the urbanization of the population as a whole and led to the massive migrations of workers, usually from Romanian areas into those with a Hungarian population, thus diluting the proportion of Hungarians and changing the cultural aspect of traditionally Hungarian-dominated towns.

The depths of terror under communism were plumbed in the prison at Pitesti, situated some 75 miles northwest of Bucharest. It became notorious for an experiment of a grotesque nature that originated there on December 6, 1949. Termed *re-education,* the experiment employed techinques of psychiatric abuse designed not only to instill terror in opponents of the regime, but also to destroy their individual personalities. The experiment lasted until August 1952 and was conducted in other prisons as well, albeit on a smaller scale. The victims, estimated at one thousand, were mainly anticommunist students arrested in 1948.

Nothing illustrated more graphically the coercive nature of the centralizing policies pursed by the communist regime than its use of forced labor. Just as Beria was, at Stalin's death in 1953, the second largest employer in the Soviet Union, so too the Ministry of the Interior in Romania was effectively charged with managing part of the economy. Forced labor was formally introduced in June 1950 although it had been practiced

for more than a year in a prestige project involving the construction of a canal shortening the passage of the river Danube to the Black Sea. By the spring of 1952, 19,000 political prisoners—including many peasants and students—were used on the canal. In addition, 20,000 voluntary civilians workers were employed together with 18,000 conscripted soldiers. Many of the prisoners endured appalling conditions in Romania's fourteen labor camps. The shortage of water and medicine, and primitive sanitary conditions, led to disease and death. An official report of the Securitate admitted that "many prisoners were beaten without justification with iron bars, shovels, spades and whip. . . . Many died as a result of the blows received." The project was abandoned in 1954. A 1967 Securitate investigation into deaths at the camps put their number at 1,304.

This highlights the problem of compiling accurate statistics on the number of persons arrested during the communist period, and the number of those in detention who died, either as a result of execution, abuse, neglect, or natural causes. First, no Securitate statistics on the number of prisoners who died while in detention are available. Second, the Securitate statistics on the numbers arrested are themselves contradictory. Third, the only independent statistical studies are fragmentary. One Securitate report states the following: In the 10 years from 1948 to 1958, 58,733 persons were convicted of a multitude of crimes, all of which were of a political nature. They included conspiring against social order, belonging to subversive or terrorist organizations (including the former democratic political parties and extreme right-wing Iron Guard), illegally crossing the frontier, failing to report a crime against the state, crimes against humanity and "activity against the working class," treason, espionage, distributing forbidden leaflets, sabotage, and "hostile religious activity." Most of those convicted received sentences ranging from one to ten years imprisonment. A total of 73,310 persons were sentenced to imprisonment during the period from 1945 to 1964; of these, 335 received the death penalty (for several the sentence was commuted). An additional 24,905 were acquitted or had the cases against them dropped. Another 21,068 were sent to labor camps during this same period. The number of those who died while in detention is estimated at 3,847; of these 2,851 died while serving their sentence, 203 under interrogation, 137 as a result of execution, and 656 in the labor camps. Independent sources have produced quite a different set of figures; an examination of court records from the period indicates that from 1949 to 1960, 134,150 political trials took place involving at least 549,400 accused.

Ceausescu Era: 1965 to 1989

Gheorghiu-Dej's successful harnessing of Romanian ambitions of autonomy from the Soviet Union and development of internal support for the RCP in the early 1960s were further developed by Ceausescu who claimed for himself and the Party legitimacy as defender of the national interest. The corollary of this was that any criticism of the Party or its leader from Romanians, whether inside or outside the country, could be branded as treachery against the nation, a charge that was to be leveled in the early 1970s against dissenting voices, in particular, Paul Goma. In the 1980s a small number of Romanians displayed remarkable courage in defying the regime by publicly calling for a measure of democracy, among them Doina Cornea, Ionel Cana, Vasile Paraschiv, and Radu Filipescu. They were all rounded up by the Securitate and detained or imprisoned for varying lengths of time.

In Romania the brutality of some of the beatings administered to opponents of the regime was evident from the fate of Gheorghe Ursu, an engineer from Bucharest, who was arrested on September 21, 1985, for keeping a diary and writing correspondence critical of Ceausescus. He was held at Securitate headquarters on Calea Rahovei, where he was beaten by two criminals, acting on orders from senior officers in the interrogation directorate of the Securitate. As a result of his injuries, Ursu was moved to the hospital at the Jilava jail. He died there on November 17th. An official inquiry in March 1990 revealed that Ursu had died as a result of repeated blows with a heavy object to his abdomen. As of 2003 the Securitate officers involved have still not been brought to justice.

The degree of Ceausescu's interference with the lives of his citizens was most potently illustrated within the realm of family planning. To increase the declining birthrate, he introduced punitive additional taxation for all childless couples over the age of twenty-five. In 1986 he raised the minimum age for women allowed an abortion (from forty to forty-five) and lowered the age at which girls could marry (from sixteen to fifteen). As a result, there was a dramatic increase in "backstreet" and self-induced abortions, especially among young working women, despite the harsh penalties. The statistics for deaths among Romanian women resulting from the antiabortion law are the single most powerful indictment of the inhumanity of Ceausescu's regime. In the twenty-three years of its enforcement, the law is estimated to have resulted in the death of over nine thousand women from unsafe abortions. The majority died from postabortion hemorrhage and blood poisoning.

That Ceausescu would not stop short of murder to maintain his grip on power became evident during the

December 1989 revolution. When anti-Ceausescu protests were mounted in Timosoara on December 17th, Ceausescu issued orders to the army to open fire on the demonstrators. Those orders were relayed by General Ion Coman to the senior officer in Timosoara, General Victor Stanculescu, who instructed units under the command of General Mihai Chitac to carry them out. At the time the rumor spread that some 60,000 people had been shot dead in Timosoara, but subsequent investigations showed that the true casualty figures were 72 people killed and 253 wounded on December 17th and 18th. In the Transylvanian city of Cluj, 26 demonstrators were shot dead by army units on December 21st. That same evening Securitate troops and army units in Bucharest killed scores of anti-Ceausescu demonstrators. On the following day Ceausescu and his wife Elena fled the capital city, but were arrested outside the town of Târgoviste. After a summary trial on Christmas Day before a tribunal selected in part by Stanculescu, one in which due process was patently lacking, they were found guilty of the genocide of 60,000 Romanians—the alleged number of dead in Timosoara—and immediately executed by a firing squad. A parliamentary commission concluded in 1995 that 1,104 died in the revolution throughout the country (162 between December 16th and December 22nd, and 942 in the days following Ceausescu's flight). In Bucharest alone 543 persons were killed and 1,879 injured.

After Ceausescu's overthrow Romania's transition to democracy was checkered. The constitution of 1991 defined Romania as a republic with a multiparty, bicameral parliamentary system. Economically speaking, the country was a middle-income, developing nation in transition from a centrally planned economy to a market economy. But the vestiges of the communist mentality were evident in the attempts by former communists—many of whom dominated the political and economic arena—to oppose transparency in public affairs. This attitude also colored attempts to shed more light on the abuses of the communist past. The unreliability of witnesses, bureaucratic inertia, and the desire to protect vested interests—the post-1989 presidential bodyguard, the Serviciul de Paza Protectie (SPP), contained former Securitate officers—explains why the investigations into the deaths of the revolution's victims were not completed, and why relatively few charges were ever brought. Nevertheless, some senior Securitate officers were prosecuted. The first was Iulian Vlad, the last head of the security force, who was arrested on December 28, 1989, on the charge of "complicity to genocide," which carried a maximum penalty of life imprisonment. A military court later reduced the charge to "favoring genocide," and Vlad's sentence was subsequently reduced to nine years, which was to run concurrently with two other lesser terms. Both Stanculescu and Chitac were charged in January 1998 with "incitement to commit murder" for their part in events in Timosoara. They were each sentenced by the Romanian Supreme Court on July 15, 1999, to fifteen years in jail. Both generals lodged an appeal against their conviction. The Supreme Court upheld their sentences on February 25, 2000. After Ion Iliescu was elected president in December 2000, they appealed once again and on this occasion their appeal was upheld by a reconfigured court.

SEE ALSO Nationalism

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Dennis Deletant

Romanis

Although for centuries the Romanis have been referred to by a score of exonyms, such as gypsies, *Tsiganes, Zigeuner, Gitanos,* and others, the preferred self-ascriptions—Romani, Romanies, or Roma—are being used more frequently as media attention focusing on the Romanis has multiplied in recent years. This has been the result of social changes brought about by the collapse of communism in Europe, which then led to the emergence of previously suppressed ethnic nationalism with such extreme measures as ethnic cleansing in the early 1990s, and the expulsion or even destruction of non-co-ethnics from historically claimed ethnolinguistic territories. Lacking a country of their own into which to retreat, the Romanis have suffered a particularly harsh existence as a consequence.

Almost the entire experience of the Romanis has, in fact, been one of conflict, highlighted by two major episodes in their millennium-long history: enslavement and the Holocaust. Their plight does not seem to be improving; at the beginning of the twenty-first century the magazine *The Economist* reported that throughout Europe, the Romanis were "at the bottom of every socioeconomic indicator: the poorest, the most unemployed, the least educated, the shortest-lived, the most welfare dependent, the most imprisoned and the most segregated" (2001, p. 29). In the early 2000s there were between nine and twelve million Romanis worldwide, with the majority residing in Central and Eastern Europe, and about a third of that number living throughout North and South America.

Origins

The original homeland of the Romanis was India. Knowledge of this fact was not retained by the population itself, nor was it recognized by Western scholars until the mid-eighteenth century. Before that time many other places of origin, some quite imaginative, were proposed, including Atlantis, Nubia, and the Moon. Since the Indian connection was first established (through the Romanis language), scholars have attempted to piece together the historical details. The prevalent hypothesis is that the ancestors of the contemporary Romanis population were a conglomerate of diverse ethnolinguistic peoples assembled into a military force together with their camp-followers in order to resist the incursion of Islam in northwestern India during the early eleventh century. Many thousands were taken prisoner by the Muslim Ghaznavids; these captives were then subsequently co-opted by the Seljuqs for use as a militia when they defeated the Ghaznavids in 1038 CE.

An elderly Romani tinkers with scrap metal outside his motor home in Corkes Meadow (near Kent in the United Kingdom). According to a 2001 report published by *The Economist,* Europe's Romani population remains "at the bottom of every socioeconomic indicator." [HULTON-DEUTSCH COLLECTION/CORBIS]

The Seljuqs, in turn, brought their captive Indian troops to Anatolia when they occupied Armenia in 1071. It was here that this population, of various Indian origins, gradually melded into a single ethnic one, and where the Romanis language took shape within the linguistic and social environment of the Byzantine variety of the Greek language. It has been suggested that the very name *Rom* may derive from the Seljuqs' then newly established Sultanate of Rum, although an Indian etymology is more likely. The Byzantine Empire conquered the Sultanate in 1099, but the entire area was gradually infiltrated by the Ottoman Turks, who took control of Constantinople in 1453 and extended their territory across into Europe, using the Romanis as military personnel and manufacturers of weaponry. A Romanis presence in Byzantine and Venetian territory in the Balkans was documented as early as the thirteenth century.

Expansion into Europe and the World

Once in Ottoman-controlled Europe, the Romanis found themselves in an economy in decline. The Crusades had failed, and the trade routes to the East were blocked—resulting in the shift of economic strength to

Romani have often been the target of "ethnic cleansing" and expulsion. Here, they flee Kosovo, where they were considered Serb collaborators during the hostilities of the 1990s. [CHIN ALLAN/CORBIS SYGMA]

Western Europe and the beginnings of colonial expansion overseas. One repercussion of this in the Balkans was the transition from an agriculture based to a market-based economy, with an increased reliance on artisan labor. In the area of present-day Romania, the Romanis population was used to supply this need, quickly becoming indispensable to the economy. To keep this source of manpower from leaving, laws defining Romanis as property (and referring to them as *sclavii,* or slaves) began to be written into the civil code by the early 1500s; slavery was not completely abolished until 1864. Nevertheless, some Romanis were able to avoid this condition of servitude by continuing their journey to other parts of Europe. Their presence in almost every European country was recorded by about 1500. It is because of this late medieval diaspora that there are many different present-day Romanis populations, distinct from each other in their dialect of the Romanis language and the extent of Asian vs. European elements in their respective cultures and genetic makeup.

Antigypsyism

As early as 1416 the first anti-Romanis law was issued, in Germany, with fifty more to be enacted during the course of the next four centuries. Romanis in Spain were persecuted during the Inquisition, and in 1498 they were ordered to be expelled from all German-speaking territories of the Holy Roman Empire. The following year the Romanis were banished from Spain by order of the Catholic Church, and in 1504 France expelled them. Many other governments followed suit. Western European nations found an easy way to accomplish this: by shipping Romanis to their overseas colonies. Portugal transported them to Angola, India, and Brazil; Spain, France, England, and Scotland relocated them to the Americas. In 1568 Pope Pius V ordered the expulsion of the Romanis throughout the realm of the Holy Roman Church. In 1659 their mass round-up and murder took place outside of Dresden; in 1721 King Charles VI ordered the extermination of all Romanis throughout Germany. A year later Friedrich Wilhelm of Prussia made it an offense, punishable by hanging, to be born a Romani, and in 1727 the mass public torture of this group took place in Giessen. The roster of atrocities seems endless.

If the identity of the Romanis as a distinct ethnic population only dates from the Byzantine period then,

their Asian roots notwithstanding, they are in one sense a Western people who came into being in a Christian, Greek-speaking land. Certainly, their entire experience since that time has occurred exclusively in the Western world. The Asian component of their heritage, however, which manifests itself in language, culture, and often appearance, must be acknowledged as an overriding factor in the pervasive discrimination against them. Regarded as Christians by the Ottoman Muslims, although considered as heretics by the Christian establishment, they were probably already slaves of the Turks even before that condition was instituted in Europe.

The Islamic presence along the eastern routes out of Europe threatened not only trade but also the religious establishment; Muslims, who had also occupied Spain, were viewed as the enemy of the Christian Church. Romanis were perceived to be Muslims, and even Turks in countries where the Ottomans were only known by reputation. *Turks* is still a name applied to Romanis in some locales. This perception of the newly arriving Romanis as a non-European invading force is evident in yet another label applied to them: *Tatars.* In twentieth-century newspapers one can find numerous references to the arrival of Romanis in an area as an "invasion."

In addition to their foreign appearance and language, the Romani's lack of a country has added to their "outsider" reputation; their nonterritoriality remains a major characteristic, especially in countries where nationality is judged more by one's ethnicity than passport. Over the centuries these factors have created a situation that stigmatizes the overwhelming majority of Romanis in Europe as illiterate, unemployed, criminal, and impoverished, locked in a self-perpetuating cycle for which the means of escape simply do not exist without intervention from various human rights and other non-Romanis bodies. This image of "dependency," whether on philanthropic organizations or public sympathy, only fuels the overall distaste and hostility that segments of the non-Romanis population harbor.

The details of Romanis history are not generally known, and this was especially true during the decades of communism, whose ideology placed little emphasis on history in the classroom. The fact that for centuries Romanis have routinely been refused access to shops, schools, and churches is never taken into account as an underlying reason for their contemporary plight. Even the fact of their centuries of enslavement finds no discussion in modern history books, and only in the early twenty-first century is their targeting during the Holocaust receiving acknowledgment. Their present-day situation alone forms the basis for growing negative attitudes about them. Furthermore, countries in which such thinking predominates have traditionally regarded themselves as single-nation states, not egalitarian multiethnic societies, and the tolerance of ethnolinguistic minorities within their borders has been—and remains—minimal. Many Romanis would welcome a return to communism if only for the protection from interethnic conflict it afforded, in addition to the greater chances of employment.

External circumstantial factors contributing to antigypsyism, such as the historical association of Romanis with Islam, their nonterritoriality, and their fragmentation into numerous distinct and widely separate subgroups lacking any central representation, have only been reinforced by the overriding internal factor of exclusionism. Undoubtedly traceable to the Indian caste system, the self-imposed separateness of Romanis has been strengthened by centuries of slavery and other kinds of social distancing practiced by the European host societies. From group to group, and to a greater or lesser extent, the different Romanis populations maintain cultural behaviors that curtail intimate interaction with the non-Romanis world. From the Romanis perspective, one's luck and health depend on spiritual balance, which can only be acquired by interacting circumspectly with *gadj* (non-Romani; singular, *gadjo,* feminine, *gadji*), as well as with members of the opposite sex within the group, with animals, with the preparation of food, and so on. Because non-Romanis do not maintain the same behaviors, they are regarded as polluting, in a ritualistic sense, to Romanis individuals with whom they might come in contact in too intimate a manner (e.g. by sharing food, clothing, or bedding, etc.). Thus, the extent to which a Romanis would create a permanent business relationship with a non-Romani, eat food prepared by a non-Romani, allow his or her children to attend public school, or condone intermarriage seriously impacts on the achievement of an integrated society.

Porrajmos—The Romanis Holocaust

The Holocaust is undeniably another major factor in explaining the poor living conditions of the Romanis in the early twenty-first century. That "it was the will of the all-powerful Reichsführer Adolf Hitler to have the Gypsies disappear from the face of the earth," (Broad, 1966, p. 41), because they were considered a genetic contaminant threatening the gene-pool of his envisioned "master race," has been well documented. The first document referring to "the total solution to the Gypsy problem on either a national or an international level" was drafted by the Reich Ministry of the Interior in March 1936. In March 1938 Heinrich Himmler issued a statement entitled "The Final Solu-

tion of the Gypsy Question," and on December 16, 1942, he put this proposed policy into effect along with an order that "all Gypsies . . . be deported to the *Zigeunerlager* at Auschwitz concentration camp with no regard to their degree of racial impurity." Although Romanis losses amounted to between a half and three-quarters of their total population in Nazi-occupied Europe, no reparations were made to survivors, nor indeed were any Romanis called to testify on their own behalf at the Nuremberg Trial. Indeed, pre-Nazi anti-Romanis laws were still in effect after World War II, and numerous Romanis survivors were arrested for not possessing documents of citizenship. Some remained in hiding in abandoned concentration camps because of this until as late as 1947. The files of the Washington, D.C.–based War Crimes Tribunal from 1946 state plainly that of all the groups victimized by the Nazis, only Jews and Romanis were to be exterminated "unconditionally." Despite this, no reparations were set aside for the latter, funds that would have been of immense help to the surviving population in the areas of health, education, and assimilation, and that, one might assume, would have yielded a more positive present-day reality.

Both the targeting of Romanis by the Nazis and the failure of the world to respond to their plight after the Holocaust are the result of the extremely marginalized and fragmented nature of the Romanis people. Following World War II there were no international Romanis bodies to speak out and demand reparations, and pervasive Antigypsyism ensured that few non-Romanis organizations were moved to come forth on their behalf. The targeting of the Romanis was the culmination of centuries of German Antigypsyism, which only mirrored similar attitudes evident throughout Europe.

Solutions

Romanis issues are given higher or lower priority from country to country, and Romanis populations regard themselves—and are regarded—as functioning nationally, not internationally. In practical terms, a pan-Romanis global identity, an attractive ideal for the growing number of Romanis nationalists, although a threat to the leaders of some European governments, is not likely to be achieved in the short term, if ever.

In 1993 the president of the new Czech Republic, Václav Havel, stated that how the plight of the Romanis was addressed throughout Europe following the demise of communism would be "a litmus test not of democracy but of a civil society" (Crowe, 1996, p. 1). One can count since then hundreds of racially motivated Romanis deaths, document flagrantly discriminatory statements made by spokespersons for several different governments, and evidence of the forced sterilization of Romanis women, and permanent removal of Romanis children from their homes and parents in different parts of Europe well into the 1970s and 1980s. Some of the new European democracies continue to fall short of Havel's civil ideal. In the United States too, the last of many local laws (at the state and county level) against so-called gypsies were only removed from the books in 1989, and racial profiling, in the form of "gypsy" crime units, remains a reality.

In addition to the historical and cultural factors, the institutionalized attitudes toward, and beliefs about, Romanis have been overwhelmingly reinforced by the creation of a fictional gypsy persona, which portrays Romanis as romantic, wandering thieves, and as possessing magical powers. The word *Romanis* is still not widely recognized, and if asked what a gypsy is, most people will offer the literary stereotype instead of an accurate description. If Romanis continue to be perceived as fantasy figures, then the serious consideration of their problems will never occur. Clearly, education is fundamentally key to positive change. For non-Romani, ethnic diversity programs in the public schools is a place to start, as well as required sensitivity training for employers, educators, and hospital staff; it is neither difficult nor expensive to accommodate the cultural requirements of Romanis in a non-Romanis environment, but they first have to be recognized. For the Romanis themselves it is recommended that externally funded teacher-training programs be instituted, or that instruction in business and artisan skills, and legal rights be available. Harsh penalties for discrimination in housing, education, and healthcare should be enforced, and compliance closely monitored. What is essential is that the cycle of dependency and exclusion be broken, and the Romanis develop the wherewithal to determine their own destinies.

SEE ALSO Holocaust; Minorities

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Ian Hancock

Roosevelt, Eleanor

[OCTOBER 11, 1884–NOVEMBER 7, 1962]
American first lady, humanitarian, and diplomat

No issue was more important to Eleanor Roosevelt than the question of how nations should respond to the refugee crisis after World War II, and her appointment by President Harry Truman to the U.S. delegation to the United Nations (UN) put her at the center of the discussion. Roosevelt's first major achievement as a delegate was to defeat Andrei Vishinsky, the leader of the Soviet delegation, in a debate in the General Assembly on the issue of whether European displaced persons should be forced to return to their countries of origin or be free to seek asylum. As the U.S. representative on the Committee for Social, Humanitarian, and Cultural Affairs, Roosevelt participated vigorously in the debates on the creation of the International Refugee Organization (IRO), which was established to resettle or repatriate the refugees. Vishinsky argued that those who did not wish to return were traitors, war criminals, or collaborators. Roosevelt replied that many displaced persons feared returning because they disagreed with the new regimes in their home countries and insisted that refugees decide for themselves under what form of government they wanted to live.

As chair of the UN Commission on Human Rights (CHR), Roosevelt guided her colleagues in the creation of the Universal Declaration of Human Rights (1948). She insisted that the Declaration be written in clear, nonlegal language that the average person could understand. Under her leadership, the majority of the CHR thwarted the efforts of the Soviets and their allies to qualify the protection of individual rights in the Declaration by asserting the rights of the state. On the other hand, Roosevelt believed strongly that the Declaration should include economic and social rights as well as civil and political rights, and she persuaded a skeptical U.S. State Department to accept their inclusion. The majority of the CHR wanted to make the rights in the Declaration a part of international law. Once again bucking resistance in the State Department, Roosevelt sided with the majority but supported the drafting of two documents, a nonbinding statement of principles (the Declaration) and a covenant. She pushed for the drafting of the Declaration first, recognizing that drafting the covenant would take longer and that the Declaration would not require ratification by the U.S. Senate. When the Declaration came to a vote in the General Assembly in December 1948, the vote was 48 in favor, 0 against, 8 abstentions, and 2 absent. Although the CHR did not complete the covenants on civil and political rights and economic and social rights until 1966, Roosevelt's years as chairperson prepared the way for the CHR's later accomplishments.

A member of the initial U.S. delegation to the United Nations, Eleanor Roosevelt served as chair of the organization's Commission on Human Rights. Here, she exchanges thoughts with René Cassin, French human rights scholar and vice-chair of the Commission, at a session in Geneva, Switzerland, December 9, 1947. **[BETTMANN/CORBIS]**

Although successful in defending the rights of refugees at the UN, Roosevelt was less successful in persuading Americans to admit more displaced persons. In her newspaper column, "My Day," and speeches, she urged Congress to fund the United Nations Relief and Rehabilitation Administration (UNRRA) and the IRO and argued that more refugees should be admitted to the United States. Her 1946 visit to displaced persons camps in Germany fueled the urgency of her appeal and made her "more conscious than ever of what complete human misery there is in the world" (Roosevelt, February 20, 1946). When the Daughters of the American Revolution opposed President Truman's modest 1946 proposal to fill the unfilled immigration quotas with displaced persons from Europe, Roosevelt asked, "Why should other countries make any sacrifices" when America refused to act accordingly? (Roosevelt, November 20, 1946).

In 1948 she supported a bill aimed at assisting the IRO in resettling thousands of European refugees by admitting 200,000 persons to the United States. She helped raise funds for refugee groups, such as the United Jewish Appeal. She supported the immigration of Jewish refugees to Palestine and, frustrated by the refusal of the United States and other nations to accept more Jewish immigrants, became a strong supporter of the establishment of the state of Israel. When war broke out in 1948 over the creation of the Jewish state, creating thousands of Palestinian refugees, Roosevelt supported a UN resolution granting $29 million in aid to them, although she blamed the problem on the Arab leaders for urging the Palestinians to leave their homes. When she visited the Middle East in 1952, she toured Palestinian refugee camps in Jordan. Upset by the conditions she observed, she urged continued international assistance, but she remained blind to Israel's share of responsibility for the situation. Throughout the 1940s and 1950s Roosevelt was frustrated by the unwillingness of the U.S. Congress to make it easier for refugees to immigrate to the United States. In 1955 she criticized the Refugee Relief Act of 1953 for placing obstacles in the way of European refugees seeking entry into the United States. She also responded to hundreds of pleas from refugees around the world.

SEE ALSO United Nations Sub-Commission on Human Rights

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John F. Sears
Allida M. Black

Rosewood

During the 1920s racial violence exploded in Florida, including Rosewood, a predominantly black community destroyed in 1923. Located in North Central Florida approximately 9 miles east of Cedar Key, Rosewood was home to several black families, many of whom were related. They were property owners and small-time entrepreneurs, and looked forward to passing on a better life to their children. Some were self-employed, others labored at the Cummer Lumber Mill in nearby Sumner, and a number of the women worked as domestics for white families in the surrounding area.

The beginning of 1923 changed the lives of Rosewood residents forever. Several people were killed or injured, and those who survived the terror were scarred for life by the week-long outbreak of racial violence that began on January 1. On that morning, a white Sumner resident, Fannie Taylor, reported an attack by an unidentified black man. The search for Taylor's alleged attacker led to Rosewood and the death of six African Americans. Two local whites were killed when blacks fought back. African-American residents were forced to hide in the neighboring woods and swamps, while whites looted their possessions and burned their homes.

On Saturday, January 6, many of the women and children hiding in the swamps were evacuated to Gainesville by train. And on Sunday, January 7, approximately 150 whites returned to Rosewood to burn the remaining structures. Rosewood ceased to exist. A grand jury convened to investigate the Rosewood incident in February of that same year found "insufficient evidence" to indict anyone from the local white community. No one was ever prosecuted for the death and destruction that occurred in Rosewood, Florida, during the week of January 1 to 7, 1923.

Seventy-one years later, in 1993, Rosewood survivors and their descendants sought redress and filed a claim seeking $7.2 million in compensation. Representative Miguel De Grandy and Senator Al Lawson subsequently initiated legislation on their behalf. The Florida House of Representatives commissioned a thorough, objective, and scholarly study of the Rosewood incident. Based on the research conducted by an academic team, testimony from survivors and other witnesses, Special Master Richard Hixson ruled that the state had a "moral obligation" to compensate survivors for the loss of property, violation of constitutional rights, and mental anguish. On May 4, 1994, Florida Governor Lawton Chiles signed a $2.1 compensation bill into law. Nine survivors received $150,000 each for mental anguish, a state university scholarship fund was created for the families and descendants of Rosewood, and a separate fund was established to compensate those Rosewood families who could demonstrate property loss. Florida thus became one of the first U.S. states to admit that it had failed to offer protection to its black citizens during a time of racial strife. Before signing the controversial measure, Governor Chiles asserted in the *Tallahassee Democrat,* "Ignorance and racial hatred can

lead to death and destruction. Let us use the lesson of Rosewood to promote healing" (pp. 1b, 3b).

SEE ALSO Massacres; Reparations

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Maxine D. Jones

Rwanda

The 1994 genocide in Rwanda represents one of the clearest cases of genocide in modern history. From early April 1994 through mid-July 1994, members of the small Central African state's majority Hutu ethnic group systematically slaughtered members of the Tutsi ethnic minority. An extremist Hutu regime, fearing the loss of its power in the face of a democracy movement and a civil war, made plans for the elimination of all those—moderate Hutu as well as Tutsi—it perceived as threats to its authority. The genocide ended only when a mostly Tutsi rebel army occupied the country and drove the genocidal regime into exile. Over a period of only one hundred days, as many as one million people lost their lives in the genocide and war—making the Rwandan slaughter one of the most intense waves of killing in recorded history.

Competing Theories of Ethnicity

The origins of ethnic identity in Rwanda remain a subject of considerable controversy. Nearly all scholars agree that populations having the designations Hutu, Tutsi, and Twa existed in the pre-colonial Rwandan state (prior to 1895); however, the exact historic and demographic meanings of these designations remain contested. A theory—developed during the colonial period—that Rwanda's ethnic groups emerged out of successive waves of conquest and immigration has now been largely discredited among scholars, but it dominated understandings of Rwanda's past for several decades. According to this theory, the hunting and gathering Twa were the original inhabitants of the territory. They were subsequently overrun and dominated by Hutu agriculturalists who arrived in the region approximately two thousand years ago from more western regions of Africa. Tutsi cattle herders are alleged to have conquered the territory around five hundred years ago, and to have established their authority over the two groups despite their inferior numbers. Accordingly, the Rwandan genocide was the final outcome of the resentment that was generated by this occupation and subjugation.

Two other theories now dominate discussions of ethnic origins in Rwanda. Both theories maintain that ethnicity is a social construct, that it is fluid, and that ascriptions of ethnicity cannot be made on the basis of physical characteristics, but they diverge with respect to the question of when ethnicity in Rwanda is supposed to have gained its modern form. Many current politicians in Rwanda, as well as some scholars, hold the theory that, in pre-colonial Rwanda, Tutsi, Hutu, and Twa were categories that derived from work-related activity and possessed little social significance—citing that the groups shared a common language and culture and lived among one another throughout the territory. According to this theory, colonial policies and ideologies subsequently transformed these categories into ethnic identities.

Proponents of the second theory believe that the terms Tutsi, Hutu, and Twa conferred status and were freighted with status difference even in pre-colonial Rwanda. Beginning in the mid-1800s, the central court of the kingdom of Rwanda used the categorization of population by ethnicity as a means of extending its control, installing an elite Tutsi class in marginal areas of the kingdom to represent the court. According to this theory, the development of Tutsi dominance that had begun in the late pre-colonial period was accelerated by colonial rule. Colonization transformed group identities via the introduction of Western ideas of race and discrimination on the basis of ethnicity that endowed those identities with greater meaning than they had held previously.

Early Instances of Ethnic Violence

Rwanda was colonized by Germany, which ceded the region to the Belgians during World War I. Supporters of the two theories of the origins of Rwandan ethnic identity agree that violent conflict along ethnic lines rarely, if ever, occurred in pre-colonial Rwanda, and that German and Belgian colonial policies exacerbated the already existing divisions among Hutu, Tutsi, and Twa. Catholic missionaries, who arrived in Rwanda in 1900, influenced the development of ethnic identity in Rwanda. They believed that Rwanda had three distinct racial groups. The Tutsi were supposedly a Hamitic

Rwandan children view a mass grave near Goma. [TEUN VOETEN]

group—tall, thin, of aristocratic demeanor, and more closely related to Europeans (and therefore destined to rule over inferior races). The Hutu were supposedly a Bantu group—shorter and stronger and (purportedly) fit for manual labor. The Twa were considered a Pygmy group—very small and dark and inferior to other peoples.

These interpretations ultimately shaped how Rwandans saw themselves and understood their group identities; moreover, they had become a basis for policies. German and Belgian colonial administrators practiced ethnic group-based indirect rule. They put power in the hands of Tutsi and gave administrative and political positions to Tutsi, and at the same time eliminated the power of Hutu kings and chiefs. The Belgian colonial administration issued identity cards to all Rwandans that named their ethnicity. In addition the Belgian colonial law of Rwanda dictated that one's ethnicity was the ethnicity of one's father—which effectively eliminated the prior fluid nature of ethnic identities. Occupational and educational opportunities were reserved for Tutsi, whereas Hutu were required to provide forced labor for the Tutsi chiefs. As a result of these and other policies, the Hutu population of Rwanda became increasingly impoverished and embittered. In the 1950s a Hutu elite, supported by progressive Catholic missionaries, emerged to challenge the inequality of Rwandan society. In 1959 a Hutu uprising drove Tutsi chiefs from their positions and thousands of Tutsi citizens of Rwanda into exile. The uprising marked the beginning of the transfer of political power to the majority Hutu. Rwanda gained its independence in 1962. The Hutu-dominated post-independence governments referred to the 1959 uprising as a social revolution. (The current Rwandan government refers to the turbulent events of 1959 as Rwanda's first instance of genocide—though in fact few Tutsi were killed at that time.)

In 1962 Grégoire Kayibanda, the leader of the Party of the Movement for the Emancipation of Hutu (Parmehutu), became Rwanda's president. Kayibanda used ethnic appeals to build his support—thereby creating a tense social environment. When rebel groups that had taken form among the exiled Tutsi attacked the country several times in the early 1960s, Rwandan troops responded by massacring thousands of Tutsi. Thousands more were driven into exile. Ethnic violence erupted in Rwanda again in 1973, partially in response to the 1972 genocide of educated Hutu in neighboring Burundi (which had an ethnic composition similar to that of Rwanda), where Tutsi had retained control. The resulting social disruption in Rwan-

da was a factor that contributed to the July 1973 coup d'etat that installed army chief Juvenal Habyarimana as the president of Rwanda.

Under Habyarimana, ethnic tensions in Rwanda initially diminished, as the regime focused on attracting international assistance for economic development. The establishment of ethnic quotas in education and employment (which shrank opportunities for Tutsi) appeased Hutu, and the creation of a single political party, the National Revolutionary Movement for Development (MRND), sharply constrained potentially inflammatory political activity. Tutsi were still required to carry identity cards and faced discrimination, but active ethnic tensions diminished. The resulting political calm attracted both internal and international support for Habyarimana, and allowed a decade of steady economic growth.

By the mid-1980s, however, among Rwandans, frustration with the Habyarimana regime was on the rise. A collapse in the price of coffee, Rwanda's main export, caused a sharp economic downturn and a massive increase in youth unemployment. In the context of economic decline and a growing gap between rich and poor, increasingly apparent corruption among officials in the Habyarimana regime became a growing source of criticism. Preferential treatment for Hutu from Habyarimana's home region of northern Rwanda angered both southern Hutu and Tutsi from throughout the country. In 1990 public frustration manifested itself in a democracy movement that called for expanded civil rights, a legalization of multi-party politics, and free and fair elections. Facing growing unrest, President Habyarimana announced that he would consent to limited political reforms.

The October 1990 invasion of Rwanda by the Rwandan Patriotic Front (RPF) changed the political equation in the country, as it both further compromised the security of the regime and provided an opportunity for Habyarimana and his cohorts to regain popular support by playing the ethnic card. The RPF was a rebel group composed primarily of Tutsi refugees seeking the right to return to Rwanda. Since the beginnings of anti-Tutsi violence in Rwanda in 1959, tens of thousands of Tutsi had been living as refugees, primarily in the neighboring states of Zaire (present-day Democratic Republic of Congo), Burundi, and Uganda—countries in which their safety was precarious. In 1982 persecution of Tutsi by the regime of President Milton Obote in Uganda led thousands of Tutsi to try to return to Rwanda. They were turned away at the border: the Habyarimana regime claimed that there was no room for them in Rwanda. In Uganda, a number of Rwandan Tutsi joined the rebel movement that carried Yoweri Museveni to power in 1986, which afforded them political influence even as they remained vulnerable in that country. It was Tutsi within Museveni's National Resistance Army that had founded the RPF, which received clandestine support from the Museveni regime.

The initial RPF attack on Rwanda's northeastern frontier, on October 1, 1990, was easily quelled by troops of the Habyarimana regime, with the support of troops from Zaire, Belgium, and France. Nevertheless, Habyarimana used the invasion to retake the political lead. On the night of October 4, his supporters in the military staged what appeared to be an attack by the RPF on Kigali. This bogus attack was used to justify the arrest of thousands of prominent Tutsi and moderate Hutu, under the accusation of their being RPF accomplices. At the same time, regime officials organized massacres of Tutsi in several communities in the north of the country, which they portrayed as spontaneous popular revenge killings in response to the RPF attack. These assaults served to fan the flames of the ethnic tensions in the country.

Over the next several years, Habyarimana and his supporters used a cunning two-pronged strategy to improve their political position. On the one hand, they appeased critics by entering into negotiations with the RPF and offering political concessions, including the legalization of opposition parties and the creation of a government of (ostensible) national unity. Yet on the other hand they actively undermined these concessions. They denied opposition politicians real political power as they simultaneously blamed them for any problems that the country faced, such as the economic decline and the growing unemployment resulting from the civil war and an International Monetary Fund (IMF)–imposed austerity program and currency devaluation. Habyarimana's supporters encouraged acts of violence between the members of opposing political parties and were complacent toward an increase in overall criminal violence, then blamed the growing insecurity on the shift to multi-party politics. They appealed to anti-Tutsi sentiments (which had been intensified by the RPF invasion), and characterized all members of the anti-government opposition as RPF sympathizers. Each time negotiations with the RPF were on the verge of a breakthrough; Habyarimana's allies instigated small-scale massacres of Tutsi in various parts of the country and in general used ethnic violence to further inflame ethnic tensions. These massacres ultimately served as dress rehearsals for the eventual genocide, and were part of a strategy of mobilizing the population and motivating it further in the direction of violence. Throughout this period, Habyarimana's supporters increased their coercive power through a massive expansion of the Armed Forces of Rwanda (FAR).

The Road to Genocide

Within the powerful clique close to Habyarimana known as the *akazu,* the idea of retaking broad political control via the setting off of large-scale massacres of any and all persons they regarded as threats to the Habyarimana regime was apparently first proposed sometime in 1992. The akazu was composed primarily of individuals from Habyarimana's home region in the north of Rwanda, and included descendants of Hutu chiefs who had been displaced by Tutsi during the colonial period—such as some of the relatives of Habyarimana's wife Agathe Kazinga, who for this reason had retained great personal animosity toward Tutsi. Members of the akazu had acquired significant personal wealth and power under Habyarimana's rule, and they were feeling increasingly threatened by political reforms and negotiations with the RPF. Some in the akazu—allegedly by mid-1993—had devised a plan to eliminate both Tutsi and moderate Hutu, as a final solution to the threats against themselves.

A series of events in 1993 shifted popular support in favor of the Habyarimana regime, supplying the popular base that would make the genocide possible. Massacres of Tutsi in the prefectures of Gisenyi and Kibuye in January triggered a major RPF offensive in February, which captured a large swath of territory in northern Rwanda and displaced a million people (mostly Hutu) from the Ruhengeri and Byumba prefectures. With so many people having been displaced and rumors of civilian massacres in areas controlled by the RPF beginning to swirl, public opinion in Rwanda shifted sharply against the RPF. Even as the Habyarimana regime feigned participation in peace negotiations with the RPF and other opposition parties, it sought to undermine the negotiations by fostering anti-Tutsi and anti-RPF sentiments and attributing any concessions it made to the participation of opposition politicians. This strategy effectively split each of the opposition parties, thereby preventing the installation of a new unity government of transition and realigning many southern Hutu with Habyarimana. The final peace agreement, known as the Arusha Accords, signed in August 1993, was widely perceived within Rwanda as having ceded too much to the RPF and having solidified the division of political parties into pro-Arusha Accords and anti-Arusha Accords wings. The anti-Arusha Accords party factions joined with Habyarimana's MRND and the extreme anti-Tutsi party named the Coalition for the Defense of the Republic (CDR) in a loose pro-regime coalition that called itself "Hutu Power."

Hutu Power promoted an ideology that revived much of the anti-Tutsi rhetoric of the Kayibanda period. According to this ideology, Hutu had the right to rule Rwanda because they constituted a majority and because Hutu had a long history in Rwanda (whereas Tutsi had supposedly arrived more recently to conquer and dominate the country). Proponents of the Hutu Power ideology sought to promote a collective memory of Tutsi exploitation of Hutu during the colonial period, and warned that the RPF sought to annul the social revolution of the early 1960s and reassert Tutsi dominance and Hutu subservience. They claimed that all Tutsi within the territory of Rwanda were RPF sympathizers who could not be trusted, and that Hutu who opposed Habyarimana and supported the Arusha Accords were either traitors to the Hutu cause or secretly Tutsi. Associates of Habyarimana established a new quasi-independent radio station in late 1993, Radio Télévision Libre Mille-Collines (RTLM), which broadcast Hutu Power's anti-Tutsi, anti-opposition, and anti-Arusha Accords rhetoric.

The October 1993 assassination of Melchior Ndadaye, Burundi's first popularly elected Hutu president, had a major impact within Rwanda. Hutu Power leaders claimed that the failure of a transition to majority rule in Burundi demonstrated that Tutsi could not be trusted. Inter-ethnic violence that swept through Burundi over the several weeks that followed drove thousands of Hutu refugees into Rwanda, where they helped to further radicalize the political climate. Rwandan military personnel began to provide paramilitary training for the youth wings of the Hutu Power parties, such as the MRND's *Interahamwe*—expanding the membership of these youth groups and transforming them into civilian militia. In November the Catholic bishop of Nyundo parish near the city of Gisenyi warned that arms were being distributed to these civilian militias.

Both political and ethnic tensions continued to rise in Rwanda in early 1994. Even as provisions of the Arusha Accords were being implemented, Hutu Power forces sought to scuttle the final transfer of power to a new unity government. The United Nations (UN) Assistance Mission in Rwanda (UNAMIR) stationed international troops in the country to oversee the transition; a battalion of six hundred RPF troops was stationed in Kigali. Rather than reduce its forces, the FAR continued to expand in size and acquire arms—receiving weaponry from France, Egypt, and South Africa. In February Faustin Twagiramungu, the transitional prime minister named in the Arusha Accords, narrowly escaped an assassination attempt, while Félicien Gatabazi, the executive secretary of the moderate Social Democratic Party, was assassinated. In response, a crowd that had assembled in Gatabazi's home commune lynched the national chairman of the CDR, Martin Bucyana. These political assassinations intensified

the sense of crisis in the country and set the stage for the genocide. Intelligence reports coming out of the United States, France, and Belgium in early 1994 all warned that ethnic and political massacres were an imminent possibility in Rwanda. The commander of UNAMIR forces, General Roméo Dallaire, sent a memo to UN headquarters informing them that he had been informed of the existence of the secret plans of Hutu extremists to carry out genocide. None of these warnings were headed.

The Genocide

On April 6, 1994, the plane carrying President Habyarimana and Cyprien Ntaryamira, the president of Burundi, who were returning from a meeting in Tanzania that had focused on the implementation of the Arusha Accords, was shot down by surface-to-air missiles as it approached the airport in Kigali, and all on board were killed. The downing of the plane remains shrouded in mystery, since the Rwandan military restricted access to the area of the crash and blocked all serious investigation. Although associates of Habyarimana initially blamed the RPF for the assassination, many other observers believed that troops close to the president had carried out the attack—possibly because of an awareness of Habyarimana's reluctance to permit the plans for genocide (of which he was alleged to have been aware) to move forward, or the perception that he had been too moderate in his attitude toward the RPF. In part because of evidence that was eventually presented before the International Criminal Tribunal for Rwanda (ICTR), many political experts now believe that the RPF, frustrated at the president's resistance toward implementing the Arusha Accords, did in fact fire the rockets that brought down Habyarimana's plane.

Whoever was responsible for the crash, the assassination of Habyarimana served as the spark that set the plans for genocide in motion. Within hours of the crash, members of the presidential guard and other elite troops—carrying hit lists composed of the names of persons perceived to be RPF sympathizers, including prominent Tutsi and Hutu opposition politicians and civil society activists—were spreading throughout the capital. On the morning of April 7, the presidential guard assassinated the Prime Minister, Agathe Uwilingiyimana, a moderate Hutu, along with ten Belgian UNAMIR troops who had been guarding her. On the first day of the genocide, death squads also killed leaders of the predominantly Tutsi Liberal Party and the multiethnic Social Democratic Party, several cabinet ministers, justices of the constitutional court, journalists, human rights activists, and progressive priests.

For the first several days, the murderous attacks took place primarily in Kigali and were focused on prominent individuals, both Hutu and Tutsi, perceived to be opponents of the regime. The international community, at this initial stage of the genocide, construed the violence in Rwanda as an ethnic uprising, a spontaneous popular reaction to the death of the president. Without clearly condemning the political and ethnic violence that was taking place, foreign governments moved to evacuate their nationals from Rwanda. Despite calls from UNAMIR Commander Dallaire to have troop strength increased, the member states of the UN Security Council voted to cut the UNAMIR presence from around 2,500 to a token force of 270, largely because countries such as the United States feared becoming entangled in an intractable conflict that would be reminiscent of the then recent disastrous intervention by the United States in Somalia. Belgium quickly withdrew its forces, and was followed by most other participating countries. From the beginning of the violence, the international community thus promulgated a clear message that it was disinterested and would not act to stop the massacres in Rwanda.

Far from being a spontaneous popular uprising, the 1994 genocide had been carefully planned and coordinated by a small group of government and military officials who used the administrative structure and coercive force of the state to invigorate the genocide and extend it across the country. Following Habyarimana's death, a new interim government composed entirely of Hutu Power supporters had seized control. Once it became clear that the international community was not going to intervene, the death squads moved the genocide into a second phase, expanding the violence until it engulfed the entire country and focusing it more specifically on Tutsi. Using the language of self-defense, the interim government called upon the population to help protect Rwanda from the invading RPF and to root out collaborators and infiltrators within the country. It sent word to regional and local leaders of the *Interahamwe* and other militias to move forward with existing "civil self-defense" plans that entailed the elimination of all "threats to security" (understood to mean all Tutsi and, to a lesser extent, moderate Hutu). Political officials had to support the "security" efforts or relinquish their government positions.

Following Habyarimana's death and the start of the civilian massacres, the RPF ended the ceasefire that had been in effect since the previous year and renewed its assault on the country. The RPF troops stationed in Kigali as part of the terms of the Arusha Accords quickly occupied a section of the capital, which became a safe zone for Tutsi and others threatened by the genocidal regime. Other RPF troops advanced on the capital from the north, overtaking the prefecture of Byumba and

Genocide requires no advanced technology. Here, countless machetes line the border between Rwanda and Tanzania. The machete, originally devised for cutting sugarcane and underbrush, was the weapon of choice during the 1994 rampage. [TEUN VOETEN]

moving east and south through the prefecture of Kibungo and into the Bugesera region. As RPF leaders were claiming that their offensive was necessary to protect the Tutsi from extermination, their advance across Rwanda provided ideological support for those promoting the genocide. As Rwandans fled in advance of the RPF onslaught, Radio Rwanda and RTLM widely disseminated reports of civilian massacres by the RPF, fueling popular fears of the rebel army.

The genocide in each community followed a pattern. First, the civilian militias raided Tutsi homes and businesses. Fleeing Tutsi were forced to seek refuge in central locations, such as schools, public offices, and churches, where they had been protected during previous waves of violence. Coordinators of the genocide actively exploited the concept of sanctuary and encouraged Tutsi to gather at these places, offering promises of protection when in fact they were calling Tutsi together for their more efficient elimination. In some communities, a limited number of moderate Hutu were killed early in the violence—as a way of sending a message to other Hutu that they needed to cooperate. Once Tutsi had been gathered, soldiers or police joined with the militia in attacking them: first firing on the crowd and throwing grenades, then systematically finishing off survivors with machetes, axes, and knives. In some cases, buildings teeming with victims were set on fire or demolished. In instances in which communities initially resisted the genocide, militias from neighboring areas arrived on the scene and participated in the attacks until local Hutu joined in the killing. Generally armed only with stones, Tutsi were able to pose effective resistance in only a few locations.

By early May the large-scale massacres were complete, and the genocide in each community moved into a second stage of seeking out survivors. The organizers of the genocide clearly sought in this stage to lessen their own responsibility by implicating a larger segment of society in the killing. Although the massacres were carried out by relatively limited groups of militia members and members of the armed forces, all adult men were expected to participate in roadblocks and nightly patrols. People passing through roadblocks were required to show their identity cards. If a person's card stated that his or her ethnicity was Tutsi, he or she was killed on the spot. If a person had no card, he or she was assumed to be Tutsi. Persons who looked stereotypically Tutsi were almost certainly killed. The military patrols ostensibly searched for perpetrators, but they actually looked for surviving Tutsi who were hiding in communities. Many Hutu risked their own lives to protect Tutsi friends and family. The patrols searched homes where Tutsi were believed to be hiding, and if Tutsi were found, the patrols sometimes killed both Tutsi and the Hutu who were harboring them. Twa, who were a minuscule minority of the Rwandan population, were rarely targets of the genocide and in many communities participated in the killing in an effort to improve their social status.

Post-Genocide Reconstruction and Reconciliation

From the vantage point of the Hutu Power elite, the genocide, although effective at eliminating internal dissent, proved to be a terrible military strategy, as it drained resources and diverted attention from the RPF assault. Better armed and better organized, the RPF swiftly subdued FAR troops. It advanced across eastern Rwanda, then marched west, capturing the former royal capital Nyanza, on May 29; the provisional capital Gitarama, on June 13; and Kigali, on July 4. As it advanced, the RPF liberated Tutsi still being harbored in large numbers in places such as Nyanza and Kabgayi, but they also carried out civilian massacres in many communities they occupied, sometimes after gathering victims for supposed public meetings. Much of the population fled the RPF advance. As the RPF occupied eastern Rwanda, nearly one million refugees fled into Tanzania, while in July, over one million fled into Zaire.

After initially refusing to intervene in Rwanda and to stop the genocide, the UN Security Council, on May 17, authorized the creation of an expanded international force, UNAMIR II—but by the time the force was ready to deploy, the genocide was over. The RPF, angry at international neglect and believing that it could win an outright victory, rejected the idea of a new international intervention. In mid-June France, which had

Corpses of victims of the 1994 Rwandan genocide that have been thrown into the Akagera River, which traverses the border between Rwanda and Tanzania. The corpses floated downstream to Lake Victoria. [TEUN VOETEN]

been a close ally of the regime that turned genocidal, intervened in Rwanda, supposedly to stop the massacres—but it also wished to prevent an absolute RPF victory. French forces established the "Zone Turquoise" in southeastern Rwanda, which they administered for over a month after the RPF had occupied the rest of Rwanda. Nearly two million people gathered in camps for the internally displaced and came under French protection. The French presence also enabled many of the organizers of the genocide, as well as the armed forces, to flee safely into Zaire with their weapons.

On July 17, 1994, the RPF declared victory and named a new interim government. The post-genocide Rwandan government faced the inordinately daunting task of rebuilding a country that had been devastated by violence. The exact number of people killed in the genocide and war remains disputed, and ranges from 500,000 to over a million, with serious disagreement over the portion killed by the RPF and the portion killed by the genocidal regime. Whatever the exact number of dead, the loss of life was massive and the impact on society immeasurable. The RPF, seeking wider popular support, based the new government loosely on the Arusha Accords and appointed a multiethnic slate of ministers from the former opposition parties that included a Hutu president and prime minister. Real power, however, remained firmly in RPF hands, with Defense Minister and Vice President Paul Kagame widely acknowledged as the ultimate authority in the country.

The RPF, which became Rwanda's new national army, took as its first main task the taking of control

over the territory, which it did with considerable brutality. The RPF summarily executed hundreds of people who were suspected of involvement in the genocide, and arrested thousands more. Following the late August departure of French forces, the RPF sought to close the camps for the internally displaced. It used force in some cases, such as in its attack on the Kibeho camp in April 1995, in which several thousand civilians died. The refugee camps just across the border in Zaire continued to pose a security threat for the new government, as members of the former FAR and citizen militias living in the camps used the camps as a base from which to launch raids on Rwanda. In mid-1996 the RPF sponsored an antigovernment rebellion in eastern Zaire by the Alliance of Democratic Forces for the Liberation of Congo-Zaire (ADFL). The RPF itself attacked the refugee camps. The RPF killed thousands of refugees who sought to go deeper into Zaire rather than return to Rwanda. With support from the RPF and troops from Uganda and Burundi, the ADFL swiftly advanced across Zaire, driving President Mobutu Sese-Sekou from power in early 1997.

After taking power, the new government of Rwanda set about rebuilding the country's physical infrastructure, but it also committed itself to reconstructing the society. The establishment of the principle of accountability for the genocide and a repudiation of the principle of impunity were primary goals. By the late 1990s the government had imprisoned 120,000 people under the accusation of participation in the genocide. Although considerable effort was put into rebuilding the judicial system, trials of persons accused of genocide proceeded very slowly—beginning only in December 1996 and with fewer than five thousand cases tried by 2000. Responding to the need to expedite trials, but also hoping more effectively to promote accountability and reconciliation, the government decided in 2000 to implement a new judicial process, called *gacaca,* based loosely on a traditional Rwandan dispute resolution mechanism. The new gacaca courts, the first of which began to operate in June 2002, consist of panels of popularly elected lay judges from every community in the country. The panels preside at public meetings, at which all but the most serious genocidal crimes are tried. Beginning in 2003, the government began to release provisionally thousands of people who had had no formal charges brought against them or who had confessed to participation in the genocide (and would therefore be given reduced sentences). In addition to judicial strategies, the government has sought to promote reconciliation by promulgating a revised understanding of Rwandan history that emphasizes a unified national identity; creating reeducation camps for returning refugees, released prisoners, entering university students, and newly elected government officials; establishing memorials and annual commemorations of the genocide; changing the national anthem, flag, and seal; decentralizing the political structure; and adopting a new constitution.

Efforts to promote reconciliation have been undermined by the RPF's continuing mistrust of the population and its desire to retain control. The government has been highly intolerant of dissent, accusing critics of supporting the ideology of division and genocide. The government has harassed, outlawed, and co-opted human rights organizations, religious groups, and other segments of civil society. Journalists have been harassed and arrested. All political parties but the RPF have been tightly controlled. Power has become increasingly concentrated in the hands of the RPF and of Tutsi, and Paul Kagame has amassed and continues to amass increasing personal power. Kagame assumed the presidency in 2000. A putative "democratic transition" in 2003 actually served to consolidate RPF control over Rwanda.

The international community, plagued by guilt over its failure to stop the genocide, has been highly forgiving of the human rights abuses of the RPF, generally treating the abuses as an understandable or even necessary occurrence in the aftermath of genocide. It has given backing and assistance to both to the camps in Zaire and the reconstruction of Rwanda. The main outcome of the international reaction to the Rwandan genocide was the creation of the ICTR, based in Arusha, Tanzania. Created by the UN Security Council in late 1994, the ICTR is entrusted with trying the chief organizers of the 1994 genocide as well as RPF officials responsible for war crimes. Despite a slow start, the ICTR has tried or at least holds in its custody many of the most prominent officials of the former Rwandan regime. No RPF officials have yet come into ICTR custody.

Ten years after the 1994 genocide, ethnic relations in Rwanda remain tense. The government has become increasingly intolerant of dissent, and a steady flow of individuals has sought political asylum outside Rwanda. Although initially these exiles were mostly Hutu, they now include many Tutsi, including genocide survivors as well as RPF members who have fallen afoul of Kagame. These exiles could eventually become a basis for a serious challenge to the present regime. The constraints that have been put on open communication within Rwanda have hampered discussions about the genocide and its causes, but political reforms and an emphasis on national unity, as well as the active use of security forces, have helped to maintain peace in the country.

SEE ALSO Altruism, Biological; Altruism, Ethical; Burundi; Comics; Ethnicity; Genocide; Humanitarian Intervention; Identification; Incitement; Memorials and Monuments; Racism; Radio; Radio Télévision Libre Mille-Collines; Refugee Camps; Refugees; Safe Zones; United Nations

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Timothy Longman

Sabra and Shatila

On September 16 and 17, 1982, members of the LF (the "Lebanese Forces"), a Christian-Maronite militia, carried out a massacre targeting civilians at the Palestinian refugee camps Sabra and Shatila, located in the southern part of Beirut, the capital of Lebanon. Nearly a thousand people lost their lives in this massacre and many other were wounded.

The Lebanese Forces were established by Bashir al-Jumayyil in 1976 as the military wing of the Lebanese front. Their aim was to unite all Maronite forces in Lebanon. However, most members of the LF also belonged to a second Maronite party called the Lebanese Phalanges, which had been established by Bashir al-Jumayyil's father, Pierre, in 1936. This is why some sources refer to the Phalanges as those who had carried out the massacre, while other sources refer to the LF.

The Lebanese Forces entered the refugee camps two days after the assassination of their leader and their founder, Bashir al-Jumayyil. They did so in coordination with and at the request of the Israeli Defense Force (IDF), which was in full control of Beirut at that time.

The IDF had invaded Lebanon on June 5, 1982. After a few days, the Israeli forces reached the outskirts of Beirut. The IDF's mission was named by the Israeli government "the Peace for the Galilee Operation." Its ostensible aim was to remove the threat of attack by the Palestinian Liberation Organization (PLO) against the Israeli settlements along the Israeli-Lebanese border. It soon became clear, however, that the operation had more far-reaching targets. One such goal was to bring to power in Beirut an element friendly to Israel that would sign a peace agreement with it. This element was, in the eyes of the Israelis, the Lebanese Forces under the leadership of Bashir al-Jumayyil, who at that time maintained close ties with Israel.

The IDF reached Beirut within a week of the start of the war. They were joined by the LF and sealed off the Western part of the city, where Sunnis, Shi'ites and Palestinians lived. On August 13, the PLO and Syrian forces, which were deployed in Western Beirut, started leaving the city, and on August 23, 1982, Bashir al-Jumayyil was elected President of Lebanon. But on September 14, 1982, Bashir al-Jumayyil was killed in an explosion—a bomb had been planted in his headquarters by a member of the Syrian Socialist Nationalist Party (SSNP), a radical Lebanese party known for its close ties with Syria. Israel's illusions of being able to dictate a new Lebanese order were dashed.

After Jumayyil's death, the Israeli government, on the initiative of the then Defense Minister Ariel Sharon and Chief of the General Staff Refael Eytan, decided to take control of the western part of Beirut. The reason given for this move was the need to ensure peace and stability in the city for all its citizens. In fact, it was a clear effort to save at least a part of the massive investment Israel had made in Lebanon. On September 15, 1982, the IDF entered West Beirut. The Israeli commanders feared that members of the PLO who remained in the refugee camps would shoot at their soldiers, so they sent in their Lebanese allies, the LF, to take control.

On September 16 and 17, 1982, members of the Lebanese Forces, a Christian-Maronite militia, stormed the Sabra and Shatila Palestinian refugee camps in the southern part of Beirut, the capital of Lebanon. Here, two women inspect the bodies of some of the massacre's estimated 2,000 victims, possibly searching for missing relatives. [REUTERS/CORBIS]

On the evening of September 16, 1982, LF units under the command of Elie Hubayka entered the refugee camps. Hubayka served in the capacity of intelligence and security officer. Upon entering the Palestinian camps the LF unit began killing Palestinian civilians.

One reason for the killing was, no doubt, a desire to take revenge on the Palestinians for the assassination of Bashir al-Jumayyil. Another compelling reason, however, may have been the belief, commonly held within the hard core of the Maronite community, that the best way to deal with the Palestinians in Lebanon was through drastic measures that would cause them to flee the country. The massacre that ensued in Sabra and Shatila was but one of many civilian massacres to take place during the civil war in Lebanon. These further acts included the massacre of Christians in January 1976, after the Palestinians captured the Maronite town of Damur, and the massacre of Palestinian civilians in the refugee camp Tal al-Za'tar, which fell into the hands of the LF in August 1976.

First reports of sporadic killings among civilians in the refugee camps Sabra and Shatila reached the Israeli forces surrounding the camps throughout the evening of September 16, and more reports were received throughout the following day. The IDF commanders, however, responded to these reports with indifference, and preferred to treat them as exaggerations or as exceptions that did not represent the general activity of the Lebanese Forces in these camps. The IDF even provided some technical assistance to the Lebanese Forces, such as projectors and a bulldozer that was brought in to clear away the rubble. Only after the reports could no longer be ignored or dismissed did the IDF order the LF to pull out of the camps.

There is some dispute regarding the number of the casualties in the massacre. The Lebanese investigation committee, established to inquire into the massacre, reported 460 dead. Of these, 15 were women and 20 were children. The remaining 425, all adult males, included 328 Palestinians, 109 Lebanese, 7 Syrians, 3 Pakistanis, 2 Algerians, and 2 Iranians. The Kahan Committee, organized by the Israelis, reported between 700 and 800

dead. The Palestinian Red Cross estimated that the number of the dead was 2,000 and reported that it issued death certificates for 1,200 people.

The Lebanese investigation, headed by the Military Attorney General, Asa'd Jaramnus, cleared the LF of any responsibility for the massacre, but failed to place responsibility on anyone else. However, it did mention reports alleging that some of the dead were killed by PLO activists before they left Beirut, or by members of Sa'd Haddad's militia. Sa'd Haddad was the commander of an Israeli-supported Maronite militia that had been deployed along the Israel-Lebanese border.

The Kahan committee, established in Israel as a result of public pressure to investigate the massacre, came to a different conclusion. The committee determined that members of the LF were responsible for the massacre. It also concluded that the Israeli military and the political leadership in Israel took no part in the planning or conduct of the massacre in the refugee camps but that, nonetheless, Israel did bear indirect responsibility. The committee argued that Israel's leaders and the army commanders failed to seriously consider the possibility that its LF proxies would carry out such a massacre when they were allowed into the camps. In addition, the committee pointed out that the Israeli commanders in the field did not react quickly enough when they first heard reports about the massacre while it was still ongoing. As a result of the committee's conclusions, Ariel Sharon was forced to resign his office as Israeli Minister of Defense, as was Yehushua Shagi, then Israel's Chief of Military Intelligence. The Chief of the General Staff, Refael Eytan, was permitted to finish out his term of office.

The findings of the Lebanese investigators reflected the public desire to bury the memory of the massacre so it would not disturb the process of conciliation among the various communities within Lebanese society. The fact that the dead were mainly Palestinian, a rejected element within the Lebanese society, made it easier to downplay the extent and significance of the massacre. Those who were directly responsible for the Sabra and Shatila killings were never brought to trial. The most prominent among them, Elie Hubayka, defected to Lebanon's pro-Syrian political camp and became an ally of Damascus. Under Syrian patronage he served as a minister in various Lebanese governments during the 1990s. He was assassinated in 2002, and some believe that his assassination was linked to his involvement in the massacre.

In Israel, in contrast, the massacre led to a public debate about Israel's moral responsibility for the massacre. Nevertheless, the indirect responsibility that the Kahan committee placed on some Israeli figures, such as Ariel Sharon, did not cause any lasting damage to their public standing. Indeed, in January 2001, Ariel Sharon was elected Prime Minister of Israel.

SEE ALSO Massacres; Refugee Camps

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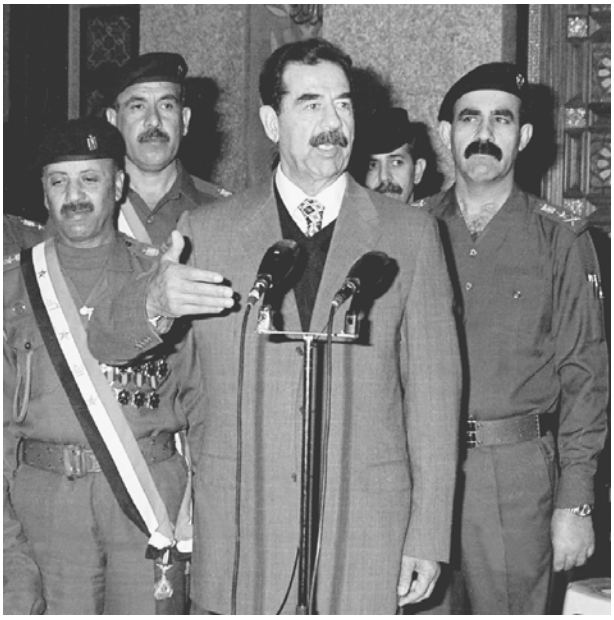
Eyal Zisser

Saddam Hussein

[APRIL 28, 1937–]
Late-twentieth-century dictator of Iraq

Saddam Hussein (also, Husayn and Husain) al-Majid was born to a poor Sunni Muslim Arab family from al-Awja, a village in north-central Iraq. Sources vary as to whether Saddam was actually born in al-Awja, or in the nearby town of Tikrit. Saddam's father left (some sources say he died) prior to his birth. His stepfather, Ibrahim al-Hasan, was physically and psychologically abusive to young Saddam, forcing him to steal for him and refusing to allow him to go to school. Saddam ended up being raised in Tikrit by his maternal uncle, Khayrallah Talfa. He moved to Baghdad in 1956, and reportedly joined the pan-Arab nationalist Arab Socialist Renaissance Party (also called Ba'th Party) the following year. He quickly became a hired gun for the party, liquidating, for example, a relative who was a communist rival to the Ba'th.

Saddam continued as a Ba'th Party enforcer by taking part in a failed attempt to assassinate Iraqi president Abd al-Karim Qasim (1941–1963) in October 1959. He was wounded in the attack, and fled to Egypt via Syria. He returned to Iraq after the February 1963 Ba'th coup against Qasim, but was imprisoned from 1963 to 1967 along with other Ba'thists after another coup deposed the Ba'th several months later. Saddam rose in the ranks of the party's international, pan-Arab leadership known as the Ba'th "National Command," as well as of its local Iraqi "Regional Command." He was appointed to the leadership of the National Command of the party in 1965 while still in prison, and became deputy secre-



A loyal, often fanatical, military were key to Saddam Hussein's continued rule and murderous campaigns in Iraq. Here, the dictator honors his officers, Baghdad, January 2000. [AFP/CORBIS]

tary-general of the Iraqi Regional Command in September 1966. Saddam helped carry out the final Ba'thist coup of July 17, 1968. Although he only assumed the title of vice-chairman of the new state executive committee, the Revolutionary Command Council, Saddam was the real force behind politics in Iraq thereafter.

Rise to Power

On July 16, 1979, Saddam pushed aside ailing Iraqi president Hasan al-Bakr (1914–1982), to become the undisputed leader of Iraqi Ba'th and state apparati. He assumed the titles of secretary-general of the Iraqi Ba'th Regional Command, chair of the state Revolutionary Command Council, and president of the republic. For ceremonial purposes, he also became deputy secretary-general of the pan-Arab National Command of the Ba'th in October 1979 (the titular secretary-general of the National Command, aging Ba'th Party co-founder Michel Aflaq (1910–1989), was merely a figurehead kept in place for ideological reasons).

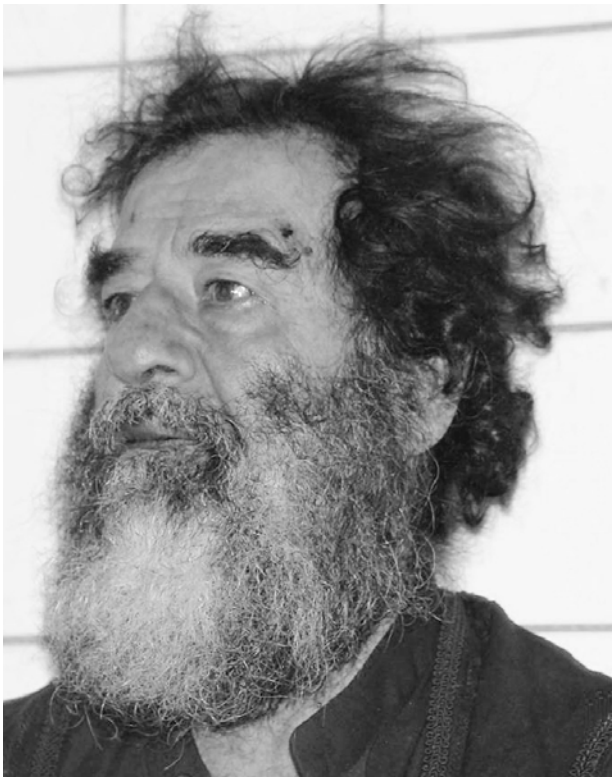
Saddam's ruthlessness continued unabated after 1979. A symbol of things to come was the infamous purge he carried out shortly after shuffling al-Bakr out of office. Saddam announced at a party meeting that twenty-one senior Ba'thists present at the meeting were part of an alleged Syrian conspiracy against him. One by one, he called out the names of the "traitors" while smoking his trademark cigar, filming them as they were led out of the conference hall to be shot. He later ensured that copies of the film were circulated throughout the country. Thereafter, Saddam took great pains to eliminate any possible rivals. He presided over a totalitarian regime in Iraq from 1979 to 2003, the cruelty and brutality of which were matched only by the fear it inspired. Saddam succeeded in using this fear to stay in power, which he did longer than any ruler in modern Iraqi history. An expert in the bureaucracy of terror, Saddam oversaw five overlapping intelligence agencies plus the Ba'th Party's own security service. These agencies not only spied on the populace, but on each other, so that Saddam could foil any plots from within the regime. To protect himself, Saddam also created two Praetorian Guard organizations. He presided over one of the twentieth century's most pervasive cults of personality as well. Photos and statues of the dictator were ubiquitous, and constituted a visible reminder throughout the country of his seeming omnipresence.

The Ba'th regime also persecuted entire groups of people. The large-scale deportations, destruction of villages, and executions Saddam ordered against the country's non-Arab Kurdish population during the 1988 "Anfal" campaign rose to the level of genocide. He is responsible for war crimes and/or crimes against humanity during the 1980–1988 Iran-Iraq War, when Iraqi forces used chemical weapons against Iranian troops. During the 1990–1991 Iraqi invasion and occupation of Kuwait, such crimes went beyond the torture, execution, and disappearances mounted against Kuwaiti individuals to include large-scale looting of museums and archives.

U.S. Invasion of Iraq

Saddam's reign of terror ended in April 2003 when American troops entered Baghdad and put Saddam to flight. He was eventually captured in the village of Dura, near al-Awja, on December 14, 2003. The Americans held him until June 28, 2004, when the United States "returned sovereignty" to a provisional Iraqi government. That government immediately submitted papers to the Americans requesting the formal transfer of legal custody, whereupon Saddam ceased being a prisoner of war protected by the Geneva Conventions, and became a criminal suspect under Iraqi jurisdiction. He remained physically in U.S. custody in Baghdad, however.

In April 2003, U.S. Ambassador-at-Large for War Crimes Issues Pierre-Richard Prosper announced that Iraqis charged with genocide, crimes against humanity, and war crimes would be tried by Iraqi courts. International human rights advocates urged that an international court try Saddam instead. The International Criminal Court (ICC) would not be an option in that



CenCom (the U.S. military's Central Command stationed in Kuwait) released this photo of a disheveled Saddam Hussein shortly after his capture on December 13, 2003. When tracked down by U.S. troops, the former Iraqi president was huddled in the cellar of a farmhouse south of his hometown, Tikrit. [HANDOUT/CORBIS]

regard; neither Iraq nor the United States are signatories to the Rome Statute that created the ICC, and the crimes were committed before July 1, 2002, the date the statute took effect. However, the United Nations (UN) Security Council could have created a special international tribunal like that for the former Yugoslavia. On December 11, 2003, however, the American-appointed Iraqi Governing Council enacted the Statute of the Iraqi Special Tribunal for Crimes Against Humanity for future trials instead.

This domestic, Iraqi tribunal was empowered to investigate crimes committed between July 17, 1968 and May 1, 2003, the period of Ba'thist rule. The tribunal's jurisdiction covered acts of genocide, as defined by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; war crimes, defined as grave breaches of the 1949 Geneva Conventions; and crimes against humanity, defined as a number of acts spelled out in the law that are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Saddam was arraigned before an Iraqi investigative judge of the tribunal on July 1, 2004, and faced seven preliminary charges. By mid-2004, the Kuwaiti government had prepared 200 major indictments against Saddam as well. Iran also indicated that it would bring charges against Saddam for war crimes.

Saddam's trial could well play a crucial role, both for the sociopolitical rehabilitation of Iraq and for the growing international legal consensus on prosecuting crimes against humanity, by exposing the breadth and scope of his crimes. The tribunal can avail itself of more than 6 million Iraqi military, intelligence, and Ba'th Party documents that were captured in 1991 and 2003. These offer an excruciatingly detailed view into the bureaucracy of terror employed by Saddam's regime, as well as devastating evidence in the hands of prosecutors. The trial could well become the most significant trial dealing with genocide, war crimes, and crimes against humanity since the trial of Nazi war criminal Adolf Eichmann in 1961.

SEE ALSO Eichmann Trials; Iraq

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Michael R. Fischbach

Safe Zones

During periods of armed conflict or strife places are set aside where people who are not involved in the fighting may find a degree of refuge. Such places have at times been referred to as safe zones; however, this is not a technical term. Comparable terms include *safe havens, safe areas, corridors of tranquility, humanitarian corridors, neutral zones, protected areas, secure humanitarian areas, security corridors,* and *security zones.*

Treaty-Based Safe Zones

Some treaties allow countries to establish specific types of safe zones. For example, the 1949 Geneva Conventions provide for the establishment of hospitals and safe zones or localities to protect the wounded, the sick, the elderly, children, and pregnant women from the effects of war (First Geneva Convention, Article 23; Fourth Geneva Convention, Article 14).

Under the Fourth Geneva Convention a country may set up safety and hospital zones by itself, for exam-

Although the United Nations had declared Srebrenica a safe zone in the 1990s, Bosnian Serb forces eventually overran it. Here, Nazira Efendic, a Muslim woman who lost most of her relatives in the ensuing ethnic cleansing, peers through the window of her devastated house in the village of Gornji Potocari, March 26, 2002. [REUTERS/CORBIS]

ple, in peacetime as a matter of defense planning. After a war starts the country may ask its enemy to recognize the hospital or safety zone as such, or it may work with another country to establish such zones. Ordinarily, the establishment of a safety zone is without legal effect until a country's enemy recognizes the hospital or locality as a safety zone. An official agreement on safety zones provides exactly this kind of recognition. Such agreements may extend protection to other categories of civilians, and the International Committee of the Red Cross may facilitate their conclusion.

United Nations Safe Zones

Pursuant to its mandate to maintain or restore international peace and security, the United Nations (UN) Security Council has recently designated safe zones and otherwise urged the protection of innocent persons in certain places. Although such safe zones purport to protect all civilians from attack and otherwise serve as places of refuge and aid, the precise legal meaning of the phrase has never been delineated. The creation of safe zones has sometimes been accompanied by the imposition of *no-fly zones,* which may be employed to provide a degree of enforcement.

Common Element: Nonmilitary Use

A key aspect common to all types of safe zones is that they are nonmilitary in use. Essentially, a bargain is struck—the zone is protected so long as it does not serve a military purpose, such as housing soldiers or storing munitions. Further, safe zones and military assets must not be situated near one another, particularly when the intent is to protect military assets from attack.

If a safe area is in fact used for military purposes, the zone may be attacked. However, the attack must follow the laws and customs of war. Specifically, the attacker must direct an attack only against legitimate military objectives, and no attack is allowed where harm to civilians and civilian property would be excessive in relation to the tangible and direct military advantage anticipated. In other words, the presence of a few soldiers might warrant a small and carefully controlled raid, but not a full-scale attack.

Practice

The notion of setting aside refuges is not new. In 1870 Henry Dunant, founder of the International Committee of the Red Cross, suggested the designation of towns as safe places during the Franco-Prussian War, and later suggested that parts of Paris be established as refuges. Temporary zones were set up during the Spanish Civil War in Madrid in 1936 and during the conflict in Shanghai, China, in 1937. Governments were cool to proposals to establish safe zones during World War II, but three neutral zones were established during the conflict in Palestine in 1948. These zones were successful enough that the drafters of the 1949 Geneva Conventions firmly established the concept of safe zones in international law. More recently, safe zones have been set up to protect civilians not only from the dangers of war, but also from the prospect of suffering crimes against humanity, such as extermination or deportation.

Nonetheless, safe zones have not always provided the envisioned protection. A handful of safe zones established in the 1970s in Bangladesh, Cyprus, and Vietnam were to some degree successful, but a hospital and safety zone attempted in Phnom Pen, Cambodia, quickly fell apart. An armed conflict in the Falklands/Malvinas ended before proposed safe zones could be established. In 1992 the parties to the conflict in Croatia, with the assistance of the International Committee of the Red Cross, established two neutral zones centered on Dubrovnik.

Recent safe zones have been designated in Iraq and Bosnia and Herzegovina. The UN Security Council demanded in 1991 that Iraq end its repression of Kurds in the north of Iraq and Shi'a in the south. The United States, United Kingdom, and France used this resolution to set up safe zones and impose no-fly zones over the northern and southern parts of the country. Occasionally, the United States and United Kingdom fired on the Iraqi military, but this generally happened either in response to the use of air defenses or to attacks on Kurds in the north. Because the Security Council resolution did not grant explicit authority for no-fly zones and air combat operations, the right to resort to such measures was disputed.

The UN Security Council declared six safe zones in Bosnia and Herzegovina early in the 1991 to 1995 war, specifically in Srebrenica, Sarajevo, Tuzla, Zepa, Gorazde, and Bihac. The UN also imposed a no-fly zone over all of Bosnia and authorized the use of air power by the North American Treaty Organization (NATO) to protect every safe zone in Bosnia. In addition the area in and around Srebrenica was declared a *demilitarized zone* by agreement between the warring parties, and the UN guaranteed the safety of all people within it.

However, both Bosnian Serb and Muslim forces violated the safe area agreement to keep Srebrenica "free from armed attack or any other hostile act." Sarajevo was also fired upon from surrounding hills for most of the war, and Bosnian Serb forces eventually overran Gorazde, Zepa, and Srebrenica. Some seven thousand Muslim men and boys were killed in and around Srebrenica alone. NATO eventually responded with an air campaign against Serb positions, notably those around Sarajevo. Bosnia was relatively quiet thereafter.

In 1994 the UN authorized France to establish a safe area in Rwanda in response to the genocide of Tutsis and moderate Hutus. This was a belated response, occurring after the worst of the genocide there was over, and in practice it protected more Hutus than Tutsis.

The term *safe zone* has other uses as well. During the Second Persian Gulf War the United States and its allies declared the area around Basra, Iraq, to be a safe zone in the sense that it was safe for humanitarian relief efforts. In the mass media, safe zone means a place where there is no fighting, as used in West African conflicts of the past few years. It is unlikely that either meaning will displace treaty law and practice denoting a safe zone as a place officially set aside for the protection of war victims.

SEE ALSO Early Warning; Prevention

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John Cerone
Ewen Allison

Sand Creek Massacre

During the summer of 1864 an Indian war erupted over the plains of Kansas, Nebraska, and the Colorado Territory following the murder of Cheyenne Chief Lean Bear. Lean Bear, a leading peacemaker who had previously met with President Abraham Lincoln in Washington, D.C., was shot from his horse without warning by U.S. troops during a Kansas buffalo hunt. The troops were acting under orders from Colonel John M. Chivington who commanded the military district of Colorado: "Find Indians wherever you can and kill them" (*The War of the Rebellion,* 1880–1881, pp. 403–404).

In September 1864 the principal chief of the Cheyenne, Black Kettle, and other Cheyenne and Arapaho leaders hazarded a visit to Denver to hold peace talks with Chivington and Governor John Evans. The chiefs were assured that they would be safe from attack if they made the trip to Fort Lyon on the Arkansas River. When Black Kettle arrived there, however, post commander Major Scott J. Anthony turned him away, ordering the Cheyenne leader to remain in camp on Sand Creek, forty miles north of the fort (Hoig, 1961, p.125).

In Denver, meanwhile, Chivington gathered his military forces for a strike against the Cheyenne. He and his command arrived at Fort Lyon at noon on November 28 and prepared for an assault on the Indian camp. With his Colorado First Cavalry, Anthony joined Chivington. But other officers, who had helped escort Black Kettle to Denver, attempted to dissuade Chivington from such an attack. Chivington, a former Methodist minister, threatened to put them in chains, ranting, "Damn any man who is in sympathy with an Indian!" (U.S. Senate, 1867, p. 47).

Chivington's army of nearly seven hundred men with four mule-drawn mountain howitzers arrived at the bend of Sand Creek at the break of dawn, November 29. Even as the cavalry began its charge and howitzers shelled the village, Black Kettle hoisted a U.S. flag over his lodge. Chief White Antelope, who had visited Washington, D.C., in 1851, pressed forward to meet the soldiers, insisting that the village was peaceful and posed no threat. He was cut down midstream.

Indian villagers fled from their lodges only to be pursued in every direction and killed by the mounted troops. A number of women and children took refuge in a cattail pond. Soldiers surrounded it and began shooting them at will. The atrocities did not end when the battle was over. Witnesses described the horrific aftermath. John Simpson Smith, a long-time Cheyenne associate who was in the camp and whose half-blood son was murdered by Chivington's men, with his body dragged behind a horse, testified as follows: "They [the Indians] were terribly mutilated, lying there in the water and sand, dead and dying, making many struggles. They were badly mutilated" (U.S. House of Representatives, 1865, p. 8).

Chivington and his Colorado Third troops returned to Denver and proudly displayed Cheyenne scalps and other body parts they had removed from men, women, and even children. Newspapers and citizens exulted in the soldiers' victory. The intensity of hatred became apparent when Senator Benjamin Doolittle later addressed a Denver crowd regarding Indian policy. His audience shouted, "Exterminate them! Exterminate them!" (Scott, 1994, p. 168).

Chivington's massacre at Sand Creek raised a firestorm of protest nationally and led to investigations by both the U.S. Army and Congress. The embattled Indian tribes of the Plains saw the U.S. military action as strong evidence of the white man's perfidy. Black Kettle, who had somehow survived, felt he had betrayed his people in trying to make peace. "My shame is as big as the earth," he said. "I once thought that I was the only man that persevered to be the friend of the white man, but it is hard for me to believe the white man any more" (*Annual Report,* 1865, p. 704).

SEE ALSO Indigenous Peoples; Massacres; Native Americans; Trail of Tears

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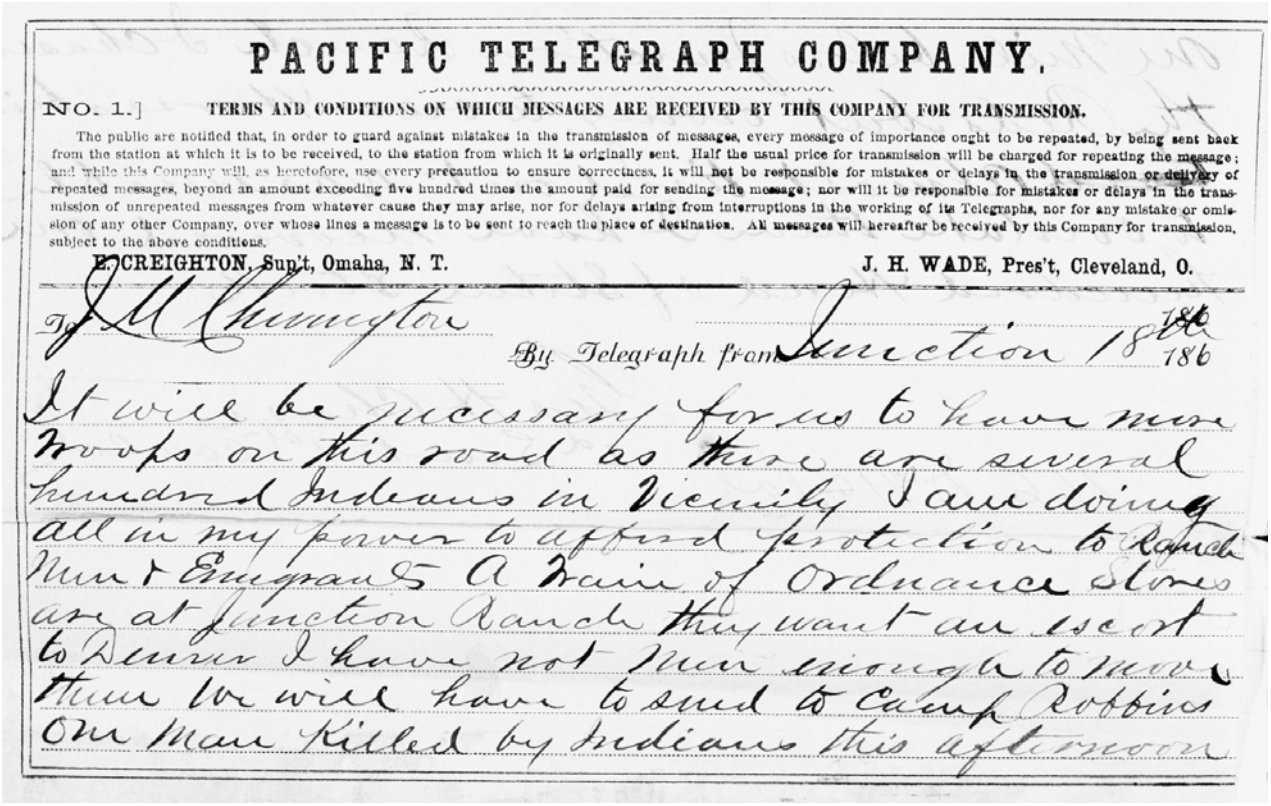

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E. CREIGHTON, Sup't, Omaha, N. T. J. H. WADE, Pres't, Cleveland, O.

To J. M. Chivington By Telegraph from Junction Ranch 18th 186

It will be necessary for us to have more troops on this road as there are several hundred Indians in vicinity I am doing all in my power to afford protection to Ranch Men & Emigrants A train of Ordnance Stores are at Junction Ranch they want an escort to Denver I have not men enough to move them we will have to send to Camp Robbins One Man Killed by Indians this afternoon

A July 18, 1864, telegram to Colonel John M. Chivington requesting troop reinforcements in the Colorado Territory. Within months Chivington ordered the brutal massacre of several hundred unsuspecting Cheyenne at Sand Creek. [CORBIS]

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Stan Hoig

Satire and Humor

The 1997 Academy Award-winning movie by the Italian filmmaker Roberto Benigni, *La Vita è Bella* (Life Is Beautiful), raised the fundamental question of whether it is permissible to use satire and humor in confronting the Holocaust. Many critics and general audiences, particularly those not immediately affected by the events of the Holocaust, expressed great delight with Benigni's film. Others registered their deep disgust.

The literary form of satire has a long tradition and is closely associated with writers such as Jonathan Swift, Voltaire, Heinrich Heine, Kurt Tucholsky, and Erich Kästner. Similarly, artists such as William Hogarth, Honoré Daumier, George Grosz, and John Heartfield used their drawings to ridicule social events.

With the advent of fascism in Germany in 1933, many writers and visual artists emulated their predecessors and even stepped up their attempts to use satire as a weapon in the fight against fascism. Their plays, sketches, poems, and caricatures were meant to undermine the power of the Nazis and provide encouragement to those directly affected by fascism. As early as October 1933 the prominent Austrian writer and satirist Karl Kraus had voiced sincere doubt on the ability of words to truly combat the imminent evil.

Kraus's reservations were, in fact, contradicted by the course of action taken by the Nazis from the moment they assumed power. The writer Carl von Ossiezky and journalist Fritz Gerlich were among the first to be arrested, tortured, and killed. In 1932 Gerlich had published a biting essay questioning whether the dark-haired Adolf Hitler might not be of "Mongolian" lineage. Kurt Tucholsky had mocked German militarism and blind obedience for years. In his 1930 publication, *Herr Wendriner steht unter der Diktatur* (Mr. Wendriner under the Dictatorship), Tucholsky made fun of Nazi stormtroopers and even predicted the requirement of yellow identification papers for Jews. His clever witticisms delighted many audiences and, not surprisingly, on May 10, 1933, the Nazis burned his books throughout Germany for their "impertinence" and "lack of re-

spect." Tucholsky went into exile in Sweden, where he committed suicide in 1935. In addition, Erich Kästner, a beloved author of children's books, wrote entertaining and sarcastic poems warning about the dangers of fascism. His books were also burned in May 1933.

From the onset writers and journalists found the Nazis' overblown seriousness, lack of humor, pomposity, and constant obsession with uniforms an easy target for mockery. They ridiculed the hyperbolic language of Hitler's *Mein Kampf*, and the book's title quickly became known as *Mein Krampf* (My Cramp). In 1940 the British poet R. F. Patterson escalated the attack on Hitler's tome. In *Mein Rant: A Summary in Light Verse*, the author claims his own version of the oeuvre to be far more acceptable than the original. In 1941 playwright Bertolt Brecht, by that time already living in exile in Finland, wrote *Der aufhaltsame Aufstieg des Arturo Ui* (The Resistible Rise of Arturo Ui). The drama is a "gangster parable" and satirizes Hitler's rise to power supported by terror and backed by financial support from big industry. Brecht ridicules Hitler's frugal and petty-bourgeois lifestyle as well. Brecht's expectations for this play remained unfulfilled. By 1941 it was too late to show his audiences how Hitler's ascent to power could have been stopped. In 1936 Lion Feuchtwanger used the genre of the historical novel to shed light on the true nature of National Socialism. His satirical novel *Der falsche Nero* (The Pretender) also fell short of what the author had intended.

The influence of exiled writers was restricted because they were cut off from their usual audiences. In addition, scholarly literary forms such as novels and plays only reached a limited audience. On the other hand, poems, ballads, and songs performed in cabarets reached a wider audience. Political cabarets were a staple in the cultural landscape of pre-Hitler Germany and existed in virtually every large city. Erika Mann's *Die Pfeffermühle* (The Peppermill) continued to delight audiences from late 1932 through 1937, even though most of the cabaret's later years of existence coincided with the Mann family's forced exile in Switzerland. The ensemble also gave guest performances in countries not yet occupied by Nazi Germany.

A close cousin of the cabaret was the Kleinkunst Theater. Whenever its actors, writers, or performers were no longer permitted to perform in public, many turned to the newest technical medium, the radio. The Austrian refugee actor and writer Robert Ehrenzweig (in England he became known as Robert Lucas) originated the "Hirnschal Letters," broadcast in 1941 by the German language division of the BBC. The main character is Adolf Hirnschal, a German private, who writes to his wife admiring letters about Hitler and the Third Reich. But as his name Hirnschal (literally meaning cerebral cavity) suggests, the protagonist is quite clever. In talking about every-day events, the "Hirnschal Letters" undermined the authority of official propaganda and raised the morale of radio listeners. Other popular radio programs were "Blockleiter Braunmüller" (Blockleader Brownmiller) and "Frau Wernicke" (Mrs. Wernicke). These radio spoofs were created by Bruno Adler, another German writer in exile working for the BBC.

John Heartfield perfected the genre of the photomontage, creating hundreds of images that appeared in popular German newspapers and magazines, and on book covers. Heartfield juxtaposed fragments of photographs with snippets of newsprint. With his montages he intended to create new images yielding original points of view. Heartfield's work referred to particular current events in an insolent, funny, and biting manner. After his escape from Germany in 1933, Heartfield continued his work in Czechoslovakia. A photomontage of December 1935 derides the food shortages as a result of Germany's remilitarization. Entitled "Hurray, the Butter Is All Gone," it shows a family seated around the dinner table gnawing on metal chains, handlebars, screws, bicycle parts, and shovels.

Photomontages and caricatures published in the popular print media had a more decisive influence on audiences than elite literary forms—even though their practitioners were no longer able to work from within Germany. The graphic artist Carl Meffert published early caricatures of the Nazi elite, which resulted in an expulsion order from Germany. He fled to Argentina, where he assumed the name of Clement Moreau. In exile Moreau published some of the most ferocious and poignant anti-Hitler caricatures in daily newspapers.

Humor, comedy, and laughter also existed under extreme conditions of incarceration and confinement. During the latter part of 1943 and through the summer of 1944, various cabaret performances were staged in the Dutch camp of Westerbork. The melodies for these cabaret pieces about lack of food and cramped living conditions derived from the heydays of cabaret life in Berlin and Vienna. Most of the performers were murdered in extermination camps in the East.

Survivors of the Kraków ghetto recount how in 1942 a Nazi slogan was transfomed into its opposite meaning by the substitution of a single letter. As a consequence of this witty action, the propaganda catchphrase *Deutschland siegt an allen Fronten* (Germany Is Victorious on All Fronts) became *Deutschland liegt an allen Fronten* (Germany Is Defeated on All Fronts). This subversive prank provided the ghetto inhabitants with a sense of joyful empowerment.

SEE ALSO Comics; Drama, Holocaust; Film, Dramatizations in

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Viktoria Hertling

Shaka Zulu

[c. 1787–SEPTEMBER 24, 1828]
Founder of the Zulu Empire

Between the end of the eighteenth century and 1825, societies on the eastern coastal seaboard of southern Africa underwent a radical and violent political transformation. The cause of this upheaval remains obscure, but an established order of independent chiefdoms collapsed, to be replaced by a number of much larger, more militarily robust kingdoms. The most powerful of these was the Zulu state, which emerged under the leadership of King Shaka kaSenzangakhona. Shaka remains one of the most complex and controversial figures in southern African history, a man still revered as the founding father of his nation, a conqueror of extraordinary vision and political ability whose methods have nonetheless earned him the reputation of a brutal tyrant. A minor—and possibly illegitimate—son of Chief Senzangakhona of the small Zulu clan, Shaka grew up amid escalating social conflict and displayed an early talent for warfare. In 1816, following the death of his father, he assumed control of the Zulu and began a program of expansion. A charismatic and innovative military commander, Shaka introduced new forms of warfare that relied on close-quarter (hand-to-hand) combat and were highly destructive. By an astute mixture of extreme force and political acumen, Shaka had come, by 1824, to dominate most of the African groups in the present-day South African province of KwaZulu-Natal.

Beyond the immediate Zulu borders, groups dislocated by the violence spread the disruption across

Shaka believed in the total annihilation of his tribal war enemies. When he became Zulu chief, he replaced the javelin (as weapon of choice) with the heavy-bladed thrusting spear. He holds such a spear in this lithograph. [THE GRANGER COLLECTION, NEW YORK]

southern Africa. In the areas under his control, Shaka imposed new political structures in which the conquered chiefdoms became subordinate to a Zulu elite. Central to his authority was the army, in which young men from across the kingdom were required to serve in regiments under the direct control of Shaka himself. By carefully cultivating a warrior ethos, Shaka deliberately created a climate of discipline and obedience. The army was used both as a means of enlarging the kingdom and suppressing internal opposition. To enhance his base of support within the army, Shaka rewarded individuals who displayed conspicuous courage, but executed those accused of cowardice. Shaka himself presided over the military reviews that routinely followed successful campaigns, in which regimental commanders identified so-called cowards who were then publicly stabbed to death. King Shaka's reputation has undoubtedly suffered at the hands of the European colonial and apartheid regimes that displaced Zulu authority—and for whom Shaka became an emblem of savagery justifying white intervention. He certainly was

autocratic and ruthless; however, the popular image of Shaka as personally bloodthirsty and psychotic is not supported by contemporary evidence, even though he made extensive use of terror as a political tool.

Executions for infringements of etiquette were a feature of daily life in Shaka's court. He condemned individuals on the spur of the moment and with a calculated insouciance for offenses such as sneezing when he was talking, or making him laugh when he wanted to be serious. Victims were usually clubbed to death and their bodies left in the veldt for the vultures, who became known throughout Zululand as "the king's birds." Although the number of individuals killed in this manner was probably small, it served not only to intimidate the opposition but also to invest the new Zulu monarchy with a terrifying aura of power. Political dissidents were isolated by accusations of witchcraft and executed, together with their families who were viewed as being tainted by association. The use of torture was still unknown at this time.

Nevertheless, so great were the political and social changes inherent in Shaka's revolution that it proved impossible to eliminate opposition entirely, and from 1824—when he survived an assassination attempt—Shaka became increasingly preoccupied with efforts to hold the kingdom together. When, in 1827, his mother Nandi died, he used his personal grief to mask the true motives behind an extensive political purge. Those who stood accused of breaking mourning taboos prescribed by Shaka himself were attacked and killed. One contemporary British observer estimated that, during the mass hysteria of the funeral ceremonies alone, as many as seven thousand people died from dehydration and exhaustion; although this statistic is probably an exaggeration, the loss of life was undoubtedly severe, and it fell heaviest on those groups who had remained unreconciled to Shaka's rule.

Shaka's attempts to secure his position were ultimately unsuccessful, however, for in September 1828 he fell victim to a coup orchestrated by members of his own family and was stabbed to death. He had ruled for just ten years, but helped to reshape the political geography of the region and left behind a complex and ambiguous legacy that associated political power with violence.

SEE ALSO South Africa; Zulu Empire

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Ian Knight

Sierra Leone

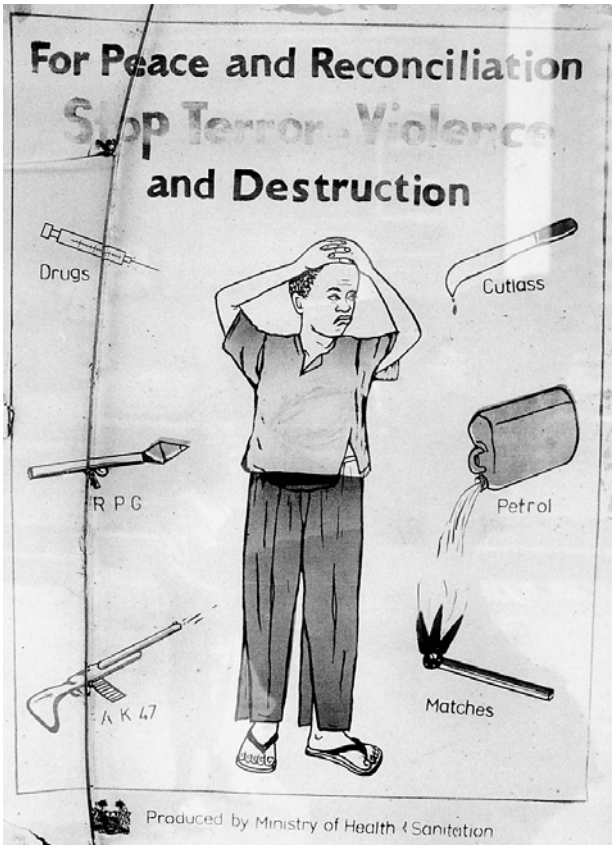
In eleven years of civil war, an estimated 150,000 people died, more than half the country was rendered homeless, 600,000 refugees (12% of the population) fled to neighbouring countries, more than 200,000 women were raped, and about 1,000 civilians suffered the amputation of one or more limbs. Fighting began on March 23, 1991, when the (student-led) Revolutionary United Front (RUF) crossed the eastern border of Sierra Leone from Liberia. The RUF was formed, with Libyan backing, to overthrow the government of the All People's Congress (APC). The APC was a one-party regime under the presidencies of Siaka Stevens (1968–1985) and Joseph Momoh (1985–1992) that maintained itself through thuggery and corruption to the point where the economy all but collapsed. The RUF also received support from the Libyan-backed forces of Charles Taylor, leader of the National Patriotic Front of Liberia (NPFL). The RUF appealed to disaffected local sentiment in the border region, and expanded its ranks largely by capturing and training young people from dysfunctional rural primary schools in eastern and southern Sierra Leone. A small cohort of radicals from the teacher training college at Bunumbu, adjacent to the Liberian border, also rallied to the movement. President Momoh created immediate conditions for the war by defaulting on the terms of an IMF loan agreement and thereafter being unable to pay for basic government services. He alienated many young people by declaring education a privilege, not a right.

The inefficient and politicized national army, riddled by corruption and nepotism, had little interest in fighting the war from its outset. The APC, appealing for international intervention, sought to deny the independent existence of the RUF, making the rebellion appear solely the work of Charles Taylor. Guinean and Nigerian troops took up key defensive positions in Daru and Gondama (near Bo) in April and August 1991, and slowed the advance of the RUF, which depended mainly on raiding opposing forces for its weapons and other supplies. Thereafter, successive governments claimed

to be engaged in peace processes, while mainly concentrating on ways to manage a small war to consolidate the political advantage of the elite.

A military coup in 1992 brought a faction of young army officers to power, but they were opposed by a larger group within the army that was still loyal to the previous regime. The National Provisional Ruling Council (1992–1996), under its chairman, Captain Valentine Strasser, offered to negotiate with the RUF, but also recruited and armed large numbers of unemployed young people. Poorly trained and ill disciplined, these new recruits were resented by the APC elements in the army. A small group of NPRC officers—some from the eastern border regions—pressed the war against the RUF, and by the end of 1993 they had forced the movement's leadership out of its temporary headquarters in northern Kailahun (Sandeyalu). The movement scattered, and various members built a number of secure forest camps in different parts of the country. Some of these were in the forest reserves along the Liberian border, others towards the center of the country, approaching Freetown. From these green fortresses, cadres raided villages to capture recruits and spread panic among local populations. Government depots and convoys were attacked to acquire supplies. The RUF was denied the opportunity for peace negotiations, largely because the NPRC continued to maintain that the organization was a front for Charles Taylor and not an indigenous Sierra Leonean movement. Facing troops that were untrained and ill-equipped for jungle warfare, the RUF began to exploit the divisions in the national army.

The RUF conducted raids wearing stolen army fatigues and carrying fake identification, creating an impression in the minds of civilians that the army was the main cause of the violence, and thus turning civilians against their own security forces. Disgruntled army units added to the impression by carrying out extensive looting in areas that had been emptied by RUF hit-and-run raids. Widespread civilian protest was directed against the military regime, to which was added international pressure for democratic reform. The NPRC agreed to elections in early 1996, thinking it would be able to manipulate the election of its own candidate. Instead, the victory went to the opposition party (the Sierra Leone Peoples Party, SLPP), even though it had been banned under a one-party constitution in 1978. The new civilian government, under President Ahmad Tejan-Kabba, a retired UN bureaucrat, had no confidence in the army of the previous government, and turned instead to an ethnically based civil defence force (CDF). This military organization was trained by Nigerian peacekeepers and a South Africa–British mercenary company that had originally been contracted to protect kimberlite (hard-rock) diamond mining concessions in Sierra Leone.



In a war-weary Sierra Leone, government-released posters, similar to this one, sought to promote peace and reconciliation. May 2000. [TEUN VOETEN]

Despite a cease-fire agreement, civil defence forces destroyed several of the main forest camps of the RUF prior to the RUF leadership agreeing to a peace treaty in Abidjan, Ivory Coast, on November 30, 1996. Having signed under duress, the civilian leadership of the RUF was unable to get its fighters to accept the deal, and the war continued. Although a failure, the Abidjan agreement remains significant, because it marks the date from which the Sierra Leone Special Court indicts participants in the war for war crimes.

The RUF believed that the peace process was no more than a pretext to wipe it out and consolidate (with international support) the results of a democratic transition from which the movement was excluded. RUF fighters escaping the sack of their camps regrouped in the north and center of the country. They began again to gather new recruits by force, vowing revenge on a society that had rejected the revolutionary message. It was from this time that some of the worst

A determined Foday Sankoh, rebel leader of the Revolutionary United Front, rallying his troops at Port Loko. [TEUN VOETEN]

raids and massacres occurred, especially in villages from which the civil defence fighters had been recruited. There seems no doubt that counterinsurgency activities by the CDF broke the 1996 cease-fire accords to which the RUF had mainly adhered. The Kabba government argued that civil defence was a civilian movement over which it had no control. The point is crucial to understanding why the RUF became so unstable, seeking the destruction of communities it once hoped would offer it welcome. Demobilized cadres spoke openly about a link between heightened violence and the rejection of their movement by a majority of the rural population. Amputations and massacres imposed random destruction on the countryside and were brutally expressive of the feelings of embittered RUF cadres that their own lives became, under the movement, no more than a lottery of poverty, capture, and ostracism.

In May 1997 the army was faced with the cancellation of food subsidies at the insistence of the IMF. Soldiers mounted a mutiny, forcing the civilian regime into exile in Guinea. A Momoh loyalist in the army, Major Johnny Paul Koroma, accused of collaboration with the enemy in acts of sabotage, and later jailed by the Kabba government, emerged to become leader of a new regime (the Armed Forces Revolutionary Council, AFRC). The AFRC sought to end the war by enticing the RUF into a power-sharing regime, but the junta was shunned internationally, and the alliance between former enemies soon fell apart. The RUF used its time in government to stockpile weapons in its rear bases, convinced by its charismatic leader, a cashiered former army corporal named Foday Sankoh, that one day, despite all hardships, it was destined to rule. Negotiations over the return of the legitimate government proved inconclusive. Although the deadlines had not yet expired, Nigerian General Sanni Abacha ordered Nigerian troops in the regional peacekeeping force, ECOMOG, to take Freetown and restore the deposed government in February 1998. The irony of a military dictator fighting for democracy in a foreign country was not lost on the international community, despite general relief that the way was open for the legitimate government to return (which it did in March 1998). The army was disbanded, but army loyalists calling themselves the West Side Boys went to ground in villages behind the Ocra Hills, only about forty miles from Freetown. The RUF resumed its positions on the forested Liberian border. It offered refuge to elements in the former junta leadership, although some say it held them hostage—Koroma was held in virtual captivity by his erstwhile comrades-in-arms. The RUF also strengthened its links with the Taylor regime and its allies in Burkina Faso and Libya.

In exile in Conakry, Guinea, the Kabba government engaged another branch of the South African–British security and mining company that had helped undermine the RUF. It directed these allies to support loyalist fighters in southern Sierra Leone and mount a counter-coup. Alleged involvement of U.K. officials and military intelligence in this arrangement, contrary to UN sanctions, caused a storm in British politics, leading to a parliamentary investigation by Sir David Legg into the shipment of arms to Sierra Leone. The kimberlite concession held by the main mining associate of the security company in question (valued at around $450 million on resumption of operations in 2002) stimulated business rivalry in the murky world of African minerals capitalism. Competitors, mainly from the former Soivet Union, ventured to re-arm and retrain remnant junta forces, hoping once again to topple the Kabba government and thus overturn the kimberlite concession granted in return for security services. The RUF had its own political reasons for going along with this scheme. In October 1998, RUF forces led by Samuel Bockarie, a Libyan-backed Sankoh loyalist, battled Nigerian troops to seize the main diamond-mining district of Kono. It was widely reported that the Nigerian peacekeepers were lax due to their own in-

volvement in alluvial diamond mining. RUF and junta forces soon took control of the Makeni-Magburaka axis, giving them control of the main approach roads to Kono and much of the north of the country, where former government troops had their greatest support. In December, an audacious attempt to take Freetown began.

Junta fighters entered eastern Freetown on January 6, 1999, forcing sections of the government to flee. For a period of time, the president slept in Conakry, the Guinean capital, and by day he administered his country from Freetown's international airport at Lungi, protected by Nigerian troops. The civilian casualty rate from the attack amounted to some 7,000 to 8,000 deaths. Many terrible atrocities were committed, including random amputations and burning alive entire households. These acts were committed especially by units of the West Side Boys, which by then included former army recruits and their irregular associates.

The RUF tended to occupy rear positions, such as at Waterloo, on the road out of Freetown, and close to the forest in which they felt most at home. Some RUF units were at the forefront, however, focusing in particular on Pademba Road Prison. These forces were hoping to find and release their leader, Foday Sankoh, who had been detained in the aftermath of the Abidjan peace negotiation, in February 1997. Sankoh had been tried for treason in October 1998, as the junta revival began, and was awaiting confirmation of his death sentence. The government quickly moved him to another location when the attack on Freetown began. The peacekeepers were also guilty of abuses, carrying out summary executions of young people suspected of RUF membership. Civilians manipulated the excited Nigerian troops to settle old scores, at times pointing the finger at young neighbors suspected of thieving or adultery. Under the rules of the Sierra Leone Special Court, war crimes by troops invited into the country by the legitimate government can only be tried in the sending country.

Nigerian troops ousted the junta from Freetown after three weeks of fighting, but suffered heavy casualties—as many as 1,000 Nigerian soldiers may have been killed. A scaling back of Nigerian peacekeepers was underway before the attack. Abacha had died, and Nigeria was about to return to democracy. The president-elect, Olusegun Obasanjo, had made it clear, even while campaigning, that he had reservations about Nigeria's peace-enforcement role in Sierra Leone. The days of the Nigerian-dominated ECOMOG were numbered. President Kabba, with no army of his own, had little option but to sue for peace.

The Lomè Peace Agreement offered the RUF a better deal than it had been offered at Abidjan. The death sentence on Sankoh was lifted, and the movement was offered three senior government posts in a power-sharing agreement. Fighters were amnestied, although the UN entered a reservation concerning amnesties for indictable war crimes. Sankoh became the national commissioner for minerals, with vice-presidential status. The RUF hoped this would lead to controls on the cancerous corruption that had blighted politics in Sierra Leone for more than forty years. Some assumed that the diamonds were all Sankoh ever wanted, and that he and his cronies would become the new national mineral-rich elite. Former army elements were marginalized in the agreement. The West Side Boys took up a life of banditry and hostage-taking on the main road leading into Freetown, later clashing with the British army.

British intervention in Sierra Leone in May 2000 was occasioned by the near collapse of the Lomè agreement. ECOMOG finally withdrew in April 2000, to be replaced by a UN force, UNAMSIL, as had been envisaged in the Lome agreement. UNAMSIL was ill prepared for its task, however. In particular, it knew little about the identities, backgrounds, and factions within the fighting groups controlling the RUF. Political leaders of the RUF had never gone back to the movement in the bush when the Abidjan agreement foundered. Not many military commanders in the field had passed through the RUF ideological training program, which was based on the *Green Book* and other Libyan writings, teachings of Kim Il Sung, and Sandanista sources on guerrilla warfare, as well as various manuals on community leadership and cooperative development. Those without political training made up disciplinary rules in very harsh operational conditions, and with little or no effective supervision from Sankoh or other movement intellectuals. Violent and sometimes bizarre punishments were their main tools for subjugating unwilling civilian populations, at times reflecting the codes and norms of adolescent gang culture.

UN peacekeepers (familiarly known as Blue Helmets) attempted forcibly to disarm the RUF. Oblivious of the international consequences, nervy teenage fighters hit back at the Blue Helmet forces, killing some and taking large numbers hostage. Meanwhile, rumors swept Freetown that the RUF was once again on the march. These were given currency by UN sources and only later corrected. Some members of the RUF political leadership in Freetown were rounded up and jailed on Sunday, May 7, 2000, and a peace demonstration at Foday Sankoh's house on Spur Road on the next day turned violent; it was described by one of the organizers as a "riot cum lynch-mob." Sankoh's panicky guards

opened fire after the security forces lost control of the crowd, killing over twenty demonstrators. Sankoh and his supporters escaped into the hills above Freetown. Some made it through bush tracks to the movement's safe haven in Makeni. A group of women fighters saved their lives by claiming to be out collecting firewood when they were attacked by the escaping RUF party. Sankoh himself spent several days in the forests above Freetown before deciding to surrender himself to the authorities. Detained by the government for many months, he was eventually handed over to the jurisdiction of the special court, and died in captivity in August 2003, before he could stand trial for his alleged war crimes.

The objective of the British intervention in Sierra Leone was to stabilize the situation, encourage resolution of the UN hostage crisis, enable the full deployment of UNAMSIL, and (over the longer term) train a new Sierra Leonean army. The British government, under prime minister Tony Blair, had been uneasy about Sierra Leone ever since the Legg report revealed collusion between the private security company assisting the exiled government of Sierra Leone and middle level officials of the British Foreign Office acting without proper political authorization. The Legg enquiry and subsequent parliamentary debate exposed an agent of British overseas military intelligence, earlier based in Namibia, who had become, after retirement in 1993, a representative of the mining company seeking a kimberlite concession in Sierra Leone. It also disclosed the role played by the British ambassador, who had offered advice to the Kabba government on certain security options "in a private capacity." Sources in the Sierra Leonean Ministry of Defence have indicated that they were advised to maintain military pressure on the RUF during the Abidjan negotiations and were promised international military assistance should the policy backfire; but it may not have been clear that some of the advisors came wearing two hats, and that military assistance would come from private sources. The scandal made a mockery of New Labour's boast of an ethical foreign policy, and the Blair cabinet was persuaded that a properly authorized military intervention in Sierra Leone might make amends.

British forces were deployed to secure a road linking the airport at Lungi, the main junctions controlling road connections from Freetown to the provinces, and Freetown itself. This calmed the city and sobered the RUF. Having offered support to groups seeking to destabilize the regime in neighboring Guinea, the RUF was further constrained by decisive cross-border action by the Guinean army. Careful negotiations were begun with the RUF to release the UN hostages. In August the West Side Boys, marginalized from the peace process and anxious to advertize their own plight, seized a British security patrol. They were met with a sharp military response. The hostages were freed and the group rounded up, lifting the threat of bandit raids on the Freetown road.

The deployment of the Bangladesh Battalion of UNAMSIL along the Makeni-Magburaka axis was also an important step in consolidating the peace. Some of the RUF commanders had encountered texts on postwar cooperative development in Bangladesh during their ideological training, and these welcomed the arrival of the UNAMSIL forces. The battalion has since encouraged community reconstruction activities led by demobilized RUF commanders. Foday Sankoh came from a village in the vicinity of Magburaka, and his movement began to show signs of developing a permanent presence in the area, deploying in particular into community reconstruction and agricultural development.

With little scope for further RUF offensives after the British and Guinean interventions, the government and the RUF, under Issa Sesay, a commander trusted by Sankoh, negotiated a permanent cease-fire agreement—the Abuja Accord—in November 2000. Other RUF commanders, including a Green Book die-hard named Samuel Bockarie, removed to Liberia, where they worked for Charles Taylor. They later shifted operations to the war in Cote d'Ivoire. Bockarie was indicted by the Sierra Leone Special Court in absentia. He was killed in May 2003 on the Liberian-Ivoirian border, allegedly in a shoot-out with his own forces. He may, however, have been killed on the orders of Charles Taylor, who was no doubt anxious to prevent Bockarie from testifying against him should he be brought before the court. Johnny Paul Koroma escaped from the RUF in Kailahun, and was reinstated in Freetown in negotiations with junta elements subsequent to the signing of the Lome accord. Pledging loyalty to Kabba, he helped defend Freetown in May 2000, but was subsequently accused of a further coup attempt and escaped the country. He was sought by the special court for war crimes. It was rumored that he had been killed in Liberia, but other sources suggest Koroma escaped to Ghana. The RUF, CDF, and elements from the former government army submitted to disarmament, demobilization, and reintegration, a process effectively completed by the end of 2001. President Kabba declared the war at an end on January 18, 2002.

The war in Sierra Leone is complex and fits no prevailing stereotype. It is not the aftermath of a cold war proxy struggle (unlike wars in Angola or Somalia). Nor is it a war of ethnic animosity (as in Rwanda). The RUF

[CHARLES TAYLOR]

Charles Ghankay MacArthur Dakpana Taylor was born in Arthington, Monrovia, on January 29, 1948. He became the leader of the armed National Patriotic Front of Liberia (NPFL) and later became president of that country from 1997 to 2003. On June 4, 2003, Taylor was indicted by the Special Court in Sierra Leone, accused of crimes against humanity in the civil war in Sierra Leone. The charges relate to a broad range of atrocities, indictees being not necessarily actual perpetrators, but those who "bear the greatest responsibility" for the commission of the acts. The case against Taylor alleges his material support for and encouragement of the Revolutionary United Front of Sierra Leone (RUF) after the collapse of the Abidjan peace accords signed in November 1996.

The UN Security Council's panel of experts on Liberia established in 2000 that Liberia was at the heart of a shadowy international network of support for the RUF, involving Israeli, South African, Kenyan, and Ukrainian arms suppliers and diamond mining interests. The Abidjan peace accords were still in the process of implementation when army mutineers overthrew the elected government of Sierra Leone and invited the RUF to take part in a military regime (May 1997). This junta was, in turn, deposed by Nigerian-led peacekeeping troops in February 1998, and the RUF was forced into the bush once more.

Charles Taylor helped the movement to revive. Arms were flown in from Eastern Europe via Burkina Faso. Training of RUF fighters was undertaken in Liberia by a former colonel of the South African Defence Forces, recruited in 1998 to develop an anti-terrorist unit from fighters formerly associated with Taylor's guerrilla forces. This group included Sierra Leonean, Burkinabe, and Gambian nationals. The RUF took over the rich Kono diamond fields in eastern Sierra Leone in October 1998, paying its materiel suppliers in diamonds. Liberia briefly became a major exporter of rough diamonds from Sierra Leone. In effect, these "blood diamonds" paid for the revival of the war.

This was the period when many of the worst atrocities occurred, and Charles Taylor was indicted as one of those "most responsible." The Liberian leader first encountered the leaders of the RUF at the "World Revolutionary Headquarters" (al-Mathabh al-Thauriya al-Amaniya), a facility run by the Libyan secret services in Benghazi, Libya. Colonel Gaddafi was at the time encouraging a pan-Africanist movement that included the leaderships of various West African revolutionary groups. Taylor had reached Libya by a tortuous route. Having first worked for and then falling out with the Doe government in Liberia, he fled to the United States, pursued by a Liberian arrest warrant for embezzlement. He was taken into custody and held in the Plymouth County House of Correction, Plymouth, Massachussets, to await extradition, but he escaped and eventually joined a group of Liberian dissidents who had helped Blaise Compaore overthrow Thomas Sankara to become President of Burkina Faso. It was Compaore who introduced Taylor to Gaddafi. The Libyan leader initially accepted the Liberian economist as a true convert to the Green Book cause (the *Green Book* was Gaddafi's version of *Mao Zedong*), but later decided that Taylor was a fake.

RUF fighters helped Taylor in his struggle for political predominance in Liberia—a result finally achieved not through the gun but through the ballot box in a war-weary country. Taylor's support for the RUF was based not only on long-term loyalties among Green Book comrades-in-arms, but also designed to secure a flow of resources from the rich diamond fields and forest of eastern Sierra Leone to sustain his own political hegemony in Liberia. As a result of Security Council scrutiny of his support for the Sierra Leone rebels, Taylor was made the subject of a UN travel ban in 2001, and the Swiss government later froze his overseas assets. Wounded economically, Taylor could no longer hold armed dissident groups at bay. War again flared in Liberia. To end fighting that threatened large numbers of civilians, Nigeria offered Taylor conditional asylum, an offer that Taylor accepted on July 11, 2003. He stepped down as president one month later and departed for Calabar in Nigeria, beyond the jurisdiction of the Special Court.

For further reading, see Ellis, S. (1999). *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War.* London: Christopher Hurst; and UN Experts (December 2000). *Report of the Panel of Experts Appointed Pursuant to the UN Security Council Resolution 1306 para. 19, in Relation to Sierra Leone.* New York: United Nations Organization.

was founded by and recruited young people from all ethnic backgrounds suffering educational marginalization and social exclusion. More recently, the war has been assimilated to a thesis fashionable in the World Bank that all recent civil wars are better understood in economic rather than in political terms. Because the economy of Sierra Leone is dominated by alluvial diamonds, the war—it is reasoned—must have been

During the ten-year civil war in Sierra Leone, the Revolutionary United Front routinely perpetrated mutilation as a form of punishment or coercion. [LOUISE GUBB/CORBIS]

caused by the struggle for diamond wealth. The diamond thesis is useful in explaining how all factions (government troops, international peacekeepers, and the RUF) succumbed to diamonds, either to pay for weapons or as a diversion from fighting, thereby compromising operations and prolonging conflict. But the RUF did not prioritize control of diamond districts. In 1991, its sights were set on capturing Bo and Kenema, key provincial towns, and in 1995 it was hammering on the gates of Freetown. The movement itself argues that it was dragged into the diamond districts by its enemies, who preferred skirmishing around diamond pits rather than being ambushed in the forests of the Liberian border. Greed for diamonds is thus, at best, only a partial explanation for the war in Sierra Leone.

The conflict might be better regarded as a reflection upon poverty and globalization, resting on an awareness (created by videos, satellite broadcasting, and mobile phones, available even in remote mining camps) of the huge gap in life chances between the world's richest and poorest countries. Many RUF cadres state frankly that their personal ambition is to reach America or Europe, perhaps to obtain a technical education, for which mastery of an AK47 is a poor substitute. Many senior fighters in the RUF, women included, have opted for computer training as part of their demobilization package, believing this will put them in contact with a wider technological world. In the bush, the movement offered able children technical training in its signals unit, and Sankoh, a signaller in the army, supervised the examination procedures.

Two key statistics are germane to understanding the crisis in Sierra Leone. According to the UN Development Program (UNDP), Sierra Leone has hovered for a number of years at or near the bottom of the Human Development Index, which measures not just per capita income, but aspects of social development such as gender equality, educational opportunity, and life expectancy. Additionally, Sierra Leone has now surpassed Brazil as the most unequal country in the world. In such a small, compact, and tightly intermarried nation, this is a staggering fact. It means that all the contrasts of wealth and poverty in the world can be found even at the family level.

In a reflective mood, villagers sometimes openly state that the greater part of the destruction was done by their own kith and kin. A political figure confessed that an RUF raiding party that burned several family houses was led by his own half-brother. A leading advisor to the president wrote in a newspaper about how, under the junta, he was humiliated by learning that an RUF killer, renowned for his atrocity, turned out to be his own nephew. What sense of humiliation fuels desire for bloody vengeance against even family members? A major factor seems to be that, underneath the veneer of local social and family solidarity, there lurks a huge inequality. Some members, through the unaccountable wealth from diamonds, are able to access modern education and live fulfilling and successful professional lives, often in international employment, whereas others, barely able to complete primary education, are condemned to an impoverished existence on farms, regulated by elders who operate legal procedures bequeathed by colonialism in which some of the social disadvantages of domestic slavery remain encoded.

Young RUF recruits rallied to the movement because of the fines, beatings, and (at times arbitrary and illegal) punishments of village elders and chiefs. Village marriage continues to reflect conditions of production and reproduction associated with the days of domestic slavery. Most girls are married in their teenage years to older polygynists, and young men cannot afford to marry. Those who set up informal unions risk being fined for "woman damage." Much farm labor still goes to elders and in-laws in the form of bride service. Sierra

Leone was founded in 1787 as a home for former slaves, and later for those who were rescued on the high seas by the Freetown-based British anti-slavery squadron but, ironically, domestic slavery was abolished there only in 1928, after prodding by the League of Nations. The British were anxious not to provoke the rural chiefs, who were stirred to revolt in 1898 by the threat that colonial law would free their tied labor force. Even in the early twenty-first century, the government seems at times more concerned to placate rural tradition than to address the needs of disenchanted youth, confusing the causes of the war of 1898 with the causes of the war of 1991.

If there was any ethnic component to the war, it is found in Kailahun, and especially among the Kissi, an ethnic group that straddles the borders of three countries by the artificial borders established during colonialism. Anthropologist Claude Meillassoux has written that "Kissi" derives from a name given by a savannah merchant group, the Fula of Futa Jallon, to the forest peoples they raided for slaves. In some respects the civil war, and its extremes of brutalizing, dehumanizing violence, can be regarded as a long-delayed slave revolt, at least in this region. Slave revolts are especially notorious for atrocities when the denial of human potential exists side-by-side with freedoms enjoyed by others, in short, when slaves live as part of a domestic group. The horribly violent Turner Revolt in Virginia in 1834 is an example of this. Similarly apocalyptic and brutal ideas about the need to destroy society itself, in conditions where only some are free, can be detected in aspects of the war Sierra Leone.

More routine explanations may serve to account for much of the violence, however. A depressing law of tit-for-tat escalation seems all too apparent. The thuggery of the APC regime under Stevens deadened political nerves and consciences. From its involvement in the Liberian war, the RUF imported knowledge that civilians can be controlled by terror. The army's summary execution of rebels in the early days of the war locked up captives in the RUF, turning them into loyalists. Double-dealing in peace negotiations resulted in a further cycles of revenge attacks. Few prisoners were taken by peacekeepers, private security, or civil defence militia forces. Fear of summary executions turned embattled RUF cadres against communities that had clubbed together to pay for the initiation of CDF volunteers. Civilian lynchings of rebel suspects laid the foundations for the massacres and mass amputations that followed. Atrocities mounted as militias were forced into retreat.

All this violence was illegal, and none of it is excusable. But the world's media only notice a country as apparently insignificant as Sierra Leone when the level of violence passes a certain threshold. The search for justice and accountability has to dig deeper. Here the UN-funded Special Court for Sierra Leone has been, in some eyes, something of an expensive disappointment. It took so long to arrange the court that some of its key defendants were lost. It is a very expensive process, in the world's poorest country, where most citizens agree that grinding poverty was a main cause of the war. Sankoh and Bockarie have taken their testimony to the grave. Taylor and Koroma remain fugitives. Hinga Norman (the leader of the CDF) is a national hero to many. Several of the RUF military command lack insight into the movement's origins and political aims, and even if condemned, are unlikely to expose the political issues at the heart of the conflict. The indictments are too general—referring not to specific involvement in war crimes and atrocities, but to the general responsibility for mayhem borne by the senior military commanders of RUF and CDF alike.

The Truth and Reconciliation Commission (TRC) is, perhaps, in some respects even less satisfactory. Most testimony appears to have been regulated by adherence to a well-known local proverb: "talk half, leave half." All sides have things to hide, and listeners to the sessions that have been broadcast on the radio suck their teeth at the omissions and half-truths. The TRC seems, to some, more a ritual of reconciliation than an attempt to get at the truth. Opinions are divided about whether this is a good or bad thing. Some think that the truth shall make you free, and others—aware that local culture often deploys ritual in order to forget—believe that in a conflict as complex as Sierra Leone, it is better to look only to the future. Until the world is ready to admit that its own failure to abolish extreme poverty or to uphold the right to social and economic development has contributed to this war of globalization, it is perhaps unfair to expect Sierra Leoneans to expose the secrets of a violent family quarrel.

SEE ALSO Liberia; Mercenaries; Peacekeeping; Sierra Leone Special Court; Truth Commissions

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Paul Richards

Sierra Leone Special Court

The eight and one-half year armed conflict between the government of Sierra Leone and rebel groups (in effect a civil war), which officially ended on July 7, 1999, with the signing of the Lomè Peace Agreement, is unrivalled in its particularly mindless violence, directed mainly against the civilian population. The signature of the Revolutionary United Front (RUF) rebel group was the amputation of the hands, arms, and other body parts of civilians, including those of children and babies—a grimly ironic reference to the election slogan of the President of Sierra Leone, Ahmad Tejan Kabbah: "The future is in your hands." Other favored practices of the rebels included burning civilians alive; gouging out eyes; attacking civilians with machetes and/or shooting them; the forced recruitment of child soldiers; and the kidnapping of girls (who would be coerced into sexual slavery).

It would be difficult to be categoric about the war aims of the RUF and other armed opposition groups. The RUF was established and originally funded by former Liberian President Charles Taylor, who had the intention of grabbing power in Sierra Leone. But the real driving force of the conflict was control over natural resources, especially the country's diamonds. This war was the continuation of business by other means, to paraphrase the famous military tactician, Karl von Clausewitz.

The extreme nature of the violence, and the fact that the victimization of the civilian population was not the "collateral damage" of a conflict otherwise fought between two armies but the modus operandi of the rebels, brought the conflict in Sierra Leone to international attention. However, while expressing concern, the international community would make no commitments to armed intervention or the type of help that could have turned the tide of the civil war. Two peace agreements were signed and quickly collapsed. The regional peacekeeping force, ECOMOG, which is the armed force of the Economic Community of West African States (ECOWAS), was deployed to assist the government of Sierra Leone in defeating the rebels. The government even resorted to hiring mercenaries to help it win the war, but to no avail. With the rebels controlling two-thirds of the national territory (containing one-half of the population), and seemingly no way to defeat the rebels militarily, the government—under pressure from the international community, particularly the United States and the United Kingdom—decided once again to sue for peace.

The Lomé Peace Agreement, signed on July 9, 1999, in the capital city of Togo, was a highly compromising document in which the government of Sierra Leone, in its desperate bid to end the conflict, offered a blanket amnesty to all the rebels, as well as government troops that might have committed serious crimes, and agreed to bring the RUF into the government. It also placed the RUF's notorious leader, Foday Sankoh, at the head of a commission known as the Strategic Minerals Commission, which would oversee the country's mineral resources and postwar reconstruction, with responsibility for "securing and monitoring the legitimate exploitation of Sierra Leone's gold and diamonds" and reviewing all mining licenses in the country. What were in effect rewards for brutality outraged many international observers, and the amnesties were considered to violate international law. In an oral disclaimer to the Peace Agreement, made at the time of the signing of the agreement, the United Nations (UN) Special Representative for Sierra Leone, Francis Okelo, said that the amnesty did not apply to genocide, crimes against humanity, and other serious violations of international humanitarian law. Backed into a corner, the government of Sierra Leone felt that it had no alternative.

The government's willingness to offer the best possible terms to the rebels in order to persuade them to renounce violence did not produce the hoped for peace and stability. By May 2000 the Lomé Peace Agreement was on the verge of collapse, as the RUF and other rebel groups, who had refused to disarm or demobilize, attacked the UN peacekeepers who had been sent to police the shaky "peace."

Establishment of the Special Court for Sierra Leone

With the spirit of reconciliation fading fast in Sierra Leone, the government called for the creation of an international criminal tribunal that would try the rebels who had committed war crimes and crimes against humanity.

In response, on August 14, 2000, the UN Security Council unanimously adopted Resolution 1315, setting in motion a process intended to culminate in the establishment of a body to be called the Special Court for Sierra Leone. The resolution expressed the Security Council's distress over the "very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and the United Nations and associated personnel, and at the prevailing situation of impunity." It declared that persons who commit such crimes are individually criminally responsible, and that "the international community would exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness, and due process of law." The resolution went on to say: "[I]n the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace."

UN Resolution 1315, consisting of nine paragraphs, entrusted to the UN Secretary-General the task of negotiating an agreement to create an independent special court with the government of Sierra Leone. It recommended that the Special Court have subject matter jurisdiction over crimes against humanity, war crimes, and other serious violations of international humanitarian law. In contrast to the already existing ad hoc International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), the Special Court was to have a mixed character, with both international and national elements.

There were several reasons for the decision by the UN to propose a court of mixed character rather than a "pure" international one such as the ICTY or ICTR. In the first place, the government of Sierra Leone itself favored the establishment of a court that would have both international and national features. Second, there was no support at the international level for the creation of yet another very expensive ad hoc international criminal tribunal modeled on the ICTY or ICTR, which by the year 2000 were as a pair costing the UN approximately $200 million per year. Although the Statute of the International Criminal Court (ICC, located in The Hague, Netherlands) was adopted in July 1998, it could not hear cases concerning the war in Sierra Leone, as under Article 11(1) of the Statute: "The Court has jurisdiction only with respect to crimes committed after the entry into force [of the Statute], on July 1, 2002."

Following the adoption of Resolution 1315, the next step in the creation of the Court was the issuance by the Secretary-General, on October 4, 2000, of a Report on the Establishment of a Special Court for Sierra Leone. Annexed to the report were a draft agreement between the UN and Sierra Leone concerning the establishment of the Court and a draft statute for the Court, which were the starting points for the subsequent bilateral negotiations. The final versions of both the Statute and the Agreement were signed sixteen months later, in January 2002. In the interim letters were exchanged among the Security Council, the Secretary-General, and the government of Sierra Leone in an effort to resolve the main issues in contention, which were the size of the Court, its jurisdiction over persons, and funding for the Court. Final agreement on these issues was reached in February 2001. Delays thereafter were attributable to difficulties having to do with the acquisition of sufficient funding to establish and operate the Court. When the funding was secured, work began on the actual establishment of the Court, the hiring of staff, and the preparation of the first indictments.

The Agreement and the Statute

Although the Special Court for Sierra Leone has much in common with its antecedents (the ICTY and ICTR), it differs from them in several key respects. One fundamental distinction is that the legal basis of the Court is the bilateral agreement between the UN and Sierra Leone, and not a resolution of the Security Council.

The establishment of the Special Court by an agreement rather than a Security Council resolution offered both advantages and disadvantages. On the plus side, it meant that Sierra Leone was able to put the stamp of its own personality on the Court—to a far greater extent than the former Yugoslavia or Rwanda had been able to put theirs on the international tribunals. On the minus side, the Special Court, not having been established pursuant to the Security Council's Chapter VII powers, lacks the authority to issue binding orders to states. Although the Secretary-General had recommended to the Security Council that it endow the Special Court with binding powers, the Security Council declined to do so. This means that the Court cannot, for example, order a state to surrender a person for trial, and must depend on states' good will when it comes to cooperation.

Although the Agreement and the Statute each has its own purpose, there is some overlap between them and they should be read together. Apart from establishing the legal basis of the Special Court, the Agreement lays out the composition of the Court and the procedure for the appointment of its judges, prosecutor, and registrar. It establishes that the Special Court shall be located in Sierra Leone. There are provisions in the Agreement that deal with administrative and other technical matters, including the legal status of the

Court itself; the privileges and immunities of the judges, prosecutor, and registrar; and the privileges and immunities of international and Sierra Leonean court personnel. Immunity of counsel, witnesses, and experts, as well as the security, safety, and protection of these persons, are guaranteed. Practical arrangements regarding the establishment of the Court, the settlement of disputes, and the entry into force of the Agreement are also spelled out.

Structure and Size of the Special Court

The Special Court for Sierra Leone has a tripartite structure, consisting of a Registry, an Office of the Prosecutor, and Chambers of the judges.

The UN Secretary-General had originally proposed a Chambers consisting of two trial chambers, both composed of three judges, and one Appeals Chamber, in which five judges would serve. However, the Security Council rejected this, primarily on the basis of financial constraints, stating that "the Special Court should begin its work with a single Trial Chamber with the possibility of adding a second Chamber should the developing caseload warrant its creation." The Security Council also rejected the Secretary-General's suggestion of alternate judges.

Although the Security Council had asked the Secretary-General to consider the possibility of the Special Court's sharing the judges of the Appeals Chamber of the ICTY and ICTR, the Secretary-General rejected this proposal as unworkable. While the Secretary-General recognized the advantages of having a single Appeals Chamber that, as the ultimate judicial authority in matters of interpretation and application of international humanitarian law, would offer the guarantee of a coherent development of the law, he found that this goal might also be achieved by linking the jurisprudence of the Special Court to that of the international tribunals. Article 20(3) of the Statute provides that the Court shall be guided by the decisions of the Appeals Chamber of the ad hoc international criminal tribunals (for Rwanda and the former Yugoslavia), whereas Article 14(1) references the Rules of Procedure and Evidence of the ICTR.

As the Special Court has jurisdiction over domestic as well as international crimes, it was necessary that at least some of the Court's judges have knowledge of Sierra Leonean law or at least have a common law background. The Agreement and Statute thus provide that one of the three judges of the Trial Chamber and two of the five Appeals Chamber judges shall be appointed by the government of Sierra Leone. The Agreement further provides that the Secretary-General should particularly seek nominations for the remaining Trial and Appeals Chambers judges from member states of the ECOWAS and the British Commonwealth. Judges serve four-year terms and are eligible for reappointment.

The chief prosecutor, who works only for the Special Court, is chosen by the UN Secretary-General; the Deputy must be a Sierra Leonean national. The prosecutor is appointed for a four-year term and is eligible for reappointment. The prosecutor acts as an independent and separate organ of the Court and is prohibited from receiving any instructions from any government.

The Registry is responsible for the day-to-day running of the Court. It includes the Victims and Witnesses Unit, which is responsible for establishing security measures for the protection of witnesses who testify before the Special Court.

The Jurisdiction of the Special Court

The Statute stipulates that the Special Court shares jurisdiction with the national courts of Sierra Leone, but enjoys primacy over those courts and, at any stage of its proceedings, may formally request a national court of Sierra Leone to defer to its competence. Defendants are not vulnerable to the risk of double jeopardy. Article 9 of the Statute makes clear that no person who has been tried before the national courts can later be tried by the Special Court in respect of the same acts. But there are exceptions. Retrial is possible if: (1) the acts for which the defendant was tried in a national court were characterized as ordinary crimes; (2) the national proceedings were not impartial or independent; or (3) the national proceedings were designed to shield the accused from international criminal responsibility or were not diligently prosecuted.

Time Limits

Given the Special Court's limited budget, there existed a need to limit its caseload. This was partly achieved by restricting the Court's temporal jurisdiction. Although the Secretary-General recognized in his Report on the Establishment of a Special Court for Sierra Leone that the armed conflict in Sierra Leone officially began on March 23, 1991, when the RUF invaded Sierra Leone from Liberia, the Court was given temporal jurisdiction that extended only as far back as November 30, 1996, the date of the signing of the Abidjan Peace Agreement. This latter date meant that the Court's jurisdiction would encompass the period during which the most serious crimes were committed. The Court's jurisdiction is open-ended.

A further issue that might have impacted on temporal jurisdiction was the amnesty granted in the Lomé Peace Agreement. If the amnesty were considered to be legal and in force, the Special Court's jurisdiction

would then extend only to crimes committed after July 7, 1999—whereas if that amnesty were illegal, the Court would also enjoy jurisdiction over crimes committed before that date. In his October 2000 report, the Secretary-General stated: "[T]he United Nations has consistently maintained the position that amnesty cannot be granted in respect of international crimes, such as genocide, crimes against humanity, or other serious violations of international humanitarian law." Scholars agreed. Article 10 of the Statue of the Special Court therefore rejects amnesty in respect of international crimes, but leaves open the question of whether national crimes can be prosecuted by the Special Court in instances in which an amnesty has been granted. It can be argued that the Court's temporal jurisdiction concerning national crimes begins only on July 7, 1999.

Jurisdiction over Persons

Discussion of the Special Court's personal jurisdiction focused on two issues: (1) defendants' position in the chain of command and level of personnel responsibility; and (2) whether the Court should have jurisdiction over children who were suspected of having committed atrocities.

Concerning the first issue, the parties to the Statute had to decide whether the Statute itself should place restrictions on who was and was not a prosecutable defendant, or whether this should be left to the discretion of the prosecutor. From the outset it was agreed that only those most responsible for the crimes committed in Sierra Leone should be prosecuted before the Special Court. However, some time elapsed before there was agreement as to the exact wording of the Statute's Article 1, concerning the Court's personnel jurisdiction over persons. The Secretary-General's original draft statute provided that the Special Court should have jurisdiction over "persons most responsible for serious violations of international humanitarian law and Sierra Leone law." Subsequently, the Security Council changed this to "persons who bear the greatest responsibility." The Security Council added to the Secretary-General's draft Article 1 the words: "including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone." This removes any ambiguity as to whether the Court has jurisdiction over crimes that were committed after the signing of the Lomé Peace Agreement.

Responding to these adjustments, the Secretary-General stated that "the words [of the Security Council]. . .provide guidance to the prosecutor in determining his or her prosecutorial strategy." He also stated that although he agreed that the Special Court should prosecute only those most responsible for serious violations of international humanitarian law, such a restriction "does not mean that the personal jurisdiction is limited to the political and military leaders only. Therefore, the determination of the meaning of the term *persons who bear the greatest responsibility* in any given case falls initially to the prosecutor and ultimately to the Special Court itself."

At the same time, the inclusion of this wording (having to do with the Court's ultimate discretion in respect of jurisdiction over persons) in the final version of the Statute of the Special Court in combination with the Court's limited financial resources suggested that the Court's main focus would be rebel leaders. The initial indictments filed by the Chief Prosecutor David Crane supported this assumption. Although violations of international humanitarian law by persons other than rebel leaders were documented, the Security Council indicated that they should be tried in other forums. The Security Council specified that the primary responsibility for prosecuting members of peacekeeping forces, for example, fell to the sending state.

The other aspect of the Special Court's jurisdiction over persons that was in contention concerned the politically sensitive question of whether the Court should be able to prosecute child soldiers—and if so, what should be the age of criminal responsibility.

The involvement of minors (some not yet teenagers) in the commission of atrocities during the armed conflict in Sierra Leone has been well-documented. These children were mostly abducted and forcibly recruited into rebel groups, and were compelled to carry out atrocities, sometimes against members of their own families.

The Secretary-General's Report of October 2000 made reference to the "terrible dilemma" of jurisdiction in relation to these minors. Although it was widely recognized that the crimes in question were committed by youths who had been under some form of duress and intoxication, there was considerable popular support within the country for prosecuting at least those minors suspected of having committed the very worst crimes.

The agreed upon solution left open the possibility of their being tried, and built into the Statute a number of safeguards in the event that they would be tried. Article 7 of the Statute provides that the Special Court has jurisdiction over persons who were fifteen years of age or older at the time of the alleged commission of the crime. It allows the Court to prosecute minors if they are judged by the Court to be among those persons who bore the greatest responsibility for alleged crimes, in accordance with Article 1. The judicial safeguards in-

clude separate trials from adults, protective measures, and provisional release pending trial.

Article 7(2) stipulates that any juvenile who is tried and found guilty by the Special Court should not be subject to imprisonment. It further provides that the Court may order any of the following as an alternative to imprisonment: "care guidance and supervision orders; community service orders; counseling; foster care; correctional, educational, and vocational training programs; approved schools; and, as appropriate, any programs of disarmament, demobilization, and reintegration or programs of child protection agencies." Moreover, several articles stipulate that judges, prosecutors, investigators, and registry staff shall be experienced in juvenile justice. Article 15 also provides that, in the prosecution of juvenile offenders, the prosecutor shall ensure that the child-rehabilitation programs are not endangered, and that, where appropriate, resort shall be made to the Truth and Reconciliation Commission.

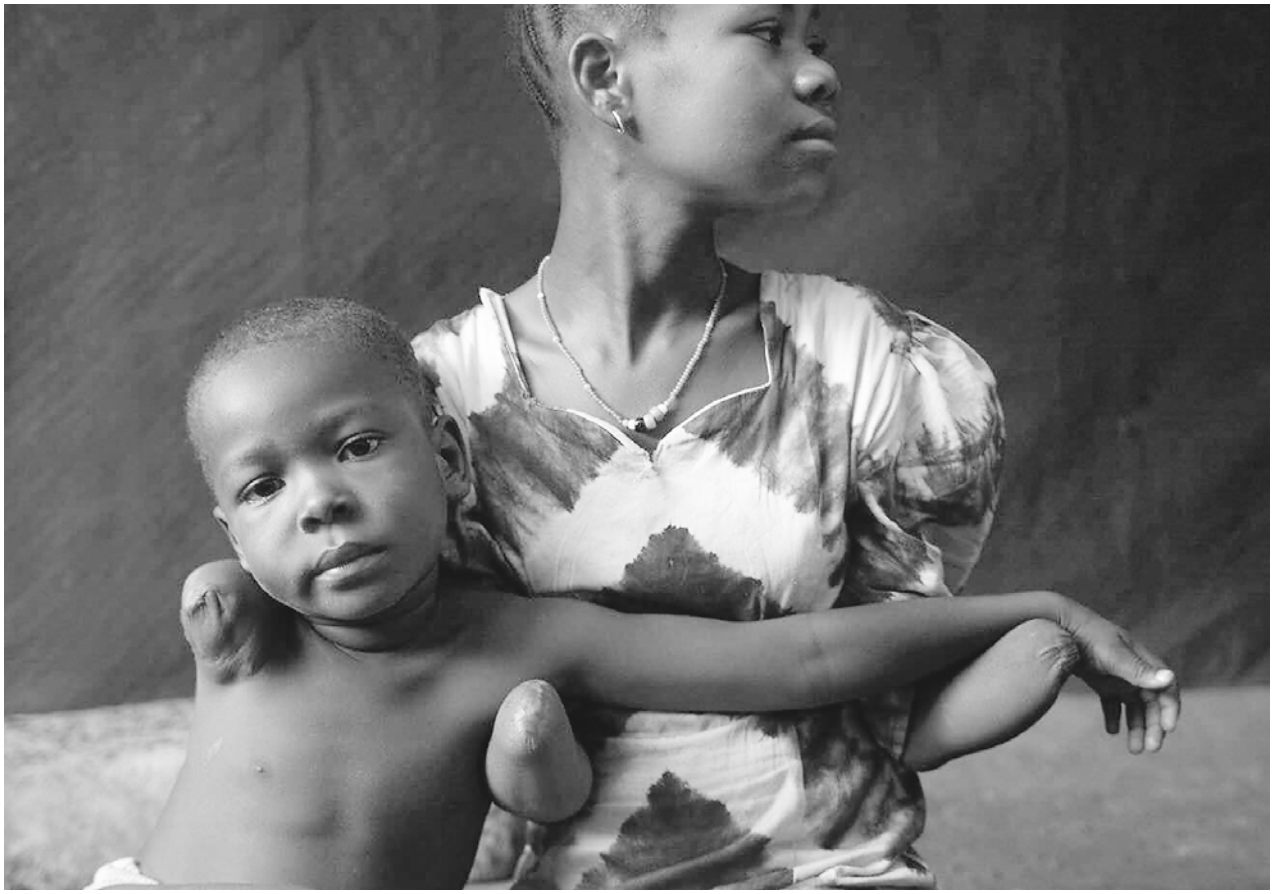
Although the age of criminal responsibility, fifteen years, is considerably less than the eighteen years stipulated in the Statute of the International Criminal Court, criminal responsibility at age fifteen is arguably not contrary to customary international law. The UN Convention on the Rights of the Child (1989) has provisions in respect of the prosecution of children and the legitimate detention of children, but does not specify a minimum age of criminal responsibility—although it stipulates that capital punishment should not be imposed on anyone younger than eighteen years at the time of the alleged offense. In relation to this, the criminal codes of many states allow prosecutions of even very young children. In fact, the age of criminal responsibility under Sierra Leonean law is ten years of age, and persons over seventeen years can be given the death penalty.

Jurisdiction over Subject Matter

The Special Court has subject matter jurisdiction over four categories of crimes: crimes against humanity; violations of Article 3 (of the Statute), which provides for the protection of civilians in wartime (essentially a recapitulation of portions of the 1949 Geneva Conventions and their Additional Protocol II of 1977); other serious violations of international humanitarian law; and crimes under Sierra Leonean law. The last category of crime in particular contributes to the individual character of the Special Court and distinguishes it from the earlier ICTY, ICTR, and ICC, all of which have jurisdiction only over international crimes. Yet all of the provisions that specify the Special Court's subject matter jurisdiction to some degree depart from similar provisions that regulate those other tribunals.

Article 2 of the Statute of the Special Court offers another definition of crimes against humanity, or at least one whose common elements diverge slightly from those of earlier definitions contained in the ICTY, ICTR, and ICC Statutes, as well as the Charter of the Nuremberg Tribunal. Of all the definitions, the one contained in Article 2 of the Statute of the Special Court is the most pared down and essential definition, but at the same time it contains elements of each of the earlier definitions. It provides: "The Special Court shall have the power to prosecute persons who committed the following crimes as part of a widespread or systematic attack against any civilian population: [the list follows]." By contrast, each of the definitions in the ICTY, ICTR, and ICC Statutes required additional common elements, which were added in order to limit the jurisdiction of those particular tribunals. In particular, unlike the statute of the ICTY, the Statute of the Special Court in contrast does not require that crimes against humanity be linked with an armed conflict. As for the specific acts listed in Article 2 of the Statute of the Special Court, most are taken almost verbatim from the Statutes of the ICTY and ICTR. The list is not as comprehensive as that contained in the crimes against humanity provision of the ICC Statute. The most significant variation (from the ICTY and ICTR delineations of crimes against humanity) is found in paragraph (g) of Article 2 of the Statute of the Special Court, which has provisions related to sexual crimes, and which was borrowed from the ICC Statute. Whereas the ICTY and ICTR Statutes simply list "rape" as a crime against humanity, the Statute of the Special Court mentions "rape, sexual slavery, enforced prostitution, forced pregnancy, and any other form of sexual violence." The other crimes designated as crimes against humanity in Article 2 include: murder; extermination; enslavement; deportation; imprisonment; torture; and persecution. The only distinction between this list and analogous lists in the ICTY and ICTR Statutes (excluding the sexual crime distinction) concerns the crime of persecution. Whereas the Statutes of the ad hoc tribunals refer to "persecutions on political, racial, and religious grounds," the Statute of the Special Court adds the designation "ethnic." Proof of malevolent intent is a required element of conviction for the crime of persecution, but not for the other crimes against humanity.

Article 3 of the Special Court Statute, which concerns war crimes committed during internal armed conflicts, is based on the equivalent Article 4 of the ICTR Statute. Article 3 identifies as war crimes: (1) violence to life, health, and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation, or any form of corporal punishment; (2) collective punishments; (3) the



Sierra Leone victims of rebel attacks sit in front of a tent at the Camp for War Wounded and Amputees in Freetown, October 11, 1999. [AP/WIDE WORLD PHOTOS]

taking of hostages; (4) acts of terrorism; (5) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution, and any form of indecent assault; (6) pillage; (7) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people; and (8) threats to commit any of the foregoing acts. The list is not exclusive and other war crimes may be prosecuted.

Like the ICTR (but unlike the ICTY and ICC), the Special Court does not have jurisdiction over war crimes committed in international armed conflicts. Although the armed conflict in Sierra Leone was generally a noninternational armed conflict (between the armed forces of Sierra Leone and armed opposition groups), the involvement of non-Sierra Leonean parties has been documented. The opposition groups are known to have received financial and military assistance from Liberia and Guinea. Whether or not that assistance was sufficient to require the reclassification of the conflict is an open legal question.

Article 4 of the Statute of the Special Court deals with other serious violations of international humanitarian law and has no equivalent in the ICTY or ICTR Statutes. It mentions three separate and distinct war crimes, only one of which is concerned with the conduct of hostilities. Its paragraph (a) gives the Special Court the power to prosecute persons for "intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities." Paragraph (b) gives the court jurisdiction with respect to the crime of "intentionally directing attacks against personnel, installations, material, units, or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations." Finally, paragraph (c) allows the Court to prosecute a crime (mentioned previously) that was common during the conflict in Sierra Leone, that is: "abduction and forced recruitment of children under the age of fifteen years into armed forces or groups for the purpose of using them to participate ac-

tively in hostilities." This crime is not mentioned in the ICTY or ICTR Statutes, although it appears in another form in the ICC Statute. Article 5 allows the Special Court to prosecute some crimes under Sierra Leonean law. The crimes are: (1) offenses relating to the abuse of girls, which are prosecuted under the Prevention of Cruelty to Children Act (1926); and (2) offenses relating to the wanton destruction of property, prosecuted under the Malicious Damage Act.

The Special Court lacks jurisdiction over the crime of genocide, in contrast to what is provided in the Statutes of the ICTY, ICTR, and ICC.

The Truth and Reconciliation Commission and Its Relationship to the Special Court

Following the adoption of the Truth and Reconciliation Commission Act on February 22, 2000, Sierra Leone took steps to establish a Truth and Reconciliation Commission (TRC). Although there is no formal relationship between the Special Court and the TRC, and although they are meant to operate completely independently from one another, their roles are designed to be complementary. Whereas the Special Court focuses on prosecuting the most serious perpetrators of offenses related to the Sierra Leonean armed conflict and should only gather information relevant to that purpose, the TRC's role is to provide the bigger picture in relation to the conflict, and to assist in the process of reconciliation. In particular, it gives a voice to the victims, and especially those who cannot appear before the Special Court. This is especially important considering that the Special Court allows victims only a very limited role. The TRC also provides a mechanism for dealing with child soldiers, and for allowing other former combatants to express remorse and ask for forgiveness.

The Commission is composed of seven members, four Sierra Leoneans and three non-nationals. It has a one-year mandate, to be preceded by a preparatory period of three months. The Commission's purpose is clearly set out in Article 6(1) of the Truth and Reconciliation Commission Act:

> The object for which the Commission is established is to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity; to respond to the needs of the victims; to promote healing and reconciliation; and to prevent a repetition of the violations and abuses suffered.

What this means in practice is that the Commission's functions are:

> (a) to investigate and report on the causes, nature, and extent of the violations and abuses . . . to the fullest degree possible, including their antecedents, the context in which the violations and abuses occurred, the question of whether those violations and abuses were the result of deliberate planning, policy, or authorization by any government, group, or individual, and the role of both internal and external factors in the conflict; and (b) to work to restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuse, and to the experiences of children within the armed conflict.

The Commission is instructed to carry out its work by means of undertaking research and investigations; holding sessions (some of which are public); listening to the stories of victims, perpetrators, and other interested parties; and taking individual statements and gathering additional information. It is to submit a report to the president at the end of its work. The TRC was formally inaugurated on July 5, 2002, began taking statements from victims and witnesses in December 2002, and is expected to complete its work sometime in 2004.

SEE ALSO International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; National Prosecutions; War Crimes

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Avril McDonald

Slavery, Historical

The growing concern with achieving freedom and social equality focuses attention on the inequity of slavery in the past, and poses continuing questions. Was large-scale slavery a necessary and inevitable stage of human development? Or was it an accident of history that might have been avoided? What is the nature and extent of slavery's legacy?

Slavery before Modern Times

Slavery existed in most societies for which we have historical records, but became extensive only where there were strong states or systems of commerce, and not in all of these. Of the populous regions of the pre-modern world, one belt of territories saw a particular development of slavery: the lands adjoining the Mediterranean, the Black Sea, and the Persian Gulf. From the time of the Babylonians through the classical era of the Greeks and Romans, the medieval societies of Muslims and Christians, and the rise of the Ottoman Empire, slavery waxed and waned with greater intensity in this region than elsewhere.

Captives were drawn from the region's peripheries: from the Nile Valley, the Caucasus, Slavic populations, and others. While the occupations of male slaves ranged widely—including miners, galley slaves, and soldiers—most slaves were female, working as domestics. In medieval times, the cultivation of sugar spread from the eastern Mediterranean to the west, with much of the work done by slaves. In time, the cultivation of sugar spread to islands of the Atlantic, and eventually to the Americas.

Distinctiveness of Modern African Slavery

The capture and enslavement of Africans by fifteenth-century Portuguese voyagers was initially little different from earlier Mediterranean slavery, of which it formed a small portion. By the late seventeenth century, however, the transatlantic shipment of African captives exceeded all the rest of slave trade, and the majority of the world's slaves were located in the Americas.

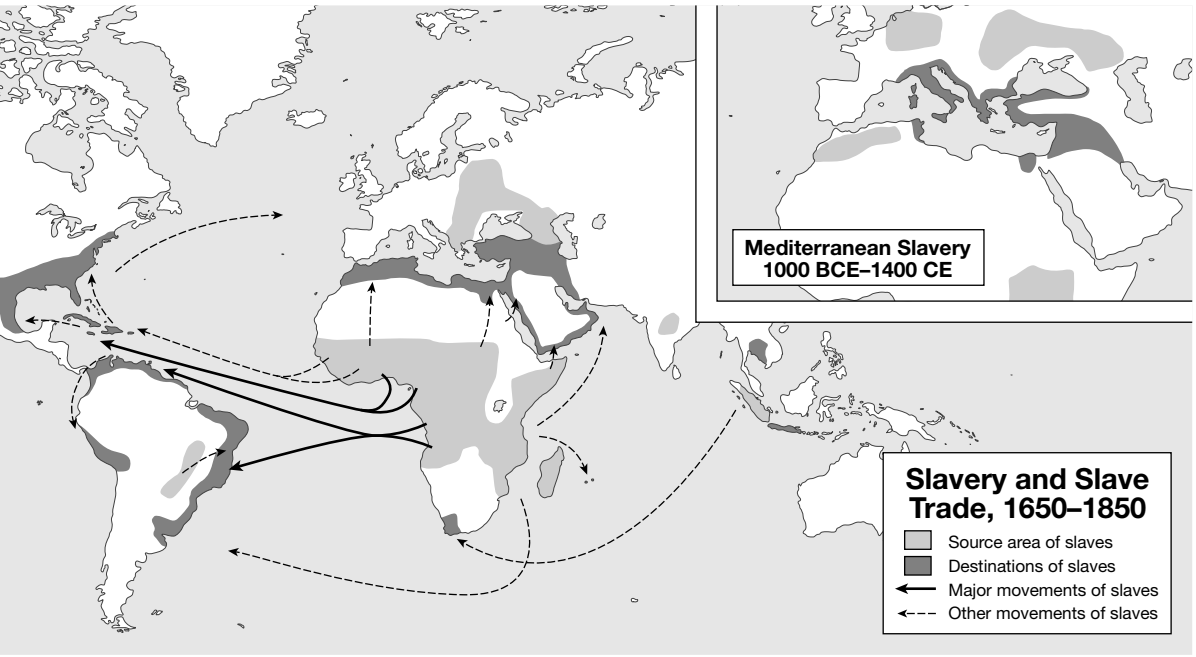
From then until the twentieth century, what distinguished African enslavement by Europeans from earlier systems of slavery was its magnitude, its incidence primarily on Africans, the development of racial categories, and the imposition of racialized social inferiority on Africans. Transatlantic slavery stimulated a more widespread system of slavery during the eighteenth and nineteenth centuries, including the expansion of slavery in Africa and the rise of slavery on all the shores of the Indian Ocean.

Rise and Fall of Atlantic Slavery and Slave Trade

The Atlantic slave trade began with the fifteenth-century capture of Africans who were sent to work in Iberian farms and households and who became laborers on sugar plantations from São Thomé to Madeira and the Canaries. With the discovery of the Americas, Africans were taken first to the Caribbean, then to the centers of Spanish colonies in Mexico and Peru. Portuguese settlers in Brazil relied first on enslaved Amerindians for labor, but in the late sixteenth century began sending slaves from West and Central Africa to Brazil. Slaves in this era came mainly from Senegambia, Upper Guinea, Congo, and Angola, with the total of slave cargoes ranging from 1,000 to 4,000 per year.

Early in the seventeenth century, the emerging Dutch Republic set a plan of displacing the Portuguese from the Atlantic, and began seizing Portuguese slave entrepŏts in Africa and plantations in Brazil. Once Portuguese resistance had largely repulsed the attacks by 1650, the Dutch turned to using their new African and Caribbean bases for introducing the system of sugar plantations to the Caribbean. The English and French joined them in expanding Caribbean and continental American slavery. From this time forth, the Atlantic slave trade exceeded the trans-Saharan trade in volume.

European purchasers of captives set up diplomatic and commercial relations with African leaders. Wherever warfare emerged, purchasers appeared to buy captives. As the slave trade continued from generation to generation, regular systems of supply developed. These ensured the transport and nutrition of captives in Africa, the paying of duties and fees to authorities along the trade routes, the sale and loading of captives aboard ship, and the Middle Passage of several weeks at sea.



howing historical slavery routes across globe. [MAP BY XNR PRODUCTIONS. THE GALE GROUP.]

in the Americas, captives underwent seasoning ocialization, further transport to their final desti-n, and assignment to their work.

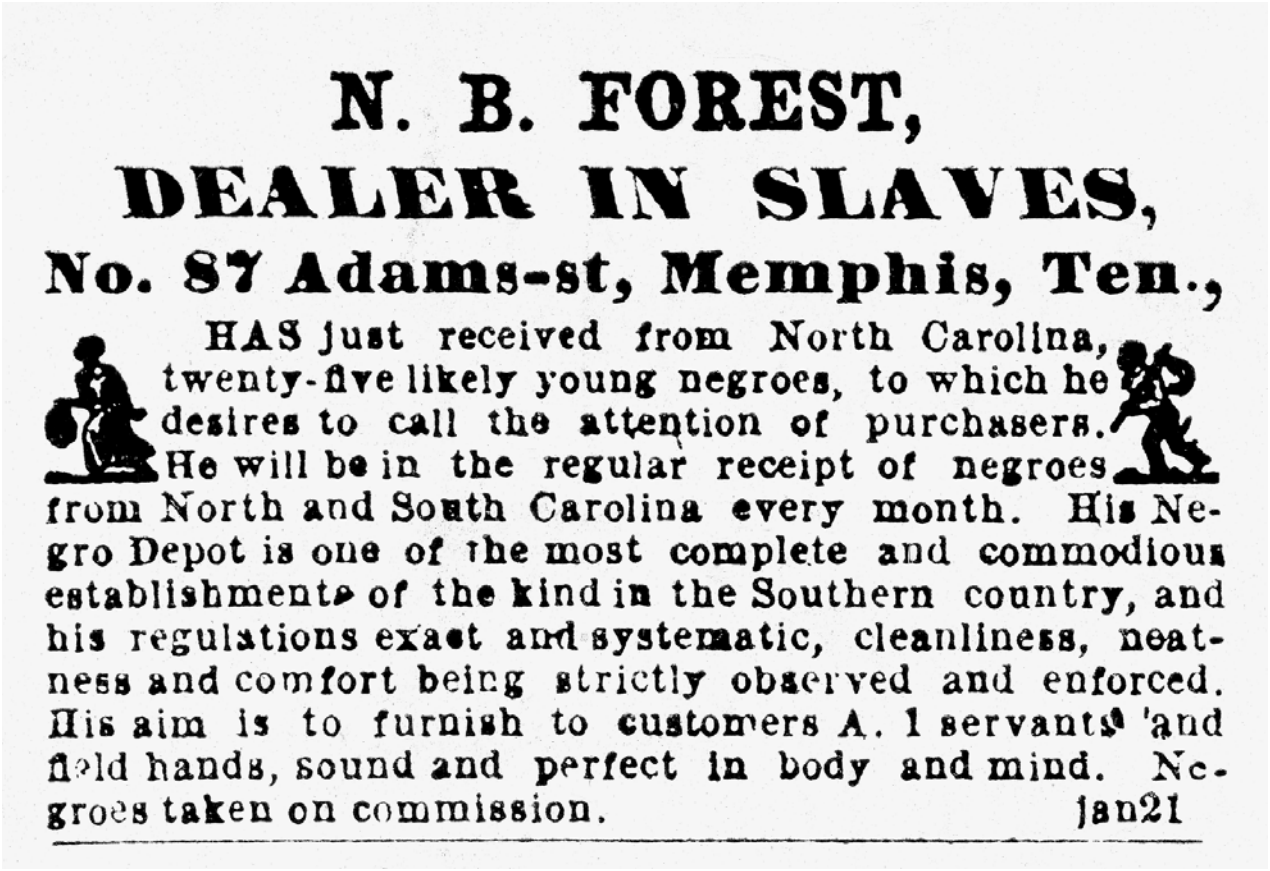
With the turn of the eighteenth century, the de- for slaves rose rapidly. In the period from 1790 30, the volume of slave exports nearly doubled he prices of slaves purchased in Africa rose by a of four or more. The processes of enslavement ded warfare (notably in the Gold Coast and Bight nin), raids (especially in the upper Niger Valley), pping (in the Bight of Biafra), and enslavement gh judicial process (in the Bight of Biafra and An- The West African ports of Ouidah and Bonny he Central African ports of Luanda and Loango ac-ted for about two thirds of all slave exports, but merchants bargained for portions of their cargoes most every port along the African littoral. In con-to the West African system of slave trade, in which peans remained offshore or in small coastal en-s, in Angola the Portuguese controlled a sizable y. There Portuguese officials and their allies over-he conduct of warfare and the collection and dis- of captives to Brazil, in the largest segment of the eenth-century Atlantic trade. The Bight of Benin he most intensively harvested region, followed by ght of Biafra and Central Africa, but every region ning the western coast of Africa suffered signifi-disruption. Slave cargoes rose to a peak of some 0 per year transported across the Atlantic in the s. The eighteenth-century Atlantic slave trade comprised the largest-ever human migration, to that point.

The nineteenth-century Atlantic slave trade was contested. It became illegal for British and Americans from 1808, but substantial shipments to Brazil and Cuba continued up to 1850. These shipments drew especially from the port of Luanda in Central Africa, but also from Lagos in the Bight of Benin. Meanwhile, as the Atlantic slave trade reached its peak and then began to decline, expanding demand caused slave shipments across the Sahara, the Red Sea, and the Indian Ocean to rise in the late eighteenth century and to continue until the end of the nineteenth century.

From the sixteenth through the nineteenth centuries, some eleven million captives were dispatched from the western coast of Africa across the Atlantic, another five million were sent across the Sahara and the Red Sea, and two million were carried off from the eastern coast of Africa in the nineteenth century. Somewhere between five and ten million inhabitants of sub-Saharan Africa lived in slave status at the end of the nineteenth century.

Modern Slavery to 1880: Causes and Effects

The demand for labor by European-based colonizers in the Americas was the single greatest cause for this system of slavery. Yet this demand, to be effective, required the concomitant supply of laborers who could be purchased at a sufficiently low price because they


N. B. FOREST,
DEALER IN SLAVES,
No. 87 Adams-st, Memphis, Ten.,
HAS just received from North Carolina, twenty-five likely young negroes, to which he desires to call the attention of purchasers. He will be in the regular receipt of negroes from North and South Carolina every month. His Negro Depot is one of the most complete and commodious establishments of the kind in the Southern country, and his regulations exact and systematic, cleanliness, neatness and comfort being strictly observed and enforced. His aim is to furnish to customers A. 1 servants and field hands, sound and perfect in body and mind. Negroes taken on commission. jan21

Nineteenth-century public notice advertising slaves for sale. [BETTMANN/CORBIS]

had been stolen, and perhaps because the productivity of African hoe agriculture was lower than that of European plow agriculture. The wealth generated in the Americas and the political disarray fomented in Africa by enslavement each served to reinforce the system. Ideologies of racial hierarchy grew up to rationalize this thriving but exploitative system, based on Christian doctrines of God's will and the curse of Ham or on secular doctrines of natural law and evolutionary hierarchy. The growth of the system and rebelliousness of the enslaved led to increasing violence from the masters. Although prejudice against foreigners existed in many societies, the history of the Atlantic slave trade shows that explicit racial discrimination was a result rather than a cause of the expansion of slavery.

Global effects of slavery and the slave trade included the creation of the African diaspora, that dispersal of persons of African origin all around the Atlantic, with smaller numbers as well at the shores of the Mediterranean and Indian Ocean. Slavery brought the development of racist practice and ultimately of its formulation in scientific terms. In response, however, slavery brought religious and secular movements for liberation and a movement for emancipation that went beyond slavery itself to address oppression by gender, nation, and religion.

In Africa, the effects of slavery were pervasive. Slavery expanded throughout Africa in association with the export slave trade. The population of West and Central Africa declined in the eighteenth and nineteenth centuries, and the population of East Africa declined in the nineteenth century in response to the captures and mortality of the slave trade. European conquests in Africa after 1880 brought an end to slave raiding, but generally did not bring emancipation to slaves until the passage of two or three decades.

The societies of the Americas all became racialized in one form or another. The Caribbean became dominantly African in ancestry, but with a hierarchy of color gradations. Brazil brought in nearly as many Africans as the Caribbean and became a racialized society, with overlapping subgroups. Racialization in the United States took the form of sharp white-black distinctions. Former Spanish territories of the mainland have significant African heritage, but this heritage has been minimized with time through the expansion of the category

Mestizo. Africans on the continent lived under racialized colonial rule for much of the twentieth century. Meanwhile, communities of African ancestry subsisted throughout the Mediterranean and Indian Ocean regions.

Heritage of Slavery since 1880

The end of slavery as a major social institution was a slow process. The major episodes of legal emancipation or gradual manumission of slaves took place across a century and a half. Slaves gained freedom in Haiti in the 1790s, in former Spanish America from the 1820s, in British territories in 1838, in French territories in 1848, in the southern United States in 1865, in Brazil in 1888—and the final absorption of millions of African slaves into other categories of subordination took place in the 1920s and 1930s.

Nonetheless, from the mid-nineteenth century, post-emancipation societies emerged in region after region as the slave trade and then slavery ended. The heritage of slavery in post-emancipation societies included the efforts of ex-slaves to achieve full social equality: reuniting and creating families, schooling at both basic and advanced levels, gaining entry to new occupations, and emphasizing development of a public culture, especially in the arts. Yet the moves of freed persons to advance themselves met with the elaboration of new ideologies and techniques to maintain the subordination of former slaves. Scientific racism, articulated progressively throughout the nineteenth century, was followed by social movements of racial discrimination and segregation at the turn of the twentieth century. Segregation and lynching in the American South were paralleled by occupational hierarchies elsewhere in the Americas and by residential segregation and colonial hierarchies in Africa. In the same era and through analogous rationale, anti-Jewish sentiment became reformulated in racial terms, and grew to its peak.

In the post–World War II era of civil rights, decolonization, and response to the Holocaust, slavery itself seemed clearly a thing of the past, yet the heritage of slavery continued to be debated. In the 1980s and 1990s some public figures began to use the terms *genocide* and *Holocaust* to refer to the Atlantic slave trade and its impact. While this use of these terms died down after some debate, the call for defining and assessing reparations for the inequities of the slave trade gained a more permanent place in the discussion of the heritage of slavery. In this and other ways, the heritage of slavery brings a continual concern with the meaning of this past of oppression.

SEE ALSO France in Tropical Africa; King Leopold II and the Congo; Slavery, Legal Aspects of

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Patrick Manning

Slavery, Legal Aspects of

Slavery's evolution from an accepted worldwide practice to its present status as an international crime, took place over the course of only a century and a half—from about the beginning of the nineteenth century to the middle of the twentieth century. Slavery has existed since ancient times, dating back to at least the times of the Old Testament. The practice was deeply engrained in ancient Rome, Greece, and the cultures of the ancient near east. The Bible contains numerous references to the practice of slavery, and Roman law had elaborate statutes and precedents for the regulation of slaves. Well before the Europeans went to the New World, there was an elaborate slave trade between the Baltic and Mediterranean regions, and slavery was legal almost everywhere in medieval and early modern Europe. Throughout the Islamic world, slavery was a fixture of society. Long before Europeans went to Africa or the New World, Arab traders were crossing the Sahara to bring slaves from south of the desert for sale in the Arab world. Some of these African slaves eventually ended up in Sardinia, Sicily, and southern Europe.

Direct European involvement in the African slave trade to Europe began in 1434, when the Portuguese began transporting Africans to Portugal for labor. The practice was institutionalized in Europe by the sixteenth century. For the next two centuries, slavery and slave-trading in Africa were not only permitted by Western governments, but were actively protected and encouraged as a lucrative branch of international commerce. During the seventeenth and eighteenth centuries, slavery was considered legal under the law of nations if not the laws of nature. In 1772, in the case of *Somerset v. Stewart,* Lord Mansfield of the King's Bench stated that in England

> [t]he state of slavery is of such a nature, that it is incapable of being introduced on any reasons,

> moral or political; but only positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: It's so odious, that nothing can be suffered to support it but positive law.

But this attitude did not hold true for the American colonies. Nor was it the dominant philosophy in the many European nations, including Holland, Spain, France, and Portugal, that inherited a Roman legal tradition that included slavery.

Slave Laws in the New World

At the beginning of the American Revolution slavery was legal everywhere in the New World, and every Old World country involved in colonization accepted the legitimacy of the practice. England and France had some case law, such as *Somerset*, that undermined slavery in the home country, but neither of them found anything wrong with permitting slavery to continue in their colonies, nor did they interfere with the African slave trade.

During the Revolution, all of the new American states banned the African slave trade, basing their decision, in part, on economic necessity. After the war, the states continued the ban for a combination of reasons, including economics, prudence (the fear of newly imported Africans), and humanitarian concerns. Between 1780 and 1804, all the New England states, as well as Pennsylvania, New York, and New Jersey, either ended slavery outright, or passed gradual emancipation acts. With gradual emancipation, the children of all slave mothers would be born free, and thus it was expected that slavery would literally die out.

The result of these laws was that, in one section of the nation, slavery was either completely illegal, or legal only for a small and diminishing class of existing slaves. The U.S. Constitution nevertheless continued to recognized slavery in a variety of ways, and it remained an ongoing practice in much of the new nation. Until the Civil War, the Supreme Court consistently protected the rights of slave masters to their property. Although some northern state courts held that slavery was contrary to natural law and state law, at no time in this period did the American federal courts find that slavery was illegal under either domestic law or international law.

Banning the Slave Trade

In 1807 and 1808 the governments of Great Britain and the United States banned the African slave trade and declared all who continued to practice it to be pirates. This piracy, however, was limited to those who violated British and American law by attempting to sell their slaves in U.S. or American markets. If the slaves were destined for countries where the practice was legal, both U.S. and British courts upheld its legality. Thus, for example, in the famous 1841 case of *The Amistad*, the U.S. Supreme Court freed a group of Africans who had been illegally imported to Cuba, because their importation violated international treaties and agreements. However, had the slaves on *The Amistad* been legally held as slaves in Cuba, the U.S. Supreme Court would have been prepared to return them to Cuba.

Illustrative of this is the case of *The Antelope* (1825), which involved a Spanish ship seized by pirates and eventually taken into a U.S. port by the American Navy. Chief Justice John Marshall ordered that some of the slaves on that unlucky ship be returned to the Spanish government, because their slave status was legally recognized under Spanish law. Others on board the ship, however, were deemed to be free, because they had been illegally taken from Africa. The court ordered that lots be drawn to determine which of the 280 Africans on the ship would be considered slaves, and which would become free. In reaching this result, Chief Justice Marshall noted that the African slave trade was "contrary to the law of nature" but that it was "consistent with the law of nations" and "cannot in itself be piracy." This analysis led Marshall to uphold the right of foreigners to engage in the slave trade, if their own nations allowed them to do so. Marshall wrote: "It if be neither repugnant to the law of nations, nor piracy, it is almost superfluous to say in this Court, that the right of bringing in for adjudication in time of peace, even where the vessel belongs to a nation which has prohibited the trade, cannot exist."

Indeed, throughout the first half of the nineteenth century, Anglo-American judges and diplomats resisted finding that slavery and the slave trade were against the laws of nations or international law. Meanwhile, most of the nations of Western Europe banned the trade for their nationals and in their colonies, and prohibited their ships to engage in the trade. In 1792, Denmark declared that the slave trade would be illegal as of 1803. The United States and Great Britain followed suit in 1807, as did France in 1815. Britain freed all slaves within its jurisdiction in 1833. At the same time, many of the European peace treaties contained statements condemning the slave trade as repugnant to the principles of justice and humanity, and called upon each other for its eradication. In 1815 the Declaration at the Congress of Vienna declared:

> The commerce, known by the name of Slave Trade (*Traite des Nègres d'Afrique*) has been considered, by just and enlightened men in all ages,

> as repugnant to the principles of humanity and universal morality; . . . [so that] . . . at length the public voice, in all civilized countries, calls aloud for its prompt suppression . . . [and] several European Governments have virtually come to the resolution of putting a stop to it.

However, none of these treaties contained concrete measures for stopping the slave trade. Nations did not consider the transport of slaves on the high seas a violation of the law of nations that justified encroaching upon another nation's sovereignty. Under the doctrine of state sovereignty, a nation had the right to adhere to its own laws within its own borders and on ships flying its flag. Thus, nations did not have the right to stop and search another nation's vessels on the high seas. The one recognized exception to this rule was for acts committed on the high seas that were condemned as acts of piracy and thus outlawed by the law of nations. In those cases, every nation had the right to punish certain offenses committed onboard ships, regardless of the flag under which the offending ship sailed. By declaring that slavery was not a crime against the law of nations, the offense did not meet the criteria for this exception, however.

As late as 1928, James Brierly, the British publicist, wrote that it was a rule of law of the sea, as established by nineteenth century slave trading cases, that the jurisdiction of each nation was limited to its own ships and nationals. Although he recognized the exceptions of "hot pursuit" and piracy, slavery and slave trading were still not included in either exception. However, in the early nineteenth century, Britain entered into a series of bilateral agreements with Portugal, France, the Netherlands, Spain, Brazil, Haiti, Uruguay, Venezuela, Ecuador, Bolivia, Chile, the Persian Gulf states, Mexico, Texas, and Sweden. According to these agreements, the signatories declared the slave trade to be an act of piracy and thus granted each other the right to search or visit ships flying the other's flag, if those ships were suspected of transporting slaves.

In 1841 Austria, Great Britain, Prussia, Russia, and France signed the Treaty for the Suppression of the African Slave Trade, commonly known as the Treaty of London. This was the first multilateral treaty to proclaim the trade in slaves an act of piracy. It provided that each party had the power to stop merchant ships flying the others' flags in prescribed zones, but was weakened by the fact that France never ratified it. In 1862, after the outbreak of the U.S. Civil War, the United States and Great Britain signed a new Treaty for Suppression of African Slave Trade, commonly known as the Treaty of Washington. This was the first time the United States granted another nation the right to board and search any of its ships if they were suspected of engaging in the slave trade, albeit such searches could be undertaken only in a narrowly prescribed zone. The treaty provided for the special courts made up of equal numbers of individuals from each nation, with one established in Sierra Leone, one at the Cape of Good Hope, and one in New York. However, these courts only functioned until 1870, when they were replaced by the more traditional trial process carried out by the nation to whom the captured ship belonged.

By the end of the nineteenth century, the market for African slaves in the United States and Europe was nonexistent, but continued to flourish in Africa and the Middle East. Toward the end of the century, many European nations sought to not only prevent the importation of slaves into their own countries, but into other nations as well. The General Act of the Conference at Berlin Respecting the Congo, February 26, 1885, was the first multilateral trade agreement to address this traffic. The act provided that the entire Congo Basin, that region of Africa from the Atlantic to the Indian Ocean, would be an area of free trade without import duties. It also provided that, within this region, "trading in slaves is forbidden in conformity with the principles of international law as recognized by the signatory powers," but contained no enforcement provisions.

In 1889 representatives from seventeen countries met at a conference in Brussels with the goal of finally putting an end to the slave trade and the crimes it engendered. The comprehensive General Act for the Repression of the African Slave Trade, July 2, 1890, commonly known as the Brussels Act, contained several articles obligating the parties to undertake economic, legislative, and military measures towards the eradication of slavery in Africa. It provided for the establishment of military stations in the interior of Africa to prevent the capture of slaves, to provide for the interception of caravans, and to organize expeditions. It also contained a comprehensive system to eradicate the slave trade at sea. The act applied to a maritime zone that included the Red Sea and the Indian Ocean, where most of the slave trading was taking place. There were rules concerning the use of signatories' flags by "native" vessels, the embarkation of African passengers, and stopping and examining ships believed to be engaged in the slave trade. The officer in command could stop any ship under 500 tons that was operating within the prescribed zone. He could board the ship and examine the list of passengers and crew. However, cargo could be searched only on those ships flying the flag of a signatory to the treaty. If the investigating officer believed that the ship was engaged in the slave trade, he had the right to bring it to the nearest port of the nation whose

flag the ship was flying. The act outlined rules for the trial of the seized ship. This act was still in force at the outbreak of World War I.

Efforts to Eliminate Slavery

At the end of World War I, a new convention was achieved between nations with the goal of revising earlier treaties and newly addressing the elimination of slavery. This formal title of this new agreement was the Convention Revising the General Act of Berlin of February 26, 1885, and the General Act and Declaration of Brussels, July 2, 1890. It is more familiarly known as the St. Germain-en-Laye Convention, and it was signed on September 10, 1919, by Belgium, Great Britain, France, Italy, Japan, Portugal, and the United States. It was subsequently ratified by all the other signatories to the Treaty of Versailles as well. The general purpose of the convention was to restore the previous system of free trade within a prescribed zone in Africa, as well as the Indian Ocean and Red Sea regions. With regard to slavery and slave trading, the parties merely agreed to "endeavor to secure the complete suppression of slavery in all its forms, and of the slave trade by land and sea." The right to stop and search vessels on the high seas, a feature of both the older treaties, no longer existed.

Following World War I, slavery was one of the first issues addressed by the League of Nations. In 1924, it established a Temporary Slavery Commission charged with studying the existence of slavery throughout the world. The commission reported that the status of slavery was recognized in Abyssinia (Ethiopia), Tibet, Nepal, and most "Mohammedan States," including Afghanistan, the Hedjaz, and other Arab nations. It reported that slave trading was openly practiced in the Arabian Peninsula, and that most of the slaves were originally from African territories. The study led the League to adopt the Slavery Convention of September 25, 1926, which was immediately signed by twenty-five League of Nations members. The convention entered into force on March 9, 1927, but remained open for signature until April of that year, by which time eleven more members had signed.

The Slavery Convention was the first time international legislation sought the abolition of slavery and the slave trade. It defined slavery as the "status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." The slave trade was defined to include all acts involved in the capture, acquisition, or disposal of a person with the intent to reduce him or her to slavery; all acts involved in the acquisition slaves with a view to selling or exchanging them; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged and, in general, every act of trade or transport in slaves. Due to disagreements over whether forced labor was analogous to slavery, the provisions regarding the two institutions were treated separately. Article 5b of the convention stated, "compulsory or forced labor may only be exacted for public purposes," and sought to prevent forced labor from "developing into conditions analogous to slavery."

The signatories agreed to prevent and suppress the slave trade, and to work progressively towards the complete abolition of slavery within their jurisdictions. The word "progressively" was inserted because many nations were concerned about the hardships and social upheavals that would be created if all slaves were suddenly liberated. The convention did not outlaw slave trading as an act of piracy. Instead, it provided that each nation would take appropriate measures to prevent the embarkation, disembarkation, and transport of slaves within their territorial waters and upon vessels flying their respective flags. Its signatories also agreed to promulgate a convention providing for rights to stop and search vessels suspected of slave trading outside of their territorial waters, as provided in the Convention on Supervision of International Trade in Arms and Ammunition and in Implements of War of June 17, 1925. However, such an agreement was never promulgated. The only enforcement provisions in the convention were that each signatory would forward to the League of Nations the laws and regulations they enacted pursuant to the convention, and that each nation had the right to bring any dispute regarding implementation of the convention to the Permanent Court of International Justice.

As of 1937, only twenty-nine nations had ratified the Slavery Convention and were therefore affirmatively bound by its terms. The United Nations adopted the convention in 1953, and adopted a Supplementary Convention on the Abolition of Slavery, The Slave Trade, and Institutions and Practices Similar to Slavery in 1956. The Supplementary Convention, which remains in force, applies the Slavery Convention to debt bondage, serfdom, the sale of women, and child labor practices.

Slavery and Human Rights

Freedom from enslavement did not become a fundamental human right solely as a result of states ratifying and acceding to the Slavery Convention. The convention is not framed in terms of preserving a fundamental right. Instead, it outlines the duties of nations to eradicate slavery and the slave trade without declaring that every human being has the right to be

free from enslavement. In fact, the signatories to the Convention did not even agree to completely eradicate slavery; they only agreed to "progressively work for its abolition." However, the League of Nations did establish first a temporary and later a permanent Advisory Committee of Experts on Slavery, which was authorized to receive, organize, and publish information furnished by the signatories to the convention, and to make recommendations regarding the eradication of slavery in particular nations. The committee was formed to study possible means of eradicating slavery and to examine the feasibility for the League of Nations to provide financial assistance to nations needing help in solving their slavery problems. It was specifically not intended to deal with forced labor. Its proceedings were confidential, and it could communicate its findings only through governments. It could not communicate directly with non-governmental persons or organizations. By 1937 the committee reported that the League of Nations had been largely successful in eliminating the traffic in slaves by encouraging members to outlaw slavery within territories under their control. However, it found it more difficult to convince independent members and nonmembers to follow suit. At the outbreak of World War II, slavery continued to be practiced in some form in Liberia, Ethiopia, and parts of the Middle East.

In the early twenty-first century, the world continues to grapple with slavery and abuses resembling slavery. In the United States, sexual and labor exploitation are often considered forms of slavery and are outlawed. Nevertheless, tens of thousands of people are held against their will in the United States. Slavery is not a crime in some European Nations. However, trafficking in human begins as defined by the European Union law is firmly established as a crime and a violation of human rights. Moreover, every general international human rights instrument proclaims the right of every person to be free from slavery and slavelike practices: the Universal Declaration of Human Rights (art. 4), the International Covenant on Civil and Political Rights (art. 8), the European Convention on Human Rights (art. 4), the American Convention on Human Rights (art. 6) and the African Charter on Human and Peoples' Rights (art. 5). Most recently, the Rome Statute of the International Criminal Court included slavery as a crime against humanity (art. 7) and when committed during war time, declared it to be a war crime (art. 8).

SEE ALSO African Americans; Rosewood; Slavery, Historical

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Social Darwinism

Social Darwinism can be defined either strictly, with reference to theories of social and cultural change implied by the theory of natural selection developed by Darwin, or loosely, as that distinct family of historical theories that claim to be theories of social and cultural change logically entailed by Darwinian theory. Historical social Darwinism, which emerged in the late nineteenth century and continues in some forms today, exploited ambiguities in Darwinian concepts such as struggle and development in advancing social theories that defended ethnic, racial, class, and gender inequality as necessary aspects of a wider conflict from which a technically and morally advanced humanity would emerge. It mattered little to social Darwinists like Herbert Spencer and William Graham Sumner that Darwin himself used the phrase "struggle for survival" metaphorically to describe all that organisms do in order to reproduce successfully. He utilized terms such as development and evolution in ways that resisted the imputation of progress or improvement. Nevertheless, in the United States, social Darwinist theories and an associated eugenics movement grew steadily in the deteriorating racial environment that characterized the final decades of the 1800s and the early 1900s.

The meaning of Darwin for social theory has been a matter of controversy from its earliest days, as can be seen in the debates between figures like Thomas Hux-

ley and Peter Kropotkin. Huxley argued that biology implied a Hobbesian, atomistic conception of individuals in society. Kropotkin posited to the contrary—the central implication of Darwinism was that sociality, trust, and mutual aid are the sustaining characteristics of humankind's behavioral repertoire. One can easily find in such controversy the echoes of previous lasting debates in Western political and social theory. Nonetheless, feeding off justifications for conquest that long predated Darwin, social Darwinists claimed to extend Darwin's theories into the realm of politics and society, as if such issues had been settled. In the early twenty-first century, however, no reputable school of evolutionary biology or psychology maintains that a theory of social Darwinism in the strict sense would endorse the conclusions of historical social Darwinism, especially its tendency to rationalize conflict and conquest. It is not too much to say as a historical matter that social Darwinism was neither Darwinist, nor particularly social. Its point was never to promote scientific discussion of the complex implications natural selection offers in providing resources for social and political thought. Instead, it has tended merely to use Darwinism as a rationale for existing forms of exploitation and their extension, especially but not exclusively in support of racism and genocide.

The list of atrocities defended on supposedly Darwinian grounds might fill several pages. Social Darwinist theories have been invoked in the United States in support of everything from laissez faire policies of tariff and trade to African slavery and genocide against the indigenous inhabitants of the Americas. Richard Hofstadter has suggested that such rationalizations have been effective in the United States in part because of the fatalism and scientism they promote. By teaching children that other lifestyles are destined to vanish, atrocity is rendered palatable and elevated from obvious injustice to high historical tragedy. This scientization of history at the center of social Darwinism is most obvious in the eugenics movement, which was much more popular in the United States in the early 1900s than in Germany. A line connects interpreters of Spencer, like the sociologist Ludwig Gumplowicz (1838-1909), with the rise of Anglo-Saxonism in the United States and the global eugenics movement. Nazi eugenics drew on an already well-established and well-rooted phenomena. But social Darwinism and similar theories have reportedly been used by apologists to defend genocidal Japanese actions in China, Italian actions in in Ethiopia, and Australian policies toward Native peoples.

SEE ALSO Eugenics; Racism

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Peter Amato

Sociology of Perpetrators

There are many approaches that sociology can take in the explanation of genocide; in fact, every field of sociology may contribute, from the study of social deviance (of Nazi leaders, e.g.) to the sociology of knowledge (how knowledge is gained and promulgated, and how definitions and explanations are socially structured and defined).

Sociology has been underutilized in the study of genocide; its many perspectives could add significantly to the field. A standard textbook such as *Sociology in Our Times* by Diana Kendall (2000) reveals how sociology can contribute:

- The social structure and interaction of everyday life during genocide;
- The racial, class, and stratification systems of genocide;
- The impact of genocide on families and kinship patterns;
- The relationship and impact of education and religion on genocide;
- The diverse cultural reactions to genocide and mass killings;
- The politics and economic impact of genocide;
- Health and medical aspects of genocide;
- Population, migration, and refugees after genocide;
- Social change, technology, and social movements.

Sociological Applications

The first dilemma studies of genocide have had to address involves definition, application, and intention, that is, questions related to the sociology of knowledge. Jack Nusan Porter posed these questions more than twenty years ago when he suggested that genocide had been applied to all of the following: race-mixing, drug distribution, methadone programs, birth control, abortions, the medical treatment of Catholics in Northern

Ireland, the closing of synagogues in the former Soviet Union, and the treatment of Palestinians under Israeli occupation. All have been labeled as forms of genocide. In other words, when one needs a catchall phrase to describe oppression or mistreatment, the more electric term *genocide* is often invoked in order to gain media attention and international political intervention.

A second area to which sociology can contribute is in defining the social, structural, and ideological components of genocide. Again, Porter has described a three-point triangulation of racist ideology, technology, and state bureaucracy as major elements. These elements range from sophisticated to crude, but all are vital to any process of genocide.

A third sociological perspective is a predictive one. What are the social conditions that increase the likelihood of genocide, and conversely, what are the conditions that make genocide less likely and lead to peaceful societies?

Furthermore, at what point does genocide occur? There are three distinct times. One is during wartime conditions. Another is during colonialization and decolonialization, that is, when a society is conquered and subdued, or later when it vanquishes a colonizer. Both periods are problematic for minorities. Both instances pose extreme danger. And finally, during tribal, ethnic, and racial conflicts, such as those that occurred in Kosova, Burundi, and Rwanda.

Comparative Sociological Approaches

Sociology's comparative approach is quite valuable in conjunction with political, historical, and economic perspectives in widening human understanding of genocide. Comparative analysis does not diminish the uniqueness of any one genocide, but instead recognizes the basic commonalities of all genocides and genocidal acts, namely that people at various times in history and throughout various parts of the world, regardless of race, religion, or national origin, behave quite similarly when confronted with genocide. If and when there is an exception, it may prove the rule, as the saying goes, and it should prompt further investigation.

Most research has focused on a two-case analysis, usually the Holocaust and another, such as the genocide of Armenians or Native Americans. The best and earliest examples appear in the work of Vahakn Dadrian (1974), who analyzed the common features of Armenian and Jewish genocides from a victimological perspective, and Helen Fein (1978), who compared the Turkish genocide of 1915 to the German Holocaust that occurred from 1939 to 1945. Some areas require more in-depth analysis, in particular:

- Stigma, that is, the methods by which victims are demonized and placed outside the realm of the moral universe, to use Fein's felicitous phrase, and also the presentation of self in various genocides. This concerns not only the way victims respond—with acquiescence, retreat, depression, or resistance—but how one internalizes the threat to one's self posed by genocide.
- Reaction of victims, from passivity (a common reaction of victims, not just during the Holocaust or the Turkish genocide of Armenians, but among later genocides) to resistance (rare yet important in most genocides) to going into hiding (which may in fact be an example of passivity or resistance.)
- Rescuers, bystanders, and perpetrators.
- Factors leading to genocide: societal, political, economic, military (wartime conditions), colonization and decolonization, tribal conflict, to name just some.
- The aftermath, including post-traumatic stress, compensation, tribunals, legacies, and remembrance/memorialization.

As this list suggests, any attempt to characterize an act of genocide as entirely unique limits the scope of one's findings. Much more important is research of a comparative nature. Such research is essential not only for theory-building, but also in order to prevent future genocides.

Postmodern Theories of Genocide

Last but not least, sociology can help scholars develop new theories. Sociology was late to study genocide, but it has attempted to make up for lost time. Several postmodern sociological approaches have given new life to the field. A new emphasis on sex and gender illuminates how genocide affects diverse people. For example, does genocide impact women, gays, and other outsiders differently than heterosexual men? Postmodern theories reject an androcentric, male-centered viewpoint.

Theories that reject a strictly Eurocentric or Western perspective and embrace a more global viewpoint might prove useful if one does not swing too far in observing political correctness. Finally, some recent postmodern theories, with their emphasis on media interpretation, argot, texts, and cultural studies, could open up new vistas for scholars and students in the study of genocide.

SEE ALSO Explanation; Political Theory; Psychology of Survivors; Psychology of Victims

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Jack Nusan Porter

Sociology of Victims

Under what circumstances and by what methods is a group identified as a distinctive "other," an alien "other," and an inferior "other" to be excluded from membership in that society and then exterminated? How and why are certain people placed "outside the universe of moral obligation" to paraphrase sociologist Helen Fein's aphorism? Several sociological theories help explain such victimization.

In the 1940s, Hans Von Hentig, a German criminologist, launched the study of the relationship between criminals and their victims. Hentig argued that much of what victims do or who they are leads to their victimization; crime is a product of an interaction between offender and victims, he said. The field of victimization was thus born. The earliest victimization studies were heavily influenced by Freudian psychology, which argued that victims yearned, and were in some way responsible, for their victimization. A good example of such an approach was scholar Bruno Bettelheim's analysis of Holocaust victim Anne Frank. However, the concept of "blaming the victim" for horrific acts at the hand of a perpetrator has been rejected by most scholars.

In his 1976 book *Blaming the Victim,* William Ryan also discussed this contention. According to sociologist Erich Goode, contemporary criminologists are much more careful to make a distinction between the terms *blame* and *cause*. Victims may be selected by offenders in part because of what they do or who they are, but they should not be blamed for their victimization. *Blame* is a heavily value-laden term, whereas *cause* denotes a much more objective, determinable sequence of events, according to Goode.

For example, young women are more likely to be raped or sexually assaulted than older women—this is a causal, not a moral statement—but younger women must not be blamed for being raped. The same is true with poorer households. They are more likely to be burglarized than more affluent households, but to assign blame to poor people for these statistics would be incorrect

The same reasoning is true with regard to victims of genocide and mass violence. They are victimized based on who they are and what they have done or become, but they should never be blamed. Surprisingly, several prominent Holocaust scholars have "blamed" the Jews themselves for their plight during World War II. Bettelheim blamed Anne Frank and her family's passivity and naivety for their fate. Raul Hilberg blamed Jewish lack of resistance on their historically passive and nonviolent nature. Younger scholars and more militant members of such victim groups as Armenians and Native Americans point out that such passivity will not happen again. They tend to emphasize resistance and revenge.

Stigma and Social Identity

Sociologist Erving Goffman in his classic *Stigma: Notes on the Management of Spoiled Identity* (1963) applied the term *stigma,* a Greek word (*stigmata*) with heavily religious overtones to physical, racial, or sociological categories. According to Goffman, stigma refers to "bodily signs designed to expose something unusual and bad about the moral status of the signifier. The signs were cut or burnt into the body and advertised that the bearer was a slave, a criminal, or a traitor—a blemished person, ritually polluted, to be avoided, especially in public places" (Goffman, 1963, p. 1).

While Goffman does not specifically relate this "stigma" to genocide or the Holocaust, the conclusion is obvious: he could easily be talking about Jews who were branded in Auschwitz with numbers or told to wear the "Yellow Star"; Armenians who were branded by the Turks; Cambodians who were distinguished by blue or yellow kerchiefs or by dark tans (implying those who worked in the sun as opposed to intellectuals and bureaucrats); Hutus and Tutsis who were distinguished by their identity papers; and numerous other marks of distinction of victims of genocide.

The stigma marks the discredited with a visible sign that the bearer must be avoided; that he or she is

polluted; and that death will result from physical or sexual contact. Often, these "deviants" are members of racial or religious minorities that have historically been isolated and marginalized as well.

Theories of Victimization

There are many theories to explain victimization. A few of the most salient include Marxist-economic theories; radical conflict theory; and labeling theory.

Marxist-Economic Theories

The targeted group is seen as an economic threat, such as with the Jews and the Armenians. In both the Holocaust and the Armenian Genocide, persecution took place in two phases. First, contact was limited. For example, Jewish doctors and lawyers could no longer represent or treat German clients or patients; Jewish physicians and managers were terminated from their jobs. Second, small businesses and factories were taken by force and given to non-Jewish "Aryan" owners. Such pauperization was rationalized as "payback" for all "offenses," real or imagined that the victim group had instigated. For example, during *Kristallnacht,* on November 9, 1937, not only were hundreds of Jewish synagogues, shops, and factories destroyed, but the insurance policies that should have covered such crimes were paid by the Jews as well.

Radical Conflict Theory

The victim group may not perceived as wealthy or powerful—such as the Jews, Armenians, or city-dwelling Cambodians—but the opposite, as weak. The genocide of the natives in Central and South America, the Aborigines in Australia, or the Maoris in New Zealand are examples of a class struggle of the strong defeating and exterminating the weak and defenseless victims of colonial and imperial conflict.

Labeling Theory

Sometimes called interactionist or symbolic interactionist theory, this theoretical approach is based on three premises. First, people act on the basis of meaning that things have for them. Second, this meaning grows out of interaction with others, especially intimate others. Third, meanings are continually modified by constant interpretation.

Labeling theory emphasizes target audiences, "moral entrepreneurs" (people such as ministers and politicians) who promulgate moral "panics," and promote the stigmatization of victim groups. Major proponents of this theory include not only Goffman but Howard S. Becker, John Kitsuse, and Kai Erikson.

Attitudes toward the Victims: The Contribution of Erich Goldhagen

Scientists are constantly amazed on how ingenious humans are in marginalizing, labeling, and victimizing others. The reactions toward the victims are also worth noting. Former Harvard University professor Erich Goldhagen has delved into the many ways that perpetrators have reacted to their victims throughout history. The various reactions ranged from indifference to amused gawking to deep involvement with murderous intent. There were a vast array of reactions, both ideological and social.

Conclusions: A Two-Step Solution

Why are people victimized? Some feel it is due to ideological concepts such as racism and anti-Semitism; others believe it is due to social pressure and conformity. In *Becoming Evil,* James Waller undertakes a wide-ranging analysis of these various theories. Other social scientists have embraced a "two-step solution," combining both ideology and obedience to orders.

According to this theory, ideology is the animus that starts genocide but then second elements kick in, such as obedience to orders, peer pressure, careerism, and conformity. All the myriad sociological, organizational, bureaucratic, and psychological motivators take over, under what Goldhagen calls the "foot in the door" theory: Once the killing starts, it takes on a momentum of its own and is difficult to stop.

In short, ordinary human beings become extraordinary killers in a very short time. People can live together peacefully for decades, even centuries, and then suddenly become lethal killers, such as with the events that took place in Bosnia in the early 1990s. Scholars may never uncover a satisfactory answer to this kind of victimization.

SEE ALSO Explanation; Political Theory; Psychology of Survivors; Psychology of Victims

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Jack Nusan Porter

Somalia, Intervention in

When genocidal violence exploded in Rwanda in May 1994, the United States sounded a particularly strident, even obstructionist, voice of caution against intervention by any outside forces to stop the atrocities. Although the United Nations Assistance Mission in Rwanda (UNAMIR) already had a small contingent on the ground at the time of the crisis, the United States quickly moved to oppose an expanded UN presence.

As events unfolded in Rwanda, American policy makers were strongly influenced by the specter of the Somalia "disaster" of less than a year earlier as they deliberated possible options. In December 1992 American forces entered Somalia as part of a UN mission to feed starving people in a nation wracked by internal chaos. With CNN broadcasting images of the soldiers coming ashore to rescue the at-risk population, this gesture of international goodwill seemed destined for success. Over the next year the mission expanded from humanitarian relief to include elements of "nation building," which translated into helping Somalia establish some sort of stable, workable, democratic polity that would ultimately prevent the need for future outside interventions. As a result of this expanded mandate (soon thereafter referred to as "mission creep"), American forces found themselves at odds with local warlords in the capital city of Mogadishu. This conflict culminated on October 3, 1993, with a firefight between U.S. Army Rangers, members of the elite Delta Force, and forces loyal to Somali leader Mohammed Aideed. After hours of intense fighting eighteen Americans lay dead and seventy-three wounded.

The loss of American lives was difficult and dramatic enough, but the Battle of Mogadishu earned its lasting legacy when triumphant Somalis dragged the body of an American helicopter pilot through the city streets. Covered in the news, complete with graphic video footage, the episode seared powerful images into the memories of most Americans—policy makers, politicians, the public, and military personnel alike. And while a majority of Americans continued to support an American presence there, Somalia sent shockwaves of caution and reflexive anti-interventionism through the Pentagon and the White House. Intervention in Africa then appeared to involve a maximum of risk with limited returns at best.

Within the military establishment, an angry belief developed that the administration of President Bill Clinton had failed to provide it with requested equipment; there was also irritation within the military at the United States' subsequent hasty withdrawal from Somalia following the Battle of Mogadishu. Both factors contributed to the administration's reluctance to commit U.S. forces to another UN mission, especially one in Africa. At the same time American domestic politics suggested that few, if any, constituencies supported risky U.S. involvement in Africa, no matter what the cause, following the debacle in Somalia. To put it simply, the president feared a decline in public support in opinion polls and losing more votes in a reelection bid than he would gain by authorizing any African intervention, even if just or successful.

Despite the episode in Somalia it is important to note that policy makers did not share a monolithic view of the appropriate and necessary response to the Rwandan crisis. The State Department's Africa Bureau, headed by George Moose, urged an expanded and more vigorous UN military presence. Deputy Assistant Secretary Prudence Bushnell and Central Africa Office Director Arlene Render "argued fiercely at interagency meetings within the executive branch for a stronger mandate and a troop increase for UNAMIR as well as for a number of diplomatic measures to isolate and stigmatize the rump regime" (Burkhalter, 1994/1995, p. 47). Secretary of State Madeleine Albright also reportedly opposed a bystander role for the United States. However, proponents of stronger action faced an uphill battle within the administration in the post-Somalia era, particularly with the Pentagon.

The Pentagon based much of its position on the crisis in Rwanda on an analogy with Somalia, arguing that an all-too fine line existed between sending in UN forces and eventually having to follow up with American soldiers. Pentagon officials were wary of the possible eventual need to bail out a floundering UNAMIR and, therefore, opposed even multilateral involvement at any level. This was an understandable concern, but one born of selective memory—the costly Battle of Mogadishu had been a U.S., not UN, operation. Proponents of intervention in any form were outranked in discussions within the Clinton administration. For a lower-level official such as Bushnell, a difficult argument became even more challenging because it in-

U.S. military troops upon their December 1992 arrival in the capital city of Mogadishu. They entered Somalia as part of a UN mission to feed starving people in a nation wracked by internal chaos. [PETER TURNLEY/CORBIS]

volved having to go head-to-head with more senior officials from the Pentagon, including Undersecretary of Defense John Deutch who staunchly opposed intervention.

Compounding this was an apparent lack of interest or support among higher-level officials at the State Department. Peter Tarnoff, the undersecretary of state for political affairs and the overseer of the Africa bureau and other regional departments, "apparently had no interest in Rwanda," whereas Tim Wirth, undersecretary of state for global affairs, "seemingly played no role at all in the question of U.S. policy during the genocide, even though his brief included human rights" (Burkhalter 1994/1995, p. 47). Meanwhile, at the National Security Council, senior officials demonstrated their disinclination toward any sort of action. Throughout the administration policy makers viewed Rwanda through the prism of Somalia. As a consequence, they thought in terms of a failed state and quickly assumed that any intervention would have to be large-scale and costly, and would probably result in no measurable improvement.

The United States also operated under a significantly flawed understanding and interpretation of events. In large part the Clinton administration mistakenly identified and therefore addressed the Rwandan issue as a "peacekeeping" matter, as a more or less "traditional" civil war between two armed forces—not as large-scale genocidal violence directed against helpless civilians. Therefore, any proposed action to alleviate the situation in Rwanda fell under the rubric of peacekeeping and was far more likely to fall victim to flawed analogies born of the experience in Somalia. It also made more likely—and perhaps more understandable and defensible—extreme caution and trepidation at the thought of interposing any foreign force between the warring parties no matter what the reported loss of life was. As former U.S. envoy to Somalia, Robert Oakley, explained at the time of the Rwandan genocide, "Somalia showed just how difficult and dangerous the mission of saving a country can be. The international community is not disposed to deploying 20, 40, 60,000 military forces each time there is an internal crisis in a failed state."

As the focus of the Clinton administration's foreign policy shifted to altering Somalia's political leadership, tensions mounted between American forces stationed in Mogadishu and local warlords. In this photo dated March 3, 1993, Somalians—possibly fleeing the city—file past U.S. soldiers. [PETER TURNLEY/CORBIS]

This peacekeeping frame of mind and its outgrowth from the events that had transpired in Somalia became manifest with the public release on May 5, 1994 (concurrent with the genocide in Rwanda) of Presidential Decision Directive 25 (PDD-25). PDD-25 marked a determined effort to redefine the conditions and contexts for U.S. participation in UN peacekeeping operations. Although President Clinton came into office trumpeting support and enthusiasm for multinational operations on issues ranging from nonproliferation to international crime, the events that occurred in Somalia chastened his administration. As a presidential candidate, Clinton had even spoken openly of the need to establish a UN rapid reaction force to intervene on humanitarian grounds.

Post-Somalia, Clinton's vision of assertive multilateralism dissipated, giving way to extreme caution and calculation, despite the fact that the mission in Somalia likely saved upwards of a quarter-million people. With new-found "prudence" and the haunting "precedent" of Somalia in the background, the Clinton administration formulated an official reassessment of U.S. support for UN peacekeeping initiatives. Termed "the first comprehensive U.S. policy on multilateral peace operations suited to the post–Cold War era," PDD-25 responded to some hard questions: when, where, and how to intervene. The document defined the U.S. national interest in terms of limited involvement and low cost. Furthermore, it declared that U.S. involvement in UN missions would occur only if it had a "direct bearing on U.S. national interests," which represented a fairly limited rather than expansive point of view, and one that would more than likely exclude places such as Somalia and Rwanda in the future.

At the press briefing introducing the directive, National Security Advisor Tony Lake stated that "the central conclusion of the study is that properly conceived and well-executed, peacekeeping can be a very important tool of American foreign policy." Shortly thereafter, though, Lake added a qualification echoing back to Somalia: He noted that although the United States can sometimes help other countries in times of need, "we can never build their nations for them."

PDD-25 addressed six major issues: (1) making disciplined and coherent choices about which peace operations to support; (2) reducing U.S. costs for UN peace operations; (3) clearly defining policy on the command and control of U.S. forces; (4) reforming and improving the UN's ability to manage peace operations; (5) reforming and improving U.S. ability to manage peace operations; and (6) improving cooperation between the Executive, the Congress, and the American public on peace operations. Among a variety of factors PDD-25 stressed that the United States would participate in a UN peace mission when the mission (1) responds to a threat to or breach of international peace and security; (2) advances U.S. interests (with unique and general risks weighed appropriately); (3) includes acceptable command and control arrangements; and (4) includes clearly defined objectives with realistic criteria for ending the operation (i.e., an exit strategy). At the policy unveiling Lake discussed each of these six imperatives and highlighted the notion that "peacekeeping is a part of our national security policy, but it is not the centerpiece. The primary purpose of our military force is to fight and win wars."

The public announcement of PDD-25 and comments like those made by a senior foreign policy official such as Lake did not bode well for American support of a strengthened UN response to the crisis in Rwanda, and certainly not for any intervention by American forces. The thrust of PDD-25 and its post-Somalia release during the crisis in Rwanda suggested that some policy makers mistakenly viewed any mission to Central Africa as a traditional peacekeeping expedition to maintain a cessation of hostilities between two fighting parties. In an operational sense the directive essentially rendered nearly impossible any significant initiatives to help Rwanda because next to none could realistically succeed or even be implemented without U.S. support.

PDD-25 was a potential catch-22 for the future deployment of UN forces: "The United States would refuse any new deployment of UN Blue Helmets unless all the necessary conditions (logistical, financial, troop deployments, etc.) were fulfilled—yet they could never be fulfilled *without* [italics in original] the active support of the superpower" (Destexhe, 1995, p. 50). Commenting on PDD-25 and its application to Rwanda, Richard Dowden of Britain's *Independent* newspaper referred to the policy statement as the result of a "poker mentality: Problem: Somalia. Response: Intervention. Result: Failure. Conclusion: No More Intervention" (Ronayne, 2001, p. 167). In Congress Representative David Obey (Democrat from Wisconsin) explained the policy as a fulfillment of the American public's desire for "zero degree of involvement and zero degree of risk and zero degree of pain and confusion" (Ronayne, 2001, p. 167). Born of Somalia, the PDD-25 mindset significantly influenced administration thinking and policy even prior to its public announcement and had striking implications for America's determination not to become involved in Rwanda during the spring of 1994.

SEE ALSO Rwanda; United States Foreign Policy Toward Genocide and Crimes Against Humanity

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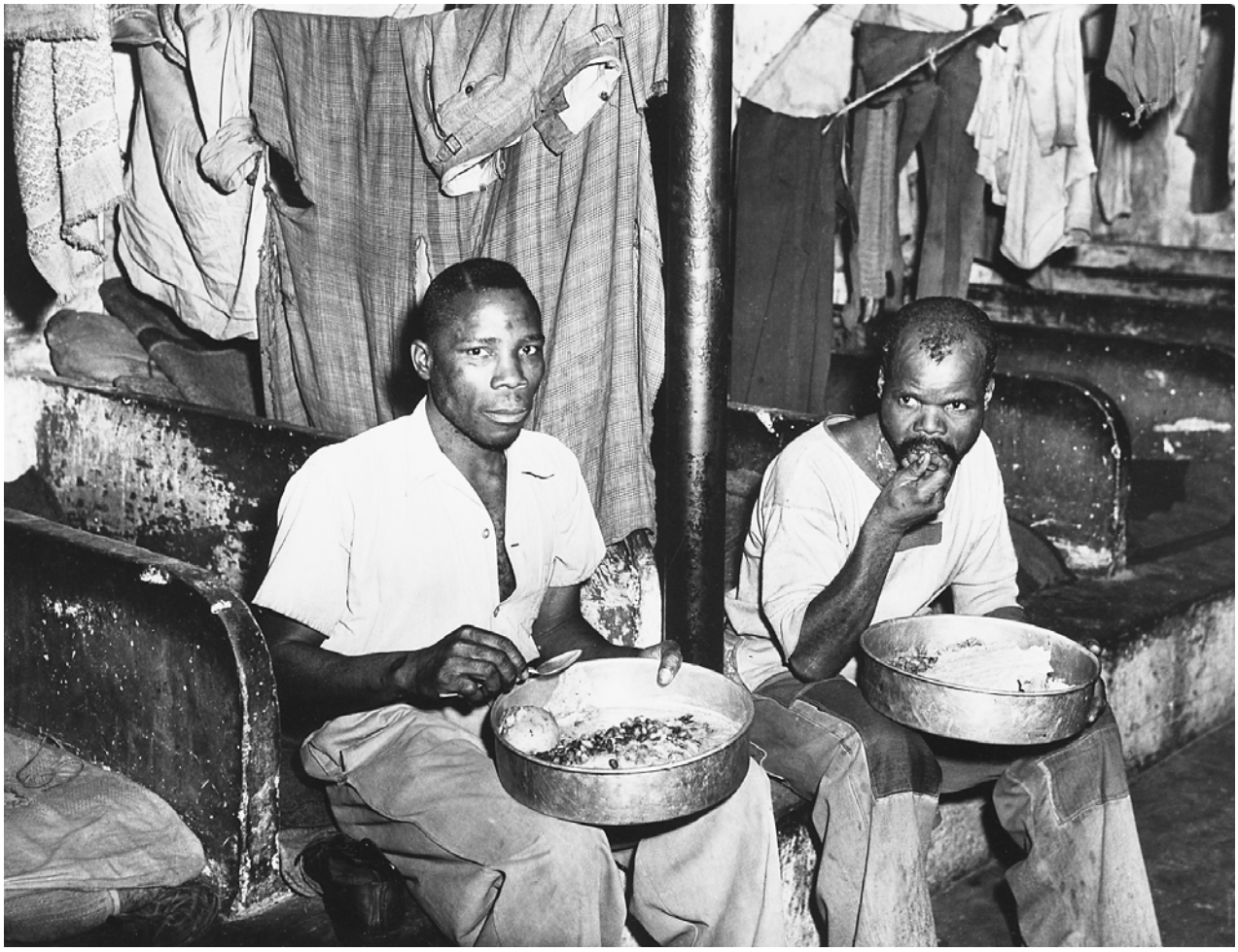
Peter Ronayne

South Africa

Old South African history books date the beginning of the country to the arrival of the first Europeans at the tip of the African continent in 1652. The Dutch East India Company needed a refreshment station for its ships while sailing around Africa to trade with its empire in Batavia (Indonesia). However, when Jan Van Riebeek founded the settlement that was called the Cape of Good Hope, the first three dozen company employees did not raise cattle and grow fruits and vegetables on empty territory. Like European colonialists ev-



Until the early twenty-first century, the gold fields of Johannesburg were the largest gold resources in the world. The gold-bearing stone is mined at considerable depth. Mining at deep levels is highly problematic, in part owing to the high temperatures and high humidity. This 1948 photo shows two South African gold miners in their living quarters, with the individual spaces for sleeping visible. [**BETTMANN/ CORBIS**]

erywhere else, they encountered indigenous people who had lived on the land from time immemorial. The story of South Africa is the dispossession, resistance, liberation, and ultimate reconciliation of foreign intruders with indigenous inhabitants. When and how the colonialists themselves became indigenous—in short, whether there can be white Africans with equal rights and privileges, despite the colonial legacy—is still a matter of debate in the twenty-first century.

In this analysis the common label of "African" for the black majority does not preclude members of other groups from being African in the political sense of citizens belonging to the African continent as it is their only home and place of origin. In contrast to the Middle East, all parties in South Africa have accepted this status of original "settlers." Therefore, not all Africans are black, and not all blacks are Africans. It should also be noted that since the rise of the black consciousness movement in the late 1960s, "black" has become a proud political term, comprising politically conscious members of all three disenfranchised groups, including South Africans of Indian descent and those of mixed origin (the coloreds).

In the Western Cape there were two distinct aboriginal groups: (1) the Khoikhoi, seminomadic herders and (2) San-speakers, hunting and gathering people, whom the Europeans derogatively referred to as Bushmen. A hundred years later and 500 kilometers further east, the expanding settlers clashed with a third indigenous people, who spoke yet another language and practiced a different way of life: (3) agriculturalists who made their living from subsistence farming and were called Bantu, or in modern times blacks or Africans.

Because Africans were more numerous and better organized in rudimentary states with chiefs and kings, they offered the stiffest and longest resistance to the European colonization of all three indigenous groups. However, they were also weakened by their own infighting, superstition, technological underdevelopment, and the colonial policy of divide and rule. Yet, unlike the Xhosa subgroup in the Eastern Cape (from which Nelson Mandela originates), the related Zulus in Natal were only subdued by the British colonial army in protracted battles as recently as 1900. The first democratic election in 1994 reversed this colonial conquest, by replacing 350 years of minority racial domination with majority political rule. In 2004, 76 percent of South African voters belonged to the African group, whereas 11 percent were classified as white.

The weakest San-speakers befell the worst fate of near-genocide. Like wild game, they were often shot on sight by special raiding parties who claimed they were habitual cattle thieves. In the early twenty-first century only about thirty thousand San people survive in the whole of Southern Africa, mainly in neighboring Botswana and Namibia, where they are still treated as second-class citizens in state parks or reservations. Were it not for the manufactured tourist attraction they provide or the tracking services they offered to the South African army during the war, most of these survivors from a different age would have vanished altogether.

The Cape settlers initially established an uneasy bartering relationship with the Khoikhoi; their rebellious chiefs were incarcerated at Robben Island, but most of the people gradually became absorbed into the feudal Cape economy as farm laborers or domestic servants. Missionaries converted the majority of Khoikhoi to Calvinism, and many Khoikhoi women intermarried with Europeans or had children out of wedlock or as a result of rape. Descendants of this group are known as coloreds in the contemporary world; the overwhelming majority speak Afrikaans as their mother tongue and make up approximately 9 percent of the total South African population of 44 million.

The ethnic mix of South Africa was further complicated by the importation of slaves from Angola, Indonesia, Malaysia, Madagascar, and elsewhere, a mere ten years after the Cape colony was founded. During the first hundred years the Cape colony barely grew through additional immigration from Europe, yet the outpost needed a dependent labor force. The huge gender imbalance among the Europeans—three men to one woman—encouraged sexual liaisons across the groups. The leading South African historian Hermann Giliomee probably understates the sexual violence and exploitation in the colonial status hierarchy when he points out: "There was also large-scale miscegenation in the form of casual sex, especially in the slave lodge frequented by European men as well as sailors and soldiers" (2003, p. 18). Because most children born from such encounters were absorbed into the Afrikaner community, the racial consciousness and assertions of racial purity during the later apartheid period appear particularly absurd. Social science research across cultures has revealed that insistence on exclusive racial or ethnic identity is particularly strong among people who have an insecure self-concept and are not sure of their own identity. Sigmund Freud has called this phenomenon the narcicissm of small difference. Ironically, early Cape society seemed to be more color-blind and free of racially defined opportunities than the frozen twentieth-century legislated race classifications of apartheid.

Among the European colonial powers, South Africa became a desired possession and the Cape colony changed hands several times between the Dutch and British who feared the French under Napoleon. Unlike the earlier immigration by Dutch and German unemployed adventurers and a few hundred religiously prosecuted French Hugenots, large-scale immigration from Britain started only in the early nineteenth century. These were largely government-selected immigrants with crafts and skills who came with their families. Most settled on the Eastern seaboard, particularly in Natal. British control of the Cape and the abolition of slavery are usually mentioned as the reasons for the Great Trek of Afrikaner farmers beyond the Cape frontier into the interior in the second quarter of the nineteenth century. Giliomee sees the diverse causes in "a lack of land, labor and security, coupled with a pervasive sense of being marginalized" (2003, p. 142). The trek left Afrikaners dispersed throughout the country. The Orange Free State and Transvaal emerged as the two new independent Boer republics.

The British influence and influx were also supplemented after 1860 by immigrants from British India on five-year contracts as indentured laborers for the sugar plantations and market gardens around Durban. Most of these poor labor migrants stayed in South Africa after the expiration of their contracts, brought their families over, and gradually prospered on the basis of solidarity with their kin and emphasis on education for their children, despite severe discrimination. This middle minority faced animosity from the dominant whites as well as the subordinate blacks. During the 1949 Durban riots 150 Indians were killed until the army restored order belatedly. Unlike the wealthy Indian trading minorities in East Africa, the Indian community in Natal consists mostly of working-class people. This did not prevent them from becoming a scapegoat and target

of resentment for the Zulu population, who competed with them for jobs and scarce resources.

About 75 percent of the 1.3 million Indian population are Hindus from various Indian linguistic groups and 20 percent are Muslims. Together with the so-called Malay coloreds, 800,000 Muslims comprise approximately 2 percent of the South African population. The majority of the South African population profess to belong to various mainstream Christian denominations, whereas about 30 percent claim membership in independent (Zionist) churches.

Rise of Afrikaner Nationalism

The discovery of diamonds in Kimberley and rich gold reserves around Johannesburg in the second half of the nineteenth century again changed the course of South African history. It established the foundations for the only industrialized country in Africa. Deep level mining required long-term capital investments that only British imperialists were prepared to supply. Unlike colonies of exploitation where a few temporary colonists export their profits to the European metropole, the permanent settler colony of South Africa reinvested its profit inside the colony for further economic expansion. That presupposed political control over the territory which Cecil Rhodes and other British rubber barons needed to wrest from the Boer republics.

Imperialist greed was the simple reason for the Boer war at the turn of the century. The Boers outgunned in their guerrilla war against superior English forces enjoyed widespread global support, including that of Lenin, in what was considered the first anti-colonial war of Africa. The Boers lost this war and about 10 percent of the Afrikaner population was killed. In the bitter struggle the ruthless British army practiced a scorched earth policy against the rural civilian population and established for the first time concentration camps in which many women and children died from starvation and disease.

The trauma of the conflict resulted in a quest for revenge and the emergence of Afrikaner nationalism. British colonial policy everywhere aimed at the anglicization of culturally different groups. The public use of the Afrikaans language was discouraged, outlawed in public, and penalized in schools. British cultural arrogance denigrated different cultural practices. Very much like the situation in Quebec until 1960, English-speakers dominated the economy and only English-speakers could hope for a substantial business career. This forced assimilation triggered a counternationalism that clamored for the equality of an impoverished people with their English overlords. The Afrikaner intellectual ethnic mobilizers stressed pride in the then fully developed Afrikaans language. They encouraged Afrikaners to accumulate capital in their own insurance companies. About 90 percent of Afrikaners in the 1920s and 1930s lived in rural areas; many drifted as landless, unskilled *bywoners* into the cities in search of work. They competed with African workers who were largely preferred by employers, because they were cheaper and considered less rebellious and more malleable. Approximately 25 percent of Afrikaners were classified as poor whites at the time.

The government at the time consisted of an English-Afrikaner United Party under the leadership of the highly reputed General Jan (Christiaan) Smuts. In 1940 it joined the war against Nazi Germany on the British side. A minority of nationalist Afrikaners strongly opposed this, mainly because of anti-British sentiments but also because of residual sympathies for German racist ideologies and anti-Semitic sentiments. The many alienated Afrikaners considered Jewish owners (*Hoggenheimer*) of the large Anglo-American gold and diamond corporation the local oppressors and exploiters.

Being that Afrikaners constituted 60 percent of the white voting population (as compared with 40% English-speakers) and only a few Cape nonwhites were enfranchised, the Afrikaner National Party not surprisingly won the 1948 general election. Capturing state control marked the triumph of Afrikaner nationalism. It now could use the state apparatus for patronage of Afrikaner interests and keeping black competitors at bay. The English United Party also practiced racist segregation, but less openly than Afrikaners. The National Party replaced segregation with apartheid, an unprecedented policy of statutory racial reordering. Its main architect was the new charismatic leader of the National Party, Hendrik Verwoerd.

In short, Afrikaner nationalism, with exclusive control of the South African state, institutionalized the Anglo informal segregation policy into formal, legalized apartheid. This grand experiment of race-based social engineering eschewed any assimilation and instead fostered ethnic difference among the black population. *Separate development,* as the ideology of divide and rule was euphemistically labeled, attempted to ethnisize the black majority and racialize the white minority of different cultural origins. It thereby tried to unify Europeans (particularly the Afrikaans and English-speakers of the white minority) into a white nation, but fragment Africans into nine tribal national groups. The imagined white nation was built on race and biology. The envisaged black nations were based on partially invented ethnic and cultural differences. The fate of the two middle groups (colored and Indians) was left undecided

The movement of black South Africans into and out of urban and employment centers was regulated by the Blacks Consolidation Act of 1945. These citizens of South Africa were required to carry special pass books at almost all times. In the photo, Africans queue up to get their new pass books at a government office in Johannesburg, April 7, 1960. [AP/WORLD WIDE PHOTOS]

initially, but this changed in the early 1980s when open cooptation strategies were adopted. Coloreds and Indians were enfranchised on separate voter's rolls for separate parliaments with limited powers that could not threaten overall white domination. The attempt backfired because of the exclusion of the majority black African population. Apartheid imposed a state-decreed identity on different groups and disallowed people to define their own identity. In all other ethnic conflicts around the world, people belong to and identify with a group because of self-association.

Many Faces of Apartheid

The American sociologist Pierre van den Berghe has distinguished three forms of apartheid:

1. *Micro-apartheid,* or petty apartheid, segregated people from birth to death in daily life. Whites and nonwhites had to use separate facilities, from hospitals to cemeteries, elevators to toilets, restaurants to park benches, buses to beaches, post-office counters to railway coaches. All facilities were of superior quality for whites and, if provided at all, of inferior quality for blacks, Indians, and coloreds.
2. *Meso-apartheid* denotes the residential segregation enforced under the Group Areas Act. Cities that had once been integrated were forcibly segregated during the 1960s and nonwhites deported to outlying areas. In the contemporary world this is referred to as *ethnic cleansing.* The four racial groups were allocated different residential areas of their own. Whites could generally remain in the better parts of the city, while houses and shops were expropriated (particularly from Indians and coloreds) and the owners forced to relocate far from city centers. This eliminated competition for white traders and amounted to the confiscation of valuable real estate. The policy was justified under the banner of "slum clearing." However, once a slum was cleared, its residents or shop- or homeowners were not allowed back to rebuild.
3. *Macro-apartheid* refers to the division of South Africa into nine tribal homelands on 13 percent of the land, while the rest was declared white territory. Blacks could live in white South Africa only with special permission, if they were needed as laborers. Slightly more than half of the total black population fell into this category. Some of the

black homelands, which were also called Bantustans, declared themselves politically independent with their own flags and border controls, but their alleged sovereignty was recognized only by white South Africa. The government in Pretoria heavily subsidized its homeland creations, because they were the supposed answer to the anticolonial independence movements on the rest of the African continent.

Apartheid constituted domestic or internal colonialism. Generally corrupt and unpopular black appointees of the white government in the capital of Pretoria were designated to administer their own poverty and police themselves. The minority Afrikaner central government wanted to shed territory and responsibility for people considered useless, costly, and politically undesirable. Since all blacks would have acquired citizenship in their own independent states, there would be no need to grant them a vote in the white state. They would have been legally denationalized in the country of their birth. Only a few black Bantustan leaders, the Zulu chief Mangosutho Buthelezi being the most prominent, refused to go along with this charade. His Inkatha movement had broken away from the African National Congress (ANC) in 1979 and decided to oppose apartheid legally from within.

Economically, a small aristocracy of whites benefited from job reservation, differential salaries for work of the same variety, or preferential promotion in a system that officially referred to itself as a "civilized labor policy." Poor Afrikaner whites enjoyed the most successful affirmative action policy. They found jobs on the railways, in the post office, or with state corporations, whether they were qualified or not. Forty-five percent of economically active Afrikaners were employed in the civil service, in what comprised a unique nation of bureaucrats. Better qualified professionals were looked after by the secret *Broederbond,* an ethnic male employment agency which ensured that Afrikaners and not English competitors filled the most influential positions in the universities, media, or senior civil service. The 12.000 member elitist organization simultaneously functioned as a think tank and clearinghouse for strategies of Afrikaner nationalism. Together with the founding of several new Afrikaner universities and the expansion of several older ones, such patronage activities ensured that Afrikaners gradually closed the wide educational and income gap with their English counterparts. Especially after Harry Oppenheimer's giant Anglo-American corporation allowed Afrikaner entry into the mining sector in the 1960s, the traditional ethnic divisions within the boardrooms of the nation faded. Beyond continuing ethnic particularities, Afrikaner and English capitalists shared basic common interests in defending their country against sanctions, perceived ANC communists abroad, and increasingly militant trade unions at home.

The majority of rural blacks were deprived of the right to seek work in urban areas through pass laws. These restrictions banned the elderly, women, and children to the desolate countryside, in order to save the system the social costs of education, unemployment, and old age. Eventually, all black South Africans were supposed to become foreigners in the country of their birth by acquiring citizenship in one of nine ethnic homelands. They would be "guest workers" without rights in 87 percent of the land, unable to own property or acquire a sense of a permanent home and belonging.

Colonialism everywhere operated on the distinction between citizens and subjects (Mamdani, 1997). Just as women in Europe were variously disenfranchised until the first half of the twentieth century, so indigenous subject populations (both in Africa and North America) were treated as so-called wards of the state, unworthy or incapable of participating in public affairs as equal citizens. A condescending paternalism confronted the allegedly childlike underlings when they demanded their rights: These had first to be earned, they were told, and their abilities demonstrated during a slow process toward equality. Colonial ideologues declared this the "burden of the white man" who had assumed the mission of "civilizing" primitive Natives in Africa.

Segregated education with different curricula and characterized by the differential allocation of resources was one of the main tools by which this policy was achieved. Bantu education was shaped by essentialized notions of what the black mind was capable of and the kind of corresponding lower skills needed in an industrialized economy. Depoliticized compliance, acquiescence, and acceptance of the status quo as the natural order were the expected attitudes. More open and progressive missionary schools were brought under state control. The few nonwhite students who attended the liberal white universities were channeled into new tribal colleges of students from the same ethnic group, all located in remote rural areas with the exception of the Coloured University of the Western Cape and the Indian University of Durban-Westville. Most faculty at these ethnic institutions were initially conservative Afrikaner civil servants. Little did the apartheid planners envisage that these colleges would gradually evolve into hotbeds of black nationalism and anti-apartheid resistance.

Ethnically based apartheid education, although imposed and resented, nevertheless built on en-

trenched traditions and linguistic backgrounds that are alive and relevant among the African rural population. Even in the cities, every black South African speaks an African language and more often is polyglot, although the medium of public discourse is almost exclusively English, despite eleven official languages. But English, poorly taught as a second language, severely disadvantages many African learners in the competition for good grades and jobs.

Even in the early twenty-first century those living in the rural areas under the authority of traditional chiefs are handicapped by customary law. Officially recognized as a concession to powerful traditional leaders, customary law does not sit well with liberal notions of equality and individual freedom. An unresolved contradiction exists between individualistic notions of citizenship and community-based rights and customs. The authority of chiefs does not rest on democratic legitimacy. Traditional leaders insist on inherited, dynastic rights. Women, in particular, suffer under communal obligations and status inequalities. Mamphela Ramphele speaks of a "dual citizenship that creates tensions between loyalty to the nation and to one's own group, however defined" (2000, p. 7). The tensions remain unresolved, and glaring discrepancies exist between the constitution and customary law. For example, the post-apartheid constitution insists on gender equality, but under customary law women cannot inherit property. Precolonial African society tends to be romanticized as communal decision making by consensus, but the monopoly of power in the hands of male elders and chiefs can hardly be called democratic.

Resistance and Liberation

European penetration of the African hinterland destroyed most of the traditional African subsistence economy. Squeezed into ever more overcrowded reserves, its inhabitants increasingly relied on the remittances of migrant workers in the cities. At the beginning of industrialization Africans had to be forced into poorly paid work on the mines through "head and hut" taxes that British administrators first introduced in the Eastern Cape. Later it was sheer rural poverty that drove blacks into the city slums, dormitories, and compounds. Migrant labor not only destroyed the African peasantry but also undermined the traditional family. The competition among ethnically housed migrants in insecure urban settings encouraged tribalism as a form of solidarity and the protection of one's own group in a tough struggle for survival.

In 1910 the ANC was founded. Among its first goals was the battle for African unity against tribalism. Under the influence of supportive white and Indian liberals and communists, this priority was later extended to color-blind nonracialism. A moderate black elite, educated at Christian missionary schools, repeatedly pleaded with the government for recognition. The much celebrated Freedom Charter of 1955 claimed the right of all South Africans to the land of their birth. A campaign of civil disobedience against new pass laws, inspired by the earlier campaigns led by Mahatma Gandhi, who lived as a British-trained lawyer in the Transvaal and experienced racial discrimination firsthand, was tried in Natal, but failed when the government simply imprisoned its peaceful protesters. The National Party government responded with ever more repressive legislation. The 1960 Sharpeville massacre of more than sixty protesters marked a turning point. The ANC and its rival, the more radical Pan African Congress (PAC), decided to go underground, revert to sabotage without hurting civilians, and establish an in-exile presence for the anti-apartheid struggle after both organizations were outlawed inside the country. After a few years in hiding Mandela and his comrades were caught and sentenced to life imprisonment, to be freed in 1990 only after serving twenty-seven years on Robben Island.

In 1983 the National Party split and shed its conservative wing. In 1989 its hard-line president, Pierre Willem Botha, was replaced with Frederik Wilhelm de Klerk, who had finally realized that apartheid did not work. Its costs outweighed its benefits. Attempts to control the influx of blacks into the cities had failed; businesses needed more skilled employees who were also politically satisfied; a powerful union movement had assumed the role of banned political organizations starting in the late 1970s; restless townships could not be stabilized, despite an essentially permanent state of emergency; demographic ratios had changed in favor of blacks, with more whites emigrating and draining the country of skills and investments; the costs of global sanctions, particularly loan refusals, and moral ostracism of the pariah South African state were felt. The collapse of communism and the end of the cold war in 1989 provided the final straw for the normalization of South Africa. The National Party decided to negotiate a historic compromise from a position of relative strength while whites were still dominant. With the loss of Eastern European support, the ANC also had to turn away from an armed struggle and seek a political solution. A perception of stalemate on both sides prepared the ground for a constitutionally mandated agreement to share power for five years. The first free democratic elections in 1994 and 1999 provided the ANC with a two-thirds majority.

Assessing the Post-Apartheid State and Future Trends

The compromise for whites involved handing over political power to the black majority, but in return leaving the economic order essentially intact. The ANC abandoned its socialist platform of "capturing the commanding heights of the economy" and turned into a right-of-center social democratic party with neoconservative fiscal and privatization policies that suited the powerful business community. A rapidly growing patriotic bourgeoisie has happily joined its white counterpart in defending nonracial capitalism (see Adam et al., 1997). Although the white–black income gap has narrowed, the inequality within each racial group has widened. Black empowerment programs and affirmative action policies have mainly favored an already privileged elite, but barely addressed mass unemployment and poverty.

The ANC has to ask itself what happens when the euphoria of liberation wears off? Black frustration has turned inward: A spiraling crime rate, sexual violence, and escalating rates of HIV infection, due to inexplicable government stalling on available counterstrategies, affect the physical well-being of the post-apartheid generation even more than what their parents experienced under apartheid. Despite holding one-third of the seats in the South African parliament, African women are not yet empowered in the private sphere in a highly patriarchal system. Although the government has made significant progress in supplying new housing, electricity, water, health, and educational services to the needy, it has also wasted precious resources on unnecessary arms purchases. Several high-profile corruption scandals have raised eyebrows. Quiet ANC support for the tyrannical Mugabe regime in Zimbabwe has not reassured jittery minorities that their long-term interests are safe in South Africa.

The cherished South African constitutionalism has not yet been tested in a real crisis of good governance, although the democratic record of the post-apartheid government cannot be faulted. Trends toward authoritarianism and highly centralized decision making in the president's office undermine democratic grassroots participation. Authoritarianism originates not from overwhelming governance as in the former order, but on the contrary, from the widespread crisis of authority and the inability to enforce order. The country lacks the institutional capacity for effective governance in many realms. An admirable human rights culture but fledgling democracy, it faces its most severe challenge both from cynical withdrawal into the private realm and support for a strong hand to impose order and economic progress without debate. A fragile, colonized civil society in South Africa is no guarantee that democracy will prevail in a crisis when even black and white businesses might side with the stability and predictability that a more authoritarian order promises.

The celebrated Truth and Reconciliation Commission (TRC) has affirmed the past sufferings of victims and made some perpetrators confess, because of its unique reward of amnesty after full disclosure of past crimes. The commission has, however, only achieved symbolic reconciliation. The TRC is more admired abroad than within South Africa. By focusing only on perpetrators and a few thousand individual victims of gross human rights violations, the TRC ignored the millions of ordinary people who suffered under apartheid. It also let white beneficiaries off the hook. Claims for reparations are still being debated.

Was apartheid genocide, or a crime against humanity? If one defines genocide as the planned and premeditated physical elimination of a people on the basis of their group membership, apartheid did not constitute genocide. Whites depended on blacks for cheap labor. However, depriving a people of fundamental human rights on the basis of their race and origin, stifling and wasting untold talents through arbitrary restrictions of advancement and differential resource allocation, or systematically insulting the dignity and equal recognition of citizens because of their descent, certainly constitutes a crime against humanity. That atrocities also occurred in countries who were among the harshest critics of apartheid South Africa should not be used to excuse the crimes of apartheid. While the perpetrators should not be labeled the Nazis of Africa, their different motivations and actions do not exonerate them. Although guilt cannot be collectively ascribed and there were also many brave dissidents and human rights activists among the dominant group, the white community bears responsibility for the continuing legacy of crimes committed in its name. All South African whites benefited, willingly or unwillingly, from a horrendous legalized racial system whether they supported it or not. Many victims of apartheid continue to bear visible and invisible scars. That those historical legacies must be acknowledged by all sides and serious efforts made to redress such wounds should be self-evident for all politically literate South Africans.

SEE ALSO Apartheid; Goldstone, Richard; Identification; Mandela, Nelson; Nationalism; Racism; Reparations; Shaka Zulu; Truth Commissions; Zulu Empire

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Soviet Prisoners of War, 1941 to 1945

Soviet prisoners of war (POWs) constitute one of the major groups that fell victim to Nazi German mass violence. For territories under German military occupation, the Department of Military Administration, Quartermaster General in the Supreme Command of Ground Troops (OKH) was in charge of Soviet POWs, whereas in Germany and areas under German civil administration, responsibility lay with the General Administration of the Armed Forces under the Supreme Command of the Armed Forces (OKW). Prior to the attack on the USSR on June 22, 1941, German military authorities had decided that international law would not apply to Soviet POWs (unlike Polish, French, or British prisoners), with minimal provisions made for their shelter, food, transport, and medical supplies. Later Soviet proposals that both sides act in accordance with the Hague and Geneva Conventions were refused by Germany. On OKW instructions, most Soviet POWs were not registered by name in the camps in Soviet areas under German military occupation (Durchgangslager, or *Dulags*), and consequently no lists were passed on from these camps to the International Committee of the Red Cross (ICRC).

Following the German invasion, huge numbers of Red Army soldiers were captured, especially in July, September, and October 1941. Crammed into camps of up to 100,000 men, poorly fed, often without housing or sanitary provisions, the prisoners soon suffered from debilitation. Certain groups of military personnel were denied POW status: On Adolf Hitler's instruction, the OKW issued its "commissar order" on June 6, 1941, according to which political officers in the Red Army were shot in 1941 and 1942. Other groups killed by German troops included Soviet soldiers shot on the battlefield although they had surrendered, alleged Jews, in many camps so-called Asians, women in the Red Army, and in some camps Soviet officers. Orders for these killings originated from platoon to army command levels. More than 100,000 prisoners were handed over to the SS and police in 1941 and 1942; very few survived. In addition, an undetermined number of Soviet POWs, believed to be in the six-digit range, were shot by military guards because of their fatigue during marches or when unloading trains that had transported POWs. In certain German-occupied Soviet areas, Soviet military stragglers were killed instead of being taken prisoner, as were most Soviet partisan fighters. The Germans arbitrarily interned Soviet civilians in several POW camps in 1941.

The German capture of large numbers of prisoners in similarly short time periods had not led to mass deaths in the German campaign against France in 1940. The majority of Soviet POWs died as a result of the deliberate undersupply of food, consequent starvation, frost, and hunger-related diseases. Prior to attacking the USSR, German authorities had planned the killing

During Germany's invasion of the USSR, countless Red Army soldiers were captured, like those shown in this c. 1941 photograph. It is estimated that hundreds of thousands were shot on capture; an equally large number were transported to Nazi prisoner-of-war camps that few survived. [CORBIS]

of tens of millions of Soviet citizens in "food-deficient" regions and in urban areas through starvation and a policy of brutal occupation. Racist and anti-communist, that scheme was to make good the overall German food deficit and to relieve the critical shortage of supplies for troops at the Eastern Front, perceived as crucial for the success of the giant military campaign. Thus, the plan was backed and coinitiated by the military. As military supplies always took priority, Soviet POWs became one of the specific groups targeted for extinction.

In October 1941 food rations particularly for Soviet POWs considered "unfit for labor" were significantly reduced. On November 13 the German Quartermaster-General Eduard Wagner stated, "Soviet POWs unfit for labor in the camps have to die of starvation" (Notes of the Chief of Staff of the 18th Army, quoted in Streit, 1997, p. 157). In many camps those "fit for labor" were separated from those deemed unfit. Yet as guards often mistreated both groups equally and prisoners were worked to exhaustion with insufficient food, this intended distinction scarcely made any difference and initially fit prisoners perished, too. Death figures shot up to 2 percent daily, especially in the German-occupied Soviet and Polish territories. Nearly two out of three million Soviet POWs had died by the end of 1941. Measures to reduce the mortality rate, adopted from December on, only succeeded in the spring of 1942. However, hard labor, poor rations, and bad treatment continued to take their toll until 1945. Orders by the German leadership were countered with brutality, violence, or gross neglect on the ground. Military and economic considerations, racism against Slavs, Jews, and so-called Asians, and anticommunism were at the core of interrelated motives.

In total, out of 5.7 million Soviet POWs, about three million died in German captivity, almost exclusively at the hands of the German military. Serious calculations, based on the interpretation of fragmentary German documents, range from "at least" 2.53 million to 3.3 million (Streit, 1997), with death figures revised downward for camps inside Germany on the basis of German records discovered in Russia and Germany in the late 1990s. Adding to their suffering, Soviet POWs

returning to the USSR encountered collective suspicion and many were imprisoned without proper trial, as about a million had been forced or agreed under pressure to work for the German army, with hundreds of thousands fighting for the German army or SS under arms.

SEE ALSO Hitler, Adolf; Stalin, Joseph; Union of Soviet Socialist Republics

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Christian Gerlach

Sparta

A precursor of genocidal regimes, ancient Sparta shared some characteristics with modern cases. Relevant features of its classical history include territorial expansion, war crimes, ethnic conflict, a tyrannical domestic hierarchy, and an agrarian, anti-urban ideology.

Territorial Expansion

Sparta was an expansionist militaristic state in what is present-day Greece. Historian Paul Cartledge called it a "workshop of war" (Cartledge, 2001, p. 89). In the eighth century BCE, Sparta destroyed Aigys in its own region of Lakonia. Next, the conquest of neighboring Messenia doubled Lakonia's population and made Sparta the wealthiest Greek state, facing no invasions of its territory for more than three centuries. Sparta exploited Messenia from 735 to 370 BCE, crushing revolts in the seventh and fifth centuries. Messenians comprised most of Sparta's serflike labor force, the Helots.

In the sixth century, Sparta expanded across southern Greece, conquering Tegea, controlling Arcadia, defeating Argos, seizing Cythera; as Herodotus wrote, "subjugating" most of the Peloponnese (Cartledge, 2001, p. 119). Cartledge described Sparta as "a leader of the Greek world" by the year 500, when it directed the Peloponnesian League (Cartledge, 2001, p. 124). It played key roles in the Greek victories over Persia in 490 and 480, and its defeat of Athens in the Peloponnesian War (431–403) brought Sparta to its zenith. Eventually, however, a Theban invasion liberated Messenia in 370 and 369. Sparta lost its independence in 195, before Rome conquered all of Greece.

Ethnic Conflict and Expansion

Sparta's expansion exacerbated ethnic conflicts. Its ruling Ephors ritually declared war on the Helots, in what Cartledge called "politically calculated religiosity designed to absolve in advance from ritual pollution any Spartan who killed a Helot."

Early Athenian politician Thucydides described a Helot revolt at Mt. Ithome in the 460s, which produced "the first open quarrel" between Sparta and Athens. The Spartans had called on Athenian aid against the Helots. However, disheartened by failure of their combined assault on Mt. Ithome, "apprehensive of the enterprising and revolutionary character of the Athenians, and further *looking upon them as of alien extraction*," Sparta sent the Athenians home. The offended Athenians "allied themselves with Sparta's enemy Argos." The Messenian rebels surrendered to Sparta's conditions: "That they should depart from the Peloponnese under safe conduct, and should never set foot in it again; any one who might hereafter be found there was to be the slave of his captor" (Thucydides, I.102–3).

The warfare fostered increased brutality. According to Thucydides, on the outbreak of the Peloponnesian War, "the Lacedaemonians butchered as enemies all whom they took on the sea, whether allies of Athens or neutrals." Spartan troops took Plataea and coldbloodedly "massacred . . . not less than two hundred" of its men, "with twenty-five Athenians who had shared in the siege. The women were taken as slaves." In 419, Spartans captured Hysiae, "killing all the freemen that fell into their hands" (Thucidides II.67.3, III.68.2, V.83). Spartan massacres ranged from what historians define as war crimes to racial murder and brutal domestic repression.

Domestic Tyranny

At the bottom of the social ladder, the Helots' agricultural servitude released every Spartan from productive labor. Bound to a plot of land, Helots worked "under pain of instant death"; even the local Lakonian Helots were often expendable (Cartledge, 2001, pp. 89, 24). Scholar G. E. M. de Ste. Croix wrote that Spartans could "cut the throats of their Helots at will, provided only that they had gone through the legal formality of declaring them 'enemies of the state'" (de Ste. Croix, 1972, p. 92). According to Thucydides, the Spartans had "raised up some Helot suppliants from the temple of Poseidon at Taenarus [in Lakonia], led them away and slain them" (Thucydides I.128). Cartledge noted that Helots were "culled" by Spartan youth as part of their training: the *Krypteia,* or "Secret Service Brigade" of select eighteen-year-olds, had to forage for them-

selves across the countryside, commissioned "to kill, after dark, any of the Spartans' enslaved Greek population of Helots whom they should accidentally-on-purpose come upon" (Cartledge, 2001, pp. 88–89). In the eighth year of the Peloponnesian War, Spartan forces massacred 2,000 Helots who had served in their army. Under a pretext, they were invited to request emancipation, "as it was thought that the first to claim their freedom would be the most high-spirited and the most apt to rebel" (Thucydides IV.80).

Above Helots on the social ladder were about eighty communities of skilled townsmen or *Perioikoi.* Free but under Sparta's suzerainty, they lacked Spartan citizenship rights, even though the Lakonian Perioikoi were "indistinguishable ethnically, linguistically and culturally from the Spartans" (Cartledge, 2002, p. 84); others were Messenian.

One-tenth of the polity's population, fewer than 10,000 people, were full citizens. These *Spartiates,* the male inhabitants of Sparta's five villages, trained there, barred from agricultural labor. Their occupation was warfare. The Spartiates paid common mess-dues out of the produce delivered to them individually by the Helots tied to working their private plots. Though their land was unequally distributed, Spartiates adopted simple, uniform dress.

Agrarian Ideology

From its beginnings, Sparta's system was almost totally agricultural, conservative, and land oriented. Thucydides reported four centuries later that Sparta was not "brought together in a single town . . . but composed of villages after the old fashion of Greece" (Thucydides I.10.2). Its closed system contrasted with the Greek city-states. Sparta favored autarchy over both trade and towns, carefully controlling commerce. Spartiates could not trade nor purchase a range of consumption goods. Cartledge wrote that Lakonia "was extraordinarily autarchic in essential foodstuffs, and its possession of abundant deposits of iron ore within its own frontiers may have been a contributory factor in its decision not to import silver to coin," a policy dating from c.550 BCE (Cartledge, 2002, p. 134). Until the early third century, Sparta coined no silver, unlike other Greek states in their prime. Iron spits apparently figured in Spartan exchanges. Plutarch asserted that the early Spartan lawgiver Lycurgus "introduced a large iron coin too bulky to carry off in any great quantity." Seneca said Spartans paid debts "in gold or in leather bearing an official stamp" (Bondanella and Bondanella, 1997, p. 387). Archaeologists have found few coins at Perioikic sites. Sparta, like Pol Pot's Democratic Kampuchea, seems to have been one of history's few states without a currency.

It was a demanding state. Rich or poor, the Spartiates or *homoioi* ("peers"), were subject to collective interests and obliged to undergo "an austere public upbringing (the *agoge*) followed by a common lifestyle of participation in the messes and in military training and service in the army" (*Oxford Classical Dictionary online*). The state, not individual landowners, owned the Helots who worked the Spartiates' private landholdings. The state alone could emancipate Helots. And it not only enforced communal eating and uniformity of attire, but according to Thucydides, "did most to assimilate the life of the rich to that of the common people" (Cartledge, 2002, p. 134; Thucydides I.6.4). The state prohibited individual names on tombstones (Cartledge, 2001, p. 117).

Ancient Greek historian Xenophon noted that Lycurgus had arranged for the Spartans to eat their meals in common, "because he knew that when people are at home they behave in their most relaxed manner" (Whitby, 2002, p. 98). Communal living facilitated state supervision. Spartan boys left home at age seven for a rigorous state upbringing. A Spartiate who married before age thirty was not allowed to live with his wife beyond infrequent secret visits. Fathers who had married after thirty lived most of their lives communally, with male peers. In Cartledge's view, Spartan women enjoyed "certain freedoms, including legal freedoms, that were denied to their Athenian counterparts, but they were not, to put it mildly, as liberated as all that" (Cartledge, 2001, p. 106).

Classical Sparta's fusion of the rhetoric of freedom with expansionist violence, racial xenophobia, domestic repression, and agrarian ideology recurred in the twentieth century. Praising Sparta for its "abandonment of sick, frail, deformed children," Adolf Hitler called it "the first racialist state" (Weinberg, 2003, p. 21). Pol Pot's communist Cambodia reproduced many ideological features of ancient Sparta, including expansionist militarism and war crimes, ethnic brutality, egalitarian rhetoric with a harshly exploitative tripartite social pyramid, an austere communal barracks lifestyle, and repression of the family unit.

SEE ALSO Ancient World; Athens and Melos; Carthage

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Ben Kiernan

Srebrenica

The Srebrenica massacre, in which some seven thousand Bosnian Muslim males were executed by Bosnian Serb forces in July 1995 in the Yugoslav War, is widely recognized as the worst single war crime committed in Europe since World War II. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has condemned the crime as an act of genocide. Srebrenica has also become synonymous with a great failure of the international community. Neither the protection of United Nations (UN) Security Council Resolutions nor the presence of a Dutch peacekeeping battalion deterred the Bosnian Serb attack on the "safe area" or prevented the subsequent massacre. Not until June 11, 2004, did the Bosnian Serb government, responding to strong international pressure, release a forty-two-page report admitting that police and army units under its control had "participated" in the massacre, and that government forces had undertaken extensive measures to "hide the crime by removing bodies."

The Massacre

Srebrenica is a little town in eastern Bosnia and Herzegovina that was bypassed in the Serb offensive in the opening stages of the war in March and April 1992. A renewed offensive in 1993 led to UN Security Council Resolution 819 (April 16, 1993), which declared the town and its surroundings a "safe area." Some 40,000 Muslim refugees from all over eastern Bosnia were surrounded in the isolated enclave. On July 6, 1995, as part of the attempt to "clean up the map" in preparation for ending the war, Bosnian Serb forces launched a carefully prepared attack, which led to the fall of the enclave on July 11. Approximately 15,000 Muslim men tried to break out and reach Bosnian government–held territory in central Bosnia. Thousands were captured and executed in a well-organized operation, lasting slightly more than a week. Some 25,000 people sought refuge around the main UN compound. Males were separated from women and children. While the 23,000 women and children were deported, approximately 2,000 men were taken away and executed.

The massacre reveals a pattern that was common to Serb strategy and tactics in the war. Srebrenica is a clear instance of the strategy of ethnic cleansing practiced by the Serbs since 1991. This strategy aimed to create an ethnically homogenous Serb state by forcing non-Serbs to flee as the result of acts of demonstrative atrocity against civilians. In the atrocities, men were objects of special attention. Their removal in particular was deemed to render communities incapable of further resistance and prevent the return of the surviving population to their original homes.

Nonetheless, the scale of the massacre was uncommon. Why did the Bosnian Serbs attempt to kill all the men from Srebrenica? The official Dutch investigation concluded that it was a combination of anger and frustration at the surprise escape attempt by the men, as well as of a desire to revenge the vicious attacks by Bosnian Muslims from the enclave in the previous years. A more convincing explanation, also accepted by the Appeals Chamber in the Krstic trial, is that the genocide would remove a cross-section of men from all over eastern Bosnia and thereby secure the whole region from effective Muslim irredentism. A related contentious issue is the timing of the decision to massacre the men. The official Dutch investigation claims that the decision was taken after the fall of the enclave and hence the genocide was a largely improvised action. Others argue that the decision was taken much earlier and thus the genocide was a premeditated act.

The Aftermath

Soon after the event, the ICTY indicted prominent Bosnian Serb leaders for their crimes. In November 1995 the first individuals to be indicted were Bosnian Serb president Radovan Karadzic and the Bosnian Serb Army commander, General Ratko Mladic. Although as of mid-2004 they had avoided capture, the former Yugoslav leader, Slobodan Milosevic, appeared before the Tribunal and was accused of complicity in the genocide (although the evidence linking him with Srebrenica was slight). Many of the "second echelon" of lesser military figures with direct involvement were also tried. A member of one of the execution squads, Drazen Erdemovic, was convicted in 1996. More importantly, the commander of the Bosnian Serb Army Corps that controlled the area, General Radislav Krstic, was sentenced

to forty-six years in 2001 (a sentence that was reduced to thirty-five years on appeal in 2004). A number of his subordinate officers were convicted in late 2003. The massacre was committed by relatively small numbers of troops and guided primarily by Security and Special Police personnel. The most senior officers were Colonels Ljubisa Beara and Ljubomir Borovcanin. They, like their commanding officer General Mladic, remained at large as of mid-2004.

The evidence in the trials was based on forensic proof, witness statements, and documents. This has led to the judgment that the Srebrenica massacre constituted genocide. The exhumation of bodies reveals that many thousands of Muslim men died not as the result of combat, but of large-scale executions. Moreover, the victims were not exclusively of military age, but included boys, old men, and invalids. Finding witnesses has posed a problem. Very few Muslims survived the massacres and few Serb suspects have admitted guilt. Controversially, the prosecution reverted to plea-bargaining. Trial judges, however, have expressed great reservations about this practice as it suggests that individual punishment for some of the most heinous crimes possible can be avoided by testifying against others.

Documentary evidence has been critical in all trials. A key part is formed by the military archive of the Bosnian Serb armed forces that was captured by North American Treaty Organization (NATO) troops after the war ended. This archive included, for example, the plan of attack and much administrative material that revealed which units and personnel were involved in the Srebrenica operation. A second important documentary trail involved intercepts of radio communications of Bosnian Serb forces made by Bosnian Muslim military intelligence. These intercepts played a major role in the Krstic trial as they tended to be more explicit about what actually took place than the written documents. On appeal, however, many intercepts were judged sufficiently ambiguous to allow for weaker interpretations benefiting the defendant. Hence, General Krstic's conviction for being a "principal perpetrator" of genocide was reduced to one of an "aider and abettor."

Unsucccessful Humanitarian Intervention

Srebrenica is often regarded as the emblematic failure of the humanitarian intervention in the former Yugoslavia. The Dutch UN battalion that was there to protect the "safe area" has become a particular focus of criticism. The unit appeared to have consciously allowed itself to be reduced to the role of impotent bystander while the genocide was committed. Despite undoubted shortcomings, much of the criticism is misplaced. In the end, Srebrenica fell because of a lack of will on the part of the international community to use force in defense of human rights. The weak and ambiguous mandate of the 1993 UN Security Council Resolution that made Srebrenica a "safe area" already exemplified this. It was confirmed by a string of other actions, ranging from the unwillingness to back up the implementation of peace plans by force, if necessary, to the half-hearted attempt to use NATO air power in May and June 1995 (which resulted in extensive hostage taking by the Bosnian Serbs and a swift capitulation by the international community). Within this political context, the behavior of the Dutch troops and, more broadly, the UNPROFOR mission in the former Yugoslavia, becomes understandable. They were expected to avoid actions that led to UN casualties and might involve the international community in a shooting war. Added into this mix was a persistent disbelief that the Bosnian Serbs would dare take the whole safe area and commit genocide. The shock of Srebrenica did directly lead to the armed intervention of August and September 1995 that resulted in the Dayton Peace Agreements being signed the following November. It also led to a much firmer stance, and ultimately armed intervention, over Kosovo in 1999.

SEE ALSO Bosnia and Herzegovina; Bystanders; Genocide; Humanitarian Intervention; Massacres

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Jan Willem Honig

Sri Lanka

Ethnic groups in Sri Lanka have been at war since 1983. The war is dominantly ethnic in its construction but not genocidal in a strict sense of the definition of the term, in that the conflict or war is not directed toward the elimination of a population on ethnic or racial

grounds. However, the passions of the war are fueled in an ideology of nationalism, given greater impetus through religious values that are one major basis for ethnic distinction. This ethnic distinction took on a destruction of genocidal quality not dissimilar from other conflicts of a genocidal character, in Kosovo, Bosnia, Rwanda, and increasingly in other parts of Africa.

The war in Sri Lanka has affected the lives of all communities in Sri Lanka. These include the major parties to the conflict, the dominant Sinhala-speaking largely Buddhist population (some two-thirds of the island's population) located mainly in the fertile central, western, and southern coastal zones of the island, and the Tamil-speaking, mainly Hindu, population (less than one-third of the total population) who live in the dry northern and eastern parts of the island. Both populations have significant minorities of Christians (mainly Catholic, but also Protestants). There is an important minority of Muslims who are mainly Tamil-speaking and these are found in communities throughout the island. They have been caught up in the fighting, sometimes the victims of violence from both Buddhist Sinhala and Hindu Tamils.

All of these populations have a history in the island stretching far back into precolonial times. Both Sinhala Buddhists and Hindu Tamils make claim to the island as their indigenous heritage and the often furious debate involving archaeological and other evidence is very much a part of the enduring crisis, legitimating the rival claims of the warring parties. However, the grounds for the war were largely established in recent colonial history starting with the arrival of the Portuguese in the early fifteenth century and ending with Dutch occupation, and from the late eighteenth century through to the mid-twentieth century, with the British. The political and economic changes that occurred in the island in these colonial periods and in the postcolonial aftermath created the structures within which the ethnic crisis and war of the early twenty-first century took form.

In the course of twenty years of open ethnic hostilities in Sri Lanka official statistics indicate that some sixty thousand individuals have lost their lives on both sides of the Sinhala/Tamil ethnic divide. Many of the deaths have been among Sri Lanka military and among combatants in various Tamil guerrilla groups, but especially the commanding Liberation Tigers of Tamil Eelam (LTTE). Civilian populations and particularly Tamil Hindus (but also Tamil Christians and Muslims sometimes as a result of LTTE attacks) have suffered the greatest number of casualties and despair resulting from social, economic, and territorial dislocation and from the deprivations and rigors of confinement and restriction imposed by the ebb and flow of combat.

Sinhalese populations both directly and indirectly have also suffered. A serious spin-off from the intensification of ethnic hostilities and the changing fortunes and uncertainties of the war has been growing civilian unrest among the Sinhala population. A major insurrection organized in the late 1980s by the Janatha Vimukthi Peramuna (JVP), also known as the Peoples Liberation Movement, and largely supported by unemployed rural and urban Sinhala youth, activated repressive military and paramilitary organizations of the Sri Lanka state. These, which had assumed much of their character because of the larger ethnic conflict, focused their acutely destructive capacities on the Sinhala civilian population (and not merely JVP supporters). Various clandestine operations by military and paramilitary forces resulted in an extremely high loss of life, which, as of the early 2000s, has received little in the way of open or serious investigation. Although tensions run high in the early twenty-first century, there are indications that the war is drawing to a close.

Ethnic Diversity

The ethnic/religious shape of the conflict and war has a long history of development. Undoubtedly, other forces of a nonethnic or religious character—often of a social class kind—also gave impetus to the struggle. Social-class issues have sustained the war even when ethnic and religious factors have declined in importance.

The hostility of mainly ethnic Sinhala majority toward the Tamil ethnic minority has its roots in colonial and postcolonial history. The ethnic categories and their political significance arose during the course of Western imperial intrusions into the island, known as Ceylon from the colonial era and until 1972, and especially under the British who subdued the entire island with their conquest of Kandy in 1815. Ethnic identity became a marker of cultural and social distinction in a colonial political order whose rigidity that was not typical of Ceylon's past. As various scholars have stressed, terms like "Sinhala" and "Tamil" used in ancient precolonial sources often described ruling lineages and structures of political allegiance that were often very fluid. The kings who defended largely Sinhala-speaking populations during the Western invasions (Portuguese, Dutch, and finally the British) were of Tamil lineage from South India. With colonial rule, ethnic distinctions served bureaucratic and governing interests and the social boundaries described ethnically became far less porous and situationally relative than before. Such ethnic boundaries informed the formation

of constituencies of political interest and nationalist resistance leading to Independence in 1947 and the burgeoning of postcolonial nationalism.

Ethnically based political rhetoric of a powerfully nationalist kind further bolstered by appeals to common language and religious affiliation was integral in the formation of political communalism. Moreover, political parties in the postcolonial period expressed a variety of socioeconomic concerns and felt inequalities under cover of debates over ethnicity. The language issue was of supreme importance in the years following independence, when Sinhala (*swabasha*) became the main language of the state. The policy of Sinhala-only was promulgated by Prime Minister Solomon West Ridgeway Dias (SWRD) Bandaranaike in order to appeal to a largely Sinhalese-speaking peasantry and the lower middle class and working class in the central, western, and southern regions of the island. English, the language of colonialism, was generally seen as a means of exclusion, only available to educated elites and inhibiting the opportunities for employment and upward social mobility of hitherto depressed groups. Tamils were widely perceived as advantaged in the job market (especially in access to the professions and highly prized positions in government bureaucracies) because they were seen as better qualified in their English-speaking abilities (to some degree a legacy of missionary activity in the Tamil north). The postcolonial politics of language intensified ethnic division. Ethnically motivated restrictions on Tamil access to university places (especially in medicine) and to positions in the civil service were a major source of discontent among Tamils from the 1970s.

Anti-Tamil feeling was also apparent in a series of attempts to repatriate to India Tamils who had been brought as indentured laborers to work on the British and later largely Sinhala-owned tea estates in the highland areas of the island. These highly exploited estate workers attracted little help from the larger Tamil population on the island who, as with the dominant Sinhala population, saw themselves as indigenous to the island and distinct in certain cultural and linguistic ways from Tamils in India. A closer feeling of identity between tea-estate Tamils (who were also discriminated against in terms of caste) and the larger Tamil community in Sri Lanka is a late 1990s development and, perhaps, one positive outcome of the ethnic war.

Religious Factors

The misconception among Sinhalese that Sri Lanka was the last refuge of Buddhism was a further factor in the growth of ethnic hostility especially by Sinhala toward Tamils. British rule was regarded as instrumental in the reduction of the preeminence of the Buddhist religion. Sinhala nationalism from the late nineteenth century to the 2000s was largely motivated by a movement of Buddhist revitalization (linked to a reassertion of the value of Sinhala custom) against the effects of colonial domination. This was keenly supported by members of the urban merchant classes situated along the western and southern coasts. The various caste-based communities that formed around members of these classes were and continue to be forceful in the pursuit of Sinhala interests defined in opposition to Tamils. The engagement of religion (specifically Buddhism) to nationalist ethnic allegiance is a key factor in generating the passions of the conflict. It politicized the Buddha clergy, making them central to ethnically defined communal political and economic interest (a legacy of the revitalization movement that paradoxically made a doctrinally other worldly religion acutely this worldly). The assassination in 1959 of Prime Minister Bandaranaike, the chief architect of Sinhala ethnic nationalism, by a member of the Buddha clergy, is significant in this regard. In 1972 Bandaranaike's widow, Sirimavo Bandaranaike, the then-elected prime minister, declared Buddhism to be the national religion.

Communalist rioting and killing of an ethnic kind was gathering force in Sri Lanka through to the early 1980s. Major attacks against ethnic Tamils occurred in 1947 soon after its independence, in 1956 and 1958, and there were incidents throughout the 1960s. The 1970s were full of ethnic tension and the capital, Colombo, as well as other urban centers became increasingly subject to curfews in order to dampen any ethnic disturbances. Ethnic tensions, especially in the south (a powerful region of Sinhala nationalism), precipitated a form of ethnic cleansing. Minority Tamil populations went to Tamil areas in the large urban centers such as Colombo. The participation of Sinhala in Tamil Hindu festival events—a feature of religious life in some centers in the south (and also in the Colombo areas)—declined and eventually stopped. The increasingly greater divisions of ethnicity that appeared in everyday social life heightened communal divisions.

All came to a head in August 1983 when a unit of Sinhalese soldiers was ambushed near the sacred Buddhist city of Anuradhapura. Anti-Tamil riots spread through major urban centers but were the most fierce in Colombo. There were attacks on middle-class Tamil residential areas but perhaps the strongest were in the abject shanty communities of the poor. Sinhalese attacked their Tamil neighbors, many of them refugees from the tea estates. Sinhalese thugs roamed the streets. Government authorities were slow to react and there were many stories of Sinhalese police standing by as

Since 1948 the struggle between majority Sinhala-speaking Buddhists and minority Tamils (mostly Hindu) has been a feature of political life in Sri Lanka. There has been on-and-off civil war in Sri Lanka since 1983, with village-scale slaughters on both sides. In this photo taken in April 2004, Tamil women stand in line to vote at a polling station in the district of Batticaloa, in Eastern Sri Lanka. [**AP/WORLD WIDE PHOTOS**]

atrocities were committed. Suggestions of government complicity were strong, as were rumors that President Jayawardena's conservative United National Party government had instigated the rioting as a type of pogrom. There is some evidence that gangs of thugs were bussed to Tamil zones (violence having a long history in political party rivalry). Indeed, prior to the rioting, serious threats urging Tamil independence had been directed at the then relatively small LTTE guerrilla movement and the Tamil population as a whole. The riots blazed for four days. Official estimates of Tamil deaths are in the vicinity of 300, although other estimates are far greater. There is only one recorded instance of a Sinhala death, a person fleeing rioters. Approximately 300,000 Tamils living in Sinhala-dominated areas fled their homes. The start of the ethnic war that has consumed Sri Lanka and in which Tamil civilians have been the greatest victims can be traced to these events of 1983.

Socioeconomic Factors

Violent nationalism of a genocidal kind can generally be shown to have its roots in socioeconomic crises. There was growing unemployment in Sri Lanka partly as a consequence of the liberalizing and opening up of a hitherto relatively closed economy. Sri Lanka was one of the first countries to apply structural adjustment policies recommended by the World Bank and the IMF. Liberalization of the economy was accompanied by a paring down of state-supported welfare services, the laying off of staff in state bureaucracies (a major employer), and the winding down of state industries and their privatization. These changes seemed to coincide with the increase in ethnic tensions that were further exacerbated by the Jayawardena government's intensifi-

cation of a populist rhetoric promoting Sinhala Buddhist nationalism.

The Role of Nationalist Rhetoric

Much of the discussion regarding the violence toward Tamils by ethnic Sinhalese populations has rightly emphasized its similarity with ethnic nationalism elsewhere, especially in Europe. Scholars discovered parallels with Nazi Germany and blamed the invention of a tradition of postcolonial government-sponsored Sinhala history narratives (which drew on Western constructions of the colonial period). Powerful criticisms were made of those nationalist arguments that asserted a continuity of ancient historical experience into the present; for example, that contemporary violence was a modern manifestation of ancient enmity between Sinhala and Tamil or was the latest instance of a long cycle of revenge. The essentialism and primordialism of such arguments were attacked not only because they were empirically inaccurate but also because they displaced responsibility for the destruction and suffering away from the contemporary state and its ruling interests. The hatred that was unleashed was the result of the constructions and falsehoods of modernity. The inventions of ethnic nationalism on both sides (for the rhetoric of Tamil nationalists paralleled, if in distinct ways, those of the Sinhala) encouraged sentiments that gave emotional force to the destruction.

Perhaps the politics of ethnic hatred and exclusion and extermination in modern times carries a potent hierarchical force. But in Sri Lanka this potential gathered much energy through the mythologies of nationalist rhetoric as this found a degree of acceptance in everyday religious and ritual practices. In other words, a nationalist argument of hierarchy—that the Tamil others should exist in a generally subordinate relation to Sinhala—was more evident given the nature of the mythological sources of Sinhala nationalism. The ethnic violence during the rioting in 1983, as well as the violence of the ensuing war involving attacks on Tamil civilian populations, often took a marked hierarchical form. Incidents were recorded of victims being forced to submit their bodies after the manner of Tamil victims before Sinhala heroes of the past. Some of the fury of the destruction, the radical disordering, often dismemberment of victims and fragmentation of their possessions, carried the disordering passion of a ritual process restructuring of person and world. In many respects the direction of the ethnic war as it developed in terms of strategy and in the control and occupation of territory assumed symbolic values appropriate to the nationalist mythologies that gave it impetus. Leading politicians, including the president, and military commanders not only appealed to the ideas conveyed in ancient mythology but to a degree came to live and act them out.

The symbolic values born of nationalist discourse that have framed both ethnic conflict and war continue to have force into the 2000s. To some extent Sinhala often appear to be imprisoned in their dialectic even though there is an urgency among many sections of the population to break free. There is clear evidence that the urban and rural poor who have borne the greatest brunt of the tragedies of the war have grown tired of nationalist rhetoric. But it is still engaged by elites and this has complicated efforts by international groups (the Norwegians especially) to broker a settlement. Such an observation demands a stress on the social and economic lineaments underpinning the conflict, the almost total lack of trust that has developed between the warring parties notwithstanding.

There have been numerous shifts in elite formation, especially in relation to liberalization and contemporary globalization. To some extent this has driven an anxiety to achieve a settlement to the war, and was evident in the political tussle, given wide global media coverage, between the recently defeated prime minister and the elected president, Chandrika Kumaratunga, the daughter of Bandaranaike whose family is from the upper echelons of the still largely Kandyan-based ruling groups. The prime minister was closely associated with urban business and merchant groups with substantial local and international interests in peace. The general mood for peace was for a limited time encouraged by the U.S.–driven war on terrorism. This also produced a climate necessary for the highly successful guerrilla movement of the LTTE to come to the negotiating table. But this impetus to peace started to slow and became further hampered by the concern of powerful Sinhala elite groups to maintain a political and economic grip on the island, which the nationalist discourse they encouraged initially facilitated. It is the social dynamics of this elite (Sinhala and Tamil), many members of which have their roots in the colonial past and have spread their influence internationally (as a function of migration, some forced as a consequence of the war), that holds the much of the key to understanding the durability of the war and the persistence of suffering for all communities.

Conclusions

As the dominant population and in control of the machinery of power of the Sri Lanka government, much of the responsibility for reconciliation rests with Sinhala leaders. They, perhaps, have become weakened in responsibility with the growth in power of the LTTE. Overall, all sectors of Sri Lanka society have become

subordinated to the logic of war in itself and this has driven other nationalist discourses among Tamil Hindus and the minority Muslim population alike. These paradigms in their own particular histories enlivened by the horrors of war, are making moves toward a peaceful solution.

The result of the conflict has had enormous polarizing effects on the society of Sri Lanka, creating a degree of division that was more imagined than real in the years leading to the war. The war has caused much death and suffering, which sometimes appeared to have genocidal ingredients. However, to label the events "genocidal" would be to indulge in a discourse that is part of the inflammatory rhetoric often used by members of the warring parties to justify the perpetration of violent acts.

SEE ALSO Death Squads; Ethnic Cleansing; Ethnic Groups; India, Modern; Nationalism; Refugees; Religion

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SS

Schutzstaffel, abbreviated as SS, literally means "protective guard." The roots of the SS go back to 1923, when Hitler designated fifty men to serve as his personal bodyguards. After Hitler and the Nazi Party came to power in January 1933, the tasks of the SS expanded, eventually resulting in the SS serving as instruments of murder, terror, repression, and intimidation under the direction of Heinrich Himmler, who held the office of Reichsführer-SS (Reich leader of the SS) through 1945.

After Hitler's failed attempt to overthrow the government of Weimar Germany in November 1923, the Nazi Party and all its organizations were temporarily declared illegal. When the Nazi Party was allowed to participate again in the political life of Germany in 1925, Hitler created the SS, a small force of some two hundred men, to provide protection for himself and other Party members.

In 1929, Hitler appointed the former Bavarian chicken farmer, Heinrich Himmler, to the post of Reichsführer-SS, and charged him with forming the SS into "an elite troop of the Party." In addition to protection for the Führer, it performed a number of different tasks, including carrying out functions previously reserved for the police. By this time, the SS had grown into a 52,000-man strong organization. As early as the spring of 1933, Himmler assigned members of the SS Death's Head Division (*Totenkopf*) to stand guard over the growing number of political opponents of the regime who were incarcerated in the first concentration camps in Nazi Germany. The SS also played a prominent role in cooperation with the German armed forces

Here, SS General Jurgen Stroop and German soldiers prepare to quell the Warsaw uprising, August 1943. One of many photos that Stroop later included in his report to the Nazi high command detailing his success in liquidating the Jewish ghetto. [SNARK/ART RESOURCE]

(*Wehrmacht*) in the June 1934 plot to murder Ernst Röhm and the leadership of the Brown Shirts (*Sturmabteilung* [SA]), which had begun to threaten the supremacy of the army.

As a reward for its role as assassins in the Röhm purge (also known as "The Night of the Long Knives"), Hitler established the SS as an independent organization within the Nazi Party. In 1936, Himmler, newly appointed Chief of Police in the Ministry of the Interior in addition to his title of Reichsführer-SS, consolidated the entire German police force, bringing the regular uniformed police (*Orpo*) and the Criminal Police (*Kripo*) together with the SS. This resulted in a single Party organ having jurisdiction over all of the police forces in Germany.

Once the Germans attacked Poland in September 1939 to start World War II, the infrastructure of the SS, now 240,000-strong, changed again. Himmler created the Reich Security Main Office (RSHA) as both a departmental agency of government and the SS. He appointed Reinhard Heydrich, head of the Security Service (*Sicherheitsdienst* [SD]) of the SS to lead the RSHA. Under Heydrich, the RSHA developed plans for the destruction of enemies of the State. These included the implementation of Nazi racial policies against targeted groups such as Jews, gypsies (Roma and Sinti), and Red Army and civilian political commissars through the deployment of mobile killing units (the *Einsatzgruppen*) of the SS (SD) and Security Police, which followed the German Army into the Soviet Union beginning in the summer of 1941, as well as the work of the Gestapo (secret police) in arranging deportations of millions of Jews to extermination camps or execution sites in occupied territories of Europe from 1941 to 1945.

The SS was also involved in the administration of concentration camps and extermination camps. By 1942 the Economics and Administration Main Office (WVHA) of the SS, under the direction of Oswald Pohl, had a firm hold on the exploitation of slave labor throughout the camp system. At its peak, it controlled

more than six million prisoners, serving the economic interests of the Reich to replace the shortage of labor due to mounting casualties on all fronts.

In addition, the SS played an active role in the German armed forces. Originally intended as an elite group of "political soldiers," the Waffen-SS expanded its recruitment outside the Reich, and had over 900,000 men under arms by 1942. Known to have taken part in numerous violations of the laws of land warfare throughout the war, including the massacre of American POWs at Malmédy during the Battle of the Bulge in December 1944, members of the Waffen-SS earned a notorious reputation for brutal behavior. However, units of the Waffen-SS were some of the most highly decorated soldiers in the German armed forces.

The tribunal at the Nuremberg War Crimes Trials in 1946 declared that the SS as a whole, distinguished by their black uniforms (the Black Corps) with the signature markings of the SS written as twin lightning bolts in imitation runic script, was a criminal organization.

SEE ALSO Barbie, Klaus; Einsatzgruppen; Germany; Goebbels, Joseph; Heydrich, Reinhardt; Himmler, Heinrich; Streicher, Julius

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Robert B. Bernheim

Stalin, Joseph

[DECEMBER 21, 1879–MARCH 5, 1953]
Russian revolutionary and politician; successor to Lenin as ruler of the Soviet Union and head of the Communist Party (1929 to 1953)

One of the bloodiest despots in modern history, Joseph Stalin helped transform the Soviet Union into a military and industrial superpower, but at a staggering cost in human lives and suffering. In the words of scholar Stephen Cohen, Stalin's rule was a "holocaust by terror" that "victimized tens of millions of people for twenty-five years."

Stalin was born Iosif Vissioronovich Djugashvili on December 21, 1879, in the Georgian village of Gori. The son of a poor shoemaker, Iosif became a professional revolutionary and at age thirty-four adopted the political name of Stalin, meaning "man of steel." A member of the Bolshevik faction of the Russian Social-Democratic Party, Stalin played a minor role in the 1917 October Revolution and entered the new Soviet government as Commissar of Nationalities. In 1922 he became General Secretary of the Communist Party, a position he subsequently transformed into the major base of power in the Soviet state. A gifted politician, Stalin outmaneuvered his rivals to become the sole leader of the party and the state by 1929.

Human life had little value for Stalin, who viewed people largely as instruments for serving the needs of the state. In the late 1920s, Stalin launched a massive drive to transform Soviet industry and agriculture. To support industrialization, he ordered the collectivization of agriculture and the creation of large-scale communal farms. But collectivization soon turned into a bloody civil war that raged across the countryside, resulting in the death and deportation of five to eight million people. Those who resisted faced either execution or exile to "special settlements" in remote northern regions, where up to a third of them died from the harsh conditions. Collectivization proved even more deadly during the famine years of 1932 and 1933 when an estimated five to eight million peasants died in Ukraine and Central Asia. Some scholars view this famine as a deliberate act of genocide, whereas others blame it on bureaucratic incompetence and poor planning.

Repression was central to Stalin's leadership from the beginning. Throughout the period from 1929 to 1953 the regime employed tactics of terror, arresting people on false charges of conspiracy and espionage, then either executing them or sentencing them to labor camps, where they toiled in harsh, debilitating conditions. Chronic absenteeism at work or picking up grain husks from a harvested field could bring a ten-year sentence. According to one scholar, over twenty-eight million Soviet citizens passed through the forced labor camps and colonies between 1929 and 1953. Located all across the Soviet Union, in every time zone, the camps were filthy, brutal, and dehumanizing. Death rates were high, averaging about 6 percent per year. One archival source states that over two million in-

mates died in the camps between 1929 and 1953, but this does not include all categories of prisoners.

The height of the Stalinist repression, known as the Great Terror, lasted from 1936 to 1939. The majority of victims during this period were from the Communist Party, the economic ministries, the military, the Communist International, and minority nationalities. No precise figures exist. Official KGB figures for 1937–1938 claim that just under 700,000 were executed and that at the beginning of the 1940s there were about 3.6 million in labor camps and prisons. Stephen Wheatcroft and R. W. Davies have calculated that the total number of excess deaths from 1927 to 1938 may have amounted to some ten million persons, 8.5 million killed between 1927 and 1936 and about 1 to 1.5 million between 1937 and 1938.

Historians disagree over the motives behind the terror. Some focus on Stalin's paranoia and thirst for power, while others cite fears of an internal "fifth column" in the face of pending war and the Nazi threat. Still others argue that the process moved in part from below, due to party in-fighting, the desire to settle personal scores, and anti-elitist sentiments among the rank and file. Stalin's role as author of the terror, however, is clear: He formulated the majority of the directives and personally commanded and supervised arrests, show trials, and executions.

During World War II, the Stalinist regime carried out ethnic cleansing, though the exact motives remain unclear. It deported 400,000 Volga Germans to Central Asia and Siberia out of fear that they would support the invading enemy. Between 1943 and 1944, Stalin ordered the deportation of about a million Chechens, Crimean Tatars, Balkars, Kalmiks, and Turks from their homelands to Central Asia, alleging that they had collaborated with the Germans. Transported in sealed boxcars, with no fresh air, proper food, sanitation, or medical care, as many as 40 percent died along the way from hunger, cold, and disease. Those who resisted the deportation were shot. Prior to the war, in 1940, Stalin had ordered the execution of 21,857 Poles. Of these, over 4,000 were officers who were shot and buried in mass graves in the Katyn Forest (Smolensk region). This crime was denied by the Soviet regime for fifty years.

After the war, smaller-scale repressions continued to fill the camps. The number of prisoners rose from 1,460,676 in 1945 to 2,468,524 in 1953. The postwar period was marked by fierce attacks on creative artists, deportations of Balt, Moldavian, and Ukrainian populations, and a virulent anti-Semitic campaign that culminated in the arrests in 1953 of nine Kremlin doctors on charges of murder and treason. In addition, there were over four million foreign POWs in the camp system, many of whom either died in captivity or had to wait up to ten years for repatriation.

A portrait of Joseph Stalin to commemorate his seventieth birthday, on December 21, 1949. Communists around the world sent gifts to Stalin in 1949. During his lifetime he was often admired as a great world leaderusually by those living outside the Soviet Union (where little was known about its Gulags, mass executions, and state terrorism). [AP/WORLD WIDE PHOTOS]

Tragically, even Stalin's death in 1953 came at a price. On the day of his funeral, tens of thousands of people crowded in the streets to view the body, and many were crushed to death in the ensuing panic. Despite the magnitude of his crimes, Stalin's legacy remains complex. Some see him as the worst monster who ever ruled, a modern Genghis Khan who devoured his own children. Yet others consider him a resolute and even heroic leader who did what was necessary in order to modernize Russia and defeat its enemies. Some who lived through the Stalin years later remembered them as a time of vibrant idealism and energy. But no evaluation of Stalin's leadership can ignore the horrific price paid in human lives, and the incalculable physical, moral, and psychological destruction he left behind.

SEE ALSO Gulag; Katyn; Lenin, Vladimir; Ukraine (Famine); Union of Soviet Socialist Republics

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Statistical Analysis

Throughout conflicts, apologists for the side in power often excuse atrocities committed by their side with the claim that "violations are being committed on all sides of the conflict." The objective of such a statement is to render the parties morally equivalent, thereby relieving observers of the responsibility or duty to make a judgment about whether one side is the aggressor and the other is acting in self-defense. Even when the greater historical narrative involves more than these labels imply, in situations of massive human rights violations the perpetrators are rarely balanced in power. Although it may be literally true that all parties to a conflict have committed at least one violation, often the number of violations each party commits differs by a factor of ten or more relative to their opponents. In some cases quantitative analysis may offer a method for assessing claims about moral responsibility for crimes against humanity, including genocide. Statistics provide a way to measure crimes of policy—massive crimes that result from institutional or political decisions.

Although all parties may be guilty, they are rarely guilty in equal measure. Only with quantitative arguments can the true proportions of responsibility be understood. In this way one can transcend facile claims about "violations on all sides" in favor of an empirically rich view of responsibility for atrocities. Did the monthly number of killings increase or decrease in the first quarter of 1999? Were there more violations in Province A or in Province B? Were men more affected than women, or adults relative to children? These simple quantitative evaluations may be important questions when linked to political processes. Perhaps a new government took power and one needs to assess its impact on the state's respect for human rights. Or a military officer may move from Province A to Province B, and one may wish to determine if he is repeating the crimes he committed in Province A. Simple descriptive statistics based on properly gathered data can address these questions more precisely than the kinds of casual assessments that nonquantitative observers often make.

There are three areas in which nonquantitative analysts most often make statistical mistakes: estimating the total magnitude of violations; understanding how bias may have affected the data collection or interpretation; and comparing the relative proportions of responsibility among perpetrators. Poor information management and inappropriate statistical analysis can lead to embarrassing reversals of findings once proper methods are applied.

The use of statistical methods that demonstrably control biases and enable estimates of total magnitude can give analysts a rigorous basis for drawing conclusions about politically important questions. One such method, multiple systems estimation, uses three or more overlapping lists of some event (such as killings) to make a statistical estimate of the total number of events, including those events excluded from all three lists. "Overlapping" in this sense means events that are documented on two or more lists. The estimate made by this technique can control for several biases that might affect the original reporting which led to the lists of events.

For example, among the most important questions the Guatemalan Commission for Historical Clarification (CEH is the Spanish acronym) had to answer was whether the army had committed acts of genocide against the Maya. Using qualitative sources and field investigation, the CEH identified six regions in which genocide might have occurred. Data were collated from testimonies given to three sources: nongovernmental organizations (NGOs), the Catholic Church, and the CEH.

If genocide has been committed, then at least two statistical indicators should be clear. First, the absolute magnitude of the violations should be large. Second, there should be a big difference in the rate of killing between those who are in the victim group versus those people in the same region who are not in the victim group. It is inadequate to argue that some large number of people of specific ethnicities have been killed, because it might have been that they were simply unfortunate enough to live in very violent areas. Killing in an indiscriminate pattern might be evidence of some other crime, but if genocide occurred, a substantial difference in killing rates between targeted and nontargeted groups should exist. Thus, to find statistical evidence

consistent with genocide, it is not enough that certain people were killed at high rate, but also that other nearby people were killed at much lower rates.

The CEH analysts conducted a multiple systems estimate of the total deaths of indigenous people and nonindigenous people between 1981 and 1983 in the six regions identified. For each group in each region, the estimated total number of deaths was divided into the Guatemalan government's census figures for indigenous and nonindigenous people in 1981. The CEH showed that resulting proportions were consistent with the genocide hypothesis. In each region indigenous people were killed at a rate five to eight times greater than nonindigenous people. This statistical finding was one of the bases of the CEH's final conclusion that the Guatemalan army committed acts of genocide against the Maya.

Other human rights projects have incorporated statistical reasoning. Sociologists and demographers have testified at the trial of Slobodan Milosevic and others tried before the International Criminal Tribunal for the Former Yugoslavia. They have provided quantitative insights on ethnic cleansing, forced migration, and the evaluation of explanatory hypotheses.

In the early twenty-first century, the statistical analysis of human rights violations is just beginning, and much work remains. New techniques should be developed, including easier methods for conducting random probability sampling in the field, richer demographic analysis of forced migration, and more flexible techniques for rapidly creating lots of graphical views of data. Human rights advocacy and analysis have benefited tremendously from the introduction of better statistical methods. The international community needs to continue to find new ways to employ existing methods, and to further research on new methods, so that human rights reporting becomes more rigorous. Statistics help establish the evidentiary basis of human rights allegations about crimes of policy.

SEE ALSO Forensics; Genocide; Massacres

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Patrick Ball

Statutory Limitations

Statutory limitations (also known as prescriptions or prescriptibility) bar state authorities from investigating and prosecuting a crime after a certain length of time. These limitations are based, in part, on the premise that a fair trial becomes increasingly difficult as time passes following the alleged act. Evidence may be lost or destroyed, memories may become faulty, and proof that might otherwise support a valid defense may become inaccessible. After a certain amount of time has passed, the risk of irremediable harm to the rights of the accused is seen to outweigh the state's interest in prosecuting a crime. Thus, statutory limitations require prosecutors either to start proceedings within a set time or to free a potential accused from the threat of prosecution.

Statutes of limitations are frequently found in civil law or continental legal systems. In common law countries a long delay is more likely to lead to questions about abuse of process, the right to be tried within a reasonable time, or the public interest in addressing a matter long after the suspected crime took place. When limitations exist, exceptions or extensions are increasingly recognized for certain crimes (e.g., the sexual abuse of children, where for various reasons the crime may be reported only many years later). The nature of the crime and the state's interest in its punishment are seen to strike a different balance with respect to the fair trial concerns that underlie the principle of prescription.

The same concerns arise with genocide and crimes against humanity. The high-profile trials at Nuremberg and subsequent proceedings following World War II did not lead to the widespread prosecution that some sought of the many suspected Nazi and other war criminals who lived either openly or in hiding around the world. In addition, neither the founding instruments of the military tribunals that sat at Nuremberg and Tokyo, the 1948 United Nations (UN) Convention on the Prevention and Punishment of the Crime of Genocide, nor the four Geneva Conventions of 1949 mentioned statu-

tory limitations (one exception is Control Council Law No. 10, which adapted the norms of the Nuremberg Charter for use by the Allies' military courts in Europe, and which made clear that statutes of limitations were suspended for the entire period of Nazi rule, 1933–1945). As time passed, concerns arose that statutory limitations might forever block the possibility of holding the perpetrators of World War II's crimes accountable. Israel's prosecution of Nazi functionary Adolf Eichmann in 1961 focused international attention on the problem of the unredressed crimes of World War II and gave impetus to efforts to ensure that prescription would not bar later prosecutions.

In response, the UN General Assembly on November 26, 1968, adopted the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, which specifically included genocide within the definition of crimes against humanity, and entered into force on November 11, 1970. It declares that "[n]o statutory limitation shall apply [to these crimes] . . . irrespective of the date of their commission" (Article 1). States ratifying the Convention "undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to. . .and that, where they exist, such limitations shall be abolished" (Article 4). The Convention's preamble expresses the conviction that the potential application of statutory limitations to these crimes is "a matter of serious concern to world public opinion" and that their effective punishment "is an important element in the prevention of such crimes, the protection of human rights and fundamental freedoms . . . and the promotion of international peace and security."

The words "irrespective of the date of their commission" in Article 1 make clear the potential for retroactive application of the 1968 Convention to crimes taking place before its ratification. This has been controversial and is part of the reason that states have been slow to adhere to the Convention (Argentina became the forty-eighth state party in August 2003). Some states have filed declarations upon ratification, stating that the Convention applies only with respect to crimes committed after its entry into force for their country (e.g., Mexico and Peru). Moreover, concern about the retroactive abolition of limitation periods led the Council of Europe (CoE) to adopt an otherwise almost identical regional instrument, the 1974 European Convention on the Non-Application of Statutory Limitations to Crimes Against Humanity and War Crimes, which declares in Article 2 that it applies only to offenses committed after its entry into force or to those that, if committed previously, have not yet been prescribed by statutory limitations. Similarly, the 1994 Inter-American Convention on Forced Disappearance of Persons, in Article 8, affirms the imprescriptibility of forced disappearance, but only provided that there is no "norm of fundamental character preventing application" of this principle. When such a fundamental norm exists, prescription is allowed, provided that any limitation period is "equal to that which applies to the gravest crime in the domestic laws of the corresponding State Party."

Such concerns with retrospectivity are not universal, however, and other states have deliberately embraced this dimension of the 1968 Convention in support of their countries' reckoning with past undemocratic regimes. Hungary's Constitutional Court, for example, in 1993 upheld a law revoking statutes of limitations with respect to crimes against humanity committed in the suppression of the 1956 uprising, and Argentina in 2003 approved and constitutionally incorporated the 1968 Convention even as it annulled two laws that provided amnesties in relation to the military dictatorship that ruled from 1976 to 1983. In addition, the norm of imprescriptibility has gained support beyond the confines of state parties, if sometimes imperfectly. For example, the Court of Cassation in France, notably through its 1984 and 1985 decisions in the case against Klaus Barbie, has affirmed that, in accordance with a 1964 French law, crimes against humanity cannot be subject to statutory limitations, although (and contrary to the 1968 Convention) war crimes can.

With the end of the cold war and the beginning of the 1990s, the movement for international justice gained momentum with the establishment of the International Criminal Tribunals for the Former Yugoslavia (ICTY, 1993) as well as Rwanda (ICTR, 1994), and renewed work toward a permanent International Criminal Court (ICC). In addition, the International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind, in its 1991 version, states that "[n]o statutory limitation shall apply to crimes against the peace and security of mankind" (Article 7). The principle was omitted from the much abbreviated 1996 Draft Code (which was not approved by the General Assembly), apparently out of concern that the nonapplicability of statutory limitations was a principle which could be applied only to the "core crimes" (such as genocide and crimes against humanity) but not all international crimes.

The crowning achievement in the development of international criminal law during the 1990s was the 1998 adoption of the Rome Statute of the International

Criminal Court. In Article 29 the Rome Statute declares that "the crimes within the jurisdiction of the Court shall not be subject to any statutes of limitations." Thus, any statutory limitations in national law will have no bearing on the ICC's investigation and prosecution of genocide, crimes against humanity, and war crimes (as well as the crime of aggression, should a definition ever be adopted). States that ratify the Rome Statute are obliged to cooperate with the Court, including the arrest and transfer of suspects sought by it. Given the clear wording of Article 29, this should mean regardless of whether a statutory limitation has expired under national law. Of course, the principle of complementarity underlying the Rome Statute ensures that governments will always have the right to investigate and prosecute these crimes first. Moreover, it can be expected that in most or all cases the ICC will investigate and, where appropriate, prosecute crimes before any statute of limitations applicable at the national level expires. In principle, however, if such limitations do obstruct domestic prosecution, the ICC will be able to act, provided of course that other criteria of its jurisdiction are met (including that the crime occurred after the entry into force of the Statute). Thus, if governments wish to prevent the ICC from acting on their behalf in such circumstances, they have a further incentive to eliminate any statutory limitations applicable to crimes covered by the Rome Statute.

Taken together with the 1968 Convention, other international instruments, case law, and national legislative measures, the ICC Statute reinforces the progressive movement of customary international law toward the imprescriptibility of the core crimes and, in particular, of genocide and crimes against humanity.

SEE ALSO Barbie, Klaus; Crimes Against Humanity; International Criminal Court; Prosecution; War Crimes

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Bruce Broomhall

Streicher, Julius

[FEBRUARY 12, 1885–OCTOBER 16, 1946]
Nazi Party's primary anti-Semitic propagandist

Julius Streicher was the most visible and prolific anti-Semitic propagandist for the Nazi Party. Unlike Adolf Hitler, Heinrich Himmler, and Joseph Goebbels, who focused on a number of policy issues besides anti-Semitism, Streicher's career was single-minded in its devotion to rousing hatred against the Jews. From the founding of his weekly newspaper *Der Stürmer* (The Stormer) in 1923 to its final issue in February 1945, his slogan remained, "The Jews are our misfortune."

Streicher served with distinction in World War I. Like many others, he found it hard to accept the fact that Germany lost the war despite the country's enormous efforts. The Jews became his scapegoat. After joining several anti-Semitic organizations, Streicher brought his personal following of approximately five thousand to the Nazi Party in 1922, nearly doubling the membership of the party and earning Hitler's lasting gratitude. Streicher became the Nazi leader in the Nuremberg area, maintaining that position until he was deposed in 1938 for financial and personal irregularities.

Der Stürmer's circulation increased dramatically after 1933, reaching about 500,000 by the mid-1930s. Special editions on topics such as the alleged Jewish world conspiracy or ritual murder had print runs as high as two million. Many of Streicher's readers even proudly posted copies of each issue in display cases. He also owned a publishing house that produced three anti-Semitic children's books, an anti-Semitic teacher's guide, and several pseudo-scholarly works on the Jews.

Streicher chaired the April 1, 1933, Nazi boycott of Jewish shops and professionals. He had no other official role in Nazi anti-Jewish policy. However, *Der Stürmer* constantly attacked the Jews. It accused thousands of Jews, by name, of various crimes ranging from embezzlement to rape. Streicher took particular interest in sensational sexual accusations, earning the mocking title of "the national pornographer of the Third Reich." He also attacked any non-Jews who had contact with Jews. Between 1934 and 1938 *Der Stürmer* named more than 6,500 Germans for offenses such as buying from Jewish firms or attending Jewish funerals. These accusations often had unpleasant consequences, so Streicher made a major contribution to the climate of intim-

idation that made Germans who did not share Nazi views reluctant to protest.

Although Streicher called for the annihilation of the Jews as early as the 1920s, such calls increased dramatically once the war began. One of his children's books, published in 1940, stated: "[T]he Jewish question will only be solved when Jewry is destroyed" (Hiemer, 1940, p. 74). He made many similar comments in *Der Stürmer*.

Many Germans found Streicher's material and style repellent, but he was widely appreciated by the worst anti-Semitic elements. More than that, he provided a convenient excuse for others, who could justify their anti-Jewish attitudes by thinking that they were less crude than Streicher's.

Streicher was tried by the Nuremberg International Military Tribunal after the war, along with other such leading Nazis as Hermann Göring and Albert Speer, and sentenced to death by hanging for the widespread effects of his anti-Semitic propaganda. Although the court concluded that Streicher played no direct role in the Holocaust, it found that his propaganda was a crime against humanity that set the stage for Nazi genocide.

SEE ALSO Anti-Semitism; Derstürmer; Nuremberg Trials; Propaganda

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Randall L. Bywerk

Sudan

Although the first recorded account of the acquisition of slaves from the Sudan was inscribed in stone near the second cataract of the Nile during the reign of Egypt's First Dynasty Pharaoh Djer (c. 2900 BCE), the modern history of slavery in the Nile basin begins with the conquest of the Sudan by Muhammad Ali of Egypt in 1821 and the enslavement of Africans in the southern Sudan by Muslim Arabs from the north. Thereafter and throughout the nineteenth century, a well-organized slave trade provided thousands of African slaves for Egypt and the Middle East until the Sudanese revolution by the Mahdi in 1881. After the conquest of the Sudan by Anglo-Egyptian forces in 1898 British administrators curtailed the slave trade, but slavery in a variety of forms continued. The independence of the Sudan in 1956 brought to a head the deep tensions between the African traditionalist and Christian southern Sudanese and the northern Sudanese oriented to the Arab world and Islam. Their irreconcilable differences in culture, religion, and race precipitated a fifty-year spiral of violence that had revived the slave trade and slavery, killed more than two million southern Sudanese, and produced another four million refugees by ethnic cleansing, war, famine, and accusations of genocide.

The Turkiyya, 1821 to 1881

After his imperial conquests in the Levant and Arabia, the Turkish Viceroy of Egypt, Muhammad Ali Pasha (1769–1849), conquered the Sudan in 1821 to seek gold for his treasury, and territory to enlarge his personal empire, but primarily to acquire slaves for his army. He made this quite clear to his commander. "You are aware that the end of all out effort and this expense is to procure Negroes. Please show zeal in carrying out our wishes in this capital manner" (Hill, 1959, p. 13).

The Turco-Egyptian administration (known as the *Turkiyya*) immediately organized the systematic acquisition of slaves demanded by the viceroy. When the number of slaves that were remitted in place of taxes by the northern Muslim Sudanese proved insufficient, the government resorted to the slave raid, the infamous *razzia*, to seize non-Muslim Africans on the Kordofan and Ethiopian borderlands.

The razzia soon became an annual event, yielding thousands of slaves to be sent to Egypt by the officials who often subjected them to sadistic abuses and brutal atrocities similar to those that have been reported by the Human Rights Watch and Amnesty International in the contemporary Sudan. In Kordofan at Taqali alone, five thousand slaves were seized in 1839. In 1854 the Egyptian viceroy, Muhammad Sa'id, succumbed to European pressure and abolished the government slave raids, but his decree was studiously ignored by private traders in the Sudan. In the early twenty-first century the government of Umar Hasan Ahmad al-Bashir in the Sudan has issued similar declarations that are disregarded by those over whom his administration exercises little or no authority, but who benefit from so-called abductions, the trade in slaves. In the mid-nineteenth century the demand from the Ottoman world for Sudanese slaves became inexhaustible and soon focused the attention of European abolitionists on the Nilotic slave trade in the southern Sudan.

The great swamps of the Nile (*sudd*) had first been penetrated in 1841, and thereafter the whole of the

Upper Nile basin was opened to Sudanese from the north. The isolated African southern Sudanese then became exposed to the designs of private entrepreneurs of every ethnicity—Turk, Arab, European, Sudanese. Known as Khartoumers, these adventurers flocked to the Sudan to organize the corporate ivory and slave trade. These were well-financed companies equipped with a fleet of boats on the Nile and forts (*zariba*) throughout the southern Sudan from which their armed retainers (*bazinqir*) sallied forth to raid for slaves. By the 1860s regular contingents of slaves were exported annually from the Bahr al-Ghazal and Upper Nile.

This dynamic intervention by the Khartoumers created a spiral of violence that overwhelmed the southern Sudanese 150 years before the same destructive process devastated them at the end of the twentieth century. The merchant princes were accompanied by the *jallaba*, petty traders, who seized the few who fled from the razzia to engage in small trades that increased the volume and profits of their trade to the annoyance of the principal merchants. Like past and present governments in the Sudan, the Khartoumers played the internal rivalries of the southern Sudanese to their advantage. The African allies of the Khartoumers would acquire cattle and grain from a troublesome neighbor; the merchants would obtain ivory and captives as slaves. This expedient and mutually profitable association during the reign of the *Turkiyya* established the fundamental relationship between the interlopers—Turks, Egyptians, British, Sudanese—and the southern Sudanese characterized by the exploitation of historic, local animosities to achieve economic and political control in return for ivory and slaves. The historic pattern continued into the twenty-first century with the 2004 government of the Sudan unabashedly manipulating rival factions in the southern Sudanese liberation movements. In 1868 the Khartoumers exported an estimated 15,000 slaves down the Nile and another 2,000 overland through Kordofan: the 30,000 transported in 1876 were more of an anomaly than the average. Within the Sudan a quarter of the population in the nineteenth century is estimated to have been of slave origins.

When Ismail Pasha became the Khedive of Egypt in 1863, he was determined to modernize Egypt and borrowed heavily from European bankers to build railways, hospitals, palaces, and the Suez Canal. He was soon deeply in debt while at the same time under intense pressure from the European abolitionist movements and their governments to end the Nilotic slave trade, but he could not realistically expect officials in the Sudan or the powerful Khartoumers to abandon a highly profitable slave trade. He, therefore, turned to Christian administrators with no ethnic or cultural ties to the Turco-Egyptian officials, merchant princes, or Muslim Sudanese. He appointed as governor-general of the Sudan Charles "Chinese" Gordon (1833–1885), the British military leader of the victorious army in China. Gordon recruited Christian Italian, German, and British adventurers as provincial administrators. By 1879 they had crushed the corporate slave trade, but not before the khedive himself was forced to abdicate because of his profligate spending. The administration of the Sudan was then controlled by Christians, the prosperous slave trade had collapsed, and in their despair over these developments the Sudanese surmised that Islam as practiced by their Turco-Egyptian rulers was as corrupt as their secular involvement in the slave trade.

Map of Sudan. [COURTESY OF BRILL ACADEMIC PUBLISHERS]

The *Mahdiyya*: 1881 to 1898

In 1881 Muhammad Ahmad (1848–1885) declared himself to be the long-awaited Mahdi whose revolutionary cause was to dispel the religious practices of the Turks and their Christian surrogates and inaugurate a new age of Islamic righteousness. The Mahdi's divine mission was to return Sudanese Islam to the fundamental Principles of the Prophet that included strong elements of *Sufishm*, Islamic mysticism. The Sudanese en-

thusiastically rallied behind Ahmad's message and became his devoted followers (*Ansar*). They defeated the Turco-Egyptian military expeditions dispatched to fight them, culminating in victories in January 1885 when the Mahdi's forces stormed Khartoum and killed Governor-General Gordon, making him one of Britain's most famous military martyrs.

When the Mahdi died six months after his triumph at Khartoum, his successor, the Khalifa 'Abd Allahi Muhammad Turshain (1846–1899), refused to restore the power of the great slavers that was disrupted by the Mahdi's messianic revolution. The slave trade was continued by the jallaba, who conducted their still thriving exchange of slaves in village markets (*suqs*). The primary interest of the khalifa in slavery, like that of Muhammad Ali, was not commercial but military—slaves for his loyal pretorian guard (*mulazimiyya*), ten thousand strong; it consisted of slaves from the jihadiyya troops of the Turks and the bazinqir irregular mercenaries of the Khartoumers. Two expeditions were sent into the southern Sudan for slaves, but the first was recalled immediately after the death of the Mahdi and the second, dispatched to the Upper Nile in 1888, limited its operations to occasional razzia. The British then controlled Egypt and the Red Sea, so the means to organize and transport slaves to the markets of the Middle East no longer existed. Compared to the raids for slaves during the reign of the *Turkiyya*, the brief decades of *Mahdiyya* rule were halcyon years for the southern Sudanese.

The Anglo-Egyptian Condominium: 1898 to 1956

On September 2, 1898, the Mahdist state came to an end after the disastrous defeat of the Sudanese army of the Khalifa 'Abd Allahi by Anglo-Egyptian forces under the command of General Sir H. H. Kitchener. The abolition of the slave trade and slavery in the Sudan received overwhelming support from the British people, parliament, and abolitionists. It became one of the most powerful arguments for committing British forces to the conquest of Sudan. Article 11 of the 1899 agreement with Egypt that established the Anglo-Egyptian Condominium made the distinction, however, between the institution of slavery and the slave trade in the Sudan. British officials were not about to disrupt the social order of the Sudan by prohibiting slavery, but they were determined to eliminate the slave trade. From 1899 until its dissolution in 1922, the Department for the Repression of the Slave Trade (the Slavery Department) effectively eliminated any open practice of the trade. This was followed by the legal end of slavery when the Sudanese government signed the Slavery Convention at the League of Nations (1926), an action acknowledged and supported by all governments of the independent Sudan.

Independent Sudan: Since 1956

The declaration of an independent Sudan on January 1, 1956, and the departure of British officials did not result in any resurgence of slavery, which had been contained but not completely eliminated. The peaceful transfer of power, however, was marred by the mutiny of the Equatorial Corps of the Sudan Defense Force in the southern Sudan. The mutiny was suppressed, but it ignited the longest civil war in any country in the twentieth century, one that has continued into the twenty-first century. From its beginnings in 1955 the southern insurgency has became a symbol of the antagonism created by the nineteenth-century reality of slavery and the twentieth-century perceptions of racism among Arabs from the north who regarded the southern Sudanese as slaves (*'abid*) or property (*malkiyya*). Reports issued by the United Nations (UN) and in the international media of vulnerable African southern Sudanese being forced into involuntary servitude have been vehemently denied by the Sudanese government, but the government's incompetence in governing its vast hinterland and its ideology, combined with famine, war, and racism, have provided the opportunity for the revival of customary practices of slavery, euphemistically referred to as abductions, and its trade. In the violence of civil war human rights have been ignored and innocent African civilians slaughtered by the thousands. Although the southern Sudan is the conspicuous scene of this terrible conflict, no government of the Sudan at Khartoum has effectively governed the marginalized Sudanese people on the periphery in the south, west, or east.

So long as Sudanese government officials cannot control the country, whatever may be their ideologies, political persuasion, or religious beliefs regarding human relationships, slavery, and the indiscriminate slaughter associated with the seizure of slaves will continue in the Sudan. The northern Sudanese have done little to disguise their contempt for the African Sudanese from the non-Arab regions because of their color, culture, and religion. In the half-century of independence in the Sudan, the ill-defined concept of race has complicated the confusion of identity in the Sudan and reinforced historic perceptions of inferiority that may no longer be legal, yet confirm convictions of superiority that are more pervasive and powerful than the law. The persistence of this doleful inheritance has been a central cause of a rationale justifying, the killing fields in the southern Sudan.

The First Civil War: 1955 to 1972

The southern disturbances of August 1955 marked the beginning of resistance by the African Sudanese practicing traditional religions or Christianity against the

government in Khartoum, dominated by the northern Arab, Muslim Sudanese. In 1964 Christian missionaries were expelled from the Sudan. They had been the teachers of the small southern Sudanese elite who soon organized rudimentary associations to mobilize political dissent and to create the African, non-Muslim southern guerrilla forces, known as *Anya Nya* (snake venom). After eighteen years of fighting President Ja'Far Numayri, the *Anya Nya* signed an agreement at Addis Ababa in 1972 that conferred on the southern provinces a modest degree of autonomy which brought an end to the fighting but not the political turmoil between the northern and southern Sudan. Within ten years Numayri unilaterally abrogated the Addis Ababa Accords in a futile attempt to secure the support of the Islamists, Muslim fundamentalists in the Sudan, who sought to impose Islam and its laws (*Shari'a*) on non-Muslim African Sudanese. The southern Sudanese resumed their fighting in 1983, led by Colonel John Garang who reorganized former guerrilla *Anya Nya* fighters into the Sudan People's Liberation Movement/Army (SPLM/SPLA).

The First Civil War, 1955 through 1972, ended with a litany of brutality and terrorism in remote places where accountability was of little concern and the media absent. The fighting was unremitting for the civilians and debilitating for the army of the Sudan. The conflict displaced thousands of southern Sudanese, resulting in a massive number of refugees. It created a coterie of exiled southern elite. It destroyed the fragile infrastructure left by the British. It produced Christian martyrs. It convinced many southern Sudanese that there could be no compromise with the northern Sudanese.

Second Civil War: Since 1983

By 1984 Garang had consolidated the SPLM/A and forced the termination of the exploration for oil and the construction of the Jonglei Canal to supply additional water for irrigation in the northern Sudan and Egypt. Meanwhile, the SPLA, supplemented by substantial defections from the security forces, had occupied extensive areas in the rural south and driven the Sudan army onto the defensive in the major towns of Juba, Wau, and Malakal. To add to the disastrous consequences produced by war, African drought and the decision by the Sudan government in 1984 to distribute automatic weapons to the Baggara tribesmen of Darfur and Kordofan, members of the Arab militia or *murahileen*, combined to escalate war-related deaths of the southern Sudanese into the hundreds of thousands. The great African drought of the 1980s devastated the plains of the Sahil from Senegal across Africa through Darfur, Kordofan, and into southern Sudan. Here the population had been increasing more rapidly than the production of food and livestock. Customary exchange in times of hardship collapsed. Crops failed to germinate without water, and the cattle died without grass. During the winter of 1984 and 1985 tens of thousands of southern Sudanese, Nilotes, and Equatorians began to flee into southern towns and then to the north and to Ethiopia seeking food. By January 1987 hundreds of thousands of southern Sudanese were dead or in flight to the anonymity of towns and the camps for the displaced from Kordofan to Khartoum and from the Bahr al-Ghazal to Ethiopia to avoid death from starvation and war, with disease often accompanying starvation.

In 1984 Numayri's Minister of Defense, General Suwar al-Dhahab, equipped the Arab militia with automatic weapons and unleashed these *murahileen* into the southern Sudan in a desperate attempt to stem the

[DARFUR]

The conflict in Darfur began in 2003, when black African rebel groups began an uprising over a number of long-standing grievances, including ongoing slave-trading and discrimination. The government retaliated by unleashing a militia known as the janjaweed on the civilian population. By the middle of August 2004 some 300 Darfur villages had been burned and the population displaced through ethnic cleansing. The United Nations estimated that if humanitarian aid reached the area quickly some 300,000 people would die, but if it were delayed, more than a million lives would be at stake. The U.S. Congress labeled the situation a genocide.

In response to the crisis, the UN Security Council passed a resolution on July 30, 2003, threatening Sudan's government with sanctions if the government of Sudan does not, within 30 days, disarm the Arab militia, known as the janjaweed, that has been killing, raping, and terrorizing black African civilians in the Darfur region of Sudan. The resolution passed by 13-0 with two abstentions (China and Pakistan). The resolution came three days after the African Union's decision to consider expanding its observer mission in Darfur into a full-scale peacekeeping mission; it would be the AU's first military intervention in a member state. Sudan's authoritarian regime, led by president Omar Hassan al-Bashir, denied arming and backing the janjaweed, although human rights groups and other observers showed evidence to the contrary. **DINAH SHELTON**

spread of the rebellion among the Dinka who were allied with Garang, a Dinka from Bor. The raiders were mostly young Rizayqat and Messiriya Baggara tribesmen who, imbued with the folklore of their forefathers, raided the Dinka for cattle, pastures, and *'abid* (slaves), and felt they had a license to kill in order to replenish their own herds decimated by drought. With their superiority over a traditional enemy guaranteed by the AK-47, the tenuous equilibrium that had existed for more than a half-century on the Baggara-Dinka frontier dissolved into a *razzia* of indiscriminate plunder and wanton killing. A somnolent village would be surrounded before dawn and attacked at first light. The women, children, and teenage males that had not escaped were collected with the cattle. The men were indiscriminately killed, often accompanied by mutilation, and the village and cultivations were then methodically destroyed and the Dinka cattle, women, and children divided among the Baggara to serve or to be sold.

By 1987 the SPLA had established its military presence in the Bahr al-Ghazal, inflicting heavy casualties on the Baggara militia and the officers and men of the army, the Sudan People's Armed Forces (SPAF). On the night of March 27, 1987, more than a thousand Dinka were immolated and slaughtered at Ed Diein in southern Darfur in a vengeful race riot. In November the SPLA captured Kurmuk, producing a hysteria in Khartoum that culminated in the successful coup d'état of Umar Hasan Ahmad al-Bashir on June 30, 1989. He installed the first theocratic Islamist government in the Sudan. His supporters, the National Islamic Front (NIF), were more determined than ever to defeat the southern Sudanese insurgents in order to impose Islam and Arab culture on the Africans of the southern Sudan.

Islamist government of the Sudan: Since 1989

Unlike many coup d'état that are motivated by discontent, the officers who seized control of the Sudan government on June 30th were determined to construct a new Sudan defined by Islam, with the laws of the Q'uran (*Shari'a*) interpreted and regulated by the doctrines of the National Islamic Front (NIF) and promulgated by the Revolutionary Government of National Salvation led by Umar al-Bashir. To be Sudanese was to conform to the rigid ideology of the Islamists. Whoever refused to conform to its creed would be excluded for not being Sudanese. To produce the new Sudan, the Islamists introduced a complete ideology that affected all aspects of life in the Sudan. It was an attempt to indoctrinate, shape, and thereby control the Sudanese to produce a homogeneous Islamic society even if it required the destruction of the *kafirin*, unbelieving Africans in the southern Sudan, by jihad (holy war). By 1991 the *Shari'a* had been embodied in the Sudan penal code; in 1992 Islamic legal traditions were employed to justify the jihad against apostates and heathens; after 1993 Islamic principles were invoked as the guide for all agencies of government, civilian and military. The creation of the new Sudan as a monolithic and homogeneous society reduced the non-Muslim African Sudanese before the law and in society to less than equal status. The legal and religious definition of non-Muslim Sudanese Africans as second-class citizens provided welcome relief, if not justification by the Islamists in Khartoum to carry on total war with greater intensity. During the decade of drought and the *razzia* (1983–1993) more than 1 million southern Sudanese died and another 4 million became refugees in foreign countries, or internally displaced within the Sudan.

Having little confidence in the SPAF to pursue a jihad aggressively, the NIF-controlled government introduced universal conscription to create the People's Defense Forces (PDF) composed of raw recruits and government-supported militias. In 1990 the air force began indiscriminate aerial bombing of civilians in the southern Sudan; its only targets were villages, cattle, churches, schools, and hospitals. An estimated eleven thousand Sudanese were either killed or wounded. The offensive was symbolic of more demonstrable efforts by the SPAF, supported by the PDF, to eliminate the presence of the SPLA by premeditated ethnic cleansing. Between 1990 and 2000 the jihad in the Nuba Mountains had killed more than an estimated 100,000 and resettled another 170,000 Nuba in so-called peace villages on the Sahilean plains of Kordofan where they labored in fields and towns for northern Sudanese entrepreneurs.

During the same decade military offensives by the SPAF and the *razzia* of the Baggara *murahileen* and the Dinka militia of Kerubino Kwanjin Bol, who had defected from the SPLA to join the government forces, resulted in the death of another estimated 200,000 Dinka and Nuer in the Bahr al-Ghazal by killing and famine. Others were displaced by the hundreds of thousands. During the drought of 1993 and 1994 the Sudan government deliberately intervened in the distribution of humanitarian food aid by Operation Lifeline, a Western organization. The Sudan effectively utilized famine as a weapon of war to depopulate large areas of the Bahr al-Ghazal by starvation, forcing its inhabitants to become internally displaced persons (IDP).

In the Upper Nile in 1991 the SPLA commanders Riak Machar, Lam Akol, and Gordon Kong Cuol formed a rival South Sudan Independence Movement/Army (SSIM/A) to overthrow Garang. The SSIM/A was dominated by the Nuer. In a formal alliance with the

Sudan government, they received large numbers of automatic weapons that they promptly used to kill many thousand of their traditional Dinka enemies who were supporters of the SPLA and their kinsman, Garang. The ensuing local Nilotic civil war within the larger Sudan civil war killed more southerners than the SPAF. The southern Sudanese casualties from 1991 to 2000 are estimated at approximately 250,000, and an equal number of southerners were displaced. In Equatoria, the heartland of the SPLA, the fighting intensified throughout the decade as the SPAF sought to capitalize on the bitter feud within the SPLA to recapture strategic towns they had previously lost. During this same tragic decade in Equatoria war-related deaths averaged ten thousand per year.

Although oil had been discovered on the northern borders of the southern Sudan in 1976, the renewal of the civil war in 1983 delayed its export by pipeline to Port Sudan until August 1999. At this time further exploration demonstrated that large Sudanese oil reserves were located in the sudd and surrounding grassland plains of the Upper Nile and Bahr al-Ghazal. These oil-rich regions could obviously not be exploited if controlled by southern insurgents, whether the militias of southern warlords or the SPLA that had frustrated the development of Sudanese oil for twenty years. In order to secure the oil fields, the government launched military offensives to clear the land of southern Sudanese by killing its inhabitants and their cattle and forcing the survivors to seek refuge in the southern Bahr al-Ghazal as internally displaced persons. The government then had at its disposal millions of dollars from oil revenues. Over half of this money was used to purchase sophisticated weapons and the especially feared helicopter gun ships, which are more effective at driving people off the land than the indiscriminate high-level bombing of the past. Better equipped, the regular army, the PDF, and the southern Sudanese militias were initially successful in their campaigns of ethnic cleansing to secure the flat pasture lands of the western Upper Nile and eastern Bahr al-Ghazal. The war-related deaths of the southern Sudanese continued to grow.

Quantifying War-Related Deaths of Southern Sudanese

The southern Sudan has been one of the most remote regions of the earth—it was not opened to the outside world until the mid-nineteenth century. This isolation continued through the half-century of the Anglo-Egyptian Condominium (1899–1956) and during the First Civil War (1955–1972). There are no reliable statistics and only unreliable estimates of the southern Sudanese losses during the seventeen years of this conflict. In contrast, the Second Civil War (1983–present) has been well recorded by the international media, in massive reports by human rights and relief agencies, and through the writings of Sudanese and foreign participants. Unlike the First Civil War, advances in technology have now made it possible to transmit visually and through the media the disastrous consequences of the vicious fighting in the forests, plains, and swamps of the southern Sudan on the civilian population. Despite the plethora of information about this tragic conflict, there has been only one serious study attempting to quantify the number of war-related deaths, *Quantifying Genocide in Southern Sudan and the Nuba Mountains, 1983–1998*, authored by J. Millard Burr.

Burr estimates that more than 1.3 million southern Sudanese perished in the conflict between 1983 and 1993 in a population, according to the 1983 national census, of some 5 million in the southern provinces of Equatoria, the Bahr al-Ghazal, and Upper Nile; the victims constitute one-fourth to one-third of the Sudan's total population. There has been no further census, but ten years later, if one accepts the folk figure of 3.2 million residing in the south and another 1.8 million IDP living in the north, and assumes a generous 3 percent population growth, the number of southern Sudanese has not increased because of war-related losses. During the next five years, 1993 through 1998, Burr estimates that another 600,000 southern Sudanese perished in the war. This represents an annual average of 120,000, a number close to the 130,000 who died each year from 1983 to 1993. Because the intensity of fighting in the southern Sudan has escalated since the acquisition of arms for oil revenues, the annual losses from 1998 to 2003 have certainly not diminished from the 120,000 each year during 1993 through 1998. Consequently, the total war-related deaths of southern Sudanese during the twenty years from 1983 to 2003 numbers more than 2.5 million. Although precise figure for these war-related deaths in the southern Sudan will never be available, Burr's estimates speak to the enormity of the consequences of this continuing conflict.

There is no way to distinguish between military and civilian casualties, but given the size of the government forces and those of the SPLA, their casualties can only be numbered in the tens of thousands, whereas those of the civilians must be counted in the hundreds of thousands. Many more southern Sudanese have undoubtedly died from disease and starvation as a direct result of the policies of the Sudan government than have died by the bullets of their armed forces. The stark conclusion remains that during the period of 1983 to 2003 the death of at least one in five southern Sudanese can be attributed to this terrible civil conflict.

After a half-century of civil war punctuated by a decade of peace (1972–1983) and infrequent ceasefires during which a host of international mediators have sought to broker a peace between the Sudan government and the SPLM/A, the question of genocide on the part of the Sudan government was first raised by the international non-governmental organizations (NGOs) working in the Sudan, and then discussed at the UN and in the international media. After 1989 the determination of the Islamist government of Umar al-Bashir to defeat the southern insurgents and impose by jihad Islam, Arabization, and the Shari'a throughout the southern Sudan leaves little doubt that the government in Khartoum actively participated or quietly condoned the death by famine or slaughter of hundreds of thousands of civilian African Sudanese. There are numerous definitions of genocide, but the standard definition is contained in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide. *Genocide* means the intent to destroy, in whole or part, any national, ethic, racial, or religious group by killing, bodily harm, preventing birth, or transferring children from that group to another one.

Although there is no evidence that the Sudan government officially adopted a policy to eliminate any particular ethnic group in the southern Sudan or the southern Sudanese as a whole, their policies involved the indiscriminate aerial bombing of civilians and their installations, the withholding of humanitarian aid to cause death by starvation, and silent indifference to the activities by government-supported militias to loot, kidnap, and enslave. The Islamist government has worked assiduously to deny these charges by defending its actions as a necessary military response to defeat the southern Sudanese insurgents, the SPLA, preserve the unity of the Sudan, and incorporate the African Sudanese into an Islamic, Arab Sudan. Under international pressure the government of Umar al-Bashir has sought to dispel the accusations of genocide by greater cooperation with the West and a willingness to discuss peace with the SPLA. Without peace in the Sudan there is no prospect of resolving whether the massive loss of southern Sudanese lives was, in fact, a deliberate policy of genocide by the government of the Sudan.

SEE ALSO Ethiopia; Ethnic Cleansing; Famine; Refugees; Religion; Slavery, Historical; Uganda

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Robert O. Collins

Superior (or Command) Responsibility

International law provides two primary modes of liability for holding an individual criminally responsible: (1) individual or personal criminal responsibility and (2) superior or command responsibility. The latter concept is reflected in the statutes of international criminal courts and tribunals that hear cases arising under international humanitarian law (such as Article 28 of the Statute of the International Criminal Court, Article 6[3] of the Statute of the International Criminal Tribunal for Rwanda and Article 7[3] of the Statute of the International Criminal Tribunal for the Former Yugoslavia), as well as in many nations' military and civilian criminal codes. The doctrine of superior or command responsibility (the terms will be used interchangeably in this entry) differs from other forms of criminal liability in that it is based on omissions rather than affirmative actions. Under the doctrine of superior responsibility, the accused may be convicted based on his or her failure to prevent the crime from occurring in the first place (or to punish the perpetrator) after having learned that the offense was committed. It is important to stress that superior responsibility does not cover situations where a superior (or military commander) orders persons under his or her control to commit crimes. (Under such a scenario, the superior would be responsible under a theory of individual or personal criminal responsibility.) After a brief historical discussion, the doctrine of command responsibility will be analyzed here, with particular emphasis on its application as reflected in the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

Historically, this doctrine was used exclusively as a basis to prosecute superior military officers for offenses committed by their subordinates. More recently the statutes of the ICTY, ICTR, and the International Criminal Court (ICC) refer to "superior responsibility," reflecting the fact that the doctrine also applies to paramilitary or irregular commanders and civilian leaders, in addition to traditional military commanders. The doctrine of command responsibility, as reflected in these statutory instruments, expresses a well-established rule of international customary law, as reflected in numerous treaties.

History and Background

Prior to World War II there are few recorded cases involving prosecutions on the basis of command responsibility, reflecting the fact that this doctrine rarely formed the basis for criminal prosecution. Although the roots of the modern doctrine of command responsibility may be found in the 1907 Hague Conventions (such as Hague Convention IV, Annex, Article 1, or Hague Convention X, Article 19), it was not until immediately after World War I that the notion of prosecuting military commanders before international tribunals on the basis of command responsibility was developed. Thus, the International Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties presented a report to the 1919 Preliminary Peace Conference, in which they recommended that an international tribunal be established to prosecute, among other matters, individuals who, "with knowledge . . . and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing violations of the laws or customs of war." Similarly, Article 227 of the Treaty of Versailles envisioned the trial of Kaiser Wilhelm by an international tribunal.

After World War II several important trials involving Japanese and German war criminals were conducted, in which the doctrine of command responsibility was invoked as the grounds for establishing criminal liability, were conducted. The Charters governing both the Nuremberg and Tokyo trials were silent as to criminal liability under the doctrine of command responsibility. Likewise, Control Council Law No. 10, the basis for trials of war criminals by the Allies in Germany, did not specifically provide for this form of criminal liability. Nevertheless, command responsibility issues were raised in several post–World War II cases, including the Yamashita trial and *United States v. Wilhelm von Leeb, et al.*, known as the *High Command* case and *Hostages case* (*United States v. Wilhelm List et al.*)—cases prosecuted under Control Council Law No. 10, the law governing the trials of war criminals in Germany other than those prosecuted in the large Nuremberg trial.

The trial of General Tomoyuki Yamashita stands for the proposition that military superiors may be found guilty if it can be established that they must have known offenses were being committed and failed to either halt such crimes or punish the perpetrators. The *High Command* and *Hostages* cases further developed this area of the law. Thirteen senior German officers were tried in the *High Command* case (reported in Volumes 10 and 11 of *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, hereafter referred to as TWC), for a variety

of offenses, including murder and mistreatment of prisoners of war (POWs), refusal of quarter, and other inhumane acts and violations of the laws or customs of war. The prosecution argued a form of strict liability should apply to commanders. The tribunal rejected this theory and held that for a commander to be criminally responsible for the acts of subordinates, the commander must breach a rule of international law and such a breach must have occurred voluntarily and with the knowledge that the act was criminal under international law. Other command responsibility issues raised during the course of the trial included: (1) the liability of a commander for actions committed by subordinates pursuant to criminal orders passed down independent of his or her command; (2) the liability of commanders for criminal orders issued by members of their staffs; and (3) the duties and responsibilities of the military commander of an occupied territory whose authority is limited.

Like the *High Command Case*, the *Hostages Case* (reported in TWC, Vol. 11, starting on p. 759) dealt with multiple accused and was prosecuted by authorities of the United States under Control Council Law No. 10. The judges dismissed the contentions of the accused that reports and orders transmitted to them were not brought to their attention by members of their staffs and addressed the issue of notice to the commander, making several important observations:

> An army commander will not ordinarily be permitted to deny knowledge of reports received at his headquarters, they being sent there for his special benefit. Neither will he ordinarily be permitted to deny knowledge of happenings within the area of his command while he is present therein. It would strain the credulity of the Tribunal to believe that a high ranking military commander would permit himself to get out of touch with current happenings in the area of his command during wartime. No doubt occurrences result occasionally because of unexpected contingencies, but they are unusual (TWC, Vol. 11, p. 1260).

With respect to information contained in such reports, the tribunal went on to state that "[a]ny failure to acquaint themselves with the contents of such reports, or a failure to require additional reports where inadequacy appears on their face, constitutes a dereliction of duty which he cannot use in his own behalf" (TWC, Vol. 11, p. 1271).

Considered together, these three cases stand for the proposition that commanders could not be held to a strict liability standard with respect to offenses committed by their subordinates, although the law did impose on them a duty to stay informed with respect to the acts of such subordinates. Based on the rulings handed down on these cases at the end of World War II, the scope of the international law of command responsibility could be summed up as follows:

- There was a presumption that orders were legal, and that commanders could pass orders from higher headquarters to lower-level commands with minimal scrutiny.
- There was a presumption that commanders would be aware of the contents of reports received at their headquarters.
- In the event such reports were inadequate or unclear, commanders had a duty to request that additional reports be prepared.
- There was a presumption that commanders were aware of events (including crimes) that occurred within the geographic scope of their areas of responsibility.
- To be criminally responsible, commanders must have known that patently criminal acts were committed and they acquiesced to, participated in, or criminally neglected to interfere in their commission.
- Commanders could delegate authority, but responsibility for the conduct of the troops remained with the commander.
- In examining the alleged criminal conduct of commanders, a variety of factors could be relevant for determining whether the commander was on notice, including the scale and geographic scope of the alleged criminal acts.

Notwithstanding these cases, the four 1949 Geneva Conventions were silent as to command responsibility, with the exception of Article 39 of the third Geneva Convention, which requires POW camps to be "under the immediate authority of a responsible commissioned officer." This situation was not rectified until the adoption of Additional Protocol I Relating to the Protection of Victims of International Armed Conflicts in 1977. Consequently, state practice played an important role in the development of the concept of superior responsibility during this period. Both during and immediately after World War II many states incorporated superior responsibility provisions in their national legislation. On the basis of these statutory provisions, some states prosecuted individuals, among the most well-known are the cases of Lieutenant William Calley and Captain Ernest Medina of the United States Army for their role in the 1967 My Lai massacre in Vietnam.

The Jurisprudence of the ICTY and ICTR

The ICTY was established in 1993 and was vested with jurisdiction to prosecute superiors for offenses commit-

ted by their subordinates, as the following paragraph from the Secretary-General's Report to the Security Council on the establishment of the ICTY indicates:

> A person in a position of superior authority should, therefore, be held individually responsible for giving the unlawful order to commit a crime under the present statute. But he should also be held responsible for failure to prevent a crime or to deter the unlawful behavior of his subordinates. This imputed responsibility or criminal negligence is engaged if the person in superior authority knew, or had reason to know, that his subordinates were about to commit or had committed crimes and yet failed to take the necessary and reasonable steps to prevent or repress the commission of such crimes or to punish those who had committed them (1993, para. 56).

The doctrine of superior responsibility has been applied by ICTY and ICTR trial chambers in numerous cases and has also been the subject of several Appeals Chamber decisions and judgments. These decisions have elaborated on the legal elements constituting this form of criminal liability.

The Elements

In order to prevail on a command responsibility theory of criminal liability, the prosecution must establish, beyond reasonable doubt, each of the following elements:

- An offense was committed.
- There was a superior-subordinate relationship.
- The superior knew or had reason to know that the subordinate was about to commit the offense or had done so.
- The superior failed to take the necessary and reasonable measures to prevent the offense or to punish the principal offenders.

With the exception of the first element, which simply requires proof that a certain perpetrator or group(s) of perpetrators committed an offense for which the tribunal has jurisdiction, each of these elements will be analyzed.

The first requirement is the existence of a superior-subordinate relationship between the accused superior or commander and the subordinate perpetrator at the time the offense was committed. This form of liability does not apply in the event the accused and the perpetrator(s) are of the same rank; there must be a hierarchical relationship for superior responsibility to apply. This raises several issues: the test to be used in determining this relationship; whether the commander must have de jure or de facto control; whether this liability also extends to civilian superiors; and whether more than one superior in the chain of command may be held liable for acts committed by subordinates.

"Effective Control"

The term *superior* is not necessarily restricted to military commanders senior to the actual perpetrator in the chain of command. As long as the superior exercises effective control over subordinate(s), superior responsibility may attach. Thus, a commander may incur criminal responsibility for offenses committed by persons who are not formally his or her subordinates, provided that he or she exercises effective control over them (*Prosecutor v. Zejnil Delalic et al., Čelebići* Appeal Judgment, para. 196). Moreover, in the *Prosecutor v. Dragoljub Kunarac et al.* case, the Trial Chamber stated that there is no requirement that the person committing the offense be in a permanent or fixed relationship with the commander, so long as the commander exercised the prerequisite effective control (*Kunarac* Trial Judgment, para. 399).

Effective control is a prerequisite in establishing that the superior had the material ability to prevent or punish the commission of violations of international humanitarian law committed by subordinates. The conflicts in both the former Yugoslavia and Rwanda saw instances where offenses were committed by paramilitary and irregular militia forces, who often lacked de jure authority over the actual perpetrators. On the basis of their de facto control over the offenders and applying the effective control test, the leaders of such groups may be found criminally responsible for the crimes committed by subordinates.

Military and/or Civilian Leaders

Under customary international law, the doctrine of command responsibility extends to both civilian and military superiors, as well as to individuals exercising both types of functions. Article 7(3) of the ICTY Statute is consistent with this customary law, in that it does not qualify the term superior by explicitly limiting the theory to military superiors. Moreover, Article 7(2), which provides that the official position of a person "shall not relieve such person of criminal responsibility nor mitigate punishment," supports the proposition that civilian superiors may fall within the bounds of Article 7(3). This issue was dealt with by the ICTY Appeals Chamber in the *Prosecutor v. Zlatko Aleksovski* case, when the Court stated that "[t]he Appeals Chamber takes the view that it does not matter whether he was a civilian or a military superior, if it can be proved that within the Kaonik prison, he had the powers to prevent or to punish in terms of Article 7(3)" (*Aleksovski* Appeal Judgment, para. 76).

The ICC Statute takes a slightly different approach with respect to the distinctions between civilian and military superiors. Article 28(a) applies to military

commanders and those "effectively acting as a military commander," while Article 28(b) limits civilian responsibility to those instances where the subordinates were under the "effective authority and control" of the civilian superior and:

1. The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes.
2. The crimes concerned activities that were within the effective responsibility and control of the superior.
3. The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the appropriate authorities for investigation and prosecution.

Until the ICC has the opportunity to address this issue in an on-going case, it is unclear whether these provisions reflect newly emerging customary law.

Multiple Commanders in the Chain of Command

Because the military laws of every state require all soldiers to comply with international humanitarian law, every person in the chain of command who exercises effective control over subordinates is responsible for crimes committed by such persons, if we assume all the elements of Article 7(3) are met. This means that more than one superior may be responsible for crimes committed by the same subordinates, as long as each superior in the chain of command exercises effective control.

The Knowledge Requirement

The knowledge (or mens rea) element of superior responsibility entails two distinct components: The accused "knew" or "had reason to know" that a subordinate was about to commit a crime or had done so. The term *knew* means actual knowledge, which may not be presumed and may be established either through: (1) direct evidence of actual knowledge or (2) circumstantial evidence, from which it can be inferred that the commander must have had actual knowledge. Proof of actual knowledge can be established, among other things, by introducing evidence that the accused commander acknowledged receiving reports that subordinates committed crimes. In most cases, however, the prosecution will rely on circumstantial evidence to prove that a superior had actual knowledge and the following factors may constitute such evidence:

- Number of illegal acts
- Type of illegal acts
- Scope of illegal acts
- Time during which the illegal acts occurred
- Number and type of troops involved
- Logistics involved, if any
- Geographical location of the acts
- Widespread occurrence of the acts
- Tactical tempo of operations
- Modus operandi of similar illegal acts
- Officers and staff involved
- Location of the commander at the time
- Nature and scope of the particular position held by the superior
- Character traits of subordinates
- Events taking place during any temporary absences of the superior
- Level of training and instruction provided by the commander to the subordinates

The phrase "had reason to know" has proven more difficult to interpret and apply, with different courts coming to different conclusions on this issue. The fact that the ICC Statute has adopted different mens rea standards for military and nonmilitary superiors only tends to complicate this area of the law.

In the *Čelebići* case, the appeals chamber discussed what must be established to prove that the accused had reason to know. The judges concluded that the prosecution must demonstrate that "information of a general nature was available to the superior that would have put him or her on notice of offenses committed by subordinates" (*Čelebići* Appeal Judgment, para. 241). This information does not have to be conclusive that crimes were committed, but it must be specific enough to indicate the need for additional investigation to determine if crimes had been, or were about to be, committed. This places a duty on commanders to investigate once they are notified of the possibility that offenses may have been committed.

As noted above, the ICC Statute sets forth different standards for military and civilian superiors, and these differences also include different mens rea requirements. Pursuant to Article 28(a) of the ICC Statute, the mens rea for military superiors is that the accused "knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes." With respect to civilian superiors, it must be proven that the civilian superior "knew or consciously disregarded information that clearly indicated, that the subordinates were committing or about to commit such crimes."

Necessary and Reasonable Measures to Prevent or Punish

The requirement that superiors take necessary and reasonable measures to prevent or punish is the third element of superior responsibility, and overlaps with the first element, because commanders who lack effective control will not be able to satisfy this requirement. The obligation of the superior to act is triggered once he becomes aware that crimes have been or are about to be committed. In the *Prosecutor v. Tihomir Blaskic* case, the trial chamber concluded that the two components of this obligation must be considered together, stating, "Obviously, where the accused knew or had reason to know that subordinates were about to commit crimes and failed to prevent them, he cannot make up for the failure to act by punishing the subordinates afterwards" (*Blaskic* Judgment, para. 336).

However, as the judges noted in the *Čelebići* case, the first instance in which the ICTY dealt with superior responsibility, there are limits as to what may be expected of superiors:

> International law cannot oblige a superior to perform the impossible. Hence, a superior may only be held criminally responsible for failing to take such measures that are within his powers. The question then arises of what actions are to be considered to be within the superior's powers in this sense. As the corollary to the standard adopted by the Trial Chamber with respect to the concept of superior, we conclude that a superior should be held responsible for failing to take such measures that are within his material possibility (*Čelebići* Trial Judgment, para. 395).

The determination of whether a superior has fulfilled this obligation is thus highly fact-specific and consequently a practical approach is required. Subsequent cases, for example, have demonstrated that a commander may meet this obligation by reporting the matter to his or her superior officer.

Responsibility for Crimes Committed before the Superior-Subordinate Relationship Exists

Until a recent decision of the ICTY Appeals Chamber in the *Prosecutor v. Enver Hadzihasanovic et al.* case (Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility), it was unclear whether such responsibility included obligations on commanders stemming from crimes committed prior to the establishment of the superior-subordinate relationship. The following hypothetical demonstrates this point. Assume that Soldier A, who is under the command of Commander A, commits an offense on January 1. On January 3, Commander A is informed of this crime, but the following day Commander A is reassigned and Commander B assumes command of the unit that includes Soldier A. May Commander B be held criminally liable for the failure to punish Soldier A for crimes committed prior to Commander B's assumption of command, assuming Commander B is aware of the allegations? The Appeals Chamber of the ICTY has held that he or she may not, based on customary international law. Two of the five judges on the appeals chamber dissented, arguing that customary international law supported the notion that commanders could be held liable for such crimes, provided that the commander had reason to know of the crimes.

Internal Armed Conflict

Historically, the doctrine of command responsibility has been applied in international armed conflicts only, as is clear from a reading of Articles 86 and 87 of Additional Protocol I and by the fact that Additional Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts has no corresponding provisions. This reflects the hesitation that most states have traditionally demonstrated in entering into treaties with specific provisions governing internal armed conflict (civil wars). Nevertheless, recent developments, as illustrated in the jurisprudence of the ad hoc international criminal tribunals, indicate that the characterization of a conflict is irrelevant for purposes of holding a superior responsible for offenses committed by subordinates. It is well-established that command responsibility is part of the customary international law relating to internal armed conflict.

Relationship between Article 7(1) and Article 7(3)

An accused who exercises effective control over subordinates who commit crimes may also be held responsible as a direct participant, depending on the facts of the case, although the recent trend has been to convict the accused under only one form of liability, the one that most accurately describes his or her participation. As a result, it is not uncommon for the ICTY prosecutor, for example, to allege simultaneously that an accused is liable under both ICTY Statute Article 7(1), on a theory of joint criminal enterprise, and under Article 7(3) of the same statute, on the basis that the accused was a superior.

When used together, these forms of liability provide the prosecutor with a variety of theories on which to charge an accused in command of or exercising authority over the perpetrators of serious violations of international humanitarian law. Perhaps the best example of this practice occurred in the *Prosecutor v. Radislav Krstic* case, in which General Radislav Krstic was charged under both Article 7(1), including joint

criminal enterprise, and Article 7(3) for his role in the genocide at Srebrenica. The judges held that a joint criminal enterprise existed in the Srebrenica enclave and the object of this common plan was, among other things, the forcible transfer of the Muslim civilian population out of Srebrenica and killing of military-aged Bosnian Muslim men. These acts were committed with the awareness that theys would lead to the annihilation of the entire Bosnian Muslim community in Srebrenica.

Before the killings many of the Bosnian Muslims living in Srebrenica had fled to Potocari, a few miles from the town of Srebrenica, but within the Srebrenica "enclave." A significant number of those who fled to Potocari were the victims of murder, rape, beatings, and other abuse. The trial chamber made the following findings:

> The Trial Chamber is not, however, convinced beyond reasonable doubt that the murders, rapes, beatings and abuses committed against the refugees at Potocari were also an agreed upon objective among the members of the joint criminal enterprise. However, there is no doubt that these crimes were natural and foreseeable consequences of the ethnic cleansing campaign (*Krstic* Judgment, para. 616).

Thus, the crimes committed at Potocari were not part of the joint criminal enterprise "as agreed upon" by the members of that group. Although Krstic did not personally commit these crimes, he was convicted for the "incidental murders, rapes, beatings and abuses committed in the execution of this criminal enterprise at Potocari" (*Krstic* Judgment, para. 617).

Moreover, in light of the knowledge requirement under Article 7(3) of the ICTY Statute, it is interesting that the trial chamber stated the following in support of its conclusions:

> Given the circumstances at the time the plan was formed, General Krstic must have been aware that an outbreak of these crimes would be inevitable given the lack of shelter, the density of the crowds, the vulnerable condition of the refugees, the presence of many regular and irregular military and paramilitary units in the area and the sheer lack of sufficient numbers of UN soldiers to provide protection (*Krstic* Judgment, para. 616).

The "must have been aware" standard should be compared with the interpretation of the "had reason to know" standard rendered in the *Čelebići* appeal. It seems to be the case that if it can be established that a superior was part of a joint criminal enterprise, it may be easier to convict that superior under Article 7(1) than Article 7(3). Because offenses alleged under Article 7(1) typically result in a harsher penalty on conviction than similar crimes alleged under Article 7(3), it is clear that the joint criminal enterprise theory, and superior responsibility as either complementary or alternative bases of liability, play important roles in terms of prosecutorial charging policy.

In the *Prosecutor v. Milorad Krnojelac* case, however, a different trial chamber focused on the relationship between joint criminal enterprise liability and aiding and abetting liability under Article 7(1) on the one hand, and criminal liability as a superior under Article 7(3) on the other hand. The prosecution established that the accused was aware both of the illegality of the detention of non-Serbs in a camp where he was the warden and that his acts and omissions contributed to this unlawful system. Nonetheless, the trial chamber concluded that it was possible that the accused was "merely carrying out the orders given to him by those who appointed him to the position of [the camp] without sharing their intent" (*Krnojelac*, Trial Judgment, para. 12). Consequently, the judges determined that

> [T]he criminal conduct of the accused is most appropriately characterized as that of an aider and abettor to the principal offenders of the joint criminal enterprise to illegally imprison the non-Serb detainees pursuant to Article 7(1) of the Statute. As to the accused's superior responsibility for illegal imprisonment of non-Serb detainees pursuant to Article 7(3), the most which could have been done by the accused as a superior would have been to report the illegal conduct to the very persons who had ordered it. Accordingly, the Trial Chamber considers that it would not be appropriate to find him responsible as a superior (Krnojelac, Trial Judgment, paras. 127 and 173).

Conclusion

The theory of superior responsibility is a well-established principle of customary international law and has been developed through a variety of sources, including treaties, Security Council resolutions, and domestic and international case law. Moreover, command responsibility plays an important role in ongoing cases at the ad hoc international criminal tribunals and is likely to play a similarly important role at trials conducted before the ICC. Several important conclusions may be drawn concerning command or superior responsibility. First, the doctrine applies only to those commanders who exercise effective control over their subordinates. Second, this theory applies equally to all superiors who exercise effective control, whether military or civilian, provided that civilians exercise the type and scope of control normally associated with mil-

itary commanders. Third, formal characterization of the relationship is not required and either de jure or de facto superiors may be held liable for the conduct of subordinates. Fourth, actual knowledge is difficult to establish in most cases, but there are several indicators from which inferences may be drawn that a commander had knowledge, and such circumstantial evidence may be sufficient to establish this point. Fifth, the mens rea requirement of either "knew" or "had reason to know" has not developed in a linear fashion and is likely to be influenced by developments emanating from the ICC, based on Article 28 of that court's statute. Sixth, the superior may not be held responsible for offenses committed by subordinates prior to the assumption of command by the superior. Finally, commanders must take action when they receive information that suggests a subordinate may have violated a provision of international humanitarian law.

SEE ALSO Complicity; Geneva Conventions on the Protection of Victims of War; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugolsavia; War Crimes

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Daryl A. Mundis

I am setting forth the above in my personal capacity. This article represents neither the policies of the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia nor the United Nations.

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Taino (Arawak) Indians

The Taino, also known as the Arawaks, migrated from the Caribbean coast of South America, moving northward along the island chain of the lesser Antilles to the greater Antilles, around 1200 CE. They were agriculturalists whose basic food crops—corn, manioc, and beans—were supplemented by hunting and fishing. By the time the Europeans first encountered the Taino in 1492, they dominated the islands of Hispaniola, Puerto Rico, most of Cuba, and the Bahamas, but they were coming under pressure from the more warlike Caribs of South America as they too moved northward through the lesser Antilles.

The first expedition of Christopher Columbus brought an initial wave of Old World peoples to the Caribbean. Columbus was impressed by the beauty, peaceful nature, and agricultural techniques of the Taino, and often wrote about the richness and productivity of the land. Chieftains, assisted by elders, ruled the land, and groups were linked loosely by confederations. Columbus frequently boasted of large populations that seemed well off and, surprisingly for the Europeans, to have no money. The Taino were more than willing to exchange their small gold objects or cotton for broken mirrors, knives, or copper bells.

Modern scholars do not know for certain the total population of the Taino when the Europeans arrived, and there is heated debate about these numbers. Nonetheless, it can be said that the population was substantial, with villages containing up to five thousand people, and that almost immediately such numbers began to decline. Within half a century after 1492 the Aboriginal population of many of the islands was approaching extinction. According to Miguel de Pasamonte, the Taino of Hispaniola numbered 60,000 in 1508. According to Diego Columbus, there were 33,523 in 1510; four years later the population was reported to be 26,334. The total fell to about 18,000 in 1518 and 1519, and only 2,000 Tainos remained on the island in 1542.

What were the causes of this demographic collapse? Those making a case for genocide cite the vivid descriptions of Dominican friar Bartolomé de las Casas who arrived in the islands in 1502, a decade after Columbus's first voyage. In his *Brevissima Relación* and other writings, he characterizes the Spanish settlers, gold seekers, and warlike conquerors as villains. He, too, had shared in the exploitation of the Taino until his conversion, thanks to a compelling sermon by friar Antonio de Montesinos on Whitsunday of 1512. It influenced him to give up his Indians and dedicate his life to their protection. As an eyewitness, he reported the Spanish to be rapacious, burning captives to secure the source of treasure, and forcing them to travel long distances to work in mines or on settler's estates. They raped the native women and took pleasure in maiming and brutalizing Amerindians with war dogs and instruments of torture. His compelling descriptions were supported by the writings of others, such as the Italian traveler Girolamo Benzoni. These accounts, reinforced by the gory illustrations of Theodore de Bry later in the century, led to the Black Legend, which depicted the Spanish as the scourge of whomever they encountered. But the account of Las Casas was intentionally and successfully exaggerated in order to secure legal protec-

tions for Native-American peoples from the Spanish Crown.

In fact, several factors coincided and led to the destruction of Taino society. It is impossible to deny the role of the shock of violent conquest. Columbus's first expedition of three small ships engaged in reconnaissance and trade; within months a large-scale expedition of 17 vessels and 1,500 men—and a handful of women—followed. Some of the men had fought in the wars in Italy and the recent conquest of the kingdom of Granada. They brought warhorses, war dogs, and ample military equipment. The group had been influenced by Columbus's pronouncements on the wealth of the islands, the ease of communication with the Natives, the seemingly friendly nature of the Taino women, and the backward technology of the military.

The Spaniards arrived expecting to find wealth, and they were ready to take it by force if necessary, especially as the Spaniards discovered that no one remained of a handful of men left behind by Columbus; all had fallen to the Taino. If one accepts the statistic that the Taino population of Hispaniola at the time of the Europeans' arrival was approximately a half-million, then the ratio of Spanish males to Taino males was 1:167. The superior military technology of the Europeans more than made up for the difference in numbers. Further, the Spanish utilized brutality in the early stages of conquest to subdue the enemy as quickly as possible. Some of Las Casas's descriptions of brutality during the early months of the encounter were likely accurate. Shock led to submission. But mortality for the Europeans was also very high; more than half did not survive their first year on Hispaniola.

Taino were soon distributed to the settlers in the form of an *encomienda,* an Iberian institution that had been used during the reconquest of the peninsula. Simply put, the settler was given a grant of natives, mostly adult married males, who provided tribute (a head tax) to the *encomendero,* who was then responsible for their conversion and civilization. The Spanish Crown frowned on the direct enslavement of the Indians; Queen Isabella had freed Indians enslaved by Columbus to help defray the costs of his second expedition, arguing that the Indians were her free subjects. The Laws of Burgos (1518) restated the policy against Indian slavery, although exceptions were made for Indians who rebelled, killed missionaries or rejected their efforts, or were cannibals. Although technically not slavery, the early *encomienda* in the Caribbean permitted the Spaniard to use Indian labor, either in mining or the creation of plantations for exports to Europe, especially sugar. The institution led to the abuse and death of tributary workers. Migration, either forced or voluntary, also contributed to the high rate of mortality, as normal subsistence patterns were disrupted.

The impact of culture shock as a technologically more advanced society comes into contact with a less developed one is hard to measure, but evidence exists that this phenomenon did play a role in the collapse of Taino social groups. Las Casas mentions infanticide, which he claimed mothers committed in order to free their infants from the exploitation of the Spanish. Crops were torn up and burned, with starvation as the consequence, but the destruction of crops may have been intentional, carried out by the local population on purpose to deprive the Spaniards of food. Villages became deserted as their residents fled to the countryside. Men and women, too worn out by forced labor, failed to procreate.

Until recently it was believed that the disappearance of the Taino did not involve Old World disease, so important to the collapse of the Amerindian population elsewhere. But there is new evidence that disease did play a role in the Taino disaster. A wave of disease broke out simultaneously with the arrival of the second Spanish expedition in late 1494. Several observers have suggested the loss of a third to a half of the population within that short period of time. There has been much debate among scholars on which disease triggered the huge loss of life; likely candidates have been typhus, which was present with the fall of Granada and the Italian campaigns, or swine flu, similar to the epidemic that occurred at the end of World War I. More recently smallpox has been suggested. Certainly, the smallpox pandemic of 1518 killed most of the remaining Taino on the islands before it spread to the mainland.

Slaving expeditions during the early years of the colony were undertaken to resupply the island's labor force as the Taino population declined. The brunt of slaving fell early on nearby islands, especially the Bahamas. Mortality for enslaved Indians seems exceptionally high. Slaves purchased in the Old World, largely of African origin and transported to the Carribean, ultimately solved the labor problem for European settlers in the lands of the Taino. The legality of slavery was not questioned because it had been practiced in the Mediterranean region for centuries. The long-term demographic consequence for the Caribbean islands was a population of largely European or African origin, or a mixture thereof, with little remnants of the original Aboriginal population, although the significant cultural legacies of the Taino persist.

SEE ALSO Indigenous Peoples; Native Americans

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Noble David Cook

Talaat

[SEPTEMBER 1874–MARCH 15, 1921]
Turkish political leader

As its principal author, Turkish leader Mehmet Talaat played a decisive role in the decision-making, organization, and implementation of the World War I Armenian genocide. His authority and power to act derived from a dual-track position: He was minister of the interior and, perhaps more importantly, he was the supreme boss of the ruling Committee of Union and Progress Party (CUP). In July 1908 the leaders of this revolutionary Young Turk movement successfully overthrew the despotic reign of Sultan Abdulhamit (1876–1908) in the name of a new constitutional regime. The spokespersons of this movement claimed to be guided by the ideals of the French Revolution—namely, freedom, equality, and brotherhood. Except for a brief six-month period in 1912, CUP remained in near-total control of a succession of Ottoman Turkish governments in the years between 1908 and 1918.

Such control was made possible, however, through Talaat's exceptional skills in political organization and party formation. Due to his innate qualities of leadership, CUP quickly gained inordinate strength not only in Istanbul, then the Ottoman capital, but, more importantly, in the empire's Asiatic provinces, where the bulk of the empire's Armenian population lived as an indigenous population. Parallel to this growing strength, CUP increasingly became dictatorial and monolithic in pursuit of a xenophobic nationalism. This ideological push aimed at rescuing and preserving the tottering empire by way of discarding a languishing ideology of a multiethnic and hence inclusive Ottomanism and replacing it by an exclusive Turkism. The targeting and forcible elimination of the Armenians had thus become a by-product of this new militant ideology.

To accomplish this task, Talaat decided to rely on CUP's clandestine and highly secretive mechanisms that he himself had created and fostered. As Talaat's principal biographer, Tevfik Çavdar noted, CUP had a two-tiered structure "just like an iceberg" (Çavdar, 1984, p. 190). Talaat used the submerged invisible parts for "illegal" acts in order to carry out CUP's covert and lethal objectives, which included mass murder. World War I afforded an invaluable opportunity in this respect. Accordingly, as revealed by Talaat himself, Parliament was temporarily suspended, martial law was declared, and certain constitutional rights were deferred. As a prelude to the impending genocide, the targeted Armenians were thereby stripped of their most basic human rights.

Alerted to the situation, on May 24, 1915, when the Armenian genocide was being initiated, the Allies publicly and formally pledged to hold "personally responsible" all the Turkish officials who were implicated in these "new crimes against humanity" (Dadrian, 1989, p. 962). Similar references to crimes of Turkey against humanity in the postwar period were made in the Ottoman Parliament and in some of the verdicts issued by the Turkish Military Tribunal. Prosecuting the authors of the Armenian genocide, that tribunal condemned Talaat, along with some other top CUP leaders, including Ismail Enver (Turkish Minister of War in the Ottoman Empire during World War I), to death in absentia.

Talaat's paramount role in the organization of the Armenian genocide was confirmed during the trial of a young Armenian who had assassinated him in Berlin, where Talaat had taken refuge under the fictitious name Sai. A German jury acquitted the assassin on grounds of temporary insanity brought on by a vision of his murdered mother. Given Germany's wartime military and political alliance with Turkey, this verdict was as surprising as it was educational. The general public learned with horror the gruesome details of a centrally organized mass murder orchestrated by Talaat himself, whose image was transformed from victim to arch villain.

SEE ALSO Armenians in Ottoman Turkey and the Armenian Genocide; Atatürk, Mustafa Kemal Pasha; Enver, Ismail

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Vahakn N. Dadrian

Television

Limited news coverage of major genocides and crimes against humanity prior to the second half of the twentieth century allowed those events to continue outside the glare of public scrutiny that has become possible. The advent of modern television news networks allows for rapid, even instantaneous visual reporting of international crises. Television news coverage of genocide and crimes against humanity can thus inform and shape world opinion, eliciting responses to such atrocities.

The CNN Effect

Television news coverage plays a critical role in ensuring that the global public is informed about international events. It is, in fact, the preferred means by which the majority of the Western public receives its news. The existence of Cable News Network (CNN) and other global television news networks dedicated to instantaneous coverage means that concerned nongovernmental groups and the public at large are often exposed to international news events at the same time as governments. This exposure to international news allows the public to formulate opinions and influence government policy. The broad international reach and the speed of modern television news coverage thereby create pressure on governments to respond quickly to international crises. This phenomenon whereby aggressive television news coverage of live events indirectly shapes the course of those events is known as the CNN Effect or the CNN Factor.

Television news coverage of genocide and crimes against humanity has the potential to limit the extent and severity of those incidents by motivating timely action and resource allocation by governments and nongovernmental groups like relief agencies. Such coverage may even help to prevent future occurrences; an informed public can encourage governments to monitor potential international crises and take preventative action when necessary.

Factors in Television Reporting

The television news media is also a business, and as such is limited by practical considerations. News stories themselves are limited in scope; in a given news segment, each story tends to last no more than one to three minutes. Likewise, the news media's attention to any one event is limited in duration, with sustained coverage rarely lasting longer than a period of a few weeks. The television news media generally only cover one such major event at a time, meaning that while one important international crisis may get the attention it deserves, other crises may go under- or unreported. Moreover, the complicated logistics of reporting from remote, undeveloped locations make certain events of humanitarian concern inaccessible to the media and therefore unavailable to the public.

Profit considerations similarly influence news coverage. The television news media tend to seek out sensational stories—which are most often highly negative—because those stories gather viewers. The global public has demonstrated a tendency toward voyeurism; that is, the public is more interested in seeing exceptional, negative news than in seeing ordinary and/or positive news.

Distortion and Manipulation

The television news media's proclivity to report the sensational can lead the public in developed countries to harbor incomplete and erroneous opinions about the developing world. These misconceptions can lead to frustration and a belief that the situations in the developing world are hopeless and beyond the reach of international aid or intervention. Thus, just as the television media may promote action by news coverage of international crises, the prolonged focus on such negative events may eventually lead to a decline in timely response—or any response—to similar occurrences. This phenomenon is commonly known as "compassion fatigue."

In addition to the editorial and practical decisions made at the studio and executive news media levels, decisions made by reporters in the field may also influence the global public's knowledge of humanitarian crises. For example, the television news media may often provide the global public with unintentional but ignorant misinformation. Coverage of crisis events may be based primarily upon secondary rather than primary accounts of the situation, and the coverage may lack a basic foundation or recognition of the history and context of the situation, thus likely misinforming the public about those events.

Similarly, television reporting of international crises can distort the public's perception of the crises through the camera eye itself. That is, the way a camera shot is framed or angled, in addition to the editing of shots after they are taken, can misrepresent reality. For example, a camera may portray a shot of a well-armed soldier looming in the foreground over the dead body

[JOURNALISTS AND NEWS REPORTS IN THE INTERNATIONAL CRIMINAL PROCESS]

Journalists are often some of the few nonparticipant, neutral observers in situations of genocide and crimes against humanity and are, therefore, in a unique position to impartially record and report those events. Reporters are by nature, though, also witnesses to events they observe. National and international criminal systems have come to recognize this second nature of journalists; journalists are allowed to present to courts information about what they have observed, and may even be compelled by the courts to testify if their knowledge is of critical importance.

Article 15 of the Rome Statute of the International Criminal Court (ICC) allows the prosecutor of the Court to initiate investigations based on information about "crimes within the jurisdiction of the Court"—which include genocide and crimes against humanity—and to pursue "reliable sources" of information about those crimes during the investigations. At the International Criminal Tribunal for the Former Yugoslavia (ICTY), where the prosecutor's investigative powers are essentially the same, journalists have played a significant role in providing information about genocide and crimes against humanity at both the initiation and investigation stages of the criminal process. Furthermore, numerous journalists who reported on the crisis in the former Yugoslavia have voluntarily testified at trials of accused perpetrators.

The ICTY has held that reporters with vital information about genocide or crimes against humanity may even be compelled under certain narrow circumstances to testify regarding their knowledge of those criminal acts. That decision is highly unpopular, however, as journalists and news organizations argue that compelling such testimony harms the perception of those reporters as impartial, and may even endanger them. Should the issue arise in the ICC, however, that court is likely to follow the ICTY's precedent, which engages journalists in the international criminal process beyond their voluntary participation.

Under the Statutes and Rules of the ICC and ICTY, the prosecutor can presumably initiate an investigation based solely on news reports of genocide or crimes against humanity. News reports can be used as information during investigations as well. There is no rule or precedent determining whether reports about genocide and crimes against humanity are admissible as trial evidence standing alone (i.e., without testimony from the journalist who made the report that it is a truthful account of events). The trial courts at the ICTY and ICC must decide news report admissibility on a case-by-case basis under their respective rules of evidence.

In sum, television reports and reporters help record evidence of criminal offenses like genocide and crimes against humanity. That evidence can be used to help bring perpetrators of such atrocities to justice.

of a child. What the camera eye may not show is that in reality the soldier is standing fearful, surrounded by a large and angry mob of armed youths. The reaction of the public to crisis situations can thus be significantly affected by the distorted picture of reality that the media may intentionally or unintentionally present.

Furthermore, television can also be manipulated in closed societies to intentionally misinform the public. Governments can use the television news media to disseminate propaganda, encourage stereotypes, and incite hatred and violence against certain religious, ethnic, or political groups (just as radio was used during the genocide in Rwanda in 1994).

Television news coverage of genocide and crimes against humanity may also affect victims of the events. If journalists are not sensitive to the trauma of victims, and are instead imprudent in their investigation and reporting, victims may easily be re-traumatized. On the other hand, thoughtful inquiry and reporting may be quite valuable: Victims often welcome a chance to tell their stories and explain what happened to them; in doing so, the public learns more about the effects of genocide and crimes against humanity on individuals and groups directly affected by those events.

The television news media can be a powerful force in informing and shaping world opinion, and in eliciting responses to international humanitarian crises. While the importance of the CNN effect cannot be understated, the global public should be aware of the limitations that do exist in television news media coverage. By recognizing the practical and editorial decisions behind the images on the TV screen—and by seeking knowledge of international crisis situations through additional sources—the global public will have a fuller, more accurate opinion of world events. Such a better informed public will be more capable of encouraging appropriate and timely responses to threats of genocide or crimes against humanity.

SEE ALSO Film as Propaganda; Films, Dramatizations in; Films, Holocaust

Documentary; Photography of Victims; Propaganda; Radio

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Kelly Helen Fry

Terrorism, Psychology behind

Research concerning the psychology of terrorism has focused primarily in two directions. First, psychology has examined the impact of terrorism on survivors and victims as well as the population under threat. Second, it has studied the psychology behind perpetrators of terrorism. In other words, psychologists have examined the question of what enables an individual or group to commit acts of large scale property destruction and/or mass murder that may even result in the terrorist's own death for political ends.

Perpetrators

Terrorists often are portrayed as the personification of evil, or as possessing some underlying measure of extreme psychopathology. Such a characterization may enable individuals to feel safer, for they may believe that if the targeted perpetrator is eliminated, the threat of terrorism will disappear. Unfortunately, this is not an accurate perception.

There are a myriad of reasons behind the motivations of terrorists, ranging from self-interest and fanaticism to group social influences. Leaders, while unlikely to commit acts of terrorism themselves, are most often motivated by self-interest or fanatical belief systems. Self-interested leaders may be motivated by a desire for power, recognition, money, land, or other self-directed goal. Thus, the use of terrorism may serve as more of a means to these self-serving ends than as an effort to achieve the espoused goal for their people or group. Ironically, many such leaders will work to create barriers to the expressed goal for their people, as the attainment of the goal would lead to an end of their leadership role within the terrorist organization. Thus, for example, terrorist attacks may increase prior to any movement towards resolution of a conflict or peace, because such a resolution would not be in the self-interest of the terrorist group's leadership.

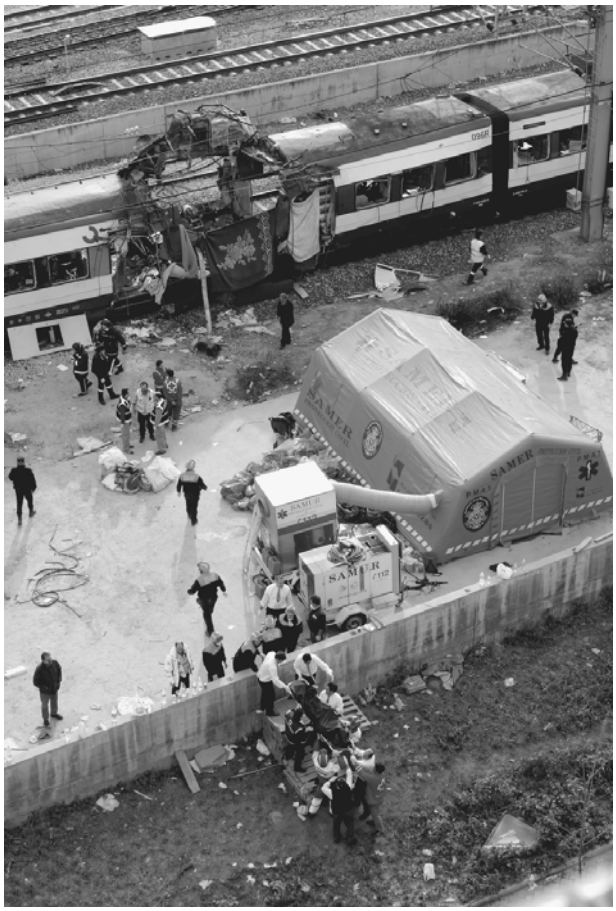
Fanatics or true believers are particularly dangerous, in that they may perceive their terrorist actions as a means for achieving a greater good. This results in a reversal of morality, whereby the taking of innocent lives may come to be viewed as righteous action to be rewarded both in the present and after one's death. Certainly, the pairing of religion and hate is an extremely destructive combination. Religious validation of hate and social inequity only serves to fuel enmity. One of the most effective ways to maintain hate and social inequities is to cite religious doctrine. In fact, leaders may selectively use religious doctrine or scripture to dictate that other religious groups be held as inferior, thereby promoting the formation of intra-religious hatred and the potential for terrorism.

While leaders are necessary for the coordinated survival of a terrorist organization, the continuation of such a group may depend less on the specific, idiosyncratic leader than on the simple presence of someone in a leadership position who has learned basic group dynamics. The most effective terrorist leaders are in tune to the needs and abilities of their followers and can therefore maximize their manipulation of the group towards the overall goals of the terrorist organization. Most terrorist attacks are committed by followers who are otherwise very ordinary people. Unfortunately, they have been made to feel needed, valued, and efficacious by their involvement in the terrorist organization, and this leads them to develop a high level of loyalty to both the leader and the group.

Robert Lifton argues that one of the features of highly destructive groups is totalism, which extends beyond an "us-them" dichotomy to an "us against them" philosophy. This belief system, taken to the extreme in terrorist and other destructive groups, pushes individuals to separate from all who are not associated with the group. This isolation of group members from those not associated with the group leads to Lifton's second feature of highly destructive groups—environmental control. Through environmental control, leaders can manipulate the majority of what is seen, heard, or experienced by the group and the "purity" of the information to which the group is exposed.

Group dynamics within a terrorist organization can further entrench individual hatred and greatly increase the likelihood of violence. For example, the organizational structure of most terrorist groups is quasi-military and necessitates conformity to the group ideal. There are often very severe penalties for not conforming, ranging from ostracism and verbal aggression to physical violence. Thus, group members may initially feel pressure to engage in hatred and violence, knowing only too well the ramifications of nonconformance. Later, after engaging in such acts, cognitive dissonance—the internal pressure to achieve consistency between our thoughts and actions—necessitates that members either internalize a rationale for their hatred of the "other" or leave the terrorist organization. The pressure to internalize the group's ideology becomes even more salient upon the introduction of a powerful authority figure or leader. Eventually, the adage of "in for a penny, in for a pound" applies, as terrorist recruits are subjected to increasing levels of commitment, are pressured to conform, and are driven to obey their leaders. In an attempt to avoid cognitive dissonance, recruits become increasing committed to the terrorist organization's ideology and activities, increasingly identify themselves solely as a terrorist group member, and become increasingly loyal to those in positions of authority.

Terrorist organizations also tend to foster a sense of anonymity or de-individuation among members. By stripping individuals of their identities through increased anonymity, de-individuation causes people to become less self-aware, feel less responsible for their actions, and become more likely to engage in violence if placed in a provocative situation. The quasi-military structure of many terrorist organizations, with their uniforms and clearly identifiable proscribed rules for behavior, facilitates the processes of de-individuation, conformity, diffusion of responsibility, and ultimately violence if the terrorist group leadership dictates such behavior.



March 11, 2004: A series of coordinated terrorist bombings rocked Madrid's commuter train system days before Spain's national election. On their way to work that morning, more than 1,800 people were wounded; 191 died. [GUILLERMO NAVARRO/COVER/CORBIS]

Finally, to facilitate movement along a path of escalating enmity and potential violence, terrorist group leaders promote increasing levels of dehumanization. The process of dehumanization begins with the increased promotion of stereotypes and negative images of the target of their enmity. This is often a necessary tool, used to reduce the cognitive dissonance that may occur when individuals behave negatively towards other human beings. Propaganda is another vital tool used by the terrorist group leadership to stigmatize and dehumanize the "other," as well as to present the target of hate as an imminent threat. Therefore, the terrorist group members may come to believe that their family, friends, and communities existence is dependent on the destruction of the "other."

Concomitant with dehumanization is the process of moral exclusion. Over time, terrorist group members begin to view the "other" as a threat and begin to morally disengage. In other words, certain moral principles

that exist within the terrorist's own group no longer pertain to those outside of the group. Thus, terrorist acts, including the killing of other human beings, become morally acceptable, as the "enemy" no longer is included in the terrorist's sphere of morality.

Survivors, Victims, and Restorative Justice

Survivors and victims of terrorism face a myriad of psychological reactions in response to a terrorist attack. These reactions can range from an acute stress reaction to a long-term cluster of symptoms associated with post-traumatic stress disorder and possible accompanying depression. The closer an individual is to a terrorist attack, the greater the likelihood they will experience either short- or long-term psychological effects. The greatest psychological trauma will occur in those individuals who personally experience a direct threat of death or serious injury, or who witnessed the death or serious injury of another and who also felt horror, fear, and intense helplessness in response to the situation.

It is normal for individuals who experience a terrorist attack either directly or indirectly to respond with emotions such as intense grief, anger, detachment, confusion, numbing, and disorientation. Individuals who continue to have such strong emotional and cognitive reactions for more than two days with accompanying recurrent thoughts, flashbacks, and nightmares about the event may be experiencing acute stress disorder. A diagnosis of acute stress disorder is most likely if the individual's functioning on a day-to-day basis is significantly impaired and there is marked evidence of anxiety symptoms.

Most individuals will recover from the trauma associated with terrorism within a relatively short period of time. However for some individuals, particularly those most directly impacted by the event, the symptoms associated with acute stress may extend beyond three months. If the symptoms persist and continue to impair daily functioning, cognitive processing, or relationships, then the person may be experiencing post-traumatic stress disorder and need additional treatment. Symptoms of post-traumatic stress disorder typically include emotional numbing, detachment from others, hypervigilance, anxiety, depression, and intrusion of memories related to the terrorist attack into the individual's daily life or dreams. Additionally, the individual will work to avoid cues reminiscent of the attack and may experience extreme panic, fear, or aggression if confronted directly with sudden reminders or recollections of the terrorist attack.

On a broader societal level, terrorist attacks create an immediate crisis for individuals, groups, and communities directly impacted by the attack. Crisis can be very destabilizing and often results in threats to the individual, such as loss of group pride, an escalation of fear, frustration of needs and wants, and confusion regarding personal identity. In addition, crisis usually leads to an increase in prejudice. Following the terrorist attacks of September 11, 2001, a time experienced by most in the United States as crisis, prejudice and hate crimes spiked. For example, anti-Arab hate crimes increased, attacks on Asian-Americans, particularly immigrants, increased dramatically, and anti-Semitism spiked from 12 to 17 percent. Crisis can also draw individuals to a wide variety of organizations such as religious groups, political groups, and cults, as well as hate groups. Unfortunately, groups with destructive agendas and ideologies built on hate may provide the shortest route to an individual's sense of perceived stability through mechanisms such as scapegoating, just-world-thinking (the belief that people get what they deserve), ingroup-outgroup polarization, hedonic balancing (denigration of the "other" as a means to one's self-esteem), and other processes. It is also important to remember that there may be incredible pressure on leaders to acquiesce to demands of terrorism, as crisis and the constant threat of additional terrorist attacks further destabilizes a culture. It is therefore imperative that leaders and constructive organizations within a culture impacted by terrorism work constructively to bring an end to terrorism, work together to heal the trauma associated with terrorism, and work towards restorative justice.

From a psychological perspective, there are three predominant responses towards ending terrorism: reform, deterrence, and backlash. Reform means addressing the concerns of those who are in situations that may lead them to perceive that desperate measures are the only possible solution to their problems. If their problems are realistically addressed, the urge to take terrorist action may be reduced. Second is backlash. Terrorists often hope that these desperate measures will raise awareness of their concerns and support for their cause. In this instance, terrorism and the media operate within the context of a symbiotic relationship. Backlash occurs when the target audience is appalled, offended, and outraged by the terrorist act as opposed to being drawn in and sympathetic. And, finally, there is deterrence. Essentially, deterrence involves the threat of retaliatory action in response to attacks. Such retaliation can range from sanctions to targeted military attacks. Of all the methods discussed above, deterrence in the absence of the other methods is the least effective.

Both deterrence and restorative justice are difficult to achieve, due to the differences in psychological perceptions between victims and perpetrators of any form

The South Tower of the World Trade Center explodes into flames after being hit by hijacked United Airlines Flight 175. The North Tower smolders following a similar attack some 17 minutes earlier. When both buildings, symbols of U.S. corporate might, collapsed to the ground on September 11, more than 2,000 people had perished. [REUTERS/CORBIS]

of harm or attack. First, a difference in perception of harm exists between victims and perpetrators. Victims perceive the extent of the harm as greater than the perpetrator does, and victims tend to view all actions on the part of the perpetrator, including those resulting in accidental outcomes, as being intentional. In addition, victims feel the reverberations of the harm extending over a much longer period of time, including intergenerationally. Ironically, perpetrators tend to perceive themselves as victims in a reversal of morality. Because of these differences in perception, victims' retaliatory responses tend to be viewed as out of proportion by the original perpetrators, thus enhancing the perpetrators perception that they are in fact being victimized. This may result in further aggression, including terrorist attacks directed towards the original victims, and may unfortunately escalate the cycle of violence. For groups to move beyond this pattern or achieve at least a cessation of violence, each group must come together to understand the partisan perceptions of the "other." This, of course, does not excuse the actions taken by terrorists, but rather explains psychologically why retaliatory responses to terrorism may in fact serve to escalate the danger of future terrorist attacks. Ultimately, each group must work to understand the perceptions of the other and acknowledge the harm caused by all involved so as to move towards restorative justice.

SEE ALSO Perpetrators; Victims

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Linda M. Woolf

Tibet

Tibet has been an independent country throughout the historical period and since time immemorial according to Tibetans' own myth-based sense of national identity. That independence is supported by the country's geography, history, language, culture, religion, and race.

Tibet's Rich Culture

Geographically, the Tibetan high plateau is a distinctively demarcated region, with boundaries starting at approximately the 10,000-feet altitude line. It can be clearly perceived on any relief map.

Historically, Tibetan dynasties often conflicted with Chinese dynasties. The Tibetan Yarlung dynasty (which ruled during the sixth through ninth centuries) conquered the Chinese T'ang dynasty (seventh through tenth centuries) for most of the eighth century. No indigenous Chinese dynasty ever conquered Tibet, though the Mongol Empire (thirteenth through fourteenth centuries) and the Manchu Empire (seventeenth through twentieth centuries) incorporated both China and Tibet under their imperial hegemony. The British Empire invaded Tibet and imposed a trade treaty on it, doing the same with China. However, none of these three empires made any attempt to homogenize China and Tibet into a single national entity, or to colonize Tibet with Mongolian, Manchu, British, or surrogate subject Chinese settlers. Except for a few border regions in the Far East, there was almost no Chinese population in high plateau Tibet until the People's Republic of China (PRC) invasion between 1949 and 1951.

Linguistically, the Tibetan language differs from the Chinese. Tibetan is written in an alphabetic system with noun declension and verb conjugation inflections based on Indic languages, as opposed to an ideographic character system. Formerly, Tibetan was considered a member of the "Tibeto-Burman" language group, a subgroup assimilated into a "Sino-Tibetan" language family. Chinese speakers cannot understand spoken Tibetan, and Tibetan speakers cannot understand Chinese, nor can they read each other's street signs, newspapers, or other texts.

Culturally, Chinese people tend not to know the myths, religious symbols, or history of Tibet, nor do Tibetans tend to know those of the Chinese. For example, few Tibetans know the name of any of the Chinese dynasties, nor have they heard of philosophers Confucius or Lao-tzu, and fewer Chinese know of the Yarlung dynasty, or have ever heard of Songzen Gampo (emperor who first imported Buddhism, seventh century), Padma Sambhava (eighth century religious leader), or Tsong Khapa (philosopher 1357–1419). Tibetan and Chinese clothing styles, food habits, family customs, household rituals, and folk beliefs are utterly distinct. The Chinese people traditionally did not herd animals and did not include milk or other dairy products in their diets; in fact, the Chinese people are the only large civilization on the earth that was not based on a symbiosis of upland herding people and lowland agriculturalists. Hence they were the only culture to create a defensive structure, the "Great Wall" in order to keep themselves separate from upland herding peoples such as Tibetans, Turks, and Mongolians.

Religiously, Buddhism is common to both Tibetan and Chinese cultures, being the main religion in Tibet and one of the three main religions in China. However, the main Chinese forms of Buddhism are quite different from the Tibetan forms (widely considered by Chinese Buddhists as an outlandish form of Buddhism they call "Lamaism," or *Lama jiao* in Chinese). Only in the twentieth century, among overseas Chinese and underground on the mainland, has interest arisen among Chinese in the spiritual leader known as the Dalai Lama and Tibetan Buddhist teachings and rituals.

Racially or ethnically, while there is some resemblance in facial features and other physical characteristics among some eastern Tibetan and Chinese individuals, most Chinese and Tibetans are easily distinguishable on sight, and generally do not perceive each other upon meeting as racially or ethnically the same. The Tibetan acclimatization over many centuries to an altitude of two miles or higher has created a pronounced internal physical difference, as Chinese individuals do not acclimatize easily to Tibet, and long years of exposure to the altitude tends to produce various lung disabilities among Chinese settlers. Chinese mothers in wealthy families that settle in Tibet prefer to give birth to their babies in hospitals in neighboring, low-altitude cities such as Hsining or Chengdu.

Chinese Invasion and Dominance

In 1949 the People's Republic of China began invading, occupying, and colonizing Tibet. China entered into

Buddhist monks await the recitation of the Kalachakra Readings by the 14th Dalai Lama, Tenzin Gyatso, in Sarnath, India. Gyatso fled Tibet in 1959 when China's mounting oppression of indigenous groups threatened his safety; he was awarded the Nobel Peace Prize in 1989 for his nonviolent efforts to end Chinese rule there. [ALISON WRIGHT/CORBIS]

Tibet immediately after the communist victory over the Chinese Nationalists, imposed a treaty of "liberation" on the Tibetans, militarily occupied Tibet's territory, and divided that territory into twelve administrative units. It forcibly repressed Tibetan resistance between 1956 and 1959 and annexed Tibet in 1965. Since then it has engaged in massive colonization of all parts of Tibet. For its part, China claims that Tibet has always been a part of China, that a Tibetan person is a type of Chinese person, and that, therefore, all of the above is an internal affair of the Chinese people. The Chinese government has thus sought to overcome the geographical difference with industrial technology, erase and rewrite Tibet's history, destroy Tibet's language, suppress the culture, eradicate the religion (a priority of communist ideology in general), and replace the Tibetan people with Chinese people.

In China itself, communist leader Mao Zedong's policies caused the death of as many as 60 million Chinese people by war, famine, class struggle, and forced labor in thought-reform labor camps. As many as 1.2 million deaths in Tibet resulted from the same policies, as well as lethal agricultural mismanagement, collectivization, class struggle, cultural destruction, and forced sterilization. However, in the case of Tibet, the special long-term imperative of attempting to remove evidence against and provide justification for the Chinese claim of long-term ownership of the land, its resources, and its people gave these policies an additional edge.

The process of the Chinese takeover since 1949 unfolded in several stages. The first phase of invasion by military force, from 1949 to 1951, led to the imposition of a seventeen-point agreement for the liberation of Tibet and the military takeover of Lhasa. Second, the Chinese military rulers pretended to show support for the existing "local" Tibetan government and culture, from 1951 through 1959, but with gradual infiltration of greater numbers of troops and communist cadres into Tibet. A third phase from 1959 involved violent suppression of government and culture, mass arrests, and formation of a vast network of labor camps, with outright annexation of the whole country from 1959 through 1966. Fourth, violent cultural revolution, from 1966 through 1976, destroyed the remaining monaste-

ries and monuments, killed those resisting the destruction of the "four olds," and sought to eradicate all traces of Tibetan Buddhist culture. A fifth phase of temporary liberalization under Hu Yao Bang was quickly reversed by Chinese leader Deng Xiaoping and led to a mass influx of settlers beginning in the early 1980s. Martial law and renewed suppression took place between 1987 and 1993, with intensified population transfer of Chinese settlers. Finally, from 1993, direct orders of the aging Chinese leadership placed Tibet under the control of an aggressive administrator named Chen Kuei Yuan. Chen proclaimed that the Tibetan identity had to be eradicated in order for remaining Tibetans to develop a Chinese identity. Since Tibetan identity was tied up with Tibetan Buddhism, Tibetan Buddhist culture was in itself seditious, or "splittist," as the Chinese call it.

Chen also was able to use China's growing economic power to invest heavily in internal projects in Tibet, bring in millions more colonists, and he extracted unprecedented amounts of timber, herbs, and minerals from the land. He also toughened up the policies of the People's Liberation Army and the Public Security Bureau.

In 1960 the nongovernmental International Commission of Jurists (ICJ) gave a report titled *Tibet and the Chinese People's Republic* to the United Nations. The report was prepared by the ICJ's Legal Inquiry Committee, composed of eleven international lawyers from around the world. This report accused the Chinese of the crime of genocide in Tibet, after nine years of full occupation, six years before the devastation of the cultural revolution began. The Commission was careful to state that the "genocide" was directed against the Tibetans as a religious group, rather than a racial, "ethnical," or national group.

The report's conclusions reflect the uncertainty felt at that time about Tibetans being a distinct race, ethnicity, or nation. The Commission did state that it considered Tibet a de facto independent state at least from 1913 until 1950. However, the Chinese themselves perceive the Tibetans in terms of race, ethnicity, and even nation. In the Chinese constitution, "national minorities" have certain protections on paper, and smaller minorities living in areas where ethnic Chinese constitute the vast majority of the population receive some of these protections.

In the 2000s, many view the Chinese genocide in Tibet as the result of the territorial ambitions of the PRC leadership. It is seen as stemming from their systematic attempt to expand the traditional territory of China by annexing permanently the vast, approximately 900,000-square-mile territory of traditional Tibet. Tibet represents about 30 percent of China's land surface, while the Tibetans represent .004 percent of China's population. Tibetans were not a minority but an absolute majority in their own historical environment. Chinese government efforts can be seen as aiming at securing permanent control of the Tibetans' land. For this reason, some observers see genocide in Tibet as not merely referring to the matter of religion, that is, of destroying Tibetan Buddhism. Chinese policies have involved the extermination of more than 1 million Tibetans, the forced relocation of millions of Tibetan villagers and nomads, the population transfer of millions of Chinese settlers, and systematic assimilation.

The Dalai Lama

A Tibetan government in exile exists under the leadership of the Dalai Lama in India and Nepal. During the cold war years, the Dalai Lama avoided politics, but tried to work with the Chinese occupiers from 1951 until 1959. He left Tibet to bring the Tibetan genocide to the world's attention. In the early 1980s, he tried to negotiate with Deng Xiaoping and succeeded in sending several fact-finding missions to Tibet. In the meantime, the exile government has worked to preserve the seeds of Tibetan culture and society.

In 1989 the Dalai Lama received the Nobel Peace Prize for his travels around the world to spread the Buddhist message of peace and reconciliation. He has informed the general public of many countries about the Tibetan struggle. His overall policy of nonviolence has been followed by most Tibetans. Despite the historical record, the Dalai Lama calls for dialogue and reconciliation. He has publicly offered to Beijing to lead a plebiscite and campaign to persuade his people to join the Chinese union in a voluntary and legal manner, under a "one country, two systems" formula, as in the cases of Hong Kong and Macao under the following circumstances: (1) all the high-plateau provinces are reunited in a natural Tibet Autonomous Region; (2) Tibet is allowed to govern itself democratically with true autonomy over internal matters; (3) Tibet is demilitarized except for essential border garrisons; and (4) the environment is respected and economic development controlled by the Tibetans themselves.

There were renewed discussions over Tibet starting in 2002 and several delegations made visits to the region.

SEE ALSO China; Mao Zedong; Religion

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Robert A. F. Thurman

Tokyo Trial

The International Military Tribunal for the Far East (IMTFE), commonly known as the Tokyo War Crimes Trial, or simply the Tokyo Trial, lasted three times longer than the Trial of the Major German War Criminals, commonly called the Nuremberg Trial. At one point the president of the IMTFE was informed that the trial was utilizing about one-quarter of all the paper consumed by the Allied occupation forces in Japan. The transcripts of the proceedings in open session and in chambers, taken together with the separate opinions, consist of approximately 57,000 pages and, with the even longer full text of the Trial Exhibits and other documentation assembled for use during the trial, the English-language text represents by far the largest collection of material that exists in any European language on Japan and on Japanese relations with the outside world during the critical period between 1927 and 1945.

The IMTFE Charter

The charter of the IMTFE was issued as an order together with a Special Proclamation by General Douglas MacArthur on January 19, 1946, in accordance with orders sent to him in October 1945 by the Joint Chiefs of Staff of the United States, afterward circulated to the Far Eastern Advisory Commission consisting of representatives of the Allied powers.

MacArthur's Special Proclamation said that he established an international military tribunal for the Far East, approved its constitution, jurisdiction, and functions as set out in its charter, and indicated that these steps were without prejudice to any other proceedings that might be established in Japan or within the domains of the countries with which Japan had been at war. He stated that he did this by powers the Allies entrusted to him as supreme commander with responsibility "to carry into effect the general surrender of the Japanese armed forces," and with the authority bestowed upon him by the governments of the United States, Great Britain, and the Soviet Union at the Moscow Conference of December 1945 and with China's concurrence.

The Charter was strongly influenced by its Nuremberg counterpart but redrafted in compliance with the guidelines given to General MacArthur by the American Joint Chiefs of Staff to suit the different conditions that prevailed in occupied Japan. The Charter established that the supreme commander would select members of the tribunal from names submitted to him by any of the signatories of the Instrument of Surrender. The supreme commander would appoint one of the members to serve as president of the tribunal. The supreme commander would also appoint a general secretary of the tribunal and provide for clerical services and other duties required by the tribunal.

The charter set out the jurisdiction of the tribunal and established the individual responsibility of the accused for acts of state and for acts taken in compliance with superior orders. The supreme commander would designate the chief of counsel. Any of the United Nations engaged in the recent war against Japan might appoint an associate counsel to assist the chief of counsel. Proceedings of the tribunal would be conducted in English and in Japanese. The use of other languages in court later became a contentious matter. It was clear to the Allied powers that the supreme commander and the United States government were determined to go ahead with the tribunal on American terms. Accordingly the Allied powers moved quickly to select their own associate counsel.

The Americans assembled a huge team of more than one thousand lawyers and support staff. In Tokyo as at Nuremberg, the manpower and financial resources committed by the Americans made a huge impact on the collection and processing of documentary evidence collected from German and Japanese archives, offices, and private individuals. At Nuremberg that impact was felt immediately and was continuous throughout the proceedings. At Tokyo, the Americans faced far greater difficulties in extracting documentary evidence from the Japanese government, which continued to function and frequently obstructed them, and so the Americans were less successful in controlling the flow of information to the other national delegations and to the tribunal.

The Indictment

The indictment, mainly the work of the British associate prosecutor, Arthur S. Comyns-Carr, was lodged with the Court during a brief preliminary hearing on

April 29, 1946. Two weeks before, the indictment had been recast following the arrival of the Soviet prosecution team in Tokyo. Other delegations took even longer to arrive (several of the judges did not arrive until the trial had already begun).

Each contingent had its own agenda and priorities. Last-minute changes meant that the basic law of the tribunal and its remit were transformed only days before the accused were arraigned. In addition, many of the accused had been subjected to lengthy pre-trial Allied interrogations by teams deployed by the United States Strategic Bombing Survey, by military, naval and air, intelligence, by Civil Affairs analysts, by prosecutors, and by Japanese government investigators (who, with initial encouragement from the Americans, began and soon ended a series of their own war crimes trials in the months before the IMTFE took shape). These interviews were conducted without the protection of any legal counsel.

The Proceedings Begin

For all these reasons, the proceedings began inauspiciously for both sides but were particularly detrimental to the accused who were dependent upon a defense panel that was seriously weak in the provisions made for qualified legal advisers, translators, clerical staff, and financial resources. The defense was also handicapped by express provisions in the charter that obliged the accused to make written applications in advance before seeking to produce any witness or document in evidence. The prosecution section at Tokyo labored under no such impediments regarding prior disclosure.

The court consisted of eleven members, each representing one of the eleven nations involved in the prosecution. The countries taking part in the prosecution and judgment were: five member states of the British Commonwealth and Empire (Australia, Canada, New Zealand, Great Britain, and India), who, together with the United States and its former Commonwealth of the Philippines, constituted a built-in majority for the Anglo-American common law legal system; China; the Soviet Union; and two Continental European imperial powers, France and the Netherlands. Evidence relating to Korea, Manchuria, the People's Republic of Mongolia, Thailand, Cambodia, Burma, and Portuguese possessions in East Asia was also received by the tribunal, but for legal as well as for political ones those countries or territories were not formally joined in the proceedings.

The legitimacy of the Tokyo Trial depended upon the number and variety of the states that took part in the trial, but more crucially upon the express consent of the Japanese state to submit to its jurisdiction, relinquishing or at least sharing some sovereignty in the process. This is a more modern conception of legality than was applied at Nuremberg. The difference arose because Japan did not, strictly speaking, surrender unconditionally. The Special Proclamation that brought the IMTFE into existence claimed that by the Instrument of Surrender "the authority of the Emperor and the Japanese Government to rule the state of Japan is made subject to the Supreme Commander for the Allied Powers," but in fact those provisions were restricted to measures intended to implement "the unconditional surrender . . . of the Japanese Imperial General Headquarters and of all Japanese Armed forces and all armed forces under Japanese control wherever situated." Thus, Japan surrendered in words that protected the Japanese emperor. On a number of occasions the thrust of questions put to witnesses came perilously close to implicating Emperor Hirohito personally, but the trial also provided powerful support for the viewpoint that he was a benign constitutional monarch who wanted a durable peace and prosperity for his people.

It was a matter of pivotal importance during the trial that the Japanese "sovereignty" was not extinguished with the end of hostilities. The defense made much of the limited nature of the Japanese surrender in framing successive challenges to the powers of the supreme commander, to his promulgation of the tribunal, to the charter, to the nomination of its members and of its president, and to the jurisdiction of the tribunal. These arguments created consternation in court.

The Tokyo Trial indictment did mimic elements that were present in the Nuremberg indictment, but on an altogether grander scale. The same ideas of conspiracy, crimes against peace (the planning, preparation, initiating and waging of wars of aggression), individual criminal responsibility for conventional war crimes, and crimes against humanity appeared in the indictments at Tokyo and at Nuremberg. Thus the conceptual framework was quite similar. But the ways these crimes were dealt with inevitably differed, and there were fifty-five counts on the indictment at Tokyo compared to four at Nuremberg.

The Tokyo Trial looked at events as far back as 1927, because the prosecution argued that a document prepared that year and known as the Tanaka Memorial showed that a "Common Plan or Conspiracy" to commit "Crimes against Peace" bound the accused together. The conspiracy thus began in 1927 and continued through to the end of the Asia and Pacific War in 1945. The Tanaka Memorial was, in fact, a skillful Chinese forgery, but it was not regarded as such by most observers at the time and it was consistent with the private

The International Military Tribunal of the Far East, April 1947. Presiding over the tribunal for the prosecution of Japanese war criminals was a panel of eleven judges—one from each of the Allied powers. [AP/WORLD WIDE PHOTOS]

thinking of key individuals within the Japanese government of its time.

The breadth of the supposed conspiracy took in virtually every facet of Japan's domestic and foreign affairs over a period of nearly two decades, half again longer than the period covered by the Nuremberg Major War Crimes Trial. At the time of the Tokyo Trial, the concept of criminal conspiracy was frequently employed in the battle against organized crime in the United States. It was held in far less esteem as a weapon in the arsenal of public prosecutors elsewhere. The U.S. Department of Justice gave this matter a great deal of thought and produced a treatise on the subject for the benefit of Allied prosecutors in Tokyo. Later, copies of this brief were handed out to individual members of the tribunal.

The prosecution's conspiracy case was summed up later by an American assistant prosecutor at the trial, "The Prosecution Case is a sturdy structure built upon a deep and firm and solid foundation of fact. To its destruction the Defense have brought as tools a microscope and a toothpick." What generally was at issue were not the facts, but the different constructions which the two sides placed on those facts, and this, by its very nature, meant that a great deal of detailed evidence was required to buttress the positions taken by the two opposing sides.

The defense in Tokyo retraced much of the ground covered by the prosecution and went on to explore virtually the whole history of Japan's twentieth-century constitutional, social, political, and international history up to the end of World War II. Evidence directly linking the individual defendants to what is a far broader historical record of domestic and world history became hard to see and, for most of the trial, comparatively little attention was paid to any indisputably criminal activity on the part of the accused. Defense counsel tried in vain to force the prosecution to define the essential elements and to present a Bill of Particulars indi-

cating details of the specific crimes that their individual clients were supposed to have committed. To some extent the emphasis on criminal masked the fact that the charges on the indictment at Tokyo were framed before the prosecution determined who was to be tried. As a result the prosecution experienced real difficulties in finding a sufficiency of evidence to make a truly convincing case against most of the accused.

The twenty-eight defendants charged at the Tokyo Trial were selected following international deliberations and the final decisions were taken by an executive committee of the International Prosecution Section, chaired by Sir Arthur Comyns Carr, K.C. Pretrial briefs were prepared following investigations and interviews with individual suspects, most of whom had been arrested and held in Sugamo Prison because their names appeared on the UN War Crimes Commission's lists of major war crimes suspects. Others were still free when questioned.

The defendants were by and large "establishment" figures who had achieved prominence in the leadership of Japan and had won the confidence and approbation of their fellow citizens through their own administrative competence, intellectual excellence, or distinguished military service. Baron Hiranuma Kiichirô, for instance, had become a judge as far back as 1890, rose by virtue of his talent to become vice-minister of justice in 1911, chief justice of the Supreme Court of Japan in 1921, minister of justice in 1923, vice-president of the Privy Council for a period of twelve years and afterward its president in a career interspersed posts as minister for home affairs and prime minister of Japan. The Tribunal ignored Hiranuma's prewar reputation as a strong admirer of the Western democracies and as a man who held the European totalitarian states in low regard.

Others among the defendants, in their own ways were equally distinguished, and the voices which are heard in their affidavits, testimony, and the documentary records introduced on their behalf show them generally to have been thoughtful, well-meaning, and deeply conscious of their duty to uphold the honor and integrity of Japan. The Japanese public, Western opinion, and a majority of the court, however, were of a different mind.

The Court began hearing the prosecution's case on May 4, 1946. The prosecution presented its evidence in fifteen phases, and the presentation of its Evidence-in-Chief closed on January 24, 1947.

The Tokyo Trial, like the Nuremberg Trial, refused to admit evidence favorable to the defense that might appear to bring the wartime conduct of the Allied powers into disrepute: The Court simply ruled that its jurisdiction was strictly confined to an examination of the conduct of the Japanese side. The court's powers were limited strictly by the terms of the charter and rules of procedure of the Tokyo Trial. There was, arguably, no legal basis on which the tribunal could have gone beyond the intentions of those who had convened the trial and given it authority. This was fully acknowledged in its judgment.

The Defense Panel

As early as February 21, 1946, the Judge Advocate General's (JAG) Department in Washington, D.C., was asked to obtain fifteen or twenty suitable American attorneys to form a defense panel "from which might be drawn by selection or by Court appointment counsel for Defendants charged." On March 19, 1946, General MacArthur informed Justice Northcroft of these developments and indicated that he had that day asked the JAG to increase the number of American defense lawyers from fifteen to twenty-five and to take care that they had the proper experience and qualifications that would allow the Japanese defendants a fair trial and adequate defense.

For each defendant a Japanese defense counsel was found to take charge of his particular case and an American co-counsel assumed what was nominally a junior role. The working relationships between individual American attorneys and their Japanese counterparts were not always easy. At first, not all of the defendants welcomed the Americans who were offered to them, but eventually all came to the conclusion that it was advisable to engage one or other of them. The defense counsel of both nationalities varied enormously in talent, energy, age, and experience.

The Japanese defense counsel labored under immense handicaps. As George Ware revealed years later, when the defense case opened, the chief of defense counsel, Uzawa Sômei, broadcast a nationwide radio appeal for "funds, communications, lodgings and food" (Ware, 1979, p. 145). The outcome was exceedingly disappointing. The attorneys hired by the accused finally had to resort to the expedient of donating $1,000 per head and each of the defendants paid $10,000 into a central pool to provide for translators, clerical staff, and witness expenses. Some of those difficulties were surmounted with the arrival of American associate counsel provided to bolster the defense.

Defense motions to dismiss the charges against the accused were denied, following which the defense presentation of its case began on February 3, 1947, and continued until January 12, 1948. The defense did not attempt to match the structure imposed by the prosecution's case and instead offered its case in six divisions.

In due course, the prosecution and then the defense presented further evidence in rebuttal until February 10, 1948, at which time the defense filed further motions to dismiss, which were rejected. The summations and other closing arguments continued from February 11 to April 16, 1948, when the proceedings were adjourned while the court considered its findings.

By the close of evidence, the court had met in 818 public sessions and heard from 416 witnesses in court, in addition to reading unsubstantiated affidavits and depositions from some 779 others whose evidence the court accepted for whatever probative value they might have had. The deeds recounted in the latter papers had so weakened many of these potential witnesses that it lay beyond their physical or mental capacity to travel to the Japanese capital in order to submit to a cross-examination. In other instances, individual Allied governments put obstacles in the way of potential witnesses for the defense who were prepared to testify on behalf of one or more of the accused or in the general divisions of the defense case. In a number of cases these potential witnesses had been diplomats, senior civil servants, or government ministers before or during the war. The Allied powers also refused to permit the defense counsel any access to its own official documents (other than published records). All of this was prejudicial to the fairness of the proceedings.

Judgment and Sentencing

The 1,781-page judgment of the tribunal took months to prepare. The court president, Sir William Webb of Australia, required nine days to read it in court (November 4–12, 1948). Before the judgment, Admiral Nagano Osami and the former diplomat-cum-railway administrator Matsuoka Yôsuke died of natural causes (a heart attack and pneumonia) brought about or exacerbated by the strain of their circumstances and the poor conditions in which they were kept at Sugamo Prison. Another of the accused, Ôkawa Shûmei, had been found unfit to stand trial after a theatrical episode lasting only a few minutes before he so much as entered a plea of "not guilty," and after protracted inquiries his case had been adjourned *sine die*. All twenty-five of the surviving defendants at the Tokyo Major War Crimes Trial were convicted, and all but two of them were found guilty on at least two charges.

Seven were condemned to death by hanging. Six of the condemned men had been leading military and naval figures. The seventh was a former prime minister, foreign minister, and professional diplomat, Hirota Kôki. All but two of the remaining defendants were sentenced to life imprisonment. The two exceptions, both professional diplomats who served successive terms as foreign ministers in Tôjô Hideki's wartime cabinet, were sentenced to twenty years (Tôgô Shigenori) and seven years Shigemitsu Mamoru).

The Tribunal did not convict any organizations, but General MacArthur's occupying forces were carrying out sweeping political purges of individuals and groups within Japan, blacklisting some 210,288 people, mostly on account of their previous membership in banned organizations.

The judgment and sentences of the tribunal were confirmed by General MacArthur on November 24, 1948, two days after a perfunctory meeting at his office with members of the Allied Control Commission for Japan, who acted as the local representatives of the nations of the Far Eastern Commission set up by their governments. Six of those representatives made no recommendations for clemency. Australia, Canada, India, and the Netherlands were willing to see the general make some reductions in sentences. He chose not to do so. The issue of clemency was thereafter to disturb Japanese relations with the Allied powers until the late 1950s when a majority of the Allied powers agreed to release the last of the convicted major war criminals from captivity.

In neither the Tokyo nor the Nuremberg Trials was it deemed sufficient for the defense to show that the acts of responsible officers or of government ministers and officials were protected as "acts of state." The twin principles of individual criminal responsibility and of universal jurisdiction in the prosecution and punishment of war criminals were firmly established.

Both courts ruled decisively that international law is superior to national law, and added that nothing that national courts or administrations might say could overturn that basic principle, which in times to come should be regarded as binding upon the victor as well as the vanquished. These judgments, by themselves, were not binding upon the domestic practices of states; yet, as all of the great powers and most of the lesser ones of the world at the time did sign the San Francisco Peace Treaty (which provided for all parties to accept the judgment of the Tokyo Tribunal in its entirety), there is a valid line of argument that it does indeed impose obligations upon each of those states (subject to any differences that may exist within their respective constitutions).

To its credit the IMTFE exercised a cathartic function of surpassing importance for the people of Japan and for their former enemies and, to the extent that its judgment was accepted and formally endorsed under the terms of the San Francisco Peace Treaty, it relegitimated, as intended, the Allied occupation of Japan itself.

On March 7, 1950, the supreme commander issued a directive that reduced the sentences by one-third for good behavior and authorized the parole of those who had received life sentences after fifteen years. Several of those who were imprisoned were released earlier on parole due to ill-health.

Hashimoto Kingorô, Hata Shunroku, Minami Jirô, and Oka Takazumi were all released on parole in 1954. Araki Sadao, Hiranuma Kiichirô, Hoshino Naoki, Kaya Okinori, Kido Kôichi, Ôshima Hiroshi, Shimada Shigetarô, and Suzuki Teiichi were released on parole in 1955. Satô Kenryô, whom many, including Judge B. V. A. Röling regarded as one of the convicted war criminals least deserving of imprisonment, was not granted parole until March 1956, the last of the Class A Japanese war criminals to be released. On April 7, 1957, the Japanese government announced that, with the concurrence of a majority of the powers represented on the tribunal, the last ten parolee major Japanese war criminals were granted clemency and were to be regarded henceforth as unconditionally free from the terms of their parole.

The Aftermath

The initial intention of the Allied powers was to hold further international military tribunals in both Germany and Japan once the first major war crimes trials concluded. The defendants selected for the first trials were not regarded as the only major war criminals but as clearly representative members of the groups held responsible for the outbreak of World War II. A large number of persons were held in custody with the intention of bringing them to justice as Class A war criminals. The British and Americans, however, soon lost their appetite for such proceedings (and their expense), and by December 1946 it was clear that no further major international war crimes trials would take place. In the end, however, it was not until Christmas Eve, 1948, that a formal announcement was issued that the last of the nineteen individuals who might have been expected to figure in further proceedings before the IMTFE were to be released rather than face trial.

The decision to release these men was taken as a purely political act and had nothing much to do with the merits of their individual cases. However, it is worth noting that most of these potential accused gave evidence during the Tokyo Major War Crimes Trial and, even when they did not, the nature of their involvement in events described in that trial is evident in the transcripts and other documentation of its proceedings.

An imperial rescript granting an amnesty by general pardon for war crimes committed by members of the Japanese Armed Forces during World War II was issued on November 3, 1946. It had no effect upon the Allied trials, and the news of it attracted little if any interest abroad at the time. However, one can say with a degree of certainty that no Japanese war criminal will ever again be tried on indictment in a Japanese court for crimes related to the period before and during World War II. Foreign governments have long since ceased to reveal any interest in continuing to pursue Japanese war criminals through national courts, and without regard to the dwindling number of people still interested in the apprehension and prosecution of such perpetrators through international institutions, the new permanent International Criminal Court has been denied any jurisdiction at all over crimes committed prior to its own creation.

In discussing the Tokyo trial, matters that have not been explored sufficiently include the political context of the Tokyo Trial proceedings, its charter and limited jurisdiction, the evidence presented in court, the disturbance in the power balance between the two opposing sides, the tables of legal authorities on which the respective sides relied, the one-sided exclusion of evidence to the detriment of the defense, the forensic skills or inadequacies of counsel or members of the tribunal, the differing structures of the prosecution and defense cases, the soundness or otherwise of rulings made by the tribunal during the course of the Tokyo Trial, and the closing arguments found in the summations, rebuttal and sur-rebuttal stages of the proceedings. The judgments of the international tribunals at Nuremberg and Tokyo, arguably the least satisfactory parts of all of the postwar proceedings, are read more frequently but seldom examined by scholars within the historical context of their trial processes.

SEE ALSO Japan; Nuremberg Trials; War Crimes

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R. John Pritchard

In Sierra Leone, rebels of the Revolutionary United Front frequently amputated the limbs of their victims, including the very young, like this three-year-old girl. [TEUN VOETEN]

Torture

Torture—the infliction of severe physical or mental suffering—is frequently a component of systematic policies and attacks against individuals or groups, in peacetime or in time of war. Torture is used variously as a weapon of war, as a means of soliciting information or confession, as a technique to humiliate or punish, as a tool of repression or intimidation, and as a form of sexual violence. Its typical victims include political opponents; particular national, racial, ethnic, religious or other groups; women; prisoners of war; detainees; and ordinary criminal suspects.

In response, international law has prohibited torture and other cruel, inhuman or degrading treatment in absolute terms. The prohibition of torture and other forms of ill treatment ranks among the most firmly entrenched principles of international law regarding human rights and of international humanitarian law. The right not to be tortured is based on the principles of human dignity and integrity of the person that underlie these bodies of law.

Torture is also considered a crime under international law. It is one of a small number of acts considered so heinous that all countries must play their part in pursuing the perpetrators. As a U.S. court ruled in the landmark case of *Filartiga v. Peña-Irala*, "the torturer has become—like the pirate and slave trader before him—*hostis humani generic*, an enemy of all mankind."

International and National Norms Prohibiting Torture and Other Ill-Treatment

International legal norms prohibiting torture and other forms of ill-treatment have developed, largely since 1945, as central components of the international law of human rights, international humanitarian law, and international criminal law. The Universal Declaration on Human Rights (UDHR) of 1948 includes freedom from torture as one of the fundamental rights belonging to all human beings. Article 5 of the declaration provides that "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment." Subsequently, identical or similarly worded prohibitions were included in human rights treaties adopted at international and regional levels, and these set legal stan-

dards for individual governments to follow. These include Article 7 of the International Covenant on Civil and Political Rights (ICCPR) of 1966, Article 3 of the European Convention on Human Rights of 1950, Article 5 of the American Convention on Human Rights of 1969, and Article 5 of the African Charter on Human and Peoples' Rights of 1981.

These treaties oblige states to refrain from torture or other prohibited treatment, and establish mechanisms for making states accountable if their officials commit such abuses. The prohibition on torture is absolute, and allows for no exceptions. In human rights treaties, torture is invariably listed as a "non-derogable" right. States must never deviate from the prohibition on torture, even, according to Article 4 of the ICCPR, "in time of public emergency which threatens the life of the nation."

A major landmark was the 1984 conclusion of a treaty aimed specifically at stamping out torture: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (otherwise known as the Torture Convention). By March 2004, this convention had 134 state signatories. The Torture Convention set out specific measures that governments must take to prevent and punish torture, and established its Committee Against Torture to monitor states' compliance and to receive individual complaints.

Regional torture-specific instruments followed. In 1985, the Inter-American Convention to Prevent and Punish Torture came into effect. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment passed into law in 1987, followed by the Robben Island Guidelines on the prevention of torture and ill treatment in Africa in 2002. Under UN auspices, sets of guidelines were developed that aimed at preventing torture. Among these were the UN Code of Conduct for Law Enforcement Officials of 1979 and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 1988.

In parallel to these developments in the sphere of human rights, norms prohibiting torture and other ill-treatment also developed in the spheres of international humanitarian law, and the laws of war. The four Geneva Conventions of 1949 list torture and inhuman treatment committed during international armed conflict that are considered grave breaches of the Geneva Conventions (war crimes). Article 3, common to all four of the Geneva Conventions, as well as the second Additional Protocol II to those conventions hold torture and cruel, humiliating. and degrading treatment as prohibited by the law applying to internal armed conflicts.

As the concept of crimes against humanity developed in the wake of World War II atrocities, torture was considered to be covered, although not listed explicitly, in early definitions. The Nuremberg and Tokyo Charters of 1945 and 1946, on which trials of German and Japanese World War II leaders were based, included within their definitions of prosecutable crimes against humanity "other inhumane acts committed against any civilian population." The Control Council Law No. 10 of 1945, used as the basis for prosecuting second-tier Nazis, specifically listed torture as one of the inhumane acts constituting a crime against humanity.

When the International Criminal Tribunal for Former Yugoslavia (ICTY) was established by the UN in 1993, its statute listed torture as among the crimes against humanity that the tribunal could prosecute. The 1994 statute of the International Criminal Tribunal for Rwanda (ICTR) followed suit. The Rome Statute for the International Criminal Court (ICC), which was concluded in 1998, codified crimes against humanity in greater detail. Article 7 of that statute includes the widespread or systematic practice of torture as a crime against humanity, when such practices are committed as part of an attack directed against a civilian population. Also listed are "[o]ther inhumane acts of a similar character internationally causing great suffering or serious injury to body or to mental or physical health."

Torture is also one of the acts that can constitute the crime of genocide. The definition adopted in the Genocide Convention of 1948 included, at Article II(b), "causing serious bodily or mental harm." This definition was intended to cover a range of acts of physical violence falling short of actual killing, as well as acts causing serious mental harm. The ICTR helped to clarify the meaning of this phrase in 1998 in the *Akayesu* case, finding that the definition of serious bodily or mental harm, includes acts of torture, be they bodily or mental, and inhumane or degrading treatment and persecution, and could include rape and other acts of sexual violence or death threats. The Rome Statute included a document that set out the physical and mental elements of each crime that needed to be proved in any given case brought before the ICC. This document, titled "Elements of Crimes" contains the following footnote to the crime of genocide by causing serious bodily or mental harm: "This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment."

The absolute prohibition on torture is has been generally accepted as a part of customary international law, and is therefore binding on all states, not only

those that become party to treaties prohibiting torture. This view has been upheld by international courts and tribunals, as well as by national courts. The prohibition has also been recognized as a norm of *jus cogens*, which is an overriding or superior principle of international law.

Torture and other ill-treatment are also specifically prohibited in many national constitutions. Even where a prohibition on torture is not specifically included in the constitution, it has been made into other provisions. For instance, by giving a wide interpretation to the right to life and personal liberty, the Indian Supreme Court has incorporated freedom from torture among its schedule of constitutionally protected rights. Many states have made torture a specific criminal offence under their penal codes. Torture is also commonly criminalized in military codes and through legislation incorporating the war crimes provisions of the Geneva Conventions. After becoming party to the Rome Statute for the ICC, states have also incorporated torture as a crime against humanity, as genocide, and as a war crime in their domestic law.

The international norms in this array of treaties and customary international law impose a range of obligations on states. For instance, states must not only refrain from using torture, they must also take strong positive measures to prevent and punish torture. Article 2.1 of the Torture Convention obliges states to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." Such measures include training law enforcement personnel and other public officials and reviewing rules and practices relating to the interrogation and custody of prisoners and detainees. States must also ensure that statements taken as a result of torture may not be used in court as evidence, except against a person accused of torture as evidence that the statement was made.

States also have an obligation to investigate and prosecute individuals responsible for torture. Under Article 4 of the Torture Convention, states are obliged to ensure that all acts of torture are criminal offences under domestic criminal law, and to impose penalties that reflect their grave nature. States are obliged to carry out a prompt and impartial investigation whenever torture or ill-treatment is alleged, to identify those responsible, and to impose an appropriate punishment, as illustrated in the case of *Velasquez Rodriguez v. Honduras*, tried before the Inter American Court of Human Rights in 1988.

The duty of states to ensure that torturers are brought to justice is not limited to policing what happens within their own borders, since torture is also a crime under international law. According to Articles 5.2 and 7 of the Torture Convention, when an alleged torturer is present within its jurisdiction, regardless of where the torture was committed, a state must either prosecute the person, or extradite them elsewhere to face trial. This exceptional jurisdiction—based only on the nature of the crime itself, regardless of where the crime was committed or by whom—is recognized in international law and is known as universal jurisdiction. The "extradite or prosecute" formula exists also in the Geneva Conventions in relation to grave breaches, thus applying to those who commit torture in the course of an international armed conflict. Even outside the scope of these treaties, states have the right, and may be obliged, under international law to prosecute torture on the basis of universal jurisdiction. There is increasing authority for the proposition that customary international law requires states to prosecute all crimes against humanity, genocide, and war crimes, and that this extends to war crimes committed in internal armed conflict, to individual acts of official torture, and possibly also to cruel or inhuman treatment.

The duty to prosecute torture, and its status as a crime under international law, has a number of important implications. There is increasing consensus that amnesties should not be granted for torture, nor should the normal rules on statutes of limitations or immunities be applied in cases of torture. For instance, the British House of Lords ruled in March 1999 that Augusto Pinochet was not entitled to head-of-state immunity for torture from the time that the Torture Convention applied.

According to Article 13 of the Torture Convention, states must provide access to adequate remedies for victims when torture occurs. Any individual who alleges they have been tortured must have the right to complain to competent authorities, and to have the allegation promptly and impartially examined. Further, victims have a right to reparation, including compensation, restitution, rehabilitation, "satisfaction" (which may include bringing to account those responsible and symbolic measures such as commemorations), and guarantees that torture will not recur. These victim's rights are laid out in a UN draft document regarding the basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights law and violations of international humanitarian law, as revised October 2003. Finally, the duty to protect people from torture and other ill treatment extends to the duty not to hand them over to be tortured elsewhere. Article 3 of the Torture Convention prohibits states from expelling, returning, or extraditing a person to another state where there are

substantial grounds for believing they could be subjected to torture or other prohibited treatment there.

Definitions of Torture

Torture is absolutely prohibited in all circumstances. But what is it? A common element that appears consistently in definitions is that torture is the intentional infliction of severe pain or suffering, whether physical or mental, on a person. Decisions of international human rights courts and monitoring bodies have been very influential in establishing the basic elements of the definition. International criminal tribunals have relied heavily on these decisions to interpret what constitutes torture when it is being prosecuted as a crime against humanity or as a genocidal act, although they have also departed from the international human rights law interpretations in significant aspects.

The severity or intensity of pain or suffering caused is one factor that will determine whether behavior amounts to torture. An act has to cause "very serious and cruel suffering" to constitute torture, as the European Court of Human Rights decided when called upon to consider whether certain techniques used by U.K. security forces while interrogating IRA suspects in Northern Ireland were lawful (*Ireland v. U.K.*). The court concluded, in its judgment of 1978, that the techniques (hooding; being made to stand against a wall for many hours; subjection to constant noise; and deprivation of sleep, food and drink) were not severe enough to constitute torture, but did constitute inhuman treatment, which is also prohibited under the Torture Convention. The ICTY also followed this approach, finding that the severity of pain or suffering is what sets torture apart from other crimes. Subjective as well as objective factors may be considered in assessing severity. The European Court of Human Rights takes into account all the circumstances, including the duration of the treatment; its physical and mental effects; and the sex, age, and state of health of the victim. The ICTY has also said that subjective as well as objective criteria may be relevant in assessing the gravity of the harm.

As for the definition of mental torture, once again international cases have helped to clarify how to assess whether mental suffering caused by a certain act is severe enough to amount to torture. In the case of *Estrella v. Uruguay*, in 1980, the Human Rights Committee found that mock amputation of the hands of a well-known guitarist was psychological torture.

Another factor that distinguishes torture from other ill-treatment in the international law of human rights is the purpose for which the particular suffering is inflicted. In human rights law, exemplified in Article 1 of the Torture Convention, in order for conduct to amount to torture, it must be inflicted for specific purposes such as obtaining information or a confession, punishment, intimidation, coercion, or discrimination. The European Commission of Human Rights had already established the need for such a purpose in its 1969 decision in a case concerning the conduct of Greek security forces following the military coup. This legal decision, following what came to be known as the "Greek case," confirmed that without such a purpose, the same act would be classified as ill treatment but not torture. The European Court of Human Rights has continued to look for specific purposes before it will categorize an act as torture, for example, in the 1996 case of *Aksoy v. Turkey*. The Israeli Supreme Court, when considering methods used by Israeli security services in interrogating Palestinian suspects in 1999, distinguished between a situation in which sleep deprivation is a side effect inherent in interrogation, which would not be unlawful, and a situation where prolonged sleep deprivation is used as an end in itself, for the purpose of tiring or breaking the prisoner, in which case it would not be lawful.

In international criminal law, however, the requirement of a particular purpose appears to be losing ground. In cases concerning torture as a crime against humanity, although the ICTY and ICTR have held that the act or omission must aim at purposes such as those outlined in Article 1 of the Torture Convention, (e.g., the ICTR in the *Akayesu* case, 1998), they have also said that this is not to be viewed as an exhaustive list, and that the prohibited purpose need not be the predominating or sole purpose. In a further departure, in the Rome Statute's "Elements of Crimes," a footnote to the elements of the crime against humanity of torture states that: "It is understood that no specific purpose need be proved for this crime."

Another difference has opened up between human rights law and international criminal law as regards the state-actor requirement. The Torture Convention requires an act of torture to have been "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." The rule reflects the traditional purpose of human rights protection, which is to place limits on abuses by states rather than to regulate behavior between private individuals. This approach has shown signs of breaking down in some respects, however. For instance, states are increasingly required to regulate private individuals' behavior in order to protect vulnerable people from ill treatment. In the sphere of international criminal law, non-state actors can be held responsible for torture. The ICTY decided that the definition of torture in the context of crimes against

humanity is not identical to the definition in the Torture Convention, and that outside the framework of the Torture Convention, customary international law does not impose a public official requirement in relation to criminal responsibility for torture.

Special elements are added to the crime of torture if it is prosecuted as a crime against humanity, an act of genocide, or a war crime. For example, as a crime against humanity under the Rome Statute, torture must be carried out as part of a widespread or systematic attack against a civilian population, accompanied by the knowledge or intention to further such an attack, and it must be inflicted upon a person in the custody or under the control of the accused. When prosecuted as an act of genocide, the serious bodily or mental harm must be caused to persons belonging to a particular national, ethnical, racial or religious group, and the perpetrator must have intended to destroy that group, in whole or in part. The conduct must either be part of a "manifest pattern of similar conduct" against such a group, or be itself capable of causing such destruction of the group.

The international criminal tribunals have been instrumental in expanding understandings of the definition of torture, for instance, by prosecuting rape and other forms of sexual violence under the heading of torture as a crime against humanity. The ICTY Appeals Chamber has said that, since sexual violence necessarily gives rise to severe pain or suffering, the crime of torture has been established once rape has been proved.

Definitions of Inhuman and Degrading Treatment or Punishment

Again, interpretations of these terms have developed in the law of human rights. Treatment causing less severe suffering, or not for one of the requisite purposes, may nonetheless constitute inhuman or degrading treatment. Solitary confinement, incommunicado detention, and poor prison conditions are examples of behavior that may amount to inhuman treatment, depending on the circumstances. For example, in *Öcalan v. Turkey*, the European Court of Human Rights found in 2003 that complete sensory isolation, coupled with total social isolation, can destroy the personality and would constitute inhuman treatment. On the other hand, it held that merely prohibiting contact with other prisoners for legitimate reasons such as security does not in itself amount to a violation. In the *Greek* case, treatment was found to be degrading if it grossly humiliates a person before others, or if it drives a person to act against his or her will or conscience. International criminal tribunals have generally followed these interpretations. In the ICTY and ICTR, using persons as human shields is an example of behavior that has been found to constitute inhuman or cruel treatment.

The definitions of torture and other forms of prohibited treatment, and the boundaries between such various forms of treatment, tend to be somewhat fluid and to change over time. According to the European Court of Human Rights, in its findings in *Ireland v. U.K.*, the distinction between torture and other forms of prohibited treatment was embodied in the Torture Convention in order to allow the special stigma of torture to attach only to deliberate inhuman treatment causing very serious and cruel suffering. The European Court has also consciously amended its standards over the years, classifying as torture acts which it had previously viewed as inhuman treatment in the past. An example of this shift in classification can be seen in the 1999 case of *Selmouni v. France*.

Sanctions

How does the prohibition on torture and other ill-treatment affect what forms of punishment states may impose, given that the Torture Convention says that torture "does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions"? The same exclusion appears as part of the definition of torture as a crime against humanity applying in the ICTY, ICTR, and ICC. The main reason for the exclusion is to make clear that punishments such as imprisonment, which might otherwise be challenged on the basis they cause severe suffering, do not constitute torture. The question is to what extent this leaves open the door for other punishments that would otherwise fall foul of the definition but are permitted under national law. Some argue that the phrase rightly leaves what constitutes cruel, inhuman, or degrading treatment or punishment to be determined by the moral and legal standards in each society. Under Islamic *shari'a* law, theft is punishable by amputation of the right hand, and in certain countries, corporal punishments are administered by the courts. Some national courts have ruled that corporal punishments such as whipping and flogging violate the prohibition on torture or ill-treatment. Examples are Botswana, Zimbabwe, Namibia, South Africa, and St. Vincent and the Grenadines. In *Tyrer v. U.K.*, the European Court of Human Rights found that the punishment of birching (a type of flogging) ordered by a juvenile court was a degrading punishment. The UN Special Rapporteur on Torture reported to the Commission on Human Rights in 1997 that, in his view, corporal punishment violates the prohibition on torture or cruel, inhuman, or degrading treatment or punishment. Further, punishments are subject to scrutiny according to international standards. Subsequently, the commission adopted a Reso-

lution 1997/38, which stated that corporal punishment can amount to cruel, inhuman, or degrading punishment or even to torture. Corporal punishment is prohibited in the Geneva Conventions in relation to prisoners of war or protected civilians in international armed conflict.

The courts of several countries, including Tanzania, Canada, Hungary, and South Africa, have held that the death penalty violates constitutional prohibitions on torture and other forms of ill-treatment. In the *Ôcalan* case, the European Court of Human Rights in 2003 declined to reach a firm conclusion on whether the death penalty was inhuman and degrading in all circumstances, but found that its imposition following an unfair trial did amount to inhuman treatment. The prohibition on torture also places limitations on how the death penalty is implemented. In 1994, the Judicial Committee of the Privy Council, the highest court of appeal for Jamaica, ruled that to carry out executions after 14 years of delay would violate the Jamaican constitution, and that after five years on death row, a prisoner would have suffered inhuman punishment (*Pratt and Morgan v. Attorney General for Jamaica*).

Psychological Impact of Torture

Both physical and mental torture can have lasting psychological effects. In serious cases, post-traumatic stress disorder (PTSD) can be diagnosed. Criteria for PTSD include re-experiencing aspects of a traumatic event in nightmares or flashbacks, avoidance of reminders of the event, sleep problems, memory and concentration problems, anger, and low mood. However, the concept of PTSD is somewhat controversial among mental health experts, and some (such as Derek Summerfield) do not accept that there is a psychiatric illness that is specific of trauma or torture. Such dissenting experts view the reframing of distress as a psychological disturbance to be a distortion, and prefer to look for solutions in a broader social recovery.

Because of the widespread use of torture and the particular needs of those who survive it, specialized torture rehabilitation centers have sprung up all around the world that provide physical and psychological treatment for survivors of torture. Some of these are in the countries where torture is taking place, and others cater primarily for refugee communities. The UN in 1981 established the UN Voluntary Fund for Victims of Torture to provide humanitarian assistance through medical, legal, and other forms of support to torture victims and their families.

International law has increasingly recognized that the psychological impact of torture calls for particular legal remedies. In international standards that are developing on the right to reparation, rehabilitation—including medical and psychological care as well as legal and social services—is specifically identified as one of the forms of reparation to which victims of violations will be entitled. This perspective is explicitly embodied in the UN Draft Basic Principles and Guidelines on the Right to a Remedy and Reparation.

Action of International Institutions and International Jurisdictions against Torture

Monitoring states' records on torture and holding them accountable is the function of international human rights treaty bodies. Among these bodies is the UN Committee Against Torture, established under the Torture Convention, which requires member states to submit regular reports on what they are doing to comply with the treaty, and issues observations and recommendations in response. Although the Committee Against Torture lacks enforcement powers and is frequently frustrated by states' late reporting, most states that are party to the Torture Convention do submit reports and appear before the committee to defend their records. The UN Commission on Human Rights has also taken steps specifically targeting torture. Its Special Rapporteur on Torture takes up cases of alleged torture with governments, carries out country visits, and reports annually to the Human Rights Commission. These mechanisms are designed to respond both to individual or isolated acts and to systematic torture.

Procedures have also been developed specifically to address situations where torture is committed as part of a widespread or systematic pattern of violations. Under Article 20 of the Torture Convention, there is established a confidential inquiry mechanism that allows the committee to look into information that torture is being systematically practiced in a member state. The UN Commission on Human Rights also has a confidential procedure (known as the 1503 Procedure) for considering information pointing toward a consistent pattern of gross and systematic violations. If, after examining the situation, a special working group believes further steps are needed, it can turn the matter over for more public consideration by the commission. This procedure was revised following a review in 2000, in response to the widely held view that it was ineffective.

Individual complaint mechanisms established at regional and international levels have been important in revealing places where systematic torture is taking place, as well as in providing redress for individual victims. United Nations' treaty bodies, including the Committee Against Torture, receive complaints from individuals, but only against states that have agreed to

such complaints being referred. The treaty bodies also issue non-binding decisions on whether a violation has taken place. Regional human rights courts, such as the European and Inter-American Courts of Human Rights, have played a leading role in defining torture and other forms of ill-treatment, and have issued many judgments declaring that a violation has occurred and ordering compensation to individual torture victims. However since the remedies they order are directed at the individuals whose cases are before them, these courts have not been able to deal directly with the underlying causes of widespread or systematic torture. Nevertheless, their findings can help to reveal the problem, and may help bring about international pressure for change.

International inspection mechanisms have been established that aim to prevent torture by addressing the conditions it which it occurs. The European Committee for the Protection of Torture and Inhuman or Degrading Treatment or Punishment (the ECPT) operates within Europe and is designed to bring about improvements in conditions in which prisoners and detainees are held. This committee conducts regular inspections of places of detention within its member states, and also makes ad hoc, unscheduled visits in response to specific concerns. After a visit, the committee reports its findings to the state in which the detentions are occurring, and gives that state an opportunity to respond. Normally, the state allows the report to be made public. In 2002, a new Optional Protocol to the UN Convention against Torture was adopted by the UN General Assembly, establishing a similar system of international inspection of places of detention for states that are party to the Convention and that have signed up for participation in the inspection program.

The international community has also taken collective action to hold individuals criminally accountable for torture, along with other crimes under international law. Since the Nuremberg trials, international law has recognized torture in its occurrence as a crime against humanity, but there have been relatively few prosecutions either at the international or national level until the establishment of the ICTY and the ICTR in the 1990s. Torture and ill treatment were prosecuted in some of the post–World War II trials. One example was the "High Command Case" brought by the U.S. against fourteen Nazi defendants in Germany in the 1940s. Torture was singled out by the international commissions of experts that convinced the UN Security Council to establish the ICTY, the ICTR, and, in 2000, the Special Panels in East Timor. It was also one of the violations that spurred the UN to agree to work together with the government of Sierra Leone to establish the Special Court there in 2002. Numerous indictments for torture have been handed down by these judicial institutions.

There are also examples of countries prosecuting torture as part of an attempt to deal with atrocities in their own past. Klaus Barbie, head of the Gestapo in Paris during the Nazi occupation of France in World War II, was tried in a French criminal court in 1987 for crimes against humanity committed in France during the war, in which acts of torture featured prominently. He was sentenced to life imprisonment. Truth-seeking mechanisms, such as national truth commissions, have also investigated widespread torture. In its report of 2003, the Peruvian Truth Commission concluded that during the period 1983 to 1997 there was a widespread practice of torture by state officials that amounted to crimes against humanity, and recommended that criminal charges be brought against those responsible.

The 1990s saw a significant increase in action by individual states to pursue alleged torturers for acts committed outside their territory, relying either on universal jurisdiction or other permissible bases of jurisdiction, such as the nationality of the victim. The number of states that had amended their law to provide a jurisdictional basis for their courts to prosecute torture committed elsewhere, and the number of actual prosecutions, steadily increased. In 1994 a Danish court convicted Refik Saric under the Geneva Conventions for torturing detainees in a Croat-run prison camp in Bosnia in 1993, and sentenced him to eight years imprisonment. A Spanish court charged former Chilean President Augusto Pinochet with committing torture in Chile, and sought his extradition from the U.K. in 1998. That process was stopped, not due to any jurisdictional impediment, but because Pinochet was found to be unfit to stand trial. Complaints including torture have also been pursued in the courts of several European countries, including Belgium, France, the Netherlands, and Senegal, involving alleged torture in Chad, Mauritania, Rwanda, Algeria, Tunisia, Suriname, Chile, and Argentina.

SEE ALSO Conventions Against Torture and Other Cruel, Inhuman, and Degrading Treatment; Prosecution; Psychology of Perpetrators; Psychology of Victims; Reparations

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Fiona McKay

Trail of Tears

At the time of European entry into North America, the Cherokee Nation included a large portion of the southern United States. Over the years, however, treaties and military actions reduced the Cherokee lands to an area comprised of western North Carolina, southeastern Tennessee, northern Georgia, and northeastern Alabama. Even here, the Cherokee, a number of whom were educated and literate, lived under the legislative control of whites without recourse to personal legal protection.

As early as 1810 a group known as the Western Cherokee had migrated to Arkansas Territory. Over the years others followed, including the illustrious Sequoyah, inventor of the world-famous Cherokee Syllabary (or Cherokee alphabet). During 1828 these Cherokee traded their Arkansas lands for others in Indian Territory (now Oklahoma).

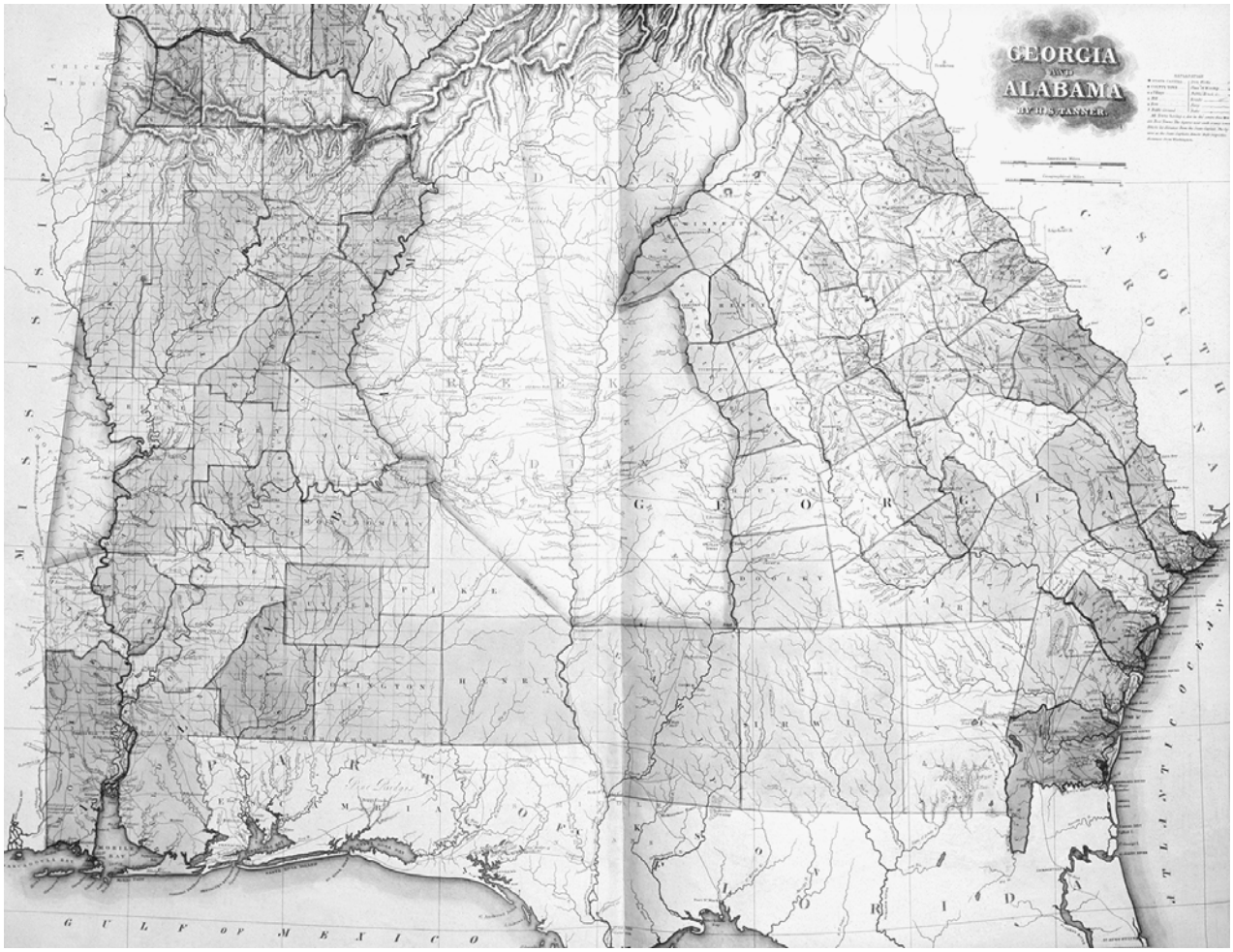
Two events in 1828 exacerbated the situation for the Cherokee Nation: the election of Andrew Jackson as president of the United States and the discovery of gold on the Cherokee lands of northern Georgia, spawning state laws that annexed the lands for gold-mining and stripped the Cherokee of legal redress from whites. Despite the determined opposition of Cherokee chief John Ross, in 1830 Jackson was able to push through Congress an Indian Removal Bill that would remove, on a so-called voluntary basis, all Eastern Indian tribes to west of the Mississippi River. His administration further supported the power of the states, in defiance of the U.S. Supreme Court, to usurp solemn treaties made with the Cherokee and other tribes. During the winter of 1831–1832 Chief Justice John Marshall ruled that U.S. treaties overrode the laws of the state of Georgia. Jackson supposedly replied, "John Marshall has rendered his decision; now let him enforce it" (Woodward, 1963, p. 171).

When Ross, backed by the Cherokee full-blood majority, stubbornly refused to accede to Jackson's demands, Jackson subverted the accepted Cherokee form of governance and conspired with a group of Cherokee intellectuals who were amenable to removal. Through his representative, the Reverend John F. Schermerhorn, Jackson was able to negotiate the 1835 Treaty of New Echota with the ad hoc group. By this treaty the Cherokee Nation ceded all its lands east of the Mississippi to the United States for a sum of $3.25 million and agreed to relocate to new lands in Indian Territory. A U.S. officer who witnessed the treaty signing opined that if placed before the Cherokee people, the treaty would have been rejected by nine-tenths of them. Former president John Quincy Adams called the treaty "an eternal disgrace upon the country" (Eaton, 1914, p. 55).

Once the Treaty of New Echota was ratified by Congress, Jackson issued a proclamation decreeing that the United States no longer recognized the existing Cherokee governance. U.S. troops commenced rounding up Cherokee and herding them to collection camps at U.S. military posts during 1837 and 1838. Without prior notice terrified families were forced from their homes and driven off their lands, leaving behind all they owned. At times wives, husbands, and children were separated from one another. Often they were abused and degraded by the troops (Jones, 1838, p. 236).

During 1837 and the spring of 1838 over two thousand Cherokee were rounded up by the army and removed forcibly to the West. Traveling both by river and overland, some of these parties suffered cholera and other illnesses, many dying en route. Another twenty-three hundred of the Pro-Treaty Party departed voluntarily, taking an overland wagon route by way of Memphis. A number of Cherokee escaped troops by hiding out in the mountains of western North Carolina.

With a severe drought delaying removal through the summer and fall of 1838, some twelve thousand



A map of Georgia and Alabama, 1823. As part of its Indian removal policy, the U.S. government forcibly moved Native Americans, during the 1830s, from their homelands in the southeastern United States to lands far west of the Mississippi River. [CORBIS]

Cherokee remained imprisoned in the cramped, disease-ridden stockade pens without bedding, cooking utensils, spare clothing, sanitation facilities, fresh drinking water, adequate food, medical attention, or shelter from the blazing sun. Official records indicate that 353 Cherokee died in the camps, but most historians believe the number was much larger.

Eventually, the surviving Cherokee were moved to collection points for their forced march to Indian Territory. Fort Payne, Alabama, served as one point of debarkation for a party that, lacking tents, blankets, and even shoes, took a middle route through northern Arkansas. Another group was formed at Ross's Landing near Chattanooga. By far the greatest number of Cherokee were herded into camps at Calhoun Agency's Rattlesnake Springs near present-day Charleston, Tennessee.

Here, principally, began the infamous Cherokee Trail of Tears, which followed a winter-imperiled, 800-mile route through Kentucky, Illinois, and Missouri. Detachments of overland wagon caravans organized and departed through October and November 1838 on their fateful three-month journey. Each of these was under the control of Cherokee Nation captains and light-horse police, Ross having convinced General Winfield Scott that the Cherokee themselves could best manage their own removal.

As the first dazed contingent pushed off from Rattlesnake Springs on October 1, the mixed-blood scholar William Shorey Coodey expressed his deep pathos. "Pangs of parting," he observed, "are tearing the hearts of our bravest men at this forced abandonment of their dear lov'd country" (Hoig, 1996, p. 3).

Even at the start of the foreboding three months on the trail, there were problems. Children, the elderly, and those weak with illnesses contracted in the camps were loaded into the few wagons available. Many others were forced to walk and carry whatever goods they pos-

sessed. Once on the move, they suffered from billowing trail dust or, when the rains came, wheel-clogging mud that once dried, left deep, travel-impeding ruts. But worse problems developed when severe weather arrived. By the time the lead caravans reached Kentucky, an early blizzard struck, bringing punishing temperatures along with blowing snow and icy roads that made travel even more difficult. Canvas wagon covers provided scant protection at night.

Members of the caravan had already begun to die, among them proud elderly Chief White Path, who in 1827 led a rebellion against white influence on his people. He was buried along the trail near Hopkinsville, Kentucky; his grave is marked by a long pole and linen flag.

A traveler from Maine, who encountered the Cherokee exodus in early December, observed the wagons loaded with the sick, feeble, and dying as the majority of the Cherokee struggled forth against the flesh-numbing winds. One young Cherokee mother "could only carry her dying child a few miles further, and then she must stop in a stranger land and consign her much loved babe to the cold ground and pass on with the multitude" (*New York Observer,* 1839).

The Cherokee agony grew even worse upon reaching the ice-clogged Ohio River and beyond. Blasts of snow and freezing rain plagued the march; dysentery, whooping cough, and other diseases decimated the doctorless caravans. Funerals were conducted at almost every camping place, leaving a pathetic line of gravesites to mark the route across southern Illinois and Missouri. "For what crime," missionary David Butrick moaned, "was this whole nation doomed?" (Kutsche, 1986).

The death toll for the Cherokee removal and Trail of Tears has been estimated to be as high as four thousand. This does not include fatalities that occurred during the tribe's painful resettlement in the wilds of Indian Territory. Nor was even the loss of homes and property in their former Nation as disastrous as the intense rancor and divisiveness that the removal had caused among the Cherokee themselves. It would wrench their Nation apart and lead to years of factional bloodshed.

SEE ALSO Forcible Transfer; Indigenous Peoples; Native Americans

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Stan Hoig

Transitional Justice

Transitional justice refers to a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future.

The concept is commonly understood as a framework for confronting past abuse as a component of a major political transformation. This generally involves a combination of complementary judicial and nonjudicial strategies, such as prosecuting perpetrators; establishing truth commissions and other forms of investigation about the past; forging efforts toward reconciliation in fractured societies; developing reparations packages for those most affected by the violence or abuse; memorializing and remembering victims; and reforming a wide spectrum of abusive state institutions (such as security services, police, or military) in an attempt to prevent future violations.

Transitional justice draws on two primary sources to make a normative argument in favor of confronting the past (if one assumes that local conditions support doing so). First, the human rights movement has strongly influenced the development of the field, making it self-consciously victim-centric. Transitional justice practitioners tend to pursue strategies that they believe are consistent with the rights and concerns of victims, survivors, and victims' families.

An additional source of legitimacy derives from international human rights and humanitarian law. Transitional justice relies on international law to make the case that states undergoing transitions are faced with certain legal obligations, including halting ongoing human rights abuses, investigating past crimes, identifying those responsible for human rights violations, imposing sanctions on those responsible, providing reparations to victims, preventing future abuses, preserving and enhancing peace, and fostering individual and national reconciliation.

Defining Transitional Justice

At its core, transitional justice is a link between the two concepts of transition and justice. The etymology of the phrase is unclear, but it had already become a term by the 1992 publication of the three-part volume *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* edited by Neil Kritz, which brings together the early and significant texts of the field. The term itself is misleading, as it more commonly refers to "justice during transition" than to any form of modified or altered justice.

Transitional justice has certain defining characteristics. First, it includes the concept of justice. Although the field depends on international legal principles that require the prosecution of perpetrators, this context also includes broader forms of justice, such as reparations programs and truth-seeking mechanisms.

The second key concept is transitional, which refers to a major political transformation, such as regime change from authoritarian or repressive rule to democratic or electoral rule or a transition from conflict to peace or stability. Although transitions are understood as long processes, there is also an emphasis on key historical moments such as those that occurred in Chile (1990), East Timor (2001), Guatemala (1994), Poland (1997), Sierra Leone (1999), and South Africa (1994). When a society "turns over a new leaf" or "gets a fresh start," mechanisms of transitional justice can help strengthen this process.

The transitional justice framework recognizes that transitions are complex and often characterized by both impediments and opportunities for new and creative democratic strategies. For example, the transition might be a negotiated settlement resulting in a tenuous peace or fragile democracy. The existing judicial system might be weak, corrupt, or ineffective. Justice during a transition may be limited by barriers such as a large number of perpetrators that is far beyond the capacity of the legal system to prosecute. Similarly, there might be an abundance of victims and survivors, many of whom would like the opportunity to tell their stories or receive financial compensation. Legal or constitutional limitations to accountability, such as amnesties for perpetrators associated with the former regime, may result from negotiations, thereby limiting prosecutorial capabilities. Nascent democratic institutions might suffer from authoritarian enclaves or the lasting influence of former power brokers. In these contexts transitional justice requires an awareness of multiple imperatives during a political transition, suggesting that comprehensive justice must be sought in a context in which other values are also important, including democracy, stability, equity, and fairness to victims and their families.

Development of a Field

The origins of the field can be traced back to the post–World War II setting in Europe (e.g., the International Military Tribunal at Nuremberg and denazification programs in Germany). However, the transitional justice framework gained coherence in the last two-and-a-half decades of the twentieth century, especially beginning with the trials of the former members of the military juntas in Greece (1975) and Argentina (1983), in which domestic judicial systems successfully tried the intellectual authors of past abuses for their crimes.

The truth-seeking efforts in Latin America's Southern Cone—such as the Argentine National Commission on the Disappearance of People (1983), the Uruguayan nongovernmental effort that resulted in a best-selling report entitled *Uruguay: Never Again, and the Chilean Truth and Reconciliation Commission* (1990)—further expanded the possibilities of comprehensive justice during transition, relying on the idea of truth as an "absolute, unrenounceable value" (Zalaquett, 1993, p. xxxi). Argentina's and Chile's additional efforts to provide different forms of reparation to victims also made important contributions to establishing justice for victims of human rights abuses.

These developments emerged because democratic activists and their allies in government sought to find new and creative ways to address the past. To accomplish this, they began to develop the nascent transitional justice framework as a way to strengthen new democracies and comply with the moral and legal obligations that the human rights movement was articulating, both domestically and internationally.

Eastern European endeavors to deal with past violations by opening up the files of former security agencies (e.g., the Stasi Records Act in Germany in 1991) or banning past human rights offenders from positions of power through disqualification (e.g., what occurred in Czechoslovakia in 1991) also contributed to debates on how to achieve justice during transition.

In 1995, drawing on experiences from Latin America and Eastern Europe (Boraine, Levy, and Scheffer, 1997), South Africa established a Truth and Reconciliation Commission to address past human rights crimes. Since then truth commissions have become widely recognized instruments of transitional justice, and commissions have been formed in many parts of the world, including East Timor, Ghana, Peru, and Sierra Leone. All differ from previous models, and many demonstrate important innovations.

The creation of ad hoc tribunals for the former Yugoslavia and Rwanda, while not specifically designed to

strengthen democratic transitions, have enhanced jurisprudence in transitional justice and achieved some visible victories for accountability. The ratification of the International Criminal Court (ICC) also represents an extremely important moment in the history of transitional justice.

Efforts to prosecute perpetrators of human rights abuses in Chile and Guatemala in the late 1990s and early 2000s have arguably strengthened movements for criminal accountability on the national level and been influential on an international scale in demonstrating the potential of this approach.

Comprehensive Approach to Past Abuse

By the first decade of the twenty-first century there was increasing consensus among scholars and practitioners about the basic contents of the transitional justice framework, which accepts the general premise that national strategies to confront past human rights abuses, depending on the specifics of the local context, can contribute to accountability, an end to impunity, the reconstruction of state-citizen relationships, and the creation of democratic institutions. It then proposes that such a national strategy consider the following complementary approaches in an effort to contribute to comprehensive justice at a critical political juncture. These include:

- Prosecution of perpetrators, whether on the domestic level, in a hybrid internationalized court (i.e., the Special Court for Sierra Leone), or in an international court, such as the ICC.
- Establishing the truth about the past through the creation of truth commissions or other national efforts, such as engaging in major historical research, compiling victims' testimonials or oral histories, supporting the work of forensic anthropologists in determining the exact nature of victims' deaths, or exhuming the bodies of those killed.
- Establishing reparations policies that take into account the requirements of, or moral obligations to, the victims. These policies can include economic compensation as well as a variety of health (physical and mental) and education benefits, and symbolic measures, such as a state apology.
- Remembering and honoring victims through a series of measures, including consulting with victims to develop memorials and museums of memory, converting public spaces such as former detention camps into memorial parks and interpretive sites, and catalyzing constructive social dialogue about the past.
- Developing reconciliation initiatives, such as working with victims to determine what they require in order to experience healing and closure, and forging peaceful coexistence among former adversaries without sacrificing justice and accountability for perpetrators.
- Reforming institutions that have a history of abusive behavior, including, for example, security forces or the police, in order to prevent future patterns of abuse and establish state-society relationships based on functioning and fair institutions.

SEE ALSO Chile; East Timor; El Salvador; International Criminal Tribunal for the Former Yugoslavia; Reparations; Sierra Leone; Truth Commissions

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Louis Bickford

Truth Commissions

A truth commission is an official, temporary body set up to investigate a period of past human rights violations or violations of human rights law. After taking statements from victims, witnesses, and others, a truth commission produces a final report that is usually made public and serves as an official acknowledgment of what was often before either widely denied or little understood.

The 1990s showed a sharp increase in the global interest in such unofficial truth-seeking for countries emerging from repressive rule or armed conflict, and this interest has continued in the decade of the 2000s. By 2004 there were over thirty examples of truth commissions that had existed in all regions of the world.

The initial meeting of South Africa's Truth and Reconciliation Commission, in East London, South Africa, April 15, 1996. The commission hears the first-hand accounts of victims of the apartheid regime. [AP/WORLD WIDE PHOTOS]

A truth commission is officially sanctioned, either by the government or the armed opposition, where relevant, sometimes also with the backing of the international community such as the United Nations. A truth commission can thus be distinguished from the efforts undertaken by nongovernmental organizations to document abuses, as important as those also may be, as such official commissions generally have better access to information and will receive much greater attention to their work.

Goals of Truth Commissions

A truth commission may be established with a number of aims. In addition to discovering or more publicly revealing the extent of past abuses, such a commission can look into the causes as well as the consequences of what took place, identifying patterns of wrongdoing and broader institutional responsibility, that cannot always be done through the courts. In addition, a truth commission is usually focused primarily on victims' experiences, providing victims and survivors with a supportive context in which to recount their story. Some victims find the process of telling their story to an official and credible body an important part of their healing process, although many still find it painful to remember and describe such traumatic memories in great detail. Another important aim of a truth commission is to learn from the past in order to put forward recommended reforms that will help prevent such abuses in the future.

Truth commissions are understood to be part of the broader field of transitional justice, and are best instituted when done in a manner that complements other initiatives to obtain accountability. While truth commissions themselves do not have the power to put someone in jail for their past deeds, they may still make publicly known that certain named individuals were responsible for past crimes, which can have other subsequent effects. Indeed, the late twentieth century has shown that the relationship between truth commissions and other forms of accountability, especially that of prosecution and vetting, can be quite positive. Often there is a clear interrelationship between truth commissions and other measures that address victims, as well

as broader societal needs, such as reparations programs and institutional reform.

Truth commissions are usually set up through national legislation, or sometimes by way of presidential decree. In some cases, such as in El Salvador and Sierra Leone, a truth commission was first agreed to in a national peace accord. Their terms of reference can be quite broad, typically covering more than a decade of violence or abuses, sometimes going back even as far as thirty-five or forty years. The founding legislation or decree may leave some flexibility for the commission to determine its precise scope, but generally a truth commission is directed to try to determine the causes as well as consequences of the abuses that took place, through speaking with victims, undertaking research and investigations, holding public hearings, if appropriate, and completing a final report with recommendations.

The first truth commissions were established in the 1970s, but the first well-known truth commission was established in Argentina in 1983, at the end of a seven-year period of military rule. This National Commission on the Disappeared found that close to eight thousand persons had been forcibly "disappeared" by government forces during the period of military rule. Years later, the findings from this commission were used to implement a reparations program for families of the victims. Since then, prominent truth commissions have been established throughout Latin America, Africa, and Asia, and there has been at least one example in eastern Europe. For example, the early- to mid-1990s saw such commissions established in Chile, El Salvador, Haiti, Guatemala, and South Africa, and by the early 2000s, such bodies were created in Peru, East Timor, Ghana, and Sierra Leone. By that time, it was widely accepted in the international community that transitions from authoritarianism or armed conflict were likely to at least consider establishing an official, nonjudicial truth-seeking mechanism as part of a transitional accountability package.

Despite the increasing support for and understanding of these investigative bodies on the international level, it remains important that the decision to establish a truth commission—including the precise form that it might take and powers and mandate that it is given—remain a national one. One of the primary purposes of a truth commission, that of assisting a process of national reflecting and acknowledgment of the wrongs committed in the past, is unlikely to result from an internationally imposed or internationally determined process.

However, there may be an important role for the international community in providing funding and technical assistance, and in some cases some of the members of a truth commission have been internationals.

How Truth Commissions Operate

Typically operating for one to two years, a truth commission generally takes statements from thousands of victims, its staff traveling throughout the country and perhaps even overseas to collect information from survivors of the past violence. A few of the truth commissions that have existed have been given quite strong investigatory powers, including powers to subpoena and the powers of search and seizure, allowing them to enter into premises without prior notice. These powers have been used to obtain documents and other information from prisons and government offices, for example.

The South African Truth and Reconciliation Commission received a great amount of international attention, in part because it was given unique powers to grant amnesty to individuals who confessed and fully described their crimes, if those individuals could demonstrate that the crimes were committed for political rather than personal motivation. This arrangement set out in the Commissions founding legislation, contributed to hundreds of perpetrators describing the details of their crimes in public hearings, aired live on radio and broadcast on television, making it impossible for the public to deny the level of abuse that had taken place under apartheid. The South African commission is the only truth commission that has been given amnesty-granting powers. Others can either request or subpoena perpetrators to come forward, but without offering an amnesty in exchange.

The question of how these nonjudicial investigatory bodies relate to or have an impact on prosecutions of human rights abusers in the courts has been of great interest over the years. Initially, especially in the early to mid-1990s, there was fear that the creation of truth commissions would somehow displace or reduce the possibility of prosecutions taking place for the crimes covered by the commission. In some cases, an existing amnesty, or a new agreement to grant amnesty in the context of a peace accord, has spurred the establishment of a truth commission. But there is rarely an explicit link between the two. There often is an overlap in the substantive focus of a truth commission and any domestic or international investigations that may be underway for the purposes of prosecuting accused perpetrators. However, time has shown that these commissions can in fact strengthen the possibility of successful prosecutions, by sharing information with the courts during or after the commission's investigations are

completed. The Truth and Reconciliation Commission in Peru, for example, established a judicialization unit within the commission and prepared cases that it recommended for prosecution by the appropriate authorities.

Some truth commissions also contribute to individual accountability by naming the names of persons that they find to be responsible for abuses in the past. The El Salvador Commission on the Truth, for example, named over forty persons, identifying their direct involvement in planning or carrying out some of the most egregious acts that took place during the country's civil war from 1980 to 1991. The minister of defense was named for his direct involvement in major atrocities committed years earlier, for example, and the president of the Supreme Court was named for prejudicial and politically motivated attempts to block investigations into a 1981 massacre. Some persons named by the Salvadoran commission were removed from their posts, but the government quickly passed a broad amnesty that prevented prosecutions.

Truth commissions are generally established where widespread abuses took place and where they were unaccounted for or officially denied at the time. However, some countries that have suffered some of the more infamous histories of genocide or intense violence in the decades of the late twentieth century, such as Rwanda or Cambodia, have chosen not to put a truth commission in place. This may be due to a lack of popular interest in delving into the past, or perhaps insufficient political interest in investigating and revealing the full nature, extent, and institutional or personal involvement in past crimes. There can be political and personal risks as well as traumas associated with digging into such a fraught and painful period, and thus some countries choose not to institute such an inquiry during a political transition.

While all truth commissions as of the early 2000s have found and reported on unspeakable violence, few have concluded that the violence constituted genocide, per se. The truth commission in Guatemala, called the Commission for Historical Clarification, was under pressure from victims and survivor groups to include such an explicit finding it its final report, in recognition of the tens of thousands of indigenous Mayan people who were targeted and killed in the course of the war. After close legal analysis of the nature and extent of the violence, the commission did conclude that government forces committed "acts of genocide" as part of its counterinsurgency strategy early in the civil war. This finding, along with the commission's other strong conclusions, received an emotional response from a population whose suffering had very rarely been acknowledged by the state.

Over time, new truth commissions have been formed with more creative and far-reaching mandates. Some have been designed to work very closely with indigenous or nationally rooted and community-based mechanisms. In East Timor, for example, a truth commission facilitated perpetrator confessions and negotiated agreement for low-level perpetrators to undertake community service or provide a symbolic payment, thus allowing the perpetrator to be reintegrated fully into his or her community. In Sierra Leone, some truth commission hearings ended with indigenously based cleansing ceremonies, with Sierra Leonean paramount chiefs overseeing a process of accepting back into the community those wrongdoers who had confessed. More of these kinds of creative approaches may well be incorporated into new truth commissions in the future.

Because truth commissions are generally instituted after a period of repression or violence has come to an end, their main focus is to learn from that past and to make specific recommendations to help prevent the reoccurrence of such abuses in the future. These recommendations often include institutional reforms, such as strengthening the judicial system or legal framework so that proper and independent oversight of the actions of government and armed forces will take place when complaints are made. In some contexts, recommendations also address social, educational, and even cultural aspects of society and the need to make changes, addressed not only to the government but sometimes to society at large.

In addition to reforms that may take place on an official level, advocates hope that an honest understanding and recognition of the extent of past abuses will help to strengthen societal resistance to allowing such events to take place again.

But few truth commissions have had the power to adopt conclusions that are mandatory. Such conclusions are often considered as recommendations, and some well-formulated proposals have not been followed up by the government and implemented as policy. The commission itself generally ceases to exist with the submission of its report, leaving the lobbying around policy implementation to civil society organizations. A few truth commissions, however—in El Salvador and Sierra Leone—have been given the power to address resolutions to the government that are agreed in advance to be obligatory. In addition, the legislation that set up the Sierra Leone commission allows for the creation of a follow-up committee at end of the commission's work. The goal of that commission is to track and publicly report on the progress of implementation

of the original commission's recommendations. These and other examples show society's increasing concern to strengthen the long-term impact of truth commissions.

SEE ALSO Argentina; Chile; El Salvador; Guatemala; South Africa

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Priscilla B. Hayner

Tudjman, Franjo

[MAY 14, 1922–DECEMBER 10, 1999]
First Croatian president

Franjo Tudjman was born in Veliko Trgovisce, a village in the Hrvatsko Zagorje region in northern Croatia. He was the first president of Croatia, following its creation as an independent state in 1991.

During World War II Tudjman fought alongside his father and brothers as an officer in the partisan forces of communist leader Joseph Broz Tito (Marshal Tito) against Croatia's pro-Nazi Ustache regime, founded on April 10, 1941, as the so-called Independent State of Croatia (Nezavisna Drzava Hrvatska, NDH). After the war Tudjman served in the Ministry of Defense and was a member of the general staff of the Yugoslav National Army (JNA) in Belgrade, attaining the rank of major general. In 1961 Tudjman left the JNA to pursue an academic career in Croatia. From 1961 to 1967 he was the director of the Institute for the History of the Workers Movement located in Zagreb. In 1967 Tudjman resigned from the institute after Croatian communist authorities sharply criticized the Declaration on the Croatian Language that he had signed. The same year Tudjman was expelled from the Croatian Communist Party and thus began a new period in his life as a dissident and nationalist. In 1972 he was jailed for two years as a result of his activities in support of the "Croatian Spring" (the Croatian movement which advocated greater political autonomy in former Yugoslavia); he was jailed again in 1981 for three years for his writings on Yugoslav history. As a historian, Tudjman was accused of being a Holocaust revisionist because of his controversial 1989 book, *Bespuca povijesne zbiljnosti* (Wastelands: Historical Truth, translated also as The Horrors of War), in which he attempted to minimize the number of Jews who had perished in the Holocaust.

In 1989 Tudjman established a political party called the Croatian Democratic Union (HDZ) and became its chairman. The HDZ won the first free elections in Croatia in 1990. As its presidential candidate, Tudjman declared that NDH, the puppet state of Nazi Germany, "had not simply been a quisling creation, but was also an expression of the historical aspirations of the Croatian people to have their own state." During the same campaign he also declared, "Thank God, my wife is neither a Serb nor a Jew."

In 1990 Tudjman became the first democratically elected president of the newly proclaimed state of Croatia. In the elections of 1992 and 1997, he was re-elected as president.

After the declaration of Croatia's independence in 1991, which coincided with open aggression by Serbia and the federal army against the newly founded state, Tudjman's policy, which combined military and diplomatic means, secured the existence of Croatia as a sovereign state. In 1995 Croatia's military forces in their Operations Flash and Storm liberated about 25 percent of the territory that had been occupied by Serbian paramilitary forces since 1990. These military operations resulted in the mass exodus of the Serbian population as approximately 200,000 fled to Serbia and Bosnia and Herzegovina, or more precisely the Serb Republic (Republika Srpska).

In regard to Bosnia and Herzegovina, Tudjman's policy was both ambiguous and controversial. He engaged in secret negotiations with the Serbian leader Slobodan Milosevic to partition this state.

Following Operation Storm, Tudjman became the subject of an investigation by the International Criminal Tribunal for the Former Yugoslavia (ICTY) but he was never formally charged for the war crimes that occurred during and after this campaign in August 1995. Tudjman's name, however, appeared in the ICTY's indictment of the Croatian General, Ante Gotovina, for war crimes. In it the Chief Prosecutor of the ICTY, Carla del Ponte, accused Gotovina and President Tudjman of participating "in a joint criminal enterprise, the common purpose of which was the forcible and permanent removal of the Serb population from the Krajina region."

SEE ALSO Croatia, Independent State of; Karadzic, Radovan; Mladic, Ratko

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Reneo Lukic

Tuzla see Yugoslavia.

Uganda

Since 1962, Ugandans have suffered gross violation of human rights, including genocide, government-sponsored violence, acts of elimination of elites, forced exiles and expulsions, imprisonment without trial, and denial of the other basic human rights. More than 2 million people have been killed, maimed, imprisoned, or forced into exile. Various political elites have sought power to control and to distribute resources at the expense of human rights. Ugandans have not yet developed mechanisms to change government leaders by peaceful means. Political change has been effected through violence, and this has invariably led to other forms of violence. The distribution of resources along ethnic and racial lines was a legacy of British colonialism. During the colonial period, the Europeans and Asians received the highest incomes because they controlled the state and business, respectively. Among the African population, the Baganda were the richest because they produced cash crops—cotton and coffee—and played the role of colonial subimperialists. Western Uganda became a reservoir of labor for the colonial state as well as the managers of the cash crop economy in Buganda. The armed forces of the colonial era were recruited mainly from the Luo and Sudanic speakers of the northern region. This specialization along racial and ethnic lines became the source of instability and violence in postcolonial Uganda. Unsophisticated leaders like Obote and Amin exploited the politics of ethnicity and historical imbalances to entrench themselves. They branded whole populations guilty for the inequities of British colonialism and imposed collective punishment regardless of class or political association and sympathies.

Genocide

Thousands of Ugandans have suffered from acts of genocidal massacre. Since independence in 1962, Uganda has witnessed massacres directed against certain ethnic and consolidated social groups. Between 1966 and 1971, the first Obote regime targeted the Baganda, and 400 to 1,000 people were reported to have been killed. The Amin Regime (1971–1979) targeted the Acholi and Langi, particularly those in the armed forces, and thousands were eliminated. During the Tanzania-led war to oust Amin, groups of people suspected of supporting or sympathizing with Amin or even those who only came from the ethnic groups in his home region were killed. These included Muslims in the Ankole–Masaka areas, the people of West Nile, and Nubians scattered in the urban centers. In the second Obote administration (1980–1985), the Baganda were again targets for killings. The activities of both the government and the guerrilla armies in the Luwero Triangle caused the deaths of more than 300,000 people and the flight of many more from the area. From 1986 to 2003, the people of the Acholi region in northern Uganda were indiscriminately terrorized. More than 100,000 people were killed and more than 20,000 children abducted. These killings were managed by individuals trying to destabilize the political machinery of the Uganda state.

The fall of Kampala on April 11, 1979. A Tanzanian soldier uncovers mutilated bodies at the State Research Bureau, headquarters of Idi Amin's dreaded secret police. [BETTMANN/CORBIS]

The Elimination of Political and Commercial Elites

The violent struggle to control the state has led those in power to eliminate their political rivals. In the period from 1962 to 1971, many political opponents of the first Obote regime were either imprisoned (including Grace Ibingira, George Magezi, Balaki Kirya, Lumu, Ben Kiwanuka, and some members of the Buganda royal family, such as Prince Badru Kakungulu) or forced into exile (Sir Edward Mutesa II). When Amin came to power, he eliminated political and commercial elites who seemed to be a threat to his grip on Uganda. Those killed in the Amin period have been listed elsewhere, but they included prominent individuals such as Chief Justice Ben Kiwanuka, the Anglican Archbishop Janan Luwum, writers such as Byron Kawaddwa, Father Clement Kigggundu, and prominent business people. The elimination of prominent individuals continued throughout the Uganda National Liberation Front (UNLF) governments (1979–1980), the second Obote administration (1980–1985), the Okello junta years (1985–1986), and the early part of the National Resistance Movement (NRM) government. The impact of these eliminations has been the reduction of the number of individuals capable of offering alternative leadership to this unfortunate country.

Exiles and Expulsions

Since 1969, Uganda has lost thousands of people through exile and expulsions. During the Amin regime, more than 80,000 people were forced to leave Uganda. By 1984, about a quarter of a million Ugandans were living in exile as refugees. In the period from 1980 to 1983, almost the whole of the West Nile district population was forced into exile by the atrocities committed by the Uganda National Liberation Army.

Whole ethnic and social groups have been expelled from Uganda. In October and November 1969, Obote's government expelled about 30,000 Kenyan workers, most of them Luos. Their brutal expulsion did not make headlines in the international news because no strong international economic interests were involved. In 1972, Idi Amin expelled some 75,000 Asians of Indo-Pakistani origin and appropriated their properties. Although they have been compensated and some have returned, the action was a brutal one. In 1982–1983, functionaries of the official ruling party, the Uganda People's Congress (UPC), caused the expulsion of some 75,000 Banyarwanda who had over the years settled in western Uganda (Ankole, Rakai, and parts of Masaka). In the same period, the UPC government fanned primordial forces within Karamoja that led to internal conflicts in that region. Some 20,000 to 40,000 Karamajog were killed, and many were displaced in the same period.

Denial of Basic Human Rights

Between 1966 and 1986, Ugandans were denied basic human rights. The right to freedom of opinion was denied, as was the right of association. The media was state controlled, and political parties, trade unions, student organizations, and later, some religious organizations were proscribed. There was, particularly in the period after 1971 to 1985, complete absence of the rule of law. Court verdicts were not respected by the security forces. The security forces could arrest people without warrant and detain them for as long as they wished. But these forces were immune from prosecution. When the Museveni government came to power in 1986, it instituted a commission of inquiry into past human rights abuses and the creation of the Human Rights Commission. The situation dramatically changed for the better.

Conclusion

The 1995 Constitution put in place mechanisms facilitating conflict resolution, including separation of pow-

ers among the executive, legislative, and judicial branches of government. However, permanent peace and security can only be viable when Ugandans accept, in word and deed, the mechanisms for changing the guard without violence as embedded in the 1995 Constitution. Any rash action to change the Constitution to suit personal arrangements could cast Uganda back twenty years. The positive achievements of the last seventeen years would be thrown into the dust bin.

SEE ALSO Death Squads

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A. B. Kasozi

Ukraine (Famine)

In the Ukrainian language, the famine of 1932 and 1933 famine is called "holodomor," which means extermination by starvation. It is also referred to as the "artificial famine," "terror famine," and "terror-genocide." Until the end of the 1980s, however, the Soviet Union dismissed all references to the famine as anti-Soviet propaganda. Denial of the famine declined after the Communist Party lost power and the Soviet empire disintegrated. With the declassification and publication of Western and Soviet historical documents, it became impossible to continue to deny the occurrence of the now well-attested catastrophe. The controversy did not abate, however, despite newly uncovered evidence. Instead, new disputes arose over whether the famine was Ukrainian or Soviet, whether its victims should be regarded primarily as Ukrainians or as peasants, and if it was appropriate to call the famine genocidal.

The Surge of Recurrent Famines

During the first three decades of communist rule, Ukraine experienced a series of food crises. The first widespread famine began in the summer of 1921, and lasted two years. It affected one-third of the Ukrainian population, and killed approximately one million people. Possibly three or four times more people died in Russia, which also suffered a famine during that time. Little information and no mortality data are available for the shorter starvation periods, which occurred from 1924 to 1925 and from 1928 to 1929. The most costly in human lives was the great famine of 1932 and 1933. It is also this famine for which the classification of genocide is claimed.

Later, fatal food shortages were experienced during World War II, but they occurred mainly in the cities and thus form a separate category. After the war, Ukrainians again faced famine conditions in 1946 and 1947, notably in the central and southern regions of the country. Victims numbered in the hundreds of thousands. In each instance, food shortages were not exclusive to Ukraine. Concomitant famines took place in Russia and other parts of the sprawling Soviet empire.

Peasants constituted the majority of victims in all the famines, except during the war. The common features of all the famines were adverse climatic conditions, poor crop yields, mismanagement, corruption, and waste. The main cause of starvation, however, was excessive grain procurements ordered by the government. The state extracted exorbitant amounts of foodstuffs from the peasants, with the full knowledge that it was condemning them to annihilation.

The readiness of the allegedly proletarian state to sacrifice the interests of the peasantry, which comprised three-quarters of its population, was evident throughout the whole of the Soviet Union, but the origin and handling of food shortages in Ukraine had specific features that distinguished them from the situation elsewhere in the USSR. This is because the Russo-centric government was mistrustful of Ukrainians, many of who resented the loss of their bid for national independence after the Revolution.

Moscow responded to the 1921 drought and ensuing famine that swept the Volga valley and Northern Caucasus in Russia and the southern steppe lands of Ukraine with two very different policies. Food taxation

was suspended in the famished provinces of Russia, famine relief was organized, and requests were sent for Western aid. Meanwhile, however, Ukraine's dire situation was ignored; in fact, the country was obliged to send some of its own meager crop to help Russia. Western aid began arriving in September 1921, and by the end of the year the American Relief Administration (ARA) was providing meals for one million people. The Ukrainian famine was finally acknowledged and the country opened to foreign aid only at the beginning of 1922. Even that only occurred after the ARA put pressure on Moscow at the behest of the American Jewish Joint Distribution Committee (JDC), which had received alarming news about Jews starving in southern Ukraine.

At the height of its operations in 1922, the ARA fed over eight million people in Russia, with funds provided by the U.S. Congress, and nearly one million people in Ukraine, with the aid of funds supplied mainly by the JDC. Both famines received wide publicity in the Western media, and photographs and films were made for the purpose of raising funds. Even after recognition of the famine situation in Ukraine, starving Ukrainian provinces continued to be taxed and food trains continued to be sent not only from northern Ukraine, which were blessed with a reasonably good harvest, but also from the starving southern provinces. As late as May 1922, Western observers were baffled and scandalized to see southern Ukraine sending foodstuffs to Russia. In addition, Ukraine was obliged to give refuge to hundreds of thousands of Russian refugees, and to numerous Red Army units.

Drought and poor harvests occurred again in 1922, but this time Moscow decided to export grain rather than retain its crop to feed its own people. Shocked, Western relief organizations protested, but to no avail. To counter bad publicity, on October 15, 1922, Moscow declared that the famine had ended. Trapped by their own humanitarian convictions, Western relief agencies kept their soup kitchens open for another year, even though the Soviet government continued to export grain. Strikes by port workers and even the burning of grain elevators in the Ukrainian port of Mykolaiv had no effect on Soviet export policy. The Soviet authorities did not engineer mass starvation in 1921, but once the famine broke out, the government quickly recognized its utility as a tool of state policy. In Ukraine, in other words, the famine was seen as an effective way to physically weaken nationalist and anarchist elements, which had challenged Moscow's rule over Ukraine until the autumn of 1921.

After the famine, while Party leaders fought over Lenin's mantle in Moscow, Ukraine acquired a certain amount of autonomy. To make their rule more palatable, and to placate Ukrainian national feelings, the victorious Bolsheviks began their rule by promoting policies of "indigenization" and "Ukrainization." The party and the state recruited native Ukrainians, even former members of defunct Ukrainian national parties. The use of Ukrainian language was promoted in the republic's schools and administration. The main beneficiaries of these new policies were Ukrainian intellectuals and farmers. The former began to create nationally conscious socio-economic and political elites, whereas the latter took advantage of the liberal "New Economic Policy" (NEP) to recover from the famines of previous years. An influx of rural populations into the urban centers helped to Ukrainianize the previously Russified towns and cities. The country was undergoing a wide-ranging national renaissance. Such a national revival rekindled old fears in the Kremlin, however, and Ukraine was once again perceived as presenting a challenge to the hegemony of the government and a threat to the integrity of the multinational empire.

Stalin's Revolution from Above

Ten years after the Bolshevik seizure of power, Stalin's ascendancy over the USSR was complete. As the party's chief theoretician and decision maker, Stalin could now take up Lenin's unfinished job of eliminating the last vestiges of capitalism and pursue his personal ambition of transforming the rich but backward empire into a powerful socialist state. In order to become a fatherland for the world proletariat and a vanguard of world revolution, the USSR had to undergo an industrial revolution, for which agriculture was the only available source of capital. The party's left wing had long advocated agricultural collectivization as a way of bringing socialism to the countryside and giving the state direct control over farm production. Stalin took the leftist platform and pushed it to the extreme.

The collectivization of agriculture was approved in December 1927, and was made part of the latest Five Year Plan, the cornerstone of the NEP. Five months later, Stalin rationalized his abandoning the NEP. He argued that, with almost equal yields, Russia nonetheless produced twice as much market grain in 1913 as the Soviet Union did in 1926. Large-scale farming, run by rich landlords in 1913, and by *sovkhozes* (state farms employing agricultural workers) and *kolkhozes* (collective farms organized as cooperatives) in 1926, sent 47 percent of their produce to the market, while *kulaks* (rich farmers) sold 34 percent of theirs before the revolution and only 20 percent after it. But while the first two categories of farm enterprises accounted for half of all grain production in 1916, their share in 1926 was only 15 percent. The *seredniaks* ("middle," or subsis-

tence farmers) and the *bedniaks* (poor farmers) increased their share of crop production from 50 to 85 percent, but reduced their sales from 15 to 11 percent in 1926. The problem was clear: the middle and poor peasants had become the main grain producers, but they consumed most of their crop. The solution to grain shortages, Stalin argued, lay in the "transition from individual peasant farming to collective farming." Large-scale farming was also supposed to increase production by taking advantage of "modern machinery and scientific knowledge," but above all, Stalin insisted, it was a system that was "capable of producing a maximum of grain for the market."

Collectivization was expected to meet with stiff opposition from the kulaks—because they had the most to lose—and Ukrainian peasants, who were not familiar with the Russian tradition of *obshchina* (commune). Stalin launched his struggle against these hostile elements with the call to "liquidate the kulaks as a class." The drive for "dekulakization" was launched in December 1929, and, like collectivization, was subordinated to state planning. The most intense period of dekulakization was from January to March 1930, and coincided with the main push for collectivization. As a result of dekulakization, deportation, and other upheavals connected with collectivization, 282,000 peasant households disappeared in Ukraine between 1930 and 1931. By the end of that period there were no real kulaks left in the region.

In theory, kolkhozes were voluntary organizations. Many bedniaks and *batraks* (landless farm workers) freely signed up, expecting a better life. Most peasants, however, preferred to stick to individual farming. The scope and tempo of collectivization were regulated. To meet their monthly quotas, peasants were coerced to join collectives by the levy of exorbitant taxes on individual farm incomes, false accusations, administrative intimidation, and physical violence. The peasants resisted, however, and by June 1929 only 5.6 percent of households had joined kolkhozes in the Ukraine.

Grain producing regions in Ukraine and the Northern Caucasus, especially the rich and predominantly Ukrainian Kuban' region, were specially targeted for rapid collectivization. In October, 10.6 percent of Ukrainian peasant households were in kolkhozes. In the steppe region, the figure was 16 percent. Mismanagement, insufficient farm machinery and draught power (horses and tractors), and other woes continued to undermine the institution. Peasants fled and the kolkhozes collapsed. Undaunted, on November 7, 1929, Stalin declared the collectivization movement a great success and bolstered his claim by ordering 25,000 specially selected industrial workers to be sent to the countryside to continue to help with the organization and management of kolkhozes. Additional cadres were periodically dispatched, and by the spring of 1930, the Ukraine had 50,000 activists with special powers to organize, punish and intimidate, and terrorize the peasants.

Reinforced state violence produced the desired results. By the end of February 1930, more than half of all individual households in the USSR had been collectivized, and in Ukraine the number reached 68.5 percent. The government's success was achieved with unbridled violence and at the cost of many peasant lives. Terror reigned in the villages. To protect their men, women often took over their role in opposing the formation of kolkhozes and in their dismantling. Resistance peaked in the early spring of 1930, when the OGPU (state police) recorded 6,528 mass peasant uprisings, with 2,945, or 45 percent, taking place in Ukraine.

As kolkhozes collapsed in Ukraine and the North Caucasus, Stalin was forced to sound a temporary retreat. On March 2, 1930, the newspaper *Pravda* published Stalin's essay "Dizzy with Success," in which collectivization was once again declared a success, with certain excesses being blamed on overzealous activists. Stalin once more reaffirmed the principle of voluntary adhesion to the kolkhozes. The peasants took him at his word and began to leave the collectives. By September, only 21 percent of peasant households remained collectivized in the USSR; 34 percent in Ukraine. If this was a new NEP, as some had hoped or feared, it was of short duration. Renewed collectivization began in October 1930. By August 1931 the Ukrainian steppe was wholly collectivized, and by the following year, three-quarters of Ukrainian peasants were working in kolkhozes.

Collectivization was at the heart of a revolution aimed at solving several other problems besides economic ones. In ideological terms, the termination of the NEP meant the triumph of socialism, although the *kolkhozniks* called it the return of serfdom. Politically, it meant the extension of party control over the countryside by means of reliable personnel in newly established Machine and Tractor Stations that were created to service the kolkhozes with machinery and to supervise them politically. The principal loser was to be the peasant, demoted from independent producer to agricultural worker, akin to the city worker but bound to the more primitive conditions of country life.

The Ukrainian Famine of 1932–1933

Dekulakization and deportation deprived Soviet agriculture of its ablest and most conscientious farmers.

In Kiev, Ukrainian Orthodox priests hold a commemorative service in 2003 to mark the seventieth anniversary of the Soviet-imposed Ukrainian famine/genocide (1932–1933). The death toll from the famine has been estimated at between six and seven million. [AP/WORLD WIDE PHOTOS]

Productivity declined while wastage increased. It has been claimed that three million tons of grain were lost in Ukraine during the 1931 harvest. This is probably an exaggeration, but together with unfavorable weather conditions, it helps to explain why Ukrainian harvests of 1931 and 1932 were lower than the official figures used by Moscow to set its procurement plans. The Kremlin, insisting on high quotas, had great success. It took in 7.5 million tons of grain in 1930 and more than 7 million tons in 1931, and planned to match the latter figure in 1932. State procurement claimed a very high proportion of Ukrainian production: 30 percent in 1930 and 41 percent in 1931.

By the summer of 1932, however, Ukrainian leadership realized that it would not be able to deliver the exorbitant amount it had originally agreed to provide. Ukrainian party leaders pleaded with Stalin for a reduction in the quota. In June 1932 Vlas Chubar and Hryhorii Petrovsky, members of the Ukrainian party's Central Committee, wrote the Kremlin about the menace of wide-scale starvation. In the fall of 1932, the boss of the Kharkiv region, informed Stalin of the famine in his province, only to be ridiculed for telling "fairy-tales." The original plan for grain procurement for the 1932 harvest was ultimately reduced three times, but the state still managed to extract 4,270,000 tons of grain, enough to feed at least 12 million people for an entire year. Workers and other citizens of Ukraine, whose food needs at that time were supposed to be met by the government, numbered about eight million.

It was not only the confiscation of foodstuffs, but also the way the confiscation was carried out that created hardships for Ukrainian peasants. In theory, the land worked by the kolkhoz belonged to the state, whereas the harvest belonged to the kolkhoz. But the kolkhoz could divide the crops among its members only after the state took its share and reserves were set aside for the next sowing. In the meantime, kolkhozniks were supposed to fend for themselves. Many tried to take an "advance" for their work by cutting a few

sheaves of unripened wheat or competing with mice for the gleanings that the harvesters left behind. On August 7, 1932, however, Stalin imposed a new law that made the "plunder of state property" a crime punishable by death or, in extenuating circumstances, ten years' imprisonment.

Fifty-five thousand people were soon arrested for pilfering grain that they themselves had cultivated, and 2,000 individuals were condemned to death. In November, a blacklist was introduced to punish kolkhozes that failed to meet their monthly grain deliveries. A blacklisted collective lost the right to all commercial transactions, including the sale of such basic necessities as salt, matches, and kerosene, and the kolkhoz administration that harbored such criminals was usually purged. In early 1933, 200,000 kolkhoz employees were inspected, and one-fourth of them were dismissed or otherwise purged. Included in these numbers were 11,420 kolkhoz chairmen, of whom 6,089 were purged.

Individual peasants who were in arrears in meeting their quotas were subjected to food fines and confiscations, which often meant the confiscation of everything edible, including the bread or vegetables found on their kitchen tables. Groups of activists, comprised of city workers or members of local "committees of poor peasants," went from house to house, prodding the earthen floors with metallic spikes to uncover hidden food reserves. To prevent peasants from fleeing the village or even merely seeking provisions outside their village, a passport system was introduced on December 27, 1932. Only city dwellers were entitled to passports. The peasants were thus confined to the village. As they had been in the days of serfdom, the peasants were once more bound to the soil. Peasants wandering in the cities were rounded up: the luckier ones were sent home, while others were punished for the crime of speculation.

Left with insufficient food, the peasant population starved. Famine broke out in the winter of 1931 and 1932, and reached a high point that spring. Hundreds of thousands of people died before the new harvest brought some relief. A new phase of food shortages began in the fall of 1932 and peaked the following spring. Foreign eyewitnesses and native survivors, who either escaped or outlived the Soviet regime, have described the horrors of this famine in contemporary accounts. Starving peasants consumed domestic animals, including dogs and cats, together with various food surrogates like tree buds, weeds, and herbs. Some resorted to cannibalism, and dug up human corpses and the carcasses of dead animals. A nearby forest or river saved many an amateur hunter or fisherman. People died by the hundreds and thousands. Just how many died from starvation in Ukraine will never be known. Deaths due to malnutrition were not recorded. Deductions made from the official censuses of 1926 and 1939, and the suppressed census of 1937, have given rise to various interpretations and conclusions. Estimates for Ukraine vary from four to ten million. Six million was the figure a Kharkiv official gave an American newspaper editor in 1933—it still seems the most plausible.

Was the Ukrainian Famine Genocide?

By the end of the 1980s, British, Italian, and German diplomatic archives provided the definitive evidence necessary to establish the historicity of the great Ukrainian famine. It is more complex to resolve the question of the genocidal nature of the catastrophe. Scholars have had reservations in judging Stalin's intent, as required by the United Nations Convention on Genocide. A conclusive assessment of the Soviet leader's motivations had to await the opening of Soviet archives. Over time, however, four approaches to the problem were developed. Some scholars flatly rejected the notion that the famine was genocide, others avoided the problem of classification by using descriptive terms such as "great famine," "artificial famine," or "man-made famine." Still others accepted the idea of genocide, but saw its victims primarily as the kulaks, or peasants; and, finally, some scholars recognized the famine as a genocide that was specifically directed against the Ukrainian nation. Russian and Ukrainian scholars use the term *holod* (*golod* in Russian, meaning hunger, starvation, or famine) or *holodomor* (*golodomor*), which is emotionally close to the notion of genocide, but without the legalistic overtone.

Stalin was not only well informed about the famine, he was its chief architect and overseer. He sent Molotov and Kaganovich to the Ukraine and the Northern Caucasus to organize and enforce the grain procurement that made the tragedy inevitable. The word *famine* was banned from the media and official documents, but it was used openly in high party circles. The Secretary-General himself used the word in a letter to Molotov, sent in June 1932, in which he blamed local mismanagement for a "state of ruin and famine" in a number of Ukrainian regions. If the party leadership had made a mistake in planning the grain procurement, it could have corrected its errors once it realized the magnitude of the famine. There were more than three million tons of grain reserves in the USSR in January 1933, enough to feed well over ten million people. The government could have organized famine relief and accepted help from outside, as it did in 1921. Instead Moscow rejected foreign aid, denounced those who offered it, and exported its own foodstuffs abroad. More than a million and a half tons of grain were sold abroad in 1932 and again in 1933, enough to feed five million people dur-

ing both years. Such behavior is more than callous; it shows a direct intent on the part of the perpetrators to destroy a part of the population by starvation.

The "peasantist" interpretation of the Ukrainian famine either accepts or rejects the idea of genocide, but emphasizes that the victims were peasants, rejecting the association of victimhood with Ukrainian ethnicity. In his *Black Book of Communism,* Stephane Courtois insists on the similarity between the Stalin regime's deliberate starvation of a child of a Ukrainian kulak, and the Nazi regime's starvation of a Jewish child. In this literary construct, there is no clash between the Ukrainian peasant's two identities, even if the reference to his kulak class gives the false impression of the victims of the famine, for by that time there were no kulaks left in Ukraine. Nicolas Werth, whose long study of the Soviet Union is included in Courtois's *Black Book,* openly poses this question, but after presenting arguments for the "ethnicist" and "peasantist" interpretations, Werth settles on an explanation that embraces the ethnicist approach, blaming the deaths on an ethnically oriented policy of, if not genocide, than certainly willful extermination. For Mark Tauger, this ethnic orientation is unacceptable. He argues that there was no Ukrainian famine, only a Soviet famine in which peasants in Ukraine were also victims.

Of Georgian background, Stalin had a keen awareness of the "nationality question" in the multiethnic Russian and then Soviet empire. On August 11, 1932, he intimated to an associate that, unless proper measures were taken, Ukraine could be lost. The half-million-strong Communist Party of Ukraine, he complained, was full of "conscious and unwitting Petliurists," "agents of Pilsudski," and other "rotten elements." Stalin argued that the Polish dictator, Pilsudski, was not dozing.

His associate, Kaganovich, concurred, adding that local Ukrainian activists had become convinced that their grain procurement quota could not be met, and that Ukrainians were being punished unjustly. Kaganovich detected a sense of "solidarity and rotten mutual guarantee," not only in the middle echelons but even in the top levels of the administration. Stalin was also irritated that, when Chubar and Petrovsky had pleaded to have Ukraine's quotas lowered, Kossior did not react. This exchange between Stalin and Kaganovich suggests that they were aware that the imposition of unreasonably high procurement targets was creating a dangerous situation in Ukraine, where peasant and national factors intermingled. The Polish dictator, Pilsudski, could become a threat only if he could find allies in the disgruntled Ukrainian political apparatus and a disaffected Ukrainian peasantry. Political purges could eliminate the first danger, and just as in 1921 and 1923, food could be used to transform revolting peasants into an obedient rural proletariat.

Despite the passport system, Ukrainian peasants left their villages and went to Belarus and Russia, where the food situation was much better than in Ukraine. On January 22, 1933, Molotov and Stalin signed a secret directive to stop this practice. Railways were forbidden to sell tickets to Ukrainian peasants, and the OGPU was ordered to be more vigilant. The directive referred to a mass movement to undermine the Soviet state by the agents of Pilsudski and other enemies. The ban on travel also applied to the Kuban *okrug* in the North Caucasus. A primary grain producing region, Kuban had also been ruthlessly dekulakized and exorbitantly taxed, and had fallen behind the procurement schedule. With 61 percent of its 1.5 million population Ukrainian, Kuban became a prime target of Skrypnyk's efforts to Ukrainianize the 3 million Ukrainians living in North Caucasus. Individuals promoting Ukrainization were called counterrevolutionary agents and directly blamed for the local sabotage of grain deliveries. Ukrainization in the North Caucasus was brought to an end.

The vast majority of famine victims during 1932 and 1933 were Ukrainians, primarily living in the Ukrainian SSR, but also in adjacent regions of Russia. The high number of Ukrainian deaths stands in sharp contrast to the low number of Russian deaths, both in absolute terms and in relation to their populations. The correlation between the ethnic and social identities of the group forming the vast majority of famine victims is inescapable. The peasantry had been the raison d'être of the Ukrainization policy and the mainstay of the Ukrainian national revival. Now both were linked by the authorities to peasant sabotage, and they were attacked. Ukrainian cultural elites were decimated, and by 1933 Ukrainization ground to a halt and was replaced by a new policy of Russification.

SEE ALSO Kulaks; Lenin, Vladimir; Stalin, Joseph; Union of Soviet Socialist Republics

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Roman Serbyn

Union of Soviet Socialist Republics

The Union of Soviet Socialist Republics (USSR) was the official name of communist Russia from December 1922 until its collapse in late 1991. This self-proclaimed Marxist state was created out of the ruins of the Tszarist Empire following the Bolshevik Revolution of October 1917 and the ensuing civil war in Russia. In the view of many scholars, the USSR under Vladimir Lenin (1870–1924) and Joseph Stalin (1878–1953) evolved into a totalitarian dictatorship directly responsible for the deaths of millions of Soviet citizens. Here the nature and scale of the crimes against humanity perpetrated by the Soviet state from the October Revolution to the death of Stalin will be examined, along with differing perspectives on Leninist and Stalinist terror.

Historical Context

Before World War I the Russian Empire had been an autocratic monarchy presided over by Tsar Nicholas II, who formally claimed the divine right to rule single-handedly. Russian political culture lacked liberal or democratic roots and institutions, and for many centuries the state had dominated society, often using repressive methods carried out by a prototype secret police force. As a consequence of this police state and emergent modernization during the course of the late nineteenth century, social tensions ran deep in tsarist Russia. For various political and socioeconomic reasons, these tensions between peasants and landlords, urban industrial workers and their bosses, and alienated middle-class intellectuals and the anachronistic tsarist state grew in the decades before 1914. Indeed, in 1905 and 1906 a full-scale, but ultimately abortive, revolution had occurred that threatened to overthrow monarchical rule. The nail in tsarism's coffin came during World War I. Russia's largely unsuccessful efforts to conduct the war against Germany and Austria added significantly to internal discontent. The result was the February Revolution of 1917, which forced Nicholas II to abdicate in favor of a centrist provisional government.

Despite meaningful democratic reforms the provisional government was unable to win mass support and it was, in turn, removed from power by the 1917 Bolshevik October Revolution. The Bolsheviks, led by Lenin, were a small urbanized Marxist party whose political mentality and revolutionary goals are critical for an understanding of the later communist crimes against humanity. It would not be an exaggeration to argue that the Bolsheviks were utopian revolutionaries (some might say megalomaniac fanatics) who were utterly convinced that capitalism, liberalism, and parliamentarianism were dead, that socialism, and ultimately communism, represented the inevitable wave of the future, and that human society and individuals were perfectible by state engineering. They were deeply contemptuous of dissenting views and, more than any other Russian political movement, were prepared to countenance class-based violence in a society that was itself highly prone to violent confrontation. In short, the Bolsheviks' revolutionary "ends"—the destruction

Lubyanka Prison and a portion of Revolution Square (Moscow) in the 1940s. Revolution Square (*Ploshchad Revolutsii*) gets its name from the bitter fighting that occurred at this spot in October 1917. The notorious Lubyanka Prison is still a government building, but no longer a prison. [HULTON-DEUTSCH COLLECTION/CORBIS]

of capitalist exploitation, the emancipation of the working class, the transformation of "bourgeois" values, and the creation of a socialist state and society—justified any means of achieving these ends, including class discrimination, illegal arrest and incarceration, even mass executions. The origins of Leninist and Stalinist terror can thus be traced to this intransigent ideological orthodoxy.

After the Bolsheviks seized power, their many opponents rallied to contest the Marxist vision of Russia's future. A truly bitter and tragic civil war ensued, one that pitted the so-called Reds, the Bolsheviks and their extreme left-wing socialist allies, against the Whites, mainly ex-tsarist forces backed, half-heartedly, by several foreign states, the United States and Great Britain among them. The barbarity of the Russian Civil War, the class and ethnic hatreds exacerbated by the conflict, the arbitrary nature of both Red and White terror, and the sheer scale of violence must surely have brutalized Russian political culture, coming as they did on top of four years of world war and revolutionary upheaval. The civil war certainly engendered a siege mentality among the Bolshevik victors, who from that point on tended to see enemies everywhere, at home and abroad; a veritable "capitalist encirclement." Red terror under Lenin has thus been rationalized as a desperate last-ditch method of survival foisted onto an isolated and inward-looking band of revolutionaries in conditions of profound social, economic, and military turmoil.

Taking a position less sympathetic to the Bolsheviks, one may argue that state-sponsored class repression was inherent in Leninist ideology, predated the civil war, and was therefore not a consequence of the objective circumstances of the time. Indeed, Lenin almost welcomed the prospect of civil war as a means of purifying Russian society, purging it of "class enemies"

and "traitors"—the landed gentry, capitalists, Orthodox priests, tsarist officials, bourgeois intellectuals, even kulaks (better-off peasants). The Bolsheviks' total belief in Marxism, which they regarded as scientific, assured them that they alone were right and everyone else was wrong, and their penchant for class discrimination transformed minor acts of nonconformity into "counterrevolutionary sabotage." Accordingly, the use of state terror became a conscious and deliberate instrument of governance under Lenin, arguably the principal method of maintaining and consolidating Bolshevik rule. Hence, it was Lenin who established the basis for later Stalinist atrocities.

Leninist Crimes

One of the first decrees of the Bolshevik regime in December 1917 was the creation of the Cheka, the original Soviet secret police force and forerunner of the much-vaunted KGB. The job of the Cheka was to root out all counterrevolutionary and antistate activities to bolster the fragile Leninist government. By June 1918 as the civil war got under way, reports of Cheka "excesses" began to reach Moscow. According to official statistics, the Cheka killed 12,733 prisoners between 1918 and 1920; unofficial calculations suggest a figure closer to 300,000. Lenin himself actively contributed to the wave of Red Terror. On August 11, 1918, shortly before an attempt was made to assassinate him, Lenin sent a now infamous telegram to local Bolsheviks, insisting that they "hang (hang without fail, so that the people see) no fewer than one hundred known kulaks, rich men, bloodsuckers. . . . Do it in such a way that for hundreds of versts [kilometres] around, the people will see, tremble, know, shout: they are strangling and will strangle . . . the bloodsucker kulaks" (Pipes, 1996, p. 50). One month earlier the tsar and his family had been murdered by local Bolsheviks in Ekaterinburg. The spiral of terror and counterterror was growing.

The arrest of large numbers of alleged counterrevolutionaries meant that they had to be detained somewhere. Decrees in September 1918 and April 1919 sanctioned the establishment of the first concentration and labor camps, the latter originally conceived as sites for rehabilitating petty criminals through physical work. The most notorious of these early Soviet camps was the prison on the Solovetskii Islands in the White Sea in the far north of Russia. The camp population there grew from 3,000 in 1923 to approximately 50,000 in 1930. Between 1931 and 1933 around 25,000 convicts perished building the White Sea Canal, one of Stalin's pet schemes involving forced labor. From these relatively humble origins emerged the vast system of Soviet labor camps, widely known as the Gulag Archipelago (*Gulag* being, in Russian, the acronym for Main Administration of Camps). These camps housed not only political prisoners, but also ordinary criminals. Generally, they lived in appalling conditions, often in the most remote and inhospitable locations of the USSR. Inmates were in essence slave labor, whose contribution to the Soviet economy, especially from the 1930s, should not be overlooked.

The communist state also launched attacks on organized religion in the USSR. In March 1922, for instance, Lenin ordered the confiscation "with the most savage and merciless energy" of valuables belonging to the Orthodox Church. According to Richard Pipes, the aim was twofold: to secure vital assets for the cash-strapped Soviet government and to smash the power of the Orthodox Church and its hold over the peasantry. Even at a time of relative liberalization under the New Economic Policy (1921–1929), Lenin advocated the execution of large numbers of "reactionary clergy . . . so that they will not dare even to think of any resistance for several decades" (Pipes, 1996, p. 153–54). Lenin, also in 1922, insisted on the death penalty for the arrested leaders of the Socialist Revolutionary Party, but he was overruled and finally relented, with the leaders instead given lengthy prison terms. Nevertheless, Lenin's implacable attitude toward political and ideological adversaries undoubtedly contributed to the formation of a one-party state in Soviet Russia, a major step on the road to which was the forcible dissolution of the Constitutent Assembly (the multiparty national parliament) as early as January 1918.

Lenin may have been the initiator of many of the repressive measures undertaken between 1918 and 1923, but all leading Bolsheviks, to a greater or lesser degree, shared his intolerance of opposition and fundamental belief in a state-sponsored transformation of human society. Lev Trotsky, Grigorii Zinoviev, Nikolai Bukharin, and Stalin all supported harsh policies against real and perceived opponents of the regime. However, serious disagreements emerged among the Bolshevik hierarchy, especially as Lenin's failing health from 1922 on led to an internal party power struggle. Lenin was acutely aware of the dangers of internal party disunity and attempted, rather ineffectually, to paper over the cracks in leadership. A year before his death in January 1924 he dictated a document that became known as "Lenin's Testament," in which he evaluated the strengths and weaknesses of six top Bolsheviks. The most notable comments, given subsequent developments, related to Stalin. In April 1922 Stalin had been appointed General Secretary of the Communist Party (the Bolshevik Party had been renamed the Communist Party in 1918) partly as a result of his close cooperation with Lenin, who valued the Georgian as a tough, practi-

cal activist who got things done. However, relations between the two men soured in 1922 and 1923, and in his testament Lenin warned that Stalin was "too crude" to serve as General Secretary. He advised the Party to find a way of removing Stalin from his post.

Portentously, Lenin's strictures were ignored. In the course of the ugly internecine power struggles that transformed the Party during the 1920s, Stalin was able to build up majority support in his position as General Secretary. His successive rivals, first Trotsky, then Zinoviev and Lev Kamenev, and finally Bukharin, were all out-voted and out-manuevered; by 1929 Stalin had emerged as the clear leader of the Communist Party. His reliance on behind-the-scenes machinations, outright slander, and administrative measures against his opponents concealed another of his characteristics: He was a workaholic who intervened in, and had practical solutions for, all the major and often secondary problems that confronted the Soviet state. What is more, he appeared to be a true Marxist dedicated to the construction of socialism in the USSR. Stalin was thus a very capable, not unintelligent, leader who commanded the respect of his followers. He was also, or at least became by the 1930s, a morbidly suspicious, capricious, and volatile man, who was possibly driven by an insatiable lust for power.

Stalinist Crimes

Stalin's regime was arguably the most repressive in modern history. As a result of his so-called revolution launched in 1928 and 1929—the forced collectivization and "dekulakization" of the countryside and the intensely rapid tempos of industrialization—millions of Soviet citizens, particularly peasants, endured dire living conditions and often direct persecution at the hands of Stalinist leaders whose overriding priority was to make the USSR economically and militarily secure. As many as eight million peasants, the majority Ukrainian, starved to death in the Great Famine of 1932 and 1933, which Robert Conquest has insisted was a man-made catastrophe deliberately engineered by Stalin in order to smash Ukrainian nationalism. Whether this controversial interpretation is correct or not, the scale of human suffering endured in the early 1930s beggars belief. There was hope that the relatively moderate policies of the years 1934 to 1936 would curtail the suffering, but by 1937 mass arrests and executions became the norm. Archival figures made public shortly before the demise of Soviet communism indicate that approximately 800,000 people were shot between 1921 and 1953, a staggering 681,692 of whom were executed during the Great Terror of 1937 and 1938. Official statistics suggest that around 3.5 million people were detained in labor camps and internal exile during the Terror, the number rising to 5.5 million at the time of Stalin's death in 1953. On both counts many scholars have speculated that the actual totals were significantly higher. In the absence of definitive data, however, it seems prudent to accept the archival figures as essentially accurate.

Horrendous as they are, the bald statistics cited above obscure the unimaginable depths of human misery, the families ripped apart, the countless orphaned children, the mental and physical torture of prisoners, the uprooting of entire peoples from their homelands, the trampling on human integrity and dignity. How can all this be explained? Was the Terror simply a product of the deranged mind of a power-hungry tyrant? Or was there a larger purpose behind the seemingly arbitrary mass arrests and executions? Scholars have debated these and related issues for many decades. Research conducted in the 1990s and early 2000s demonstrates that rather than being a unitary phenomenon possessing a single aim, the Great Terror was a multifaceted process composed of separate but related political, social, and "national" (ethnic) dimensions, the origins and goals of which were different, but which coalesced during the events of 1937 and 1938.

There is no doubt that Stalin was the prime perpetrator of the Terror, even if historians disagree on whether he had a long-term blueprint to eliminate his opponents. It is generally accepted, however, that the process of mass repression was set in motion by the December 1934 assassination of Sergei Kirov, the popular Leningrad Communist Party chief and, so it was rumored at the time, rival to Stalin. Although the jury is still out on Stalin's precise role in this assassination, it is clear that he used Kirov's murder to attack various opponents of the regime, including former Party leaders Zinoviev and Kamenev who were placed under arrest. Beginning in the summer of 1936, and more conclusively during the spring of 1937, Stalin extended these repressive measures, seeking, it appears, to eliminate any real or potential political opposition to his rule. In so doing, he broke an unwritten Leninist principle: never arrest Communist Party members and officials.

The list of actions to which Stalin provided direct input is long: The Soviet leader initiated and orchestrated the three great Show Trials of August 1936, January 1937, and March 1938, as a result of which his former Bolshevik rivals Zinoviev, Kamenev, and Bukharin, among others, were executed. In September 1936 Stalin appointed Nikolai Ezhov, a known hardline adversary of "anti-Party elements," as head of the NKVD (secret police). He oversaw the decimation of the Red Army command from May through June 1937. He signed nu-

merous death warrants and ratified numerous executions, thousands of the condemned being loyal Party and state officials; he even ordered the arrest of several members of his own extended family and close relatives of his colleagues, presumably in an attempt to test the latter's loyalty. Together with his propagandists, he set the overall tone and atmosphere of the Terror: the xenophobic suspicion of foreign spies and agents; the all-pervasive fear of wreckers, saboteurs, and double-dealers; and the endless exhortations to uphold Bolshevik vigilance in the face of these "enemies of the people." In short, as one expert has written, Stalin's "name is all over the horrible documents authorizing the terror" (Getty and Naumov, 1999, p. 451).

Aside from these politically motivated aspects, another fundamental characteristic of the Great Terror was the social component. Studies conducted in the late 1990s document the interrelationship between, on the one hand, social disorder and evolving secret police strategies to contain it in the early to mid-1930s and, on the other, the onset of mass arrests in the summer of 1937. According to one historian, the Great Terror represented "the culmination of a decade-long radicalization of policing practice against 'recidivist' criminals, social marginals, and all manner of lower-class individuals" (Hagenloh, 2000, p. 286). The threat of social instability posed by criminals, hooligans, other "socially harmful elements," and even armed gangs of bandits was taken seriously by secret police chiefs. By 1937 the lethal triumvirate of political opposition, social disorder, and ethnic subversion had raised fears among the increasingly xenophobic Stalinist elite of a broadly based anti-Soviet "fifth column" linked to foreign agents and spies. In response, on July 31, 1937, Stalin and his co-leaders sanctioned the notorious NKVD Order No. 00447, which specified by region the number of people to be sentenced either to death (approximately 73,000) or eight to ten years in the Gulag camps (approximately 186,500).

The decree remained in force until November 1938. The intent of this massive purge of socially harmful elements was to destroy what appeared to the Stalinists to be the social base for an armed overthrow of the Soviet government. Thus, one of the most interesting conclusions of new research is that, contrary to conventional wisdom about the elite status of the Great Terror's victims, in strictly numerical terms the bulk of those repressed were ordinary noncommunist citizens, kulaks, workers, and various "social marginals": recidivist criminals, the homeless, the unemployed, all those suspected of deviating from the social norms of the emerging Stalinist system.

It is also now recognized that beginning in the summer of 1937 the NKVD launched national sweeps of specific categories of foreigners and Soviet citizens of foreign extraction. Central and East Europeans were particularly targeted, but so were Koreans, Chinese, Afghans, and many other minorities who were deported from their homelands or arrested en masse. The so-called Polish Operation, ratified by the Politburo on August 7, 1937, resulted in the arrest of approximately 140,000 people, a staggering 111,000 of whom were executed. Similar campaigns were directed against Germans, Finns, Balts, and numerous others who were perceived to be real or potential spies and agents of foreign anti-Soviet intelligence agencies, although the percentages of those killed were generally lower than in the Polish Operation. A significant proportion of the victims were Jews and members of national communist parties. Whether the former were targeted specifically because of their ethnic origin is unclear. Stalin's anti-Semitic tendencies appear to have been far more pronounced in the postwar period. Such was the scale of the "national operations" that from about February 1938 on they became the prime function of secret police activity, more pervasive than the campaigns associated with Order 00447. Indeed, ethnically based repression did not end in the late 1930s. Although the number of arrests and executions decreased significantly after November 1938, during World War II entire populations (Volga Germans, Chechens, Ingushi, Kalmyks, Crimean Tartars, and others) were deported from their homelands to Central Asia and Siberia, accused of subversive tactics, espionage, and collaboration with the occupying Nazi forces.

Inevitably, these examples of Soviet ethnic cleansing have compelled some scholars to compare Stalinist and Nazi policies of extermination. The term *Stalinist genocide* employed by several specialists suggests a close relationship and moral equivalence between Nazi and Soviet terror. If one views the latter in an intentional versus functional framework, it appears that both elements of motivation were applicable: The intended victims were the traditional suspects (peasants, political opponents, and supporters of the tsarist regime) and the functional victims were those invented within the specific context of developments in the late 1930s, consisting of replaceable elites and alien nationals. Although it is important to recognize the enormity of Stalinist repression, it is critical, as many historians do, to emphasize the uniqueness of the Holocaust "the only example which history offers to date of a deliberate policy aimed at the total physical destruction of every member of an ethnic group. There was no equivalent of this under Stalinism" (Kershaw and Lewin, 1997, p. 8).

The key issue of motive remains. Why did Stalin order the mass arrest of loyal Party and state bureaucrats? Why was the terror extended to include socially harmful elements? Why did the vicious assault on ethnic minorities escalate in late 1937 and continue well into 1938? Traditional explanations for the strictly political aspects of the Great Terror stress Stalin's lust for power and his determination to liquidate all real and perceived rivals in a paranoiac drive for autocratic rule. Large numbers of "Old Bolsheviks," former opponents, and a host of unreliable double dealers, wreckers, and saboteurs were targeted in what became an arbitrary frenzy of bloodletting. By eliminating these undesirables and replacing them with devoted "yes men," Stalin's power base was mightily strengthened. However, beginning in the 1980s so-called revisionist historians challenged this Stalin-oriented approach, arguing that one man could not, and did not, decide everything. Moreover, to these historians a certain systemic rationale existed for the apparently irrational waves of repression, one linked to center-periphery conflicts, interelite rivalries, and the chaotic and dysfunctional elements of the highly bureaucratized regime.

Although Stalin's motives remain, and will continue to remain, obscure, it appears that the decision to launch the mass operations in the summer of 1937 was related to reverses in the European and Asian arenas. In particular, the lessons of the Spanish Civil War induced an atmosphere of panic in the Kremlin and incited the Stalinists to seek "enemies" at home and abroad. The Soviet leadership's fears of a fifth column among Party, state, and military elites, who in the event of war could rely on broad support from socially harmful elements and hostile national minorities in the USSR, seem to account for the dramatic rise in arrests and executions. To this extent the threat of war and a potential fifth column represent the crucial link between the three dimensions of the Great Terror: political, social, and national. Only in the context of the Stalinists' grave fears for the security and integrity of the Soviet state can the mass repressions of 1937 and 1938 be understood.

Although mass arrests and executions abated after November 1938, repression continued in the USSR throughout World War II. Portrayed in the Soviet media as a heroic war of patriotism, there were many grim sides to this life-and-death struggle between the two totalitarian giants. Internally, Stalin used the conflict to target and deport entire peoples accused of collaborating with the Nazis. The number of Gulag inmates may have decreased in these years as many were released to fight the Germans, but the living and working conditions of those who remained were nothing short of atrocious. Famine, epidemics, overcrowding, summary shootings, and inhuman exploitation for the war effort were commonplace. For instance, in 1942 the Gulag Administration registered 249,000 deaths (18 % of the camp population) and in 1943 it registered 167,000 deaths (17%). The "myth" of the Battle of Stalingrad and the euphoria of total victory in May 1945 have tended to obscure the horrendous suffering perpetrated by the regime on millions of Soviet citizens during World War II. It was not about to end.

One of the more reprehensible features of Stalin's rule after World War II was his increasing anti-Semitism. Indeed, at the time of his death in March 1953 it appears that he was planning another vast general purge of Soviet society based on the fictitious anti-Jewish Doctors' Plot that broke in January of the same year. Already in 1948 and 1949 hundreds of Jewish intellectuals had been arrested, at least one of whom, the world-renowned actor and theater director Solomon Mikhoels, was murdered. As a leading scholar has written: "Jews were systematically removed from all positions of authority in the arts and the media, in journalism and publishing, and in medicine and many other professions" (Werth, 1999, p. 245). The campaign reached a peak in the summer of 1952 with the secret trial of the members of the Jewish Anti-Fascist Committee, thirteen of whom were executed. There is some evidence that the aging and ill Stalin was at this time preparing to expose a wide-scale "Judeo-Zionist conspiracy," which was to conclude with the mass deportation of Soviet Jews to Birobidzhan, a barren region in Eastern Siberia. A major part of this final Stalinist plot was the arrest of several high-ranking Jewish doctors accused, among other things, of complicity in the deaths of two Soviet luminaries. Their trial, it seems, was set for mid-March 1953. Stalin's timely demise on March 5 put an end to their suffering and brought to a close the era of mass repression in the USSR. His successors, notably Nikita Khrushchev, renounced terror, released large numbers of Gulag prisoners, and attempted, not altogether successfully, to "de-Stalinize" Soviet politics and society.

The historical legacy of Stalin has often been framed in the following way: he was a cruel, but necessary, leader who after 1928 industrialized and modernized the USSR and thus established the economic, social, and military basis for victory over the Nazis in World War II. Given Soviet Russia's "backwardness," this could only have been accomplished rapidly by means of state coercion and pressure. Few, if any, contemporary scholars would subscribe to such an apologist interpretation of the Stalinist regime. There can be no justification—political, economic, military, and cer-

tainly not moral—for the crimes against humanity perpetrated from 1928 to 1953. However, this does not mean no connection exists between Stalin's revolution from above and the mass repressions. Indeed, a convincing consensus is emerging that stresses the interrelatedness of the two phenomena. The terror, it is argued, was inextricably linked to the massive campaigns of industrialization and the forced collectivization and dekulakization of Soviet agriculture from 1928 and 1929 on. The intense social flux and dislocation, the rising crime levels, the peasant resistance to collectivization, the urban tensions resulting from rapid industrialization, the limited success of the initiatives on the "nationality question," and the contradictory pressures on the bureaucracies and other elites, which engendered insubordination, deceit, and local and regional cliques and networks, all these outcomes of Stalin's revolution from above created conditions that were propitious for the hunt for "enemies". Add to this equation Stalin's considerable goals for personal power and his paranoias, and the built-in need for scapegoats to explain the dire state of Soviet material consumption, and the origins of mass repression become more explicable.

Conclusion

Leninist and Stalinist crimes against humanity are not easily elucidated. A multiplicity of factors—internal and external, ideological and practical, personal and systemic—must be carefully weighed. It is not enough to simply point the finger at two "evil," power-hungry men, highly relevant though they are to the entire process of Soviet mass repression. What motivated them? What were their fears? In what concrete political, economic, and military contexts did they make their decisions? What role did other actors play in fanning the flames of state violence? To what extent did elite attitudes reflect and magnify broader social mentalities, such as anti-Semitism and chauvinism? Here it is suggested that the roots of Soviet terror lay not only in the personal ambitions and whims of Lenin and Stalin, but also equally in the ideologically driven utopian mission of creating the perfect communist society purged of the politically and socially unfit in circumstances of international isolation and perceived foreign threats.

SEE ALSO Chechens; Cossacks; Gulag; Kalmyks; Katyn; Lenin, Vladimir; Memory; Stalin, Joseph; Statistical Analysis; Ukraine (Famine); Utopian Ideologies as Motives for Genocide

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Kevin McDermott

United Nations

The United Nations was created during and in the wake of World War II, which was a global cataclysm that brought death to millions of civilians. Most of those civilians were primary targets, and often not even enemy targets. The genocide of the Jews, Gypsies, Slavs and others by Nazi Germany, and the brutal repression and discrimination that preceded it, lent weight to the argument that peace and justice were inseparable, the other side of the coin from war and oppression. As stated in September 1944 by the Commission to Study the Orga-

nization of Peace, an influential United States nongovernmental organization: "it has become clear that a regime of violence and repression within any nation of the civilized world is a matter of concern for all the rest."

Human Rights in the Charter of the United Nations

On August 14, 1941, the Atlantic Charter was agreed to by U.S. president Franklin D. Roosevelt and U.K. prime minister Winston S. Churchill, along with forty-seven other nations. These charter signatories envisaged a world that would enjoy "freedom from want and fear." Some five months later, the Declaration of the United Nations of January 1, 1942, advocated complete victory over the enemies of the Allied powers, declaring that this was "essential to defend life, liberty, independence, and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands." This declaration was signed by twenty-six nations, which were later joined by twenty-one others.

The eloquent language of the documents to which these nations had pledged themselves doubtless played an important role in mobilizing the Allies' total commitment to victory over the Axis powers, but it was not a guarantee that the values espoused in the document would be seriously embraced in the postwar world. By the time of the second phase of the Dumbarton Oaks Conversations between the United States, the Soviet Union, Great Britain, and China (September 29 through October 7, 1944), divisions among these nations were already apparent. The Chinese delegation fought to insert a condemnation of racism into the draft UN Charter and to prevent human rights being given only the most minimal acknowledgment in the text. The United States, Great Britain, and the Soviet Union were opposed. The Dumbarton Oaks Conversations ultimately yielded proposals that included only one somewhat marginal provision on human rights. In the words of the proposals, the new organization would "facilitate solutions of international economic, social, and other humanitarian problems and promote respect for human rights and fundamental freedoms."

The politics of the Dumbarton Oaks negotiations made it unlikely that any more forceful statement could ever achieve acceptance. The Soviet Union under Stalin was no defender of human rights, Churchill wanted nothing that would threaten Great Britain's colonial empire, and the United States had to cater to its substantial constituencies favoring isolationism and its strict notion of state sovereignty. The United States was also concerned about the human rights implications of legal racial segregation that still held sway in its southern states. The shock and disappointment of less powerful allies, especially Latin American and British Commonwealth states (Canada, Australia and New Zealand), and of American nongovernmental organizations, led to a confrontation on these issues at the San Francisco Conference which ultimately adopted the United Nations Charter. The accumulating evidence of the scope and depravity of the crimes against humanity perpetrated by Nazi Germany lent weight to the cause of those states who wished greater attention be paid to human rights issues. In the words of Paul Gordon Lauren,

> as more and more details about the shocking extent of the Holocaust began to seep their way out from under the earth of unmarked mass graves in occupied territories, and from under the barbed wire enclosures of the extermination camps into the world, it became nearly impossible to ignore the connection between racial and religious discrimination, especially as revealed by the recent extremes of Nazi philosophy, on the one hand, and genocidal war on the other (Lauren, 1998, p. 183).

As a result of these currents, several references to human rights were inserted into the UN Charter's preamble, and six articles (Articles 1, 13, 55, 62, 68, and 76) were added. Of special note is Article 1, paragraph 3, which includes among the purposes of the United Nations: "To achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion." The establishment of a Commission on human rights was also explicitly envisaged, in Article 68. On the other hand, traditional notions of sovereignty were acknowledged in Article 2, paragraph 7: "Nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any State." Much of the subsequent history of the UN's involvement in the field of human rights has been devoted to resolving the tension between protecting the sovereignty and jurisdictional discretion of individual states and creating an international body that could play a credible role in preventing or punishing human-rights violations.

Studies of Human Rights Topics

The UN's member states put up no real resistance to allowing the UN to sponsor studies of human rights problems in general, as long as they did not involve passing judgment on the behavior of individual states. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on Promotion and Protection of Human

Under UN guard, Tutsis, carrying little more than food and a change of clothing, flee the Rwandan capital of Kigali. [TEUN VOETEN]

Rights), a group of individual experts elected by the Commission on Human Rights, has over decades produced many such studies on a variety of topics. These reports are frequently published under the imprimature of the United Nations. Two of the Sub-Commission's studies dealt with the subject of genocide, one by Nicodème Ruhashyankiko (1978), and one by Benjamin Whitaker (1983). Even in the case of these studies, political issues could cause problems. For example, the Ruhashyankiko study was published by the UN, but the Whitaker report was not, because it included as an example of genocide the Turkish massacre of Armenians in the second decade of the twentieth century. This massacre was denied by the Turkish government, which lobbied successfully to block the publication of Whitaker's work.

Human Rights Standard-Setting and Treaties

Another area of UN human-rights activity involved the setting of legal standards and definitions. This endeavor was generally not controversial. The first major text adopted outside of the bodies specifically concerned with human rights issues was the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN General Assembly December 9, 1948. This was an instrument that criminalized the type of human rights violation that the Nazi government had committed against millions of its citizens and conquered subjects. On the following day, December 10, 1948, the General Assembly adopted the Universal Declaration of Human Rights. Although the declaration had only the force of a recommendation, it quickly became the standard of the international human rights movement. It had been drafted by the UN's intergovernmental Commission on Human Rights, which had its foundation in UN Charter Article 68.

The Declaration became the first element of an International Bill of Human Rights that would eventually be completed by a series of binding treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of which were adopted on December 16, 1966, and came into force in 1976. Specialized treaties have also been adopted on racial discrimination, torture, discrimination against women, children's rights, and migrant workers' rights. In addition, numerous soft-law instruments (that is, documents containing normative standards that may reflect but do not of themselves constitute legally binding texts) have been adopted by the

United Nations Headquarters in New York City, framed by the flags of its 191 member nations. Founded in 1945, the United Nations is an international organization committed to maintaining peace and promoting economic development worldwide. [JOSEPH SOHM; CHROMOSOHM INC./CORBIS]

General Assembly, the Economic and Social Council (ECOSOC: an intergovernmental body, described in the Charter as a principal organ of the UN but reporting and effectively subordinate to the General Assembly), and other UN bodies that codify best practice in such fields as the treatment of prisoners. Many of these instruments have been invoked by UN treaty bodies and regional human rights courts, as guidance to the interpretation of rules of international human-rights law.

Monitoring Human Rights Norms by Treaty Bodies

The principal mode of resolving the tension between the UN Charter's human rights clauses and the domestic jurisdiction clause during the first two decades of the organization's existence was to favor domestic jurisdiction, or at least to give preference to a narrow view of what amounted to improper intervention. The UN's human rights bodies adopted a hands-off approach to allegations of human rights violations. These simply could not be discussed, much less become the subject of resolutions that involved making judgments about a state's human rights behavior.

Instead, the UN relied upon so-called treaty bodies, that is, special committees tasked with the responsibility of supervising the extent of states' compliance with the human rights treaties. By definition, states can waive their sovereign rights of immunity from scrutiny if they accepted a treaty obligation explicitly permitting scrutiny. Even then, however, the main form of supervision consists of a review of periodic reports submitted by the states themselves—a system of supervision whose intrusiveness was perceived to be minimal. Five of the treaties now have provisions whereby states may officially accept that the committee in question may consider complaints from individuals within their jurisdiction: the ICCPR, Race Convention, Torture Convention, Women's Convention, and Migrant Workers' Convention. Four of these also provide for the consideration of possible interstate disputes (ICCPR, Race Convention, Torture Convention, and Migrant Workers' Convention), although this faculty has yet to be employed. Two envisage the possibility of the committee studying a practice of violation (Torture Convention, automatically, under Article 20; and Women's Convention, on the basis of its Optional Protocol). The Torture, Women's, and Migrant Workers' Conventions envisage the compulsory adjudication of disputes between states that are party to the treaties. This procedure has not yet been used.

The review of periodic reports proved to be a more effective process than might have been expected. While the states' reports (often self-serving) were the only official basis for such reviews, committee members found that nongovernmental organizations would brief them informally, so that they were in a position to ask probing questions of the delegations. During the cold war, the opposition of the Soviet Union and its allies to any kind of outside judgment of their domestic practices meant that the committees would refrain from formulating conclusions resulting from the review. However, the early 1990s saw a relaxation of this inhibition, with the committees' adopting findings on the extent of state compliance and making recommendations on measures that could address the problems they found. These amounted to judgments, even though they were not formally binding.

The early inability of the committees to make country-specific observations led them to develop statements by way of what was called General Comments. General Comments serve as an authoritative aid to interpretating of the nature and scope of the obligations contained in the treaties, as the normative language is often couched in very general terms. The practice continued even after the country-specific comments began to be produced.

Another basis of guidance to the appropriate interpretation of treaties lies in the consideration of individual cases by the committees entrusted with that function. The most evolved jurisprudence is that of the Human Rights Committee under the ICCPR. Nevertheless, the committees' conclusions on individual cases are not legally binding on the state concerned. Unlike the European and inter-American regions, the broader, global community has not yet been willing to accept an international human rights court.

Monitoring Human Rights Norms by Special Procedures

The last three decades of the twentieth century saw a radical evolution in the attitude of the UN, especially of the Commission on Human Rights. The Commission, building on two resolutions of ECOSOC (Resolutions 1235 [XLII], 1967; and 1503 [XLVII], 1970), developed what came to be called its special procedures. These were designed to address member-states' unwillingness to deal with individual violations, but were primarily concerned with violations of extreme gravity, or on a massive scale, such as would be associated with crimes against humanity. In the words of ECOSOC Resolution 1503, what was to be studied or investigated were "situations appearing to reveal a consistent patterns of gross . . . violations of human rights."

The effect of ECOSOC Resolution 1235 was to pave the way for the Sub-Commission or the Commission to decide that a specific country situation could be discussed, made the subject of a resolution and even, if agreed by the Commission, put under investigation by an ad hoc group or a special rapporteur. To achieve this, the situation had to be introduced by a member of the Sub-Commission or the Commission, and a vote had to be taken to authorize the drafting of a resolution.

By Resolution 1503, information submitted by nongovernmental organizations or individuals was to be treated confidentially in a protracted procedure involving both the Sub-Commission and the Commission. The (expert) Sub-Commission tended to unearth situations for consideration by the Commission, whereas the (intergovernmental) Commission tended either to drop consideration of the situations or, at best, keep them under review. Only rarely did they become the object of sustained study. For historical reasons, the names of countries whose situations are kept under consideration are announced by the chair of the Commission, although such announcements were not originally contemplated by Resolution 1503. It is generally thought that some situations have been dealt with under Resolution 1503 when there would not have been the political will to deal with them in public session, and that the procedure, including the public announcement of reviewed situations, provided at least some pressure on the states whose practices were impugned.

Yet some situations are so appalling that even being taken up under Resolution 1503 would be an inadequate response. This was the case with Argentina in the latter half of the 1970s, where the alleged violations consisted, notoriously, of thousands of enforced disappearances of perceived political opponents of the military regime. There was insufficient political will in the UN to adopt a resolution that would permit a formal, public investigation of the situation. Frustrated with this inability to act, some member states began to a search for an alternative approach to the existing country-specific special procedures.

What emerged was the first of the thematic special procedures. In 1980, the Commission established the Working Group on Enforced or Involuntary Disappearances. The notion was that the group would consider the problem not just in one country, but in all countries. The basic mandate seemed anodyne enough—it was to study the general phenomenon of enforced disappearance. But the working group was also intended to take effective action. On this basis, the group, composed of five individual delegation members (one from each of the UN's five regions), began transmitting allegations of enforced disappearances to the member state in which the disappearances occurred. The allegations came overwhelmingly from nongovernmental sources. The working group would then report to the Commission, country by county, on the allegations received during the previous year, and on any responses received from the governments in question. Thus, although the group dealt with the general phenomenon of enforced disappearance, the procedure was also country-specific. Furthermore, individual cases were taken up with a view to seeking clarification of the fate of alleged victims. Indeed, when individuals were detained in circumstances suggesting that they might "disappear," the group developed the technique of making urgent appeals to the governments responsible for such detentions. These appeals were telexed (later faxed) messages addressed directly to the foreign minister of the state in question. Meanwhile, in countries where there appeared to be a problem of enforced disappearance involving more than just isolated cases, the group sought permission from the state to visit and explore the matter on the spot.

Slowly other themes or categories of human rights violation were accepted as deserving similar attention. In 1982, the Commission created the position of special rapporteur on summary or arbitrary executions, and in 1985 it established a special rapporteur on torture, a development long sought by nongovernmental organizations campaigning against torture, such as Amnesty International. By 2004 there were more than twenty special rapporteurs on a broad range of human rights issues, including such civil and political rights as religious intolerance, the independence of judges and lawyers, and human rights defenders. The creation in 1991 of the Working Group on Arbitrary Detention is of special interest. Given a mandate not just to study the phe-

nomenon, but to investigate cases of alleged arbitrary detention, the group not only comments on country-specific alleged violations, it also has a specific function of assessing whether or not, in its view, a particular detention should be characterized as arbitrary. On the other hand, more recently the Commission has created special rapporteurs to deal with issues in the area of economic and social rights, such as the right to education, to adequate housing and to health, which do not so readily lend themselves to taking action on individual cases.

Human Rights and International Criminal Law

The evolution of machinery to scrutinize states' performance in the field of human rights has far exceeded what might have been expected of international law and organizations by earlier generations, or even at the founding of the UN. Nevertheless, it has still failed to stop repressions that amount to crimes against humanity or even genocide. Nor is it likely that the establishment of an international human rights court could have provided a bulwark against outbreaks of mass atrocity.

In the 1990s, increasing awareness of the problem of impunity for the individual perpetrators of criminal human rights violations gave impetus to almost dormant early UN concern with international criminal law. After the General Assembly's early endorsement of the International Law Commission's draft of the Principles of Nuremberg, it took that Commission till the mid-1990s to complete decades of work on the Code of Crimes against the Peace and Security of Mankind (1996) and to draft a statute for an international criminal court (1994). Meanwhile, having failed to act effectively to prevent atrocities—including acts of genocide in the former Yugoslavia in the early 1990s, and the wholesale genocide in Rwanda in 1994—the Security Council established the first ad hoc courts (the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda) to bring the perpetrators and organizers of those atrocities to justice, regardless of rank or political status. This development can be seen as a political expedient as much as a means for the imposition of justice. Nonetheless, it gave new impetus to the movement toward establishing a standing international criminal court. The time was ripe to embark on the project, and the UN's 1998 diplomatic conference in Rome adopted the Rome Statute of the International Criminal Court.

SEE ALSO United Nations Commission on Human Rights; United Nations General Assembly; United Nations Security Council; United Nations Sub-Commission on Human Rights

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Nigel S. Rodley

United Nations Commission on Human Rights

The United Nations Commission on Human Rights is the first, and remains the only, body operating within the framework of an international organization that is devoted exclusively to promoting universal respect for human rights throughout the world.

The Commission was envisaged as part of the United Nations (UN) when it was founded after World War II. The first words of the UN Charter state:

> We the peoples of the United Nations are determined to save succeeding generations from the

As chair of the United Nations Commission on Human Rights (shown here in its 1947 composition in Geneva, Switzerland), Eleanor Roosevelt spearheaded the drive to draft the Universal Declaration of Human Rights. [BETTMANN/CORBIS]

> scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person. . . (Preamble, Sect. 1 and 2)

It was within this context, following the atrocities of a war that dramatically illustrated what would come to be known as crimes of genocide and crimes against humanity, that the UN Commission on Human Rights was created. It was a time when reaffirming the fundamental values of dignity and respect for human life was vital.

Origin and Creation

The Commission on Human Rights benefits from the fact that it is the only "technical commission" mandated by the UN Charter (Article 68), signed in San Francisco on June 26, 1945. It is thus a statutory body of the UN and had been planned for from the organization's inception. It was formally created on February 16, 1946, by the Economic and Social Council (ECOSOC), one of the principal bodies of the UN. Inclusion of the Commission in the UN Charter did not occur without considerable discussion at the San Francisco conference, which was responsible for drafting the Charter.

In fact, the four "sponsoring powers" at the San Francisco conference (China, the United States, the United Kingdom, and the former Soviet Union), whose role was essential in preparing the Charter, viewed the creation of a human rights commission with apprehension. They recognized the risk of its limiting or interfering with national sovereignty in a highly sensitive area, one where the state was traditionally tied to its prerogatives. It was only at the eleventh hour, just prior to the expiration of the allotted deadline (May 4, 1945), that the four countries filed joint amendments, one of which provided for a commission for "the development of human rights." The principal terms of its creation

may be found in Article 68 of the UN Charter. It is important to note, however, that the efforts of nongovernmental organizations (NGOs) alone ensured the commission's creation at the San Francisco conference. In particular, it was the representatives of private organizations recognized by the U.S. States delegation who, through their perseverance, succeeded in influencing member states to include in the UN's projected amendments a provision for a special commission on human rights, even though it was initially agreed that the Charter itself would not specifically mention a technical commission.

This episode illustrates the essential role that NGOs and civil society can play in advancing human rights and promoting their respect throughout the world, by their intervention on an international scale. Such activist groups have grown in strength and diversity throughout the decades of the Commission's existence, but the Commission itself has been inconsistent in its recognition of these participants, and often it has attempted to limit their involvement.

Status and Functions

Prior to the final establishment of the Commission (in 1946), debate turned to the subject of its composition, namely, whether it would be made up of independent experts or representatives of the member states. The latter proposal was eventually adopted, with the Commission officially composed of representatives from eighteen member states. Its composition has been expanded several times over the years and as of 2004 there are fifty-three members, designated by the ECOSOC on the basis of regional geographic representation. Some believe a Commission of independent experts known for their competence and impartiality would ensure a more objective approach to human rights and, in particular, the question of violations; others see the direct involvement of national governments in the Commission's work as increasing the effectiveness of its proposals and ensuring the application of its recommendations. The risk of the first approach, a truly independent Commission, is that it would become isolated, without any grasp of the realities and changes that primarily stem from existing governments. In the second approach, that adopted by the UN, states serve as both judges and parties (since they are the principal entities implicated in any violations), and the Commission risks finding its work impeded whenever the interests of a powerful state or group of states are involved.

In hindsight one may posit that in its actions to the present, the Commission might have been better able to fulfill its human rights mission if its activities had been based on the work of independent bodies and experts, such as its Sub-Commission on the Promotion and Protection of Human Rights and working groups, or its special rapporteurs (individuals responsible for examining specific violations or human rights situations within a country). This would not, of course, eliminate the specter of negative pressure from some states, especially when the Commission is being pressured from within for various reasons associated with an international situation. It remains the case, however, that arrangements could be made to limit such negative effects and prevent states that demonstrate little respect for human rights from sitting on the Commission or presiding during a session. To achieve this end, certain criteria have been proposed, such as a state's ratification of the major human rights conventions or a state's permanent agreement to allow special rapporteurs on its territory.

The Commission's mandate and responsibilities as originally defined in its statutes (ECOSOC Resolution 5(I) of February 16, 1946, and Resolution 9(II) of June 21, 1946, both of which are still applicable) are extensive and highly diverse. The Commission, which meets in an annual session, is responsible for presenting proposals, recommendations, and reports related to an international declaration of human rights and other declarations and conventions in this area; the protection of minorities; and the abolition of distinctions based on race, sex, language, or religion. It is also responsible for research activities and formulates recommendations when requested by ECOSOC. In addition, the Commission can look into "any other problem involving human rights" that is not otherwise stipulated, which opens up a nearly unlimited field of activity. In short, one may view the Commission as a specialized body within the UN responsible for implementing the fundamental terms of the UN Charter designed to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction" (Article 55), and basing its activities on commitments formally made by member states for that purpose (Article 56). In the decades following its somewhat tentative initial phase, the Commission made increasingly greater use of the mechanisms granted at its inception, primarily for investigating human rights violations around the world. The Commission has evolved through three successive phases: a standard-setting phase, a promotional phase, and a protectionist phase. Here the first and last of those phases will be addressed.

Standard-Setting Phase: Development of the Fundamental Instruments of Human Rights

Although the Charter clearly indicates that one of the principal objectives of the UN is to encourage respect for human rights, it does not define the substance of

those rights or the specific steps for ensuring their application. During the first years of its existence (1947–1954), the Commission overcame this void by devoting itself almost exclusively to drafting the instruments that would define those rights and ensure their international adoption: the Universal Declaration of Human Rights (adopted December 10, 1948), and the two international covenants, one on civil and political rights, the other on economic, social, and cultural rights (both were adopted in 1966).

The Universal Declaration is the "foundational" instrument; it establishes basic principles and defines rights by specifying their scope. Although the crime of genocide and crimes against humanity are not expressly mentioned in the text, the Declaration contains terms that can be directly related to such crimes. In its preamble the Declaration states that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind," and the Declaration itself is advanced as "a common standard of achievement for all peoples and all nations to the end that every individual and every organ of society shall strive to promote respect for these rights." As for the recognition of those principles and rights, the Declaration incorporates the following: the principle of equality in dignity and rights (Article 1); the prohibition of any discrimination, especially through race, color, sex, language, religion, political or any other opinion, national or social origin, property, birth, or any other status (Article 2); the right to life, liberty, and personal security (Article 3); and the prohibition of slavery and torture (Articles 4 and 5).

Corresponding clauses have been included in the International Covenant on Civil and Political Rights later drafted by the Commission, which identifies a specific mechanism for inspection and is legally binding on the states that have ratified it.

Coincident with the Universal Declaration, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide on December 9, 1948. This marked an important step in the definition and identification of genocide and the pursuit and punishment of its perpetrators. The Commission on Human Rights, preoccupied with the preparation of the Universal Declaration, did not participate significantly in drafting the Genocide Convention. This task was entrusted to a special committee—the Ad Hoc Committee on Genocide—created by ECOSOC.

The Commission did however contribute some twenty years later to the preparation of the draft Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. In 1965, in light of the requirement for legal action scheduled to begin at that time, as mandated by the laws of certain states, the Commission began studying the legal procedures that could be used to establish the nonapplicability of statutory limitations for such crimes. It proposed that a specific convention be formulated after the study ended; the General Assembly finally adopted such a convention in 1968. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity stipulates the crimes that are not subject to statutory limitations, identifies the individuals responsible for those crimes (in particular, any government officials), and indicates the commitments and steps states must make and follow in matters of extradition and statutory limitations. In the years subsequent to the Convention's adoption, the Commission regularly studied the "question of punishing war criminals and individuals guilty of crimes against humanity" and the necessity of international cooperation for such purposes. Concerning this last point, the Commission examined a set of draft principles adopted by the General Assembly in 1973 entitled Principles of International Co-operation in the Detection, Arrest, and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity.

The Commission's work on standard-setting continued beyond this initial period as it drafted other special instruments (declarations and conventions): primarily the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989). The Convention Against Torture, in particular, should be considered in light of acts that may be classified as crimes against humanity, for it contains a precise definition of the term *torture* and also institutes a specific control mechanism through its Committee Against Torture (composed of experts and empowered to examine documents or complaints related to violations of the Convention).

Protectionist Phase: Examination of Human Rights Violations

During the first two decades of its existence, the Commission did not follow up on the many complaints of human rights violations it had received since the UN's founding, claiming a lack of jurisdiction even though its mandate in no way prohibited investigation. Its primary focus was standard-setting, studies on specific rights, and promotional efforts with various states (e.g., technical cooperation, consulting services, a system of periodic reports).

Beginning in the late 1960s, under pressure from countries newly admitted to the UN following their independence, the Commission began to concretely address violations. It instituted procedures for examining documents and attempted to identify "situations of flagrant and systematic human rights violations" (on the basis of ECOSOC Resolution 1235 (XLII) of June 6, 1967, and Resolution 1503 (XLVIII) of May 27, 1970). Simultaneously, the Commission created special groups of experts responsible for investigating a region or country. The first, formed in 1967, was the ad hoc group of experts to investigate human rights in South Africa; it initially investigated torture and the improper treatment of prisoners arrested by the police in the Republic of South Africa. New ad hoc groups of experts were later created to investigate alleged human rights violations in other countries or territories, but since the 1980s the Commission has frequently assigned the study of a human rights situation in a specific country to a single expert known as a "special rapporteur."

In the same period the Commission also regularly appointed special rapporteurs with so called thematic mandates (in other words, mandates not restricted to a specific country), who became responsible for examining a specific type of violation that could be found throughout the world (such as extrajudicial, summary, or arbitrary execution; forced or involuntary disappearance; torture). In their publicly available reports submitted annually to the Commission, special rapporteurs identify, and establish the facts of, various cases and situations, which in certain circumstances involve crimes against humanity and/or genocide.

During the past few decades, based on reports and other sources of information at its disposal, the Commission has examined and identified situations that revealed the existence of such crimes. It has adopted resolutions condemning those acts, demanding that the responsible parties be judged and that all available steps be taken to eliminate such actions and prevent their reoccurrence in the future.

Situations That Constitute Crimes of Genocide and Crimes Against Humanity

During a single ten-year period, from 1990 through 2000, the Commission examined two large-scale occurrences of human rights violations involving the crime of genocide and crimes against humanity in the former Yugoslavia and in Rwanda. This led to protective actions in both situations. The extreme gravity of the events that transpired and the urgency of confronting them prompted the Commission to convene special sessions, the first held since its inception.

Former Yugoslavia

Serious human rights violations in Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia (Serbia and Montenegro) resulted in the first of the Commission's responses. In 1992 it held its first two special sessions to discuss these issues (August 13–14 and November 30–December 1), organized at the request of the required majority of its members. During the first session a special rapporteur was appointed and a new special session convened to examine the rapporteur's reports. On this basis, in its Resolution 1992/S-2/1 of December 1, 1992, the Commission categorically condemned the ethnic cleansing ongoing in Bosnia and Herzegovina, acknowledging that Serbian leaders in the territories under their control in Bosnia and Herzegovina, the Yugoslav army, and the political leaders of the Serb Republic bore primary responsibility for the practice. The Commission demanded that ethnic cleansing be discontinued immediately. The Resolution also forcefully restated the following: Anyone perpetrating or authorizing such crimes against humanity is individually responsible for those violations and the international community will spare no effort to bring them to justice.

Additionally, all states were invited to examine the extent to which the acts committed in Bosnia and Herzegovina and Croatia constituted genocide as defined by the Convention on the Prevention and Punishment of the Crime of Genocide. On this point, on December 18, 1992, the General Assembly itself declared that "the abhorrent policy of ethnic cleansing was a form of genocide" (General Assembly Resolution 47/121); the Commission would reaffirm the term *genocide* in its later resolutions.

During the years that followed the special rapporteur—whose mandate was regularly renewed—submitted new reports to the Commission, which, in response, adopted resolutions at each of its sessions, denouncing and condemning the substantiated crimes, and demanding that any violations be discontinued and those responsible be brought to justice. After 1993 the situation in Kosovo also deteriorated, especially in terms of ethnic cleansing, and this led to grave concerns on the Commission's part. Simultaneously, the systematic use of rape as a weapon of war and an instrument of ethnic cleansing, particularly in Bosnia and Herzegovina, was forcefully denounced and qualified as a "war crime" by the Commission. On May 25, 1993, the Security Council, in its Resolution 827, created the International Criminal Tribunal for the Former Yugoslavia (ICTY). The Commission requested that all the states cooperate and support this body.

In line with the general agreement for peace in Bosnia and Herzegovina (the Dayton Accord of November

21, 1995, signed in Paris on December 14), the Commission demanded an end to human rights violations in the Federal Republic of Yugoslavia (Serbia and Montenegro), in Bosnia and Herzegovina, and in Croatia. It also recommended that steps be taken to assist in the return of refugees and displaced persons, that the states involved provide information on the fate of those who had disappeared, and that an effort be made to promote democratic institutions. The special rapporteur, with an extended mandate, was asked to carry out these missions in the three states, especially in Kosovo. At each of its following sessions, the Commission reviewed the findings of the rapporteur and adopted resolutions concerning the human rights situation in those countries. On April 13, 1999, in the face of continued violations and the massacres carried out against the Kosovars after Serb authorities had revoked their autonomy, the Commission adopted a special resolution devoted exclusively to the human rights situation in Kosovo (Resolution 1999/2). This resolution strongly condemned the widespread and systematic practice of ethnic cleansing, demanded the immediate discontinuation of all repressive actions that might worsen the situation, and asked the international community and the ICTY "to bring to justice the perpetrators of international war crimes and crimes against humanity, in particular those responsible for acts of ethnic cleansing and identity elimination in Kosovo."

Following the retreat of Serb forces from Kosovo on June 10, 1999, new developments in the region (primarily the establishment of the UN Interim Administration Mission and the International Security Force in Kosovo) led to the Commission's modifying its approach. However, it continued to regularly examine, at each of its sessions, the human rights situation in the countries in question on the basis of reports prepared by the special rapporteur and by the "special representative" of the Commission who was appointed in 2001.

Rwanda

During the 1990s the Commission also examined the situation in Rwanda, and its investigation revealed that acts of genocide had been committed there, with serious and extensive human rights violations occurring after April 1994. This led to the Commission's convening a third special session on May 24 and 25. In its Resolution (S-3/1), the Commission "believing that genocidal acts may have occurred in Rwanda," condemned all violations of international humanitarian law and human rights committed in the country and asked all parties to put an end to the situation at once. It further affirmed that any individual who commits or authorizes violations of human rights or international humanitarian law is personally responsible and must account for his or her actions in a court of law. To further its inquiry, the Commission appointed a special rapporteur to investigate the human rights situation in Rwanda by traveling there. It also asked that given the urgency of the situation, all existing mechanisms available to the Commission be utilized: primarily the special rapporteur on extrajudicial, summary, or arbitrary executions; the special rapporteur on torture; the Secretary General's special representative on internally displaced persons; the working group on forced or involuntary disappearances; and the working group on arbitrary detention; as well as the monitoring organizations instituted by international human rights conventions. In particular, the special rapporteur becames responsible for gathering information on "acts which may constitute breaches of international humanitarian law and crimes against humanity, including acts of genocide in Rwanda."

In his report dated June 28, 1994, the special rapporteur issued the following findings: "The charges are threefold: genocide through the massacre of the Tutsi, political assassinations of a number of Hutu and various violations of human rights." On the basis of information appearing in this report and another prepared by an expert commission created on July 1, 1994, by the Security Council, the Human Rights Commission, during its next regular session held in the spring of 1995, strongly condemned the acts of genocide, the violations of international humanitarian law, and all human rights violations committed during the conflict in Rwanda following the tragic events of April 6, 1994 (attacks on the aircraft which cost the lives of the president of Rwanda and the president of Burundi). After reaffirming the personal responsibility of all individuals who commit such crimes and other serious violations, and the need to bring them to justice, the Commission asked that all states cooperate fully with the International Criminal Tribunal for Rwanda (ICTR), which the Security Council created through Resolution 955 on November 8, 1994.

During the sessions that followed, the Commission continued to examine the human rights situation in Rwanda, paying particular attention to the information supplied by the special rapporteur, whose mandate was regularly renewed. In its successive resolutions, the commission repeatedly condemned the crime of genocide, crimes against humanity, and all other human rights violations in Rwanda, insisting on the individual responsibility and prosecution of all their perpetrators, and the full cooperation of all member states with the ICTR.

The Commission has also begun to address the situation of survivors of genocide and massacres, in par-

ticular the large number of traumatized children and female victims of rape and sexual abuse. In this context it has emphasized the importance of human rights observers and the Human Rights Field Operation in Rwanda, initiated by the UN High Commissioner on Human Rights in cooperation with the Rwandan government. The field operation is responsible for investigating violations of human rights and humanitarian law, including acts of genocide and crimes against humanity, and monitoring the evolving human rights situation by preventing the occurrence of new violations. In 1997 the special rapporteur was succeeded by a "special representative," authorized by the Commission to recommend ways to improve the human rights situation and provide technical assistance. The special representative's mandate ended in 2001, concluding the Commission's specific examination of the human rights situation in Rwanda.

Commission Response

In the face of two serious situations involving massive and systematic violations of human rights, in the former Yugoslavia and Rwanda, the Commission responded decisively and quickly: convening for the first time in special session and utilizing special rapporteurs who were able to investigate violations already committed or in progress, and whose mandate lasted for several years. The Commission also made use of monitoring committees to track the application of human rights conventions and the existing "resources" available to special rapporteurs and working groups responsible for examining such issues as extrajudicial or summary executions, torture, arbitrary detention, and involuntary disappearances. The Commission's activities and decisions have also been coordinated with those of other competent UN agencies, especially the Security Council and the two international ad hoc tribunals that were created to bring those responsible for the acts in question to trial.

In this context the Commission has contributed to fact-finding and been particularly helpful inidentifying the acts that constitute crimes of genocide or crimes against humanity. Nonetheless, it is unfortunate that the Commission was unable to intervene earlier to prevent such situations or, at least, to limit the violations, whether in Rwanda or the former Yugoslavia. However, "early warning" procedures are now in effect that will allow the Commission to remain better informed about potentially serious human rights violations, although its ability to respond in concrete ways is still too limited. The prevention of violations remains a critical issue; it can be strengthened by the presence of human rights observers in the field before a situation deteriorates significantly and becomes totally uncontrollable.

Struggle against Impunity

Starting in the 1990s, the Commission began to regularly examine the issue of impunity, which, while intended to ensure that those guilty of violations do not escape justice, is also part of a system of prevention and dissuasion. In 1993 it formed a subcommission to study the impunity of human rights violators. Previously, several special rapporteurs and working groups of the Commission had raised the question within the context of their respective mandates (e.g., extrajudicial execution, torture, involuntary disappearance). Determining that the practice was increasingly widespread and that it encouraged violations and served as a fundamental obstacle to the respect of human rights, the Commission, through various resolutions, insisted the phenomenon be countered. It asked member states to take the steps necessary to prevent impunity while supplying possibly relevant information on it. For the Commission, denouncing the violations, holding perpetrators individually responsible for their acts, and obtaining justice for the victims are essential to promoting human rights and preventing future violations. Similarly, releasing information about the suffering of the victims and establishing the truth about the perpetrators of human rights violations are vital for the rehabilitation of victims and any subsequent reconciliation.

As part of its study, the subcommission drafted a document entitled, "Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity" (divided into three sections: the right to know, the right to justice, and the right to reparation). It was sent to the Commission in 1998 and then distributed to various states. While emphasizing the importance of the ICTY and ICTR, the Commission also strongly insisted on the need to establish a permanent criminal court as an important component of the struggle against impunity. When the Rome Statute of the International Criminal Court (ICC) was adopted on July 17, 1998, the Commission encouraged member states to join and collaborate. Similarly, in its resolutions, it has regularly stressed the importance of the Convention on the Preparation and Punishment of the Crime of Genocide by asking those states that have not yet ratified it to do so.

In its resolutions the Commission has also incorporated the mechanisms established by certain states in which serious violations have occurred, primarily investigative commissions and truth and reconciliation commissions, and it has additionally encouraged other states in a similar situation to institute their own mechanisms for redress. In its 2003 session the Commission asked that an independent study be prepared and recommendations provided on the most effective practices to help states combat all aspects of impunity.

The role of the United Nations Commission on Human Rights in preventing genocide and crimes against humanity falls within the scope of its overall activities and is one of the many functions it has developed since its creation: the drafting of norms and principles, the use of special studies and technical assistance to promote human rights, the use of special procedures and field missions to help provide protection. The complementary nature of, and interaction among, these different approaches and methods highlight the specific contributions of the Commission and its huge potential. It is this potential that should be further explored to encourage prevention and, in particular, those activities that will discourage the most serious human rights violations, namely genocide and crimes against humanity.

SEE ALSO Impunity; Roosevelt, Eleanor; Rwanda; United Nations; United Nations General Assembly; United Nations Security Council; United Nations Sub-Commission on Human Rights; Yugoslavia

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United Nations General Assembly

To achieve the declared purposes of the United Nations (UN), the UN Charter of 1945 provided for the establishment of a number of organs, including the General Assembly and Security Council. The Assembly is empowered to discuss any question or matters within the scope of the Charter. For this reason it can be described as the world's most important forum for political discussion. Also, owing to its various functions under the Charter, it holds a prominent position among the organs of the UN. Committees and other bodies established by the Assembly to study and report on specific issues carry out much of its work.

The Assembly is the only principal organ of the UN in which all member states are represented; it was conceived to closely resemble, in both function and structure, a representative legislative assembly. President Franklin D. Roosevelt often referred to the Security Council as the body with the power, while the Assembly was the place for small countries to "let off steam."

Composition

The Assembly's composition and role under the Charter give it a legitimacy that few other international organs possess. It is made up of representatives of the member states of the UN. These individuals act on the instructions of their governments. In this way the Assembly is a conference of states, not a world parliament of representatives for all peoples of the world. Nearly every state in the world is a member of the UN and represented in the Assembly.

An issue that arises from time to time is that of representation at the Assembly. Each member state has one vote in the Assembly. However, only one delegation is entitled to be admitted from each member state. This may seem straightforward at first, but the Assembly sometimes must deal with rival claimants from the same state. Such a scenario arises as a result of armed conflicts and civil wars around the globe. The Assembly has the right and responsibility to decide between rival claimants, but in so doing, it can be described as determining which faction is the rightful government of a particular state. A number of important controversies developed over representation, most notably those involving China between 1949 and 1971, the Congo in 1960, Yemen in 1962, and Kampuchea (Cambodia) from 1970 to 1991.

Several political and legal issues surface in deciding between rival claimants, but it is difficult to discern any definite criteria for recognition apart from a general leaning toward the principle of effectiveness. This

means that a government will be regarded as the legitimate representative of a state as long as it has not been replaced by a rival claimant independent of the support of a foreign power. This can be seen in the Assembly's decision in 1971 to recognize the government in Beijing, and not that in Taiwan, as the legitimate representative of China.

More significant was the policy regarding the Pol Pot regime in Kampuchea (Cambodia) after it lost power to the Heng Samrin government in 1979. Many states believed that the new government owed its position to the support of foreign powers, in particular Vietnam. The regime thus lacked legitimacy in the eyes of the international community, despite the fact that it had replaced one of the most despotic governments of the twentieth century. The Assembly continued to recognize the representatives of Pol Pot, in spite of the appalling human rights record of that government. The UN decision was very controversial, especially because the scale and extent of the killings, and persecution of Cambodians by the regime, were well known at the time. Many historians referred to these events as genocide. However, owing to the fact that the perpetrators and victims belonged to the same national group, they were not accepted as constituting genocide according to the narrow definition of the crime under international law. The issue posed the serious question of whether a regime that perpetrated such crimes against its own people should remain its legitimate state representative in the Assembly. There are no easy answers.

The UN is dedicated primarily to the maintenance of international peace and security by protecting the territorial integrity, political independence, and national sovereignty of its members. But the overwhelming majority of today's conflicts are internal, not interstate. Moreover, the proportion of civilians killed in such conflicts has dramatically increased from about one in ten at the start of the twentieth century to around nine out of ten at its close. This has forced the Assembly and other organs to seek to reconcile the foundational principle of member states' sovereignty and the mandate to maintain international peace and security with the equally compelling mission to promote human rights and the general welfare of people within those states.

The Secretary-General has addressed the dilemma within the conceptual framework of two notions of sovereignty: one vested in the state, the second in peoples and individuals. This is reflected in the 2001 *Report of the International Commission on Intervention and State Sovereignty*, which advances the argument that state sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state. However, when a population begins to suffer serious harm, as a result of internal war, insurgency, repression, or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of nonintervention yields to the international responsibility to protect.

Functions and Powers of the General Assembly

Under the UN Charter, the functions and powers of the Assembly are wide-ranging but ill-defined. This stands in direct contrast to the unambiguous primacy given to the Security Council in relation to the maintenance of international peace and security. It is important to bear in mind that the UN by its very nature does not infringe on the independence and sovereign powers of member states. Article 2(7) of the Charter expressly prohibits interference in matters that essentially fall within the domestic jurisdiction of states. The nonintervention clause is a fundamental principle of the organization. In practice, deciding whether a matter is within the domestic jurisdiction of a state or not is more a political than legal question. Furthermore, human rights and related issues may be deemed matters of concern to the international community if they pose a threat to international peace and security.

The Assembly's powers are described in Chapter IV of the Charter. Although Articles 10 and 14 grant generous powers to the Assembly, Articles 11 and 12 appear to restrict these. Decisions on important questions (peace and security, new members, budgetary issues) require a two-thirds majority. A simple majority may reach decisions on other issues. The powers of the Assembly may be summarized as follows:

- To make recommendations on cooperation in the maintenance of international peace and security
- To discuss any question relating to international peace and security, and to make recommendations, except when a dispute or situation is under discussion by the Security Council
- To discuss and, with the same exception as above, make recommendations on any question within the scope of the Charter or affecting the powers and functions of any organ of the UN
- To initiate studies and make recommendations to promote international political cooperation; the development and codification of international law; the recognition of human rights and fundamental freedoms for all; and international collaboration in economic, social, cultural, educational, and health fields
- To make recommendations for the peaceful settlement of any situation, regardless of origin, that might impair friendly relations among nations

- To consider reports from the Security Council and other UN organs
- To approve the UN budget and divide contributions among members
- To elect the nonpermanent members of the Security Council, the members of the Economic and Social Council, and those members of the Trusteeship Council that are elected
- To elect, jointly with the Security Council, the Judges of the International Court of Justice (ICJ)
- To appoint on the recommendation of the Security Council, the Secretary-General

Procedures and Voting

According to Article 18 of the Charter, each member of the Assembly shall have one vote, allowing equal participation in decisions. This is intended to reflect the sovereign equality of member states.

The Assembly is required to meet in regular sessions, and these usually begin each year in September. At the start of each regular session, the Assembly elects a new president, twenty-one vice-presidents, and the chairpersons of the Assembly's six main committees. To ensure equitable geographical representation, the presidency of the Assembly rotates each year among five groups of states: African, Asian, Eastern European, Latin American and Caribbean, and Western European and other states. In addition to its regular sessions, the Assembly may meet in special sessions at the request of the Security Council, a majority of member states, or one member if the majority of members concurs. At the beginning of each regular session, the Assembly holds a general debate, with heads of state and government often addressing the body, and member states express their views on issues of international concern.

Most questions are discussed in the Assembly's six main committees, where voting occurs by simple majority:

1. First Committee: Disarmament and International Security Committee
2. Second Committee: Economic and Financial Committee
3. Third Committee: Social, Humanitarian and Cultural Committee
4. Fourth Committee: Special Political and Decolonisation Committee
5. Fifth Committee: Administrative and Budgetary Committee
6. Sixth Committee: Legal Committee

The majority of the Assembly's decisions are made through the affirmative vote of two-thirds or more of its members. Proposals representing a decision of the Assembly have frequently been adopted without a formal vote taken in plenary meetings. Resolutions may be adopted by acclamation, without objection or without a vote, or the vote may be recorded or taken by roll call. This consensus approach has played a significant role in the practice of the Assembly. Although the decisions of the Assembly are not legally binding on governments, they carry significant moral and persuasive authority. No proposals have been made to change the voting system at the Assembly. However, the large number of smaller states admitted as members does raise legitimate questions given the disparity in size, population, and other characteristics of member states.

Expansion of Powers through Practice

Article 10 of the Charter is its most significant; it defines the Assembly's powers of discussion and recommendation in their broadest form:

> The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12 may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

It is evident from this Article, and the practice of the Assembly, that the range of questions or matters which the Assembly is authorized to discuss is as wide as the scope of the Charter itself. Since adoption, its broad terms have been the principal basis for an expansion of its role beyond that envisaged by the Charter's drafters. When this Article was being drafted, it provoked a serious crisis that was resolved only after high-level consultation between the former Soviet Union and the United States. The original proposal put forward would have given the Assembly no real power in the political field. Although most of the differences of opinion concerned the issue of the maintenance of international peace and security in relation to those of the Security Council, the matter of the Assembly's freedom of discussion was also crucial.

The general scope of this Article and the breadth of powers it confers have been referred to many times in plenary and committee meetings by representatives who wished to stress the overall responsibility of the Assembly as a world forum for considering international problems. However, the vagueness and sweeping extent of Article 10 also reflect the Assembly's lack of power to make a binding decision. Although such decisions or recommendations may carry significant weight and authority, it is because they are not binding that they too often are imprecise and general in nature.

Articles 11 and 12 circumscribe the role of the Assembly. However, it is clear from these and other articles that while the Security Council has primary responsibility for the maintenance of international peace and security, it does not have exclusive competence, especially as far as the Assembly is concerned. The smaller and middle power states were opposed to any restriction on the jurisdiction of the Assembly, whereas the major powers stressed the need to avoid disputes between the Assembly and Security Council on vital matters. Nevertheless, the extent of the limitation imposed on the Assembly should not be exaggerated. It applies only to the Assembly's recommendatory, not deliberative, powers. The right of the Assembly to discuss, consider, and debate any issues, including those relating to the maintenance of international peace, remains. The reason for such a rule arises from the different role and functions of the Assembly. An international crisis does not automatically guarantee an agreed upon response, and the differences in the composition of the Security Council and Assembly could lead to conflicting responses from both.

A major step in the development of the Assembly's role was the adoption of the Uniting for Peace resolution on November 3, 1950 (passed in connection with the crisis in Korea). Under this resolution the Assembly may take action if the Security Council, because of a lack of unanimity among its permanent members, fails to act in a case where there appears to be a threat to peace, breach of peace, or act of aggression. The Assembly is empowered to consider the matter immediately and make recommendations to members for collective measures. This includes, in the case of a breach of peace or act of aggression, the use of armed force when necessary to maintain or restore international peace and security.

Acting under Uniting for Peace Resolution 377(V) of November 5, 1950, the Assembly established the United Nations Emergency Force to secure and supervise the cessation of hostilities between Egypt and Israel. The resolution has been utilized additional times, most notably in 1956, after Egypt nationalized the Suez Canal and, in response, Britain, France, and Israel attacked Egypt. Both Britain and France vetoed ceasefire resolutions in the Security Council. The United States appealed to the General Assembly, calling for a ceasefire and withdrawal of forces. An emergency session was called under the Uniting for Peace resolution. In this case the Assembly's intervention did facilitate the resolution of the crisis. However, the willingness of the states concerned to comply with the Assembly's demands was due to a complex set of circumstances surrounding the military intervention.

Uniting for Peace was next used by the United States to pressure the Soviet Union into ceasing its intervention in Hungary in 1956. Again, an emergency session of the General Assembly was held and the Soviet Union was ordered to end its intervention. No visible evidence exists that the action influenced Soviet policy to any significant extent at the time. However, two years later the procedure was used to facilitate the resolution of another crisis, that existing in Lebanon.

The cold war and activities of the Asian-African group of states, in particular the support given to various independence movements, led to a new role, not earlier envisaged, for the Assembly. The repeated use of the veto on the Security Council meant that the Assembly was being called on to perform functions originally regarded as the special province of the Security Council. Thus in 1950, when it became apparent that the Security Council could no longer effectively address the mounting hostilities in Korea, the Assembly, on the initiative of the United States, assumed residual responsibility for taking measures necessary to maintain international peace in case of a threat or breach of peace. Often during the cold war all sides used the Assembly as a forum to pursue a war of words. The smaller and middle powers did not oppose the incremental growth in the influence of the Assembly; they now possessed equal say. In this way, political developments combined with a liberal interpretation of the provisions of the Charter to permit the Assembly to assume significant responsibilities for the maintenance of international peace and security.

It is important to note that the Assembly does not possess any formal mandatory powers along the lines of the Security Council. It can only make recommendations on matters of international peace and security. However, the resolutions it adopts may have a binding effect if they reflect established principles of international law. There is a clear difference between declaring that an existing law calls for a certain response and creating new law.

Convention on the Prevention and Punishment of the Crime of Genocide

As the International Military Tribunal (IMT) at Nuremberg (established to try Nazi war criminals in the aftermath of World War II) drew to a close, the first session of the Assembly was getting underway. The judgment handed down at the Nuremberg Tribunal was controversial in several respects. The limited scope given to "crimes against humanity" at the time was one of the main reasons why it was considered necessary to draft a convention that specifically addressed the crime of genocide.

A crime against humanity referred to a rather wide range of atrocities, but it also had a narrow aspect, in that the prevailing view was that crimes against humanity could only be committed in association with an international armed conflict or war. The Allies had insisted at Nuremberg that crimes against humanity could only be committed if they were associated with one of the other crimes within the IMT's jurisdiction, that is, war crimes and crimes against peace. In effect, they imposed a connection or "nexus," as it became known, between crimes against humanity and international armed conflict. The Assembly wanted to bridge the gap which many perceived to exist in international law as a result by recognizing that one atrocity, namely genocide, would constitute an international crime even if it were committed in time of peace. The price to pay for this, according to William Schabas, was an exceedingly narrow definition of the mental and material elements of the crime. The distinction between genocide and crimes against humanity is less significant today, because the recognized definition of crimes against humanity has evolved and now unquestionably refers to atrocities committed against civilians in both peacetime and wartime.

After the IMT handed down its judgment between September 30, and October 1, 1946, Cuba, India, and Panama asked that the subject of genocide be put on the agenda of the General Assembly's first session. These states were concerned that international law did not seem to govern atrocities committed in peacetime (as opposed to those perpetrated during a time of armed conflict or war). The draft resolution submitted referred to the fact that the punishment of the very serious crime of genocide when committed in time of peace lies within the exclusive territorial jurisdiction of individual states concerned, while crimes of relatively lesser importance are declared as international crimes and have been made matters of international concern. In requesting a report on the possibilities of declaring genocide an international crime and ensuring international cooperation for its prevention and punishment, the Assembly acknowledged that it was not a legislative body and therefore could not make law as such. Nonetheless, any measure it took was vested with incontestable authority.

The final version of Resolution 96(I), adopted by the Assembly on December 11, 1946, called for the preparation of a draft convention. It also affirmed that genocide was a crime under international law. Even though Resolution 96(I) was adopted unanimously and without debate, it is not legally binding. However, the ICJ has acknowledged that such resolutions may have normative value. They can provide evidence of the existence of a customary rule, and the emergence of a legally binding provision.

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the Assembly on December 9, 1948, and entered into force two years later on January 11, 1951, after ratification by twenty member states. During the drafting process, significant disagreement arose among states regarding the nature and extent of the crime of genocide. Article I creates an obligation on states to prevent and punish genocide. This was added by the Legal Committee based on proposals from Belgium and Iran. However, there was nothing in the related debates that clarified what the scope and implications of the obligation were. This stood in marked contrast to the provisions in the Convention dealing with punishment. The Legal Committee completed its review of the draft convention on December 2, 1948. The draft resolution and convention were adopted by thirty votes to none, with eight abstentions. The interventions by states provide some insights into their concerns at the Committee stage. The United Kingdom abstained, as it believed governments, not individuals, should be the focus of the Convention. Poland and Yugoslavia were critical of the Convention's failure to prohibit hate propaganda and measures aimed against a nation's art and culture. Czechoslovakia felt the Convention as adopted would do little to prevent genocide.

Article II of the Convention defines genocide as:

> any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: killing members of the group; causing serious mental or bodily harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measure intended to prevent births within the group; forcibly transferring children of the group to another group.

Under the Convention, the crime of genocide has both a physical element (certain actions, such as killing members of a racial group) and a mental element (the acts must be committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group "as such"). Although earlier drafts had included "political groups," this wording was dropped during the final drafting stages. Also excluded was the concept of cultural genocide—destroying a group by forcible assimilation into a dominant culture. The drafting history makes clear that the Convention was intended to cover the physical destruction of a people and that some governments feared they could become vulnerable to a charge of genocide for certain actions.

When the Convention was adopted, two associated resolutions were passed. The first raised the issue of trying individuals charged with genocide before a competent international tribunal. It invited the International Law Commission to study the desirability of establishing an international criminal court. A second resolution concerned the application of the Convention to dependent territories.

The International Law Commission, a subsidiary body of the Assembly, is a body of experts responsible for the codification and progressive development of international law. The Commission has examined the issue of genocide on a number of occasions during the course of its work on draft codes and statutes. In 1954 it concluded that the definition of genocide set forth in the Convention should be modified, but later decided that the original text ought to be retained as this definition was widely accepted by the international community. Hence, the original definition of genocide in the Convention is essentially repeated in Article 6 of the Rome Statute of the International Criminal Court (ICC), which was agreed to in 1998, and in the relevant statues of the ad hoc International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR).

Sabra and Shatila Refugee Camps in Lebanon

The Assembly formally addressed the issue of genocide for the first time in 1982, when it debated the massacre of Palestinians at the Sabra and Shatila refugee camps in Beirut, Lebanon. Although the term had been mentioned in previous debates, on this occasion the Assembly qualified the massacre as genocide, while the Security Council, following the lead of the Secretary-General's report, condemned the "criminal massacre of Palestinian civilians in Beirut." Cuba proposed a resolution declaring the massacres to be an "act of genocide."

In the ensuing debate little attention was paid to the actual scope and meaning of genocide under international law. The Singapore delegation accused the Assembly of using "loose and casual language when referring to issues with a precise legal definition." Such sentiments were echoed by a number of other delegations. Finland probably best reflected the view of those states not supporting the use of the term *genocide,* in declaring that its use had prevented the Assembly from giving unanimous expression "to the universal outrage and condemnation" with regard to the massacre. In spite of the heated debate, the Assembly adopted Resolution 37/123(D) on December 16, 1982, paragraph 2 of which resolved that "the massacre was an act of genocide."

It is by no means clear under the 1948 Convention on Genocide that the Assembly, in fact, had the authority to make such a determination. However, it is inevitable that a body of this nature will be dominated by political rather than legal arguments, especially when considering the tragic fate of Palestinian civilians left behind in Beirut after the agreed upon departure of Palestinian fighters.

The Former Yugoslavia and Rwanda

In December 1992 the General Assembly adopted Resolution A/RES/47/147 on the general situation in the former Yugoslavia and cited the Genocide Convention in its preamble. It also endorsed a resolution of the Commission on Human Rights adopted at that body's special session in August 1992, "in particular its call for all States to consider the extent to which the acts committed in Bosnia and Herzegovina and in Croatia constitute genocide." On December 20, 1993, the Assembly reaffirmed in Resolution A/RES/48/88 its determination to prevent acts of genocide and crimes against humanity and noted that the ICJ in its order of September 13, 1993, in the case *Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)*, had called on the government of Yugoslavia to immediately take all measures within its power to prevent the commission of the crime of genocide. Another resolution, A/RES/47/121, described ethnic cleansing as "a form of genocide," but this finding was not consistent with later resolutions on ethnic cleansing that made no reference to genocide. Resolutions equating ethnic cleansing with genocide are problematic. Although there is no generally recognized text defining ethnic cleansing, there is a consensus among scholars and others that it is aimed at displacing a population, whereas genocide is intended to destroy it. Such descriptions ultimately do not serve the best interests of victims of either crime, or further the credibility of the Assembly.

Since 1992 the Assembly has referred to genocide on a number of occasions when adopting resolutions in relation to the crisis. In December 1995 the Assembly elaborated on the issue of genocide in Bosnia and declared that rape, in certain circumstances, could constitute an act of genocide (Resolution A/RES/50/192). The 1999 Report of the Secretary-General on the fall of Srebrenica (made pursuant to Assembly Resolution 53/35) was very critical of the Security Council's failure to take decisive action and referred to the attempted genocide in Bosnia.

Given the event's scale, it is surprising that just one of the Assembly's resolutions on the crisis in Rwanda referred to genocide. On December 23, 1994, Resolution 49/206 expressed deep concern at the reports issued by the Special Rapporteur and Commission of Experts indicating that genocide and crimes against

humanity were committed, and condemned the acts of genocide that had taken place in Rwanda.

Apartheid and Forced Disappearances

The Assembly has also adopted resolutions dealing with various other crimes against humanity, including apartheid and forced disappearances. One of the best illustrations of the limitations of the Assembly and UN, as well as their potential, is the policy with regard to apartheid. On June 22, 1946, India requested that the treatment of Indians in the Union of South Africa be included in the agenda of the Assembly's first session. The General Committee did not support South Africa's request that the Indian matter be removed from the agenda on the grounds that it was essentially within the domestic jurisdiction of South Africa. Following a debate in the Assembly, Resolution 44(I) was adopted on December 8, 1946, which declared that the treatment of Indians in South Africa should conform with the international obligations under the agreements concluded between the two governments and the corresponding provisions of the UN Charter. A year later, in November 1947, the Assembly was unable to adopt any resolution on the Indian complaint for lack of a two-thirds majority.

The Assembly did adopt numerous resolutions on the issue over the next five decades, but a turning point was Resolution 1761 of November 6, 1962. The resolution, sponsored by a number of African states, urged member states to impose economic and other sanctions against South Africa and established a Special Committee (which later became the Committee on Apartheid) to monitor the situation. The debates increasingly focused on demands that the situation in South Africa be recognized as a threat to international peace and security and that universal sanctions be imposed against South Africa. During the cold war Western nations believed that the Security Council alone should make the determination that a denial of human rights posed a threat to international peace. In this context there was bound to be natural antagonism between the Assembly and the Council.

On November 30, 1973, the Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid. It declared, among other things, that apartheid is a crime against humanity. Furthermore, apartheid was found to include the "[d]eliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part." It is noteworthy that the South African government was excluded from the Assembly in 1974 when its delegation's credentials were rejected. At the same time UN bodies granted the liberation movements of South Africa Observer status and the Assembly recognized them in 1975 as the authentic representatives of the overwhelming majority of people in that country.

On December 18, 2002, the Assembly adopted by consensus two resolutions related to disappearances and missing persons. Resolution A/RES/57/215 on enforced or involuntary disappearances expressed concern at the growing number of enforced disappearances in various regions of the world. It affirmed that any act of enforced disappearance is an offense to human dignity and a flagrant violation of human rights. It urged governments to take steps to prevent and suppress the practice. It encouraged all states to abide by the principles outlined in the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the Assembly on December 18, 1992 (Resolution A/RES/47/133).

Resolution A/RES/57/207 on missing persons noted the issue of persons reported missing in connection with international conflicts and urged states to respect international humanitarian law. In both cases the Assembly used language such as "urges," "requests," "calls upon," or "appeals" to exhort members to comply, reflecting the fact that an Assembly resolution or declaration alone cannot impose legal obligations on states.

Conclusion

There have been many instances in which the Assembly has acted within its area of competence when addressing issues of international peace. If a conflict is characterized by questions of fundamental human rights, then it is arguable that the Assembly should assume the primary role in protecting those rights. When the grave risk of genocide or some other serious violation of human rights exists, then it is best that the consideration of any military intervention be first brought before the Security Council. However, if the Security Council rejects a proposal for intervention when significant humanitarian or human rights issues are at stake, or the Council fails to decide on such a proposal within a reasonable period of time, then responsibility falls to the Assembly to take appropriate action. Although the Assembly lacks the authority to take direct action, a decision in favor of action, if supported by a large majority of states, would largely legitimize any subsequent intervention.

The ability to achieve the overall two-thirds majority within the Assembly to invoke the Uniting for Peace process is very unlikely when political realities are taken into account. Political realities play an even larger role when the Security Council fails to act because

of the threat of veto. As a result, vital time can be lost before decisive action is taken to remedy a situation on the ground. In the case of genocide and crimes against humanity, such action will often be too late for victims.

When a resolution targets a specific violation or country, it is difficult to evaluate its effectiveness over time. It seems that formal resolutions may send important signals, but these too are almost impossible to measure. Political matters still tend to dominate debates, but these should not overshadow the accomplishments in the promotion of human rights across the full spectrum of UN activities.

SEE ALSO Convention on the Prevention and Punishment of Genocide; United Nations; United Nations Commission on Human Rights; United Nations Security Council; United Nations Sub-Commission on Human Rights; United Nations War Crimes Commission

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Ray Murphy

United Nations Security Council

The United Nations was created at the end of World War II. That war cost the lives of millions of people, some in battle, many others as a result of systematic and organized annihilation. When it was over, people everywhere longed for the creation of a better world and an end to all war.

Out of this desire, the United Nations came into being. Fifty-one governments agreed to sign the UN Charter, an international treaty that bound its signatories to a commitment to eliminate war and promote peace. The UN Charter begins with a promise to prevent the "untold sorrow" of war, after which it lists the rights and duties of each member government. Since its creation in 1945 the UN has grown to include 192 member nations. While the UN has not, so far, come close to fulfilling all the hopes and dreams of its founders, it remains the world's principal organization for the promotion of international peace and security.

The most powerful division of the UN is the Security Council, which all member states are bound by the UN Charter to obey. The Council comprises the representatives of fifteen member governments. Five of these are permanent members: China, the United States, the United Kingdom, France, and Russia. Each of these five states has a veto in the Council, which means any one of them can stop any decision they do not like. Ten other states, elected by the General Assembly, sit in the Council for a period of two years, after which ten different states are chosen. When disagreements between states occur, it is the job of the Security Council to mediate between them before disputes escalate to war.

The United Nations and Human Rights

Since the UN was created, its members have tried to set basic standards of behavior for the world to follow. In 1948 the UN General Assembly, which comprises every UN member, agreed to a document called the Universal Declaration of Human Rights. This outlined the rights that the members believed belonged to everyone in the world. The declaration recognized that the most fundamental of all human rights is the right to life. The Universal Declaration of Human Rights determines that people have the right to freedom and security, that they should be free from slavery, they should have the right to a fair trial, to marry, to own property, and to believe in whatever religion they choose.

The UN tries to monitor any country which is breaking these rules through a special organization

called the UN Commission on Human Rights. Through such monitoring, the UN makes sure that the rest of the world is aware of each country's human rights record. This was the beginning of an historic effort to build an edifice of treaty law on behalf of human rights. The UN set itself the task of defining human rights standards and measuring the performance of individual states against the principles embodied in the UN Charter. In these early years, the organization recognized human rights violations vary both in degree and in nature, and therefore needed to be carefully categorized.

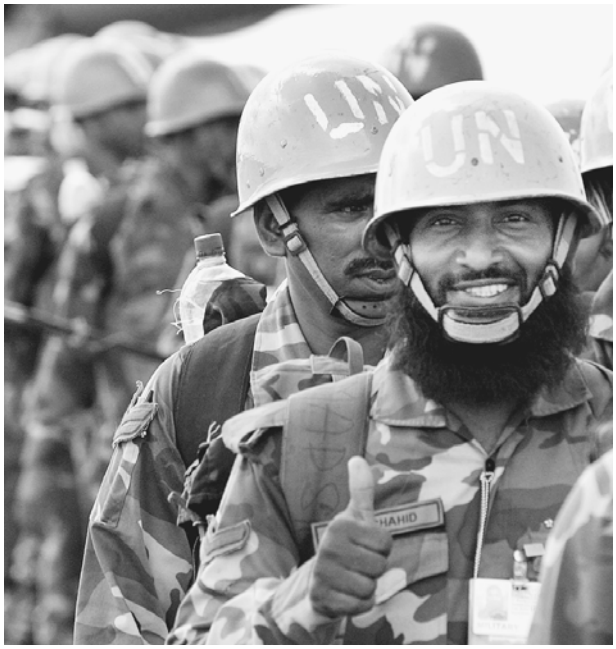
The 1948 Genocide Convention

Although the crime of genocide has been perpetrated throughout human history, little was done to prevent or punish it until the end of World War II. That war was the occasion during which the most comprehensive genocide of the twentieth century was committed: the systematic extermination of the Jews. To address this terrible crime, the UN drafted the 1948 Convention on the Prevention and Punishment of Genocide—the world's first truly universal, comprehensive, and codified protection of human rights. The Genocide Convention, which preceded the Universal Declaration of Human Rights by twenty-four hours, confirmed one of the great ideals of the UN Charter: a respect for human rights and fundamental freedoms for all.

The Genocide Convention stood for a fundamental and important principle; that whatever evil may befall any group, nation, or people, it was a matter of concern not just for that group but for the entire human family. The crime of genocide is the denial of the right of existence of entire human groups, just as homicide is the denial of the right to live of individual human beings. The Genocide Convention defines genocide to mean certain acts, enumerated in Article II, committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group. The Genocide Convention provides that conspiracy, direct and public incitement to commit genocide, and complicity in genocide shall be punishable by international law, and that there can be no defense of sovereign immunity.

In dealing with the crime of genocide on a multinational basis, the world governments, through the United Nations, appreciated that genocide was a matter of concern to all states. Before 1945, efforts to legislate internationally were very limited. Since 1945, however, multinational treaties have become the prime legal mechanism by which states entered into mutual commitments for common purposes. Under such treaties, states agree to act in accordance with rules agreed upon among their fellow nations.

At the heart of the Genocide Convention is the recognition of the principle that preventing and punishing



United Nations peacekeepers from Bangladesh arrive in Liberia in October of 2003. [AP/WIDE WORLD PHOTOS]

of genocide requires international cooperation. The convention relies on the procedures and institutions of the United Nations to prevent genocide. It clearly recognized that the commission of certain extraordinary crimes anywhere in the world had an effect on the peace and security of all nations, and that it was usually associated with breaches of international peace and security. It noted that the most flagrant examples of genocide had historically occurred during major wars, and steps to curb genocide were thus considered part of the attempt to preserve peace.

The first recognition of genocide as a crime under international law was officially agreed unanimously by the United Nations General Assembly on December 11, 1946. After two years of consideration by committees at the United Nations, on December 9, 1948, the General Assembly adopted the Genocide Convention to outlaw genocide. The UN Security Council assumed a central role in the application of the Genocide Convention—it provides the measure of international enforcement outlined in the treaty.

Article VIII of the convention recognizes that "any contracting party may call upon the competent organs of the UN to take such action under the Charter of the UN as they consider appropriate for the prevention and suppression of acts of genocide or any other acts enumerated in Article III." This article, although it adds nothing new to the UN Charter, is important in that it states explicitly the right of states to call upon the UN

with a view to preventing and suppressing genocide. It is the only article in the Genocide Convention that deals with prevention. For the most part, however, the Genocide Convention emphasizes punishment. It was intended as a warning that those who supported or executed a policy of genocide would not be tolerated or excused. Rather, they would have to answer for their sins to the world community of states. The Genocide Convention, despite its title, concentrates almost exclusively on the punishment of the offender rather than prevention of the offense.

Since the enactment of the Genocide Convention there have been major international disputes justified by claims of ethnic, racial, and religious hatreds. The use of genocide during conflict seems to have increased over the years, some experts have said that genocide occurs so often in some regions that it has come to be considered normal. It is estimated that genocide and politicide—state sponsored massacres—have claimed more than twice as many victims as war and natural disasters since 1945. Yet the Genocide Convention is a weak instrument with which to deal with the modern occurrence of genocide. It has become important only for its symbolic value because there has been no Security Council action taken to punish any of the numerous genocides that have taken place since 1945.

Complaints of genocide have been brought to the United Nations since the end of World War II, but even so, the UN has never formally applied the Genocide Convention to any of them. The complaints have not been wholly ignored. Too often, however, they have been redefined as disasters requiring humanitarian assistance. In the absence of internationally sanctioned intervention, such humanitarian aid is often all that is available for genocide victims. Recurring debates on the Genocide Convention have taken place in the Sub-Commission for the Prevention of Discrimination and Protection of Minorities, a part of the Commission on Human Rights, but there does not yet exist a committee charged with ensuring that the Genocide Convention is implemented.

The Genocide Convention is only as effective if the UN member states are willing and determined to employ their power and influence to implement it. It is up to the Security Council to decide when force should be deployed to prevent and suppress it. In the last years, however, the Security Council has allowed a respect for state sovereignty and territorial integrity to take precedence over the concern for protection against genocide. Without stern and timely action by the Security Council, the Genocide Convention has been mostly meaningless in deterring this and other gross violations of human rights. It was not until the creation of two tribunals—the International Criminal Tribunals for the Former Yugoslavia in May 1993, and the International Criminal Tribunal For Rwanda in November 1994—that redress was provided for the crime of genocide. These represent the first legal mechanisms created to punish the crime of genocide. In July 1998, the international legal venue for the punishment of such crimes, promised by the 1948 Genocide Convention, was finally created, with the UN adoption of the Rome Statute and the formation of the International Criminal Court.

Peacekeeping

During the cold war, the UN was unable to do the job for which it was created and international co-operation proved to be a difficult goal to attain. During these years, a more modest and realistic role for the UN was devised. As a neutral organization, it could help mediate conflict, monitor ceasefires, and aid in the separation of hostile armed forces. Two novel missions were undertaken through the Security Council at this time. In 1947 a mission of unarmed military observers—the UN Truce Supervision Organization (UNTSO)—was created, first used in the Balkans and then in Palestine. In 1956 an armed peacekeeping force was established in the Sinai to monitor a buffer zone between Egypt and Israel. Both these missions continue today.

Over the years there have been a total of fifty-two peacekeeping missions. UN peacekeepers rely on minimal force to defuse tension and prevent fighting. The soldiers for UN missions are provided by member governments, who loan troops from their national armies. With the effective use of the peacekeeping forces, the UN has contributed to the containment or resolution of conflicts. The achievements of UN peacekeeping were recognized in 1988 with a Nobel Peace Prize.

A New World Order

It was widely accepted during the cold war that the unilateral use of force to save victims of gross human rights abuses was a violation of the UN Charter, which restricted the right to use force on the part of individual states to purposes of self-defense. The Security Council is empowered under Chapter VII of the UN Charter to authorize the use of force to maintain international peace and security. However, there has always been controversy about how far this allows the council to authorize intervention to stop gross human rights violations that occur inside state borders. To enforce the global humanitarian norms that evolved in the wake of the Holocaust challenges, however, the Security Council must confront a very strongly held principle—that of non-intervention in the domestic affairs of states.

In 1990, with the end of the cold war, it suddenly seemed possible to aspire to the creation of a New

World Order—an international community based on the rule of law and collective security. At the first summit meeting of the Security Council in January 1992, the UN was given ambitious new goals of nation building and peacemaking. It was a hope that the close of the twentieth century would witness the civilized evolution of the global community and the gradual eradication of endless, regional bloodletting throughout the world.

As cold war tensions eased, there was enhanced cooperation in the Security Council. Opportunities were provided to resolve long-standing conflicts, but the end of the cold war also saw new conflicts erupt into violence, many couched in nationalist terms, with hostilities based on ethnic, religious, cultural, and linguistic differences. Responding to this new world disorder the Council turned to the UN Security Council's peacekeeping force, which grew rapidly in size and scope. The complexity of the situations facing the peacekeepers increased, as well.

The end of the cold war led to the hope that the UN could move beyond peacekeeping and into peace enforcement. Unfortunately, the financial, organizational, and operational resources that such a change required were never provided by the Security Council or other UN members. The demand for peacekeeping outstripped the supply of troops and political will. There was a failure by member nations to recognize that the UN could only do as much or as little as its members were willing to agree and pay for.

The last decade of the twentieth century saw a series of tragedies, in Rwanda, Somalia, Liberia, and the former Yugoslavia. Crimes against humanity were committed and documented, including genocide, mass killings, and massive refugee flows. Civilians in these countries were the main targets of armies and militia. The UN missions sent to cope with these disasters were as much engaged in nation building as in performing their military function, and they required civilian experts and relief specialists to work in parallel with soldiers. In Mozambique and El Salvador, the UN peacekeeping missions helped to demobilize combatants, destroy weapons, coordinate massive humanitarian assistance programs, and monitor human rights. Missions in Haiti, Somalia, and Cambodia were tasked with rebuilding state infrastructures, creating or reinstating judicial systems and organizing and observing elections. In these years, maintaining neutrality proved difficult. Many UN peacekeepers had to confront situations in which civilians were victimized, or when they themselves were attacked or killed. Where governmental authority broke down, there was a limit to the effectiveness of UN actions.

Security Council Resolution 688

In 1991 the debate in the Security Council focused on the question of whether the Council could legitimately address humanitarian concerns raised by Iraq's repression of the Kurdish people without violating the ban on UN Charter's ban on intervention in the domestic jurisdiction of sovereign states. At first, the Western nations argued that force was not an option. Soon, however, a flood of press coverage showed the suffering of the people of northern Iraq who had been forced to flee into the mountains and were now dying from hypothermia, exhaustion, and disease. These images went a long way to reverse the noninterventionist policy. On April 5, 1991, Security Council Resolution 688 was passed, authorizing the use of force against Iraq to protect the Kurdish minority from atrocities. In the Council, the United States argued that Iraq's treatment of its civilian population threatened regional stability. Great Britain and France were the only two countries to argue that the domestic jurisdiction did not apply to human rights because such rights were not essentially domestic. After all, it was argued, the Council had invoked Chapter VII, the enforcement powers of the UN Charter, to enforce a mandatory arms embargo against the apartheid state, South Africa. It should therefore be possible to do so again in this new context.

Although Resolution 688 did not authorize military action to enforce human rights, it was only the second time that the Security Council had collectively demanded an improvement the protection of human rights as a contribution to the promotion of international security. (The first time was when the Security Council imposed a mandatory embargo on apartheid South Africa.) Resolution 688 enumerated the consequences of Iraq's repression as a threat to international security, and is believed to provide a justification for military action aimed at enforcing human rights for Iraq's Kurds. This argument was later deemed flimsy, but the Western powers that relied upon it as legal cover for taking military action nonetheless used it to publicly justified their intervention in humanitarian terms.

The operation to save the Kurds in northern Iraq in 1991 depended upon meeting three objectives. First, humanitarian aid had to be brought to the refugees who were dying on the mountains. Second, the people had to be rescued and provided with safe haven. Third, a secure political environment had to be created in order for the Kurds to return to their homes. There is no doubt that thousands of people were saved by the intervention of Western-led forces, but the underlying political reasons for the distress of the Kurds remained to be addressed. It had been the Iraqi government's op-

pression of the Kurds that had caused the humanitarian crisis, and that government did not restrict its oppression to the Kurds. Western humanitarian intervention in northern Iraq did nothing to assist the equally persecuted Shi'ite people in the south of the country.

The intervention on behalf of Iraq's Kurds was, nonetheless, an example of the reconfigured role adopted by the UN Security Council of the post–cold war era. In the latter part of the twentieth century, the Security Council played a decisive role in legitimizing the threat or use of force in defense of humanitarian values. How much of a change in international behavior could be attributed to the Security Council's new stance is still debated.

Somalia

In the case of Somalia, the Security Council broke new ground by authorizing armed intervention on humanitarian grounds. Council Resolution 794, which authorized U.S. intervention in Somalia in December 1992, suggested that humanitarian intervention was securing a significant status in a new world order. The intervention was given milestone status, because it seemed as though Western armies would now be used for greater protective effect throughout the world. It was the first time that the UN Security Council invoked the enforcement powers of the UN Charter against sovereign government without seeking that government's consent and for a purely humanitarian reason. Somalia would also mark a turning point of a different sort, however, for it was a military failure that reduced the UN peacekeeping force to chaos.

In 1991 Somalia had been gripped by famine due to the collapse of the state, a civil war, and the failure of humanitarian agencies to supply assistance. Within a year, there were hundreds of thousands of people dying of malnutrition. A humanitarian disaster of catastrophic proportions developed. On December 3, 1992, the UN Security Council passed Resolution 794 to allow the U.S. military to enter Somalia to protect the food and medical supplies that were being shipped to the starving but were being looted by armed gangs. The resolution determined that the humanitarian crisis in Somalia was a threat to international peace and security, but what was most extraordinary was that it permitted intervention even though the sovereign power (the Somalian government) was incapable of giving its consent, having collapsed with the onset of the civil war.

In March 1993 the U.S. operation was transferred to the UN, and the mission immediately became more ambitious. Now the goal was to restore law and order and compel the Somali militia to disarm. UN Security Council Resolution 814, another landmark document, gave the UN troops a mandate to restore law and order. The new mission, called the United Nations Operation in Somalia (UNOSOM II) got under way, but by this time the security situation in Somalia had deteriorated badly. Warlords vied for power, particularly around the capital city of Mogadishu, and they tested the Security Council's resolve. It was in Mogadishu that the pitfalls of combining force with peacekeeping were tragically exposed. In June 1993, twenty-three Pakistani peacekeepers were murdered by rampaging mobs while trying to inspect weapons that were under UN supervision. After that, the Security Council passed Resolution, 837, mandating its troops to arrest the warlord deemed responsible for the murders. Meanwhile, elite U.S. forces also mounted a series of raids in an effort to capture the warlord, and an untold number of Somalians were killed in consequence of these raids. Although these U.S. operations were outside the command and control of the UN Security Council, the UN was widely blamed for the violence. There were objections from other troop-contributing countries about the United States' insistence on working outside the control of UN mission's command and control structure. On October 3, 1993, a total of eighteen U.S. servicemen lost their lives in a badly bungled arrest attempt. To the jubilation of the Somalian warlords, the United States immediately announced that it was pulling out its troops and urged all western nations to do likewise.

The Security Council commissioned a report on what had happened in Somalia. It recommended that the UN return to peacekeeping, to the principles of consent, neutrality, and impartiality. The report recommended that the UN should never again try to mount an enforcement action. Another result of failure in Somalia was quickly evident in Washington, D.C., where both the U.S. administration and Congress evinced a sudden and dramatic reduction in support for UN endeavors. It was an ignominious end to the United Nation's first attempt at rebuilding a failed state, resulting in a dramatic loss of UN credibility and prestige.

Bosnia

The question of humanitarian intervention in former Yugoslavia was another Security Council preoccupation during the 1990s. In spring 1992 Serbia, having laid waste to parts of Croatia, turned its attention to Bosnia and Herzegovina. Witnesses provided graphic, indisputable evidence of the ethnic cleansing of whole regions, the demolition of entire villages and murder of their inhabitants, the bombardment of civilian populations, and the creation of camps where thousands of men were starved and tortured and women were systematically raped.

The Council passed numerous resolutions condemning Serb aggression and authorizing the use of "all necessary measures" to halt it. However, none of the UN member nations were willing to provide the means to enforce the measures, so the resolutions remained moribund. The UN Protection Force, (UNPROFOR), as a strictly peacekeeping mission, provided armed escorts for relief convoys, but there was a general failure to defend and demilitarize the UN-established "safe-havens," for which an estimated thirty thousand peacekeeping troops were considered necessary. The failure of states to volunteer adequate numbers of troops led to these supposedly safe areas being over run. UN peacekeepers were forced to stand by as helpless observers of the massacres in Bosnia. International respect for the United Nations as a credible presence sank to the lowest point in its history. The UN mission for former Yugoslavia, the largest and most expensive in UN history, turned out to be barely capable of protecting itself.

In 1995, the North Atlantic Treaty Organization (NATO), with authorization from the Security Council, initiated widespread air strikes against the Bosnian Serbs. Some observers believe that this action persuaded Slobodan Milosevic, then President of the rump Yugoslavian state, to enter peace negotiations. The NATO action was the first time a group of states justified force against another on humanitarian grounds without an explicit Security Council resolution to provide legitimacy for the action.

The success of the 1995 NATO air strikes led some nations to believe that the threat and use of bombing could achieve quick results. This meant that in March 1999, when evidence of Serbian ethnic cleansing in Kosovo led to a new intervention by Western states. The Western states were not prepared to bear the burden of potentially negative public opinion should there be troops casualties, which would be inevitable in a ground-based war. Through a combination of bombing and the threat of a ground force, Milosevic was forced to accede to demands that Kosovar refugees be allowed to return to their homes and for a UN civil administration to help build a multiethnic society based on the rule of law.

Rwanda

The genocide in Rwanda in 1994 is one of the most blatant examples of the ineffectiveness of the Genocide Convention. The genocide began in April 1994, when the war in Bosnia and Herzegovina had been under way for more than two years, and little had been done by the UN Security Council to stop it. The lack of action in Bosnia and Herzegovina is thought to have encouraged the Rwandan perpetrators that they could act with impunity. For three months, between April and July 1994, genocide was central to the task of Hutu rebels who had seized power and claimed to constitute an interim government. Up to one million people were killed.

The genocide in Rwanda was a planned political campaign that made effective use of racist propaganda to incite hatred and violence against a minority. The widespread participation in genocide and the brutality of the killings have no parallels in modern history. Making the situation worse was the brazenness of the perpetrators, who made no attempt to conceal what was happening. The killings took place in broad daylight, in full view of the international media.

There was ample evidence of the extensive preparation and planning for the genocide went on for months in advance of the first killings. Nonetheless, the UN Security Council did not make any move to implement the Genocide Convention, either to prevent its occurrence or to stop it once it began. This raises the fundamental question: Why?

In October 1993, the UN Security Council decided to create the UN Assistance Mission for Rwanda (UNAMIR), comprising a small force of peacekeepers. The UNAMIR force was duly shipped to Rwanda, and was kept there even as the environment grew increasingly hostile. The mission had a weak mandate and minimal force capacity. Some have argued that this feeble effort actually encouraged the Hutu genocide conspirators, signaling they could continue with their plans without fear of intervention.

The failed Somalia intervention was still fresh in the Security Council's memory. When it came to Rwanda, the most important consideration was to devise a mission that was as small and as cheap as possible and that would avoid any effort at peace enforcement, even after the genocidal killings were ended. In order to comply with these considerations the Council altered the terms of Rwanda's peace agreement. Under the terms of the agreement, a neutral force was to ensure security throughout Rwanda but the Security Council decided instead that the peacekeepers should only assist in ensuring the security of the capital city of Kigali. Although the original peace accords called for peacekeepers to confiscate arms and neutralize the armed gangs throughout the country, the UN Security Council refused. There would be no "peace enforcement" and no "mission creep," whereby increasingly difficult mandates might be given to the UN mission.

Instead, the UN Security Council devised a peacekeeping mission that was extremely limited in its

engagement within Rwanda. No attention seems to have been focussed on Rwanda's serious human rights abuses, even though they had been clearly outlined in the publication of two landmark human rights reports to the UN Commission on Human Rights. The author of one of these reports, Bacre Waly Ndiaye, was the Special Rapporteur for the Commission on Human Rights for Extrajudicial Summary, or Arbitrary Executions. He provided evidence that, in Rwanda, the Hutu political leadership was desperate to cling to power and was fueling ethnic hatred with a well-orchestrated propaganda campaign. The massacre of Rwanda's Tutsis was intentional and well organized. Ndiaye recommended that the militia should be disbanded, the distribution of arms should cease, and anti-Tutsi propaganda silenced. There could be no impunity for the killers. Finally, Ndiaye called for communal policing and immediate and effective measures to protect civilians at risk. In spite of this report, the ten nonpermanent members of the Security Council insisted on viewing the Rwanda debacle as a small civil war.

From the very beginning of the Rwanda disaster, in December 1993, it was clear that the UNAMIR mission confronted enormous problems. In the weeks immediately preceding the genocide, it received detailed information about militia training, arms dumps, political murders, hate propaganda, and death lists. The rising level of ethnic extremism in Rwanda was also of great concern to the Belgian government, which provided the troops for the Rwanda mission. In February 1994 the Belgian ambassador to the UN, Paul Noterdaeme, attempted to warn everyone that the peacekeepers of UNAMIR were in grave danger and in need of immediate reinforcements and a stronger mandate—no one listened.

When the genocide began, two permanent Security Council member states—the United States and the United Kingdom—insisted on referring to the Rwandan violence as a civil war, and focused Security Council discussion on obtaining a ceasefire. In the first weeks of genocide, no one paid attention to civilian mass killings, even though the massacres were taking place nowhere near the actual fighting. Another permanent member of the Security Council, France, was intimate with the affairs of Rwanda, but kept silent about the realities of what was happening, even during council meetings.

Some of the non-permanent members of the council, notably New Zealand, Spain, Nigeria, and the Czech Republic tried to convince the United States and the Great Britain to pay attention to the daily murder of thousands upon thousands of civilians. However, none of the permanent members were willing to discuss stabilizing, reinforcing, or even re-supplying the UNAMIR peacekeepers, who were still trying to carry out rescue missions in Kigali. At the end of April 1994, the United States, Great Britain, and France refused to publish a Presidential Statement, drafted on the initiative of New Zealand Ambassador Colin Keating, that officially acknowledged the genocide that was now in full swing in Rwanda.

The Force Commander of UNAMIR, Major-General Dallaire, was later openly critical of the permanent member states in the Security Council who had the means to help, but refused. He bemoaned the lack of political will in Great Britain, and the United States that permitted the spread of the genocide and the slaughter of thousands of people trapped inside schools, churches, and clinics.

SEE ALSO Convention on the Prevention and Punishment of Genocide; Humanitarian Intervention; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Peacekeeping; Rwanda; United Nations; United Nations Commission on Human Rights; United Nations General Assembly

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Linda Melvern

United Nations Sub-Commission on Human Rights

The United Nations Sub-Commission on the Promotion and Protection of Human Rights was created by the Economic and Social Council (ECOSOC) in 1947 as the main expert body to advise the Commission on Human Rights. It has become a permanent advisory body for the Commission on all human rights issues, better described as a scientific advisory body or "think tank" for the Commission. In contrast to the Commission, which is comprised of state representatives, the Sub-Commission consists of twenty-six independent experts. Its annual three-week sessions in Geneva are attended by its members and alternates, government observers, United Nations bodies and specialized agencies, other intergovernmental organizations, and nongovernmental organizations in consultative status with the Economic and Social Council. Indeed, the Sub-Commission has become an important link between intergovernmental institutions and the public through representation by nongovernmental organizations. Consequently, its relations with its parent bodies have not always been harmonious.

The Sub-Commission has achieved many notable results, including the elaboration of draft conventions, declarations, and general principles on subjects as diverse as racial discrimination, the death penalty, the rights of indigenous peoples, the rights of minorities, the independence of the judiciary, and the human rights responsibilities of transnational corporations. Its in-depth studies have resulted in the creation of new special rapporteurs and working groups of the Commission on Human Rights addressing topics such as the independence of the judiciary, freedom of opinion, arbitrary detention, religious intolerance, toxic waste, the right to food, the right to adequate housing, human rights, and terrorism. Its debates, resolutions, and studies dealing with the issue of genocide have served to refine the definition and understanding of genocide contained in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, to review the historical development and legal implications of the convention's provisions, to apply its template to various historical events, and to recommend ways in which the international community can improve its response to genocide.

The original functions of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (as it was known from 1947 to 1999) were to undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the larger Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities. In addition, the Sub-Commission was charged with the duty to perform any other functions, which may be entrusted to it by the council or the Commission. The Sub-Commission's mandate and activities have substantially evolved over the last half century to include considering specific questions in public and private, examining petitions from alleged victims and NGOs, sending communications to governments, and adopting resolutions on particular situations.

Consideration of Country Situations

When the Commission on Human Rights requested in 1966 to be empowered by the Economic and Social Council to make recommendations about specific human rights violations brought to its attention, ECOSOC Resolution 1235 (XLII) of 1967 was adopted authorizing both the Commission and the Sub-Commission "to examine information relevant to gross violations of human rights and fundamental freedoms." Three years later, ECOSOC Resolution 1503 (XLVII) provided for a confidential procedure to handle communications revealing a consistent pattern of gross and reliably attested violations of human rights.

In practice, Resolution 1235 has served as the basis for annual public debate in the Commission and Sub-Commission on human rights violations in various countries. Allegations ranging from disappearances to torture to genocide have been discussed during these debates, on the basis of which both the Commission and Sub-Commission began the practice of adopting resolutions expressing concern about the situation in specific countries. Through resolutions and the Sub-Commission chairman's statements, as well as the strategic withdrawal of draft resolutions on certain conditions, the Sub-Commission has been able to achieve dialogue with governments and furthered the adoption of measures to improve human rights. Further, the Sub-Commission has played an important role regarding countries not dealt with by the Commission by originating resolutions and initiatives that were later adopted by the Commission.

Several of the Sub-Commission's resolutions have called attention to situations involving genocide. With regard to the former Yuglosavia, the Sub-Commission noted in Resolution 1993/17 that the "abhorrent policy of ethnic cleansing was a form of genocide." Its resolution on the same subject one year later went further, declaring that the Sub-Commission was

> appalled by the acts of genocide carried out by the rebel Pale Serbs in Bosnia and Herzegovina,

> including the evidence indicating that large-scale massacres of the Muslim population have taken place after the occupation of the safe areas of Zepa and Srebrenica.

The resolution emphasized that any peace plan should not contain provision for impunity for acts of genocide, ethnic cleansing, or other serious war crimes. In a 1995 resolution expressing solidarity with the special rapporteur on the former Yugoslavia for his decision to resign from his position following the Srebrenica massacres, the Sub-Commission noted, "a veritable genocide is being committed massively and in a systematic manner against the civilian population in Bosnia and Herzegovina, often in the presence of United Nations forces."

With regard to the situation in Rwanda, a Sub-Commission resolution of August 1994 expressed deep concern "at the convincing and appalling evidence of the genocide resulting from the massacres of the Tutsis, the political assassinations of the Hutus and the various attacks on human rights in Rwanda." It further deplored the tardy and insufficiently effective intervention of the international community (including the UN and the OAU), making it impossible to prevent the genocide. It recommended effective follow-up to the report of the special rapporteur on the situation of human rights in Rwanda, giving an account of political assassinations and genocide. At the same session, the Sub-Commission adopted a thematic resolution on the strengthening and punishment of the crime of genocide, in which it claimed that the atrocities being committed in Rwanda and the former Yugoslavia highlighted the deficiencies of the Genocide Convention. It recommended improving the convention by adding a clause concerning universal jurisdiction and considering extending its application to political genocide.

Again in 1995, the Sub-Commission expressed concern at the "convincing and appalling evidence of the genocide resulting from the massacres of the Tutsis, the political assassinations of the Hutus and the various attacks on human rights in Rwanda." That same year, the Sub-Commission adopted a resolution on the prevention of incitement to hatred and genocide, particularly by the media. This resolution referred to the situations in Rwanda, the former Yugoslavia, Zaire, and Burundi, categorically condemning the role played with increasing frequency by printed or audiovisual media in inciting genocidal hatred. Finally, the Sub-Commission's 1996 resolution on Rwanda noted with dismay that more than two years after genocide on an enormous scale, no judgment condemning those guilty had been delivered either by the International Criminal Tribunal for Rwanda (ICTR) or by national or foreign courts. The Sub-Commission expressed further concern that "persons responsible for acts of genocide were infiltrating Rwanda with the purpose of eliminating the witnesses of the genocide."

With regard to the situation in Burundi, the Sub-Commission adopted Resolution 1996/4 drawing attention to the findings of the special rapporteur on the situation of human rights in Burundi regarding "genocide by attrition." Further, it appealed to the Burundian authorities to spare no effort in "banishing the specter of genocide." It called upon them or the authorities to create mutual trust among ethnic groups, encourage peaceful coexistence, and return quickly to the rule of law.

Although it held discussions on the situation in Cambodia, the Sub-Commission was unable to pass a resolution on the country. In 1991 the Sub-Commission considered and dropped from its agenda a draft resolution that referred to "the atrocities reaching the level of genocide committed in particular during the period of Khmer Rouge rule." In 1978 the governments of Canada, Norway, and the U.K. had submitted statements concerning the continuation of violations of human rights in Democratic Kampuchea, along with voluminous evidence containing the factual basis for a charge of genocide. Democratic Kampuchea rejected the Sub-Commission's decision to appoint a member to analyze the materials submitted "as an impudent interference in internal affairs" and denied all allegations in the years hence.

Indeed, it was the political sensitivities inherent in country resolutions that gradually eroded the Sub-Commission's role in condemning human rights violations in particular countries. In 1990, to protect the independence of its members, the Sub-Commission introduced secret voting on any resolution relating to an individual country. In 1999 the Commission on Human Rights decided through its inter-sessional Working Group on Enhancing the Effectiveness of the Commission on Human Rights that the Sub-Commission should not make any pronouncements on the human rights situation in any country already under consideration by the Commission (it also reduced its session time from four to three weeks). Most drastically of all, in its decision 2000/109, the Commission withdrew the Sub-Commission's right to adopt country-specific resolutions or even to refer to country-specific situations in thematic resolutions. Three years later, in Resolution 2003/59, the Commission prohibited the Sub-Commission chairpersons from issuing country-specific statements.

Nongovernmental organizations (NGOs) have been highly critical of this fundamental role change.

Despite the fact that the Sub-Commission may still consider country situations during its debates, NGOs point to a decline in the quality and quantity of such debates and poor or nonexistent reporting. For example, revisiting the issue of the Rwandan genocide at its 2002 session, Sub-Commission member El-Hadji Guissé criticized the UN for failing to intervene during the genocide and suggested it might have done otherwise had the victims been of another race. Nothing further was stated for the record and no action was taken. Such scant consideration of an issue that had received considerable attention in earlier sessions would seem to support the contention coming from within the Sub-Commission itself that the experts increasingly saw little point in addressing the protection of human rights in individual countries.

Confidential Procedure

The 1503 (Confidential) Procedure arose out of the Economic and Social Council Resolution 1503 (XLVI-II) of 1970. It authorized the Commission on Human Rights to establish a process for the examination of communications (a UN euphemism for complaints) pertaining to "situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission." It constitutes the oldest human rights complaint mechanism in the United Nations. NGOs and others hailed its establishment as a significant success because it opened up new ways for complaints to receive a formal examination, even when they involved states that had not ratified the relevant human rights treaties. Previous to the adoption of this procedure, the Commission had employed communications only as a means of identifying general trends, without responding to the violations at issue.

The resolution, and the confidential procedure it established, originated in the dramatic change in the composition of the major UN organs that had occurred by the mid-1960s. This was a time when the many newly independent African and Asian states gained membership in the UN, and total membership of the Commission on Human Rights went from 18 in 1960 to 21 in 1967. Developing countries were eager to press for additional means by which to pursue the struggle against racist and colonialist policies.

The Confidential Procedure involves a process by which complaints are examined in order to identify the existence of a consistent pattern of gross violations of human rights. First, the Sub-Commission would undertake a review of thousands of complaints received by the United Nations Secretariat. (After the year 2000, a Working Group on Communications, rather than the entire Sub-Commission, was tasked with this responsibility.) Those cases considered that appeared to indicate "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms" are passed along to the Commission on Human Rights. A separate Working Group on Situations would then undertake a pre-examination of the evidence and, finally, the full Commission would meet in private session to discuss each situation.

Resolution 2000/3 provided the Commission with a repertoire of responses to these situations, including appointing an independent expert to make direct contacts with the government and the people concerned, keeping the case under consideration, transferring the case to the public procedures, or dismissing the situation. Perhaps the most effective of these, in terms of applying pressure on states against which complaints have been lodged, is the possibility that the situation will be transferred to a public procedure. When the Commission returns to public session, the chairperson announces the list of countries that have been examined under the 1503 process, the violations at issue, and any action taken to date.

More than 80 states have been examined by the Commission under the 1503 Procedure since 1972. The majority of these countries were responsible for a large number of human rights violations, including torture, arbitrary detention, summary or arbitrary executions, and disappearances. The 1503 procedure has never been formally employed to deal with specific allegations of genocide. On the other hand, complaints against several countries have alleged situations of gross violations of human rights that might have amounted to genocide. These include Rwanda (considered from 1993 to 1995), Burundi (considered from 1974 to 1975) and Cambodia (considered in 1979).

The 1503 Confidential Procedure has been criticized for its secrecy, slowness, complexity, and vulnerability to political influence. Reform was initiated in July 2000 by ECOSOC Resolution 2000/3 to streamline the process, but the procedure's importance has nevertheless diminished, due to the rapid development over the years of the public procedures and the system of individual complaints before treaty bodies. At the same time, the procedure provides a useful, incremental technique for placing increasing pressure on offending governments, while encouraging them to engage in a constructive exchange of views to improve the situation. At the minimum, the 1503 procedure affords a mechanism for complaints to be received through official UN channels and for governments to respond.

Studies

The loss of its ability to respond to human rights violations within particular countries has increased the relative importance of the Sub-Commission's studies program, which was established in 1952. Studies are in-depth reports on particular human rights issues carried out by Sub-Commission members who are designated as special rapporteurs for the preparation of a report on a particular issue. Upon completion, studies are submitted to the Sub-Commission for discussion. The level of interest in any given report varies; the experts may take a keen interest, or they may make only general, noncommittal remarks. Unless the Sub-Commission members have significant concerns about the report, it will usually be submitted to the Commission for broad dissemination.

With the proliferation of studies over the years, the Sub-Commission established criteria in 1997 for selecting new subjects for study. It determined that priority should be given to subjects for study recommended by the Commission on Human Rights. After these, priority should be given to subjects suggested by the working groups of the Sub-Commission. Special attention should be given to subjects proposed by treaty bodies, and economic, social, and cultural rights should be considered as a priority area in the selection of new studies. Finally, the Sub-Commission determined that proposals for isolated studies that lacked the necessary background and framework should be discouraged.

The Sub-Commission has made key contributions to the definition and understanding of genocide through its studies. The two most notable in this regard are those of Nicomède Ruhashyankiko and Benjamin Whitaker, both entitled "Study on the Question of the Prevention and Punishment of the Crime of Genocide." The Ruhashyankiko report originated in a 1967 decision of the Sub-Commission to undertake a study of the question. Ruhashyankiko was a member of the Sub-Commission and a Rwandan national. He presented a preliminary report and three progress reports to the Sub-Commission before the presentation of his final study in 1978.

The Ruhashyankiko study was largely devoted to a history of the adoption of various articles of the 1948 Genocide Convention and an examination of controversies concerning the interpretation, value, and scope of those provisions. The report concluded that the 1948 convention should only be considered a "point of departure" in the adoption of effective international measures to prevent and punish genocide; but argued against interpreting the convention in broader terms than those envisaged by the signatories. According to Ruhashyankiko, it was preferable to adhere to the convention's spirit and letter, and then prepare new instruments whenever appropriate. The report acknowledged that a number of allegations of genocide had been made since the adoption of the convention, but noted that these allegations were not promptly investigated by an impartial body, making it impossible to determine whether they were well-founded. Ruhashyankiko recommended the establishment of an ad hoc committee to inquire into all allegations of genocide brought to the attention of the Commission on Human Rights. He also recommended that serious consideration be given to the establishment of an international criminal court to try allegations of genocide.

Ruhashyankiko's report was generally well-received, although some argued with the exception of his omission of the Armenian massacres that occurred in the Ottoman Empire from 1915 to 1918. While reference to the Armenian genocide had been included in the preliminary study, Ruhashyankiko removed it from the final report. This deletion prompted impassioned critiques by Sub-Commission members and by NGOs who felt that the event deserved mention. They cited the significant size of the genocide, its comparatively recent occurrence, the ample documentary evidence establishing its existence (including a predetermined plan to exterminate the Armenian nation), the disturbing growth of movements challenging the veracity of the Holocaust, the need to analyze causation in past cases to contribute to future prevention, and perhaps most importantly, the overall moral obligation of the United Nations to adhere to historical truth and objectivity. In an attempt to address the political pressures that influenced Ruhashyankiko's decision to delete the reference, several members drew attention to the fact that the international law of state succession absolved the modern Republic of Turkey of responsibility for crimes committed by the Ottoman Empire. This did not prevent the observer from the Turkish government from taking the floor on several occasions to strongly deny the occurrence of the Armenian genocide.

Partially in an attempt to resolve this issue, the Sub-Commission and the Economic and Social Council requested a revision and updating of the Ruhashyankiko report. Benjamin Whitaker was appointed to undertake this task. During the Sub-Commission's discussions of the scope of the report, Whitaker observed that the first study was excellent, but there were "some omissions due to political pressure exerted on the Special Rapporteur who had prepared it . . . [that] resulted in the flagrant omission of the genocide of the Armenians." According to Whitaker, "rectifying such omissions was a matter of integrity and independence for the Sub-Commission."

Whitaker's final report cited nine instances of genocide in the twentieth century, including the Ottoman massacre of Armenians, that he claimed resulted in the killing or death-marching of "at least one million, and possibly well over half the Armenian population." The Turkish government intervened to advocate deletion of the mention of genocide. These debates resulted in a resolution that simply took note of Whitaker's report, but stopped short of endorsing it.

Another important study with regard to genocide was prepared in 1998 by Gay J. McDougall, entitled "Systematic Rape, Sexual Slavery and Slavery-like Practices during Armed Conflict." Commissioned in response to revelations concerning the more than 200,000 women enslaved by the Japanese military in so-called comfort stations during World War II, the report was cited by the International Criminal Tribunal for the former Yugoslavia (ICTY) as an authoritative statement of international criminal law in a landmark sexual violence case involving the detention, torture, and killing of civilians in a prison camp in Bosnia and Herzegovina.

McDougall's study provided a description of the legal framework for crimes against humanity, slavery, genocide, torture, and war crimes, and it outlined individual criminal liability for both perpetrators and those complicit in such crimes. It called for an effective response to sexual violence committed during armed conflict; emphasized that rape and other forms of sexual abuse are crimes of violence which may constitute slavery, crimes against humanity, genocide, grave breaches of the Geneva Conventions, war crimes, and torture; and reinforced the existing legal framework for the prosecution of these crimes, with a view to achieving a more consistent and gender-responsive application of human rights and humanitarian and international criminal law. The report concluded that systematic rape, sexual slavery and slavery-like practices during armed conflict constitute violations of human rights, and of humanitarian and international criminal law, and as such must be properly documented, the perpetrators brought to justice, and the victims provided with full criminal and civil redress. McDougall claimed that even in the absence of armed conflict, sexual slavery and other forms of sexual violence, including rape, may be prosecuted under existing legal norms as slavery, crimes against humanity, genocide, or torture. While women per se are not listed as a protected group under the Genocide Convention, the report argued that targeting a protected group "through attacks against its female members is sufficient to establish the crime of genocide." McDougall further contended that the prosecution need not establish intent to destroy the entire group on a national or an international basis, but "the intent to destroy a substantial portion or an important subsection of a protected group or the existence of a protected group within a limited region of a country is sufficient grounds for prosecution for genocide."

This report received important endorsement and follow-up by both the Sub-Commission and the Commission. In Decision 1999/105, the Commission on Human Rights approved the request of the Sub-Commission to extend the mandate of the special rapporteur for a year, to enable her to submit an update on developments to the next Sub-Commission session. Her updated report considered developments and actions at the international and national levels to end the cycle of impunity for sexual violence committed during armed conflict. The Sub-Commission also asked the High Commissioner for Human Rights to prepare a report on the subject, which built upon McDougall's conclusions and recommendations. High Commissioner Mary Robinson's report noted not only that the statutes of the international criminal tribunals restated the definition of genocide found in the 1948 convention, but that genocide had been interpreted and developed in international case law—including ICTR's first judicial interpretation of the Genocide Convention in the *Akayesu* case, where the trial chamber adopted a broad interpretation of genocide, including rape and sexual violence when committed with the intent to destroy, in whole or in part, a protected group.

Following the first McDougall report, the Sub-Commission began the annual adoption of resolutions on systematic rape, sexual slavery, and slavery-like practices. In Resolution 2003/26, the Sub-Commission underlined as significant the latest verdicts of the ICTY, the ICTR, and the Special Court for Sierra Leone, which acknowledged that rape and sexual enslavement are crimes against humanity. It also noted with approval the Rome Statute of the International Criminal Court's special recognition that sexual violence and sexual slavery committed in the context of either an internal or an international armed conflict may constitute crimes against humanity, war crimes, and genocide, thus falling within the jurisdiction of the Court.

Another issue with clear relevance to genocide that became the subject of a Sub-Commission study is that of population transfers. The first report on the human rights dimensions of population transfer, including the implantation of settlers and settlements, was submitted in 1993 by Awn Shawkat Al-Khasawneh and Ribot Hatano. It found that population transfer is, prima facie, unlawful and violates a number of rights affirmed in human rights and humanitarian law for both trans-

ferred and receiving populations. In Resolution 1993/34, the Sub-Commission endorsed the conclusions and recommendations of the preliminary report and requested Al-Khasawneh to continue the study on the human rights dimensions of population transfer and to submit a progress report on the question to next Sub-Commission session. It also recommended that a multidisciplinary expert seminar provide input for the final report.

Al-Khasawneh's final report, submitted in 1997, recommended that the Sub-Commission consider the possibility of preparing an international instrument to codify international standards regarding population transfer and the implantation of settlers. Such an instrument would expressly reaffirm the unlawfulness of population transfer and the implantation of settlers and define national responsibility in the matter of unlawful population transfer, including the implantation of settlers. It would also establish the criminal responsibility of individuals involved in population transfer, whether such individuals be private or officials of the state and provide a means for adjudicating claims presented by the individuals or populations involved. The report also recommended that the Commission on Human Rights adopt an instrument that embodied the principles of international law recognized by states as being applicable to population transfer and the implantation of settlers. To this end, it included in its annex a Draft Declaration on Population Transfer and the Implantation of Settlers.

Working Groups

Since the 1970s, substantial parts of the Sub-Commission's deliberations have focused on the work of its inter- or pre-sessional working groups: the Working Group on Contemporary Forms of Slavery (established in 1974); the Working Group on Indigenous Populations (created in 1982) and the Working Group on Minorities (established in 1995). Composed of five members each, working groups devote their attention to the in-depth analysis of specific issues, the study of cases, and the drafting of new international standards. Working groups have constituted a unique platform for witnesses and victims, since they permit oral and written statements by NGOs who need not have ECOSOC consultative status or be recognized by their respective governments (they need only be directly concerned with the subject at hand). Year after year, the working groups have provided an opportunity to receive and publicly discuss allegations of specific human rights violations.

The Sub-Commission also establishes sessional working groups, which meet during its annual sessions to consider particular agenda items. Examples include the Working Group on Transnational Corporations, the Working Group on the Administration of Justice, and the Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments. Each working group submits its reports to the Sub-Commission for consideration. On some questions, the Sub-Commission adopts its own resolutions and decisions. On others, it formulates draft resolutions and decisions for consideration by the Commission on Human Rights and the Economic and Social Council.

The Working Group on Indigenous Populations has dealt with the issue of genocide by examining the effectiveness of the standards contained in national, regional, and international instruments in providing adequate protection to indigenous persons. On several occasions, its discussions included alleged genocide or ethnocide in countries such as Guatemala, El Salvador, and Bangladesh. The Permanent Forum on Indigenous Issues, a body created in 2000 to advise the Economic and Social Council, recommended in 2003 that the Working Group on Indigenous Populations "undertake a study on genocidal and ethnocidal practices perpetrated on indigenous peoples, including programs for sterilization of indigenous women and girls, the use of indigenous communities as subjects for nuclear testing or storage of radioactive waste, and the testing of unapproved drugs on indigenous children and peoples."

The Working Group on the Administration of Justice dealt in depth with genocide through a working paper prepared by Louis Joinet on measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide. Indeed, the events in Rwanda and the former Yugoslavia prompted this working group's inclusion of an agenda item on genocide. This, in turn, led to Joinet's paper, which was intended more as a pragmatic study than an update of the Ruhashyankiko or Whitaker studies.

Joinet noted that, although the convention was the first such instrument in the history of the United Nations, it had never been implemented. In order to remedy the convention's deficiencies, he proposed a number of measures. Chief among these was the inclusion of a quantitative criterion in the definition of genocide and the extension of the scope of the convention to cover various categories of genocide. At the criminal level, Joinet believed it was desirable to encourage proposals concerning genocide by omission or by complicity and rejection of the doctrine of owed obedience. He believed that states should be made responsible for instituting a juridical basis and establishing an obligation of compensation. Joinet further recommended that technical assistance be provided to states that had not yet

ratified the convention or had not yet taken the legislative steps necessary for its implementation.

Joinet recommended giving priority to measures for encouraging prevention of the crime of genocide. In his view, this could be accomplished by defining two methodological approaches: repressive measures and incentives designed to combat incitement to and provocation of genocide; and the establishment of a working group on prevention of genocide. Such a body would be distinct from any international criminal court and would have both a preventive and a repressive role to play. The purpose would be to facilitate the task of future international jurisdiction.

In discussing Joinet's proposals, some Sub-Commission members advocated a more cautious approach. They argued that a clear enforcement mechanism already existed within Article 9 of the Genocide Convention, which outlined the compulsory jurisdiction of the International Court of Justice over cases of genocide. They suggested that this mechanism would not necessarily need revising, but an additional protocol to the convention could be used to expand the definition of the crime of genocide.

Other members argued that it was necessary to expand the definition of genocide by including in it the concepts of cultural, political, and economic genocide. Although genocide was considered a crime against humanity not subject to prescription, that definition had never been given effect. Joinet countered that making too many changes to improve the convention might hamper progress in combating genocide. The pragmatic approach would be to avoid any reform of the convention and to consider only one or two specific proposals that were based on existing initiatives. Unfortunately, none of the suggestions made by Joinet were taken up by bodies in a position to implement such measures.

SEE ALSO Geneva Conventions on the Protection of Victims of War; Impunity; United Nations; United Nations General Assembly; United Nations Security Council; United Nations War Crimes Commission; Whitaker, Benjamin

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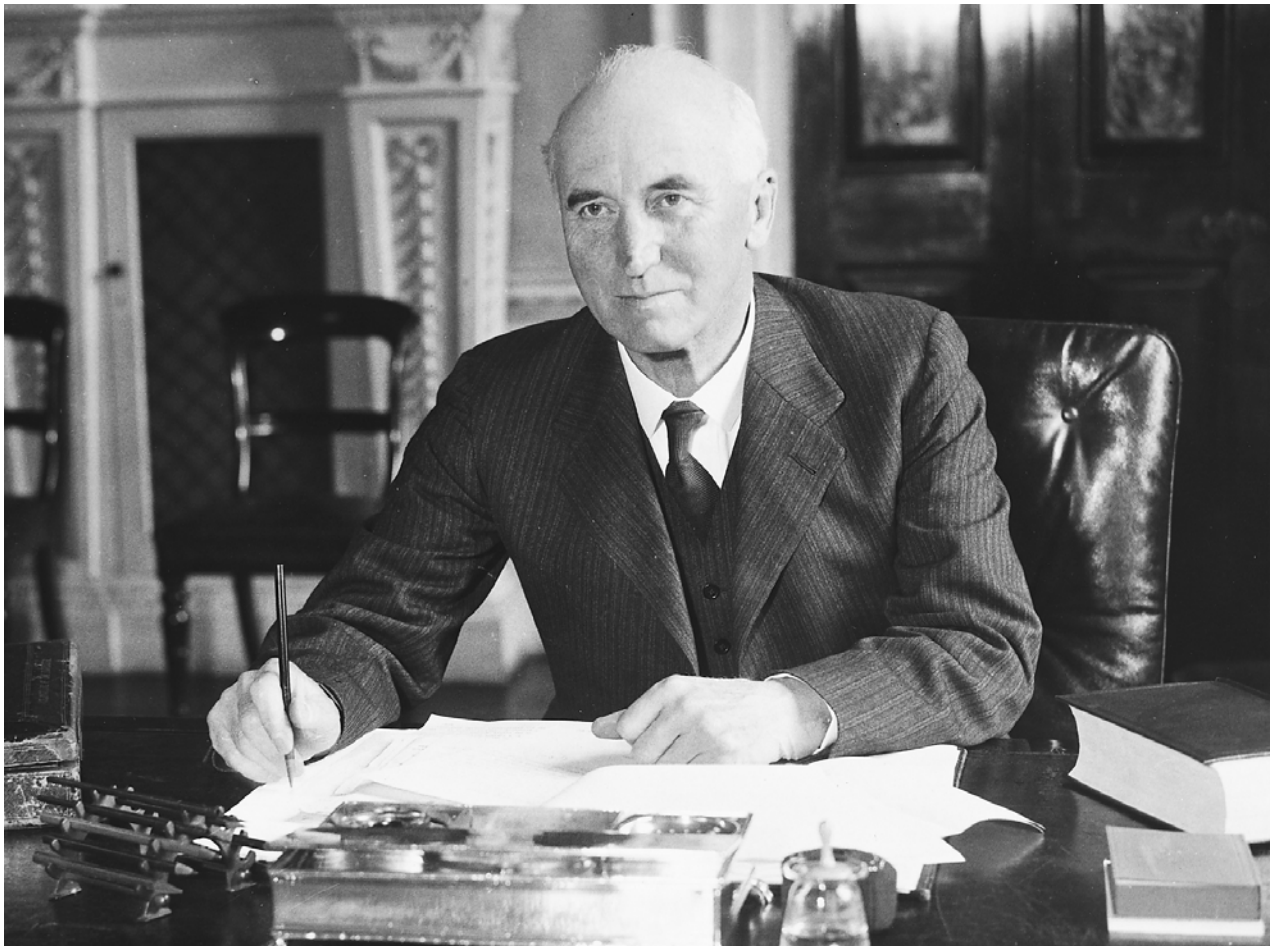

John Allsebrook Simon, the first Viscount Simon, was Churchill's Lord Chancellor and the Chair of the British Cabinet Committee on the Treatment of War Criminals. In 1942 he introduced to the House of Lords the British government's proposal of a multinational committee to investigate war crimes. [HULTON-DEUTSCH COLLECTION/CORBIS]

United Nations War Crimes Commission

The United Nations War Crimes Commission (UNWCC) was inaugurated on October 20, 1943, by representatives of the seventeen Allied nations. It was the only international framework that dealt with the issue of war crimes and war criminals during World War II. The commission continued to operate until March 31, 1948, and in the course of its four-and-a-half years of existence had created a total of 8,178 files (representing 36,810 individuals and groups). Significantly, some of the most important notions elaborated by the UNWCC found their way into the Nuremberg Charter.

The idea of establishing a United Nations (UN) "commission on atrocities" was first advanced by British prime minister Winston S. Churchill in June 1942 during his visit to the United States. Churchill was in part responding to intense pressure coming from the exiled Polish and Czech governments in London, who envisioned the threat of reprisals against Germany by the Allied nations as a deterrent against further atrocities by the Nazis. However, both Britain and the United States ascribed low priority to the war crimes problem at the time and wanted to postpone dealing with the issue of punishing war criminals for as long as possible.

On September 7, 1942, John Viscount Simon, the Lord Chancellor and Chair of the British Cabinet Committee on the Treatment of War Criminals (CCTWC) introduced to the House of Lords the British government's proposal to set up a UN Commission for the Investigation of War Crimes. Its task would be "to collect material, supported wherever possible by depositions or by other documents, to establish such crimes, especially where they are systematically perpetrated, and to name and identify those responsible for their perpetration." Simon asserted that the proposal had the support

of the United States and of the European allies, though he acknowledged that replies from the Soviet Union, China, the British Dominions, and India were still forthcoming.

The Soviet Union put up the greatest obstacles to the establishment of the UNWCC. Moscow had been piqued by the fact that London had ignored the Soviet Union during the preliminary stages of the establishment of the Commission and had appealed to the Soviet Union for support only at the last moment. In January 1943 Moscow responded in a positive manner, but then prompted further delay by opposing London's intention to include participation by the Dominions in the work of the Commission. On July 27, 1943, Moscow announced that it was prepared to meet British wishes regarding the participation of the Dominions, India, and Burma on the condition that the Federated Republics of the USSR—Ukraine, Belorussia, Moldavia, Lithuania, Latvia, Estonia, and Karelo-Finska—would also be allowed to participate. This move by the Soviet Union was clearly designed to gain political capital: recognition of its annexation of the Baltic States, would set a precedent that would help the Soviet Union claim the right to enlarge its representation in future international organizations. When London declined, Moscow decided not to respond to Britain's invitation to the Allied meeting to establish the UNWCC, scheduled for October 20, 1943.

The meeting was chaired by Viscount Simon, who set out the two principal aims of the Commission: first, to investigate allegations of war crimes and, where possible, to record evidence of the crimes and identify the individuals responsible; and second, to report those cases in which it appeared that adequate evidence of such crimes might be forthcoming to the appropriate governments. A clear distinction was made between investigation, which would be the work of the Commission, and the task of trying war criminals. The latter, Simon told the delegations, would represent a later stage requiring decisions by the relevant governments, not the Commission. Finally, according to Simon, British policy held that the fates of those judged to be major war criminals was a political question that remained to be answered. The participants agreed to locate the UNWCC's headquarters in London, and appointed Mackinon Wood, a British citizen, secretary-general. In part because the Soviets were absent, the appointment of a chairman was left to the Commission's plenum.

British officials did not assign a high priority to the UNWCC, despite the fact that Britain had been the driving force behind its establishment. One reason was fear of acts of revenge by Germans against British prisoners of war. Another was trepidation over the possibility that the Commission, under pressure from the various governments-in-exile in London, might act in ways that were not consonant with British interests. In fact, officials of the British Foreign Office succeeded in limiting the Commission's mandate to investigating war crimes committed against Allied nationals. For them the Commission was largely a means to neutralize the insistent calls for acts of retribution against the Germans that were being made by the governments-in-exile, and to create an impression that the war criminals issue was being handled. There had also been foot-dragging in the U.S. State Department. The United States wanted to maintain as low a profile as possible vis-à-vis the punishment of war criminals out of fear for the fates of its own captives in German hands, and until the final months of the war, never delved deeply into this complex question.

Almost as soon as the UNWCC had begun to function, the fears of both the British Foreign Office and the U.S. State Department materialized. Although British and U.S. officials expected the UNWCC to confine itself to the investigation of alleged war crimes and criminals, leading members of the Commission refused to accept this narrow mandate and urged the UNWCC to come up with a comprehensive plan for trying war criminals, and to devise ways and means to track and apprehend individuals charged with war crimes. The chairman of the Commission, Sir Cecil Hurst, and, to an even greater extent, Herbert C. Pell, the U.S. representative, failed to be faithful to the Foreign Office's and State Department's objectives, but prompted the Commission to formulate its own proposals for policy and action. Hurst had served as the Foreign Office's Legal Adviser (1928–1929), and subsequently became a panel judge for the Permanent Court of International Justice (and was its president from 1934 to 1936). Pell, a former U.S. congressman from New York and a friend of U.S. president Franklin D. Roosevelt, had served as U.S. minister to Portugal from May 1937 to 1941 when he was posted to Hungary, where he stayed throughout most of the year.

Many of the UNWCC representatives (who were legal scholars of sterling reputation), agreed that the work of the Commission should not be limited to an examination of dossiers and the compilation of lists of criminals, and decided that the Commission should tackle arguments of a legal nature, as well. The Commission's activities developed along three lines: the investigation of allegations and evidence in relation to war crimes; law enforcement and the punishment of war crimes; and the formulation of legal principles having to do with war crimes and the liability of perpetra-

tors. Accordingly, the Commission appointed three committees.

Committees

The Committee on Facts and Evidence (Committee I) was charged with the review of complaints (to be submitted by the various governments), the compilation of lists of alleged war criminals for consideration by the Commission, and the formulation of recommendations with respect to the investigation of war crimes. The Belgian representative, General Marcel de Baer, a lawyer and judge in the city of Antwerp, was elected its chairman.

It was the responsibility of Committee I to determine whether material that had been submitted to the Commission was legally sufficient to establish a case. As the UNWCC possessed no detective or investigative powers, it had to wait until charges were submitted by the various governments, and then had to hope for the best with regard to the accuracy of the information it received, and the diligence and good faith of the providers of this information. A name was entered on a list, not in the aftermath of judicial proceedings, but consequent to the statement of a single party. The person charged was not summoned to answer questions, and evidence was obtained, not from persons under oath, but from written statements. In addition to its designation of persons as "accused," the Commission introduced lists of "suspects," and "witnesses."

The Committee on Means and Methods of Enforcement (Committee II) would recommend to the Commission the methods and policies it should adopt in regard to the apprehension, surrender, detention, investigation, and prosecution of alleged war criminals. The recommendations, if adopted by the Commission's plenum, were then to be transmitted to the member governments for their consideration. The chief efforts of Committee II were to be directed toward the incorporation of clauses providing for the apprehension of war criminals into the anticipated armistice with Germany; the composition of draft conventions that would provide for the establishment of courts to prosecute the war criminals who could not be tried or were not likely to be tried before national courts; and the creation of war crimes offices or agencies in defeated enemy countries that would carry out the identification and arrest of war criminals. Pell was chairman of Committee II.

The Committee on Legal Questions (Committee III), chaired by Professor of Criminal Law Stephan Glaser of Poland, was the advisory board of the Commission. It strove to articulate the more theoretical aspects of the arguments that centered on: the concept of war crimes, the putative criminal nature of aggressive war, collective responsibility, individual responsibility vis-á-vis orders by superiors, gaps in national legislation, and the putative criminal nature of specific acts resembling (but technically not classifiable as such) the notion of war crimes. At the same time the committee was called on to make determinations on the criminal nature of alleged criminal acts or the liability of accused persons in cases in which there were multiple sources of ambiguity. The committee's counsel was also sought in regard to what should be, in the context of changing international laws and customs of war, the scope of the retributive actions of the UN.

On November 29, 1944, the UNWCC established a branch in Chungking, China (at the time the provisional capital of China), which it named the Far Eastern Sub-Commission. Its mission was to undertake a study of the alleged criminal acts perpetrated by the Japanese. Wang Chung Hui, Secretary-General of the Supreme National Defense Council of China was elected its first chairman. Until March 1947 (when it was dissolved), the Far Eastern Sub-Commission held thirty-eight meetings—each of them attended by UNWCC representatives from the United States, Britain, China, and the Netherlands. About 90 percent of the allegations of crimes presented to the Sub-Commission came out of the Chinese National Office. In addition, the UNWCC created a small subcommittee of in London, under the chair of Wellington Koo, the Chinese UNWCC representative.

Commission Proceedings

Guidelines for the operation of the UNWCC took shape during its initial meetings. Fears for the safety of persons who participated in any way in the work of the Commission led to a press ban and a ban on the taking of photographs of UNWCC members. It was also agreed that the Commission needed to work in closed sessions; only those Commission proceedings that centered on select matters of special interest would make their way into written communiqués. To encourage members of the Commission to express their views, it was decided that debates that were part of Commission proceedings would not be recorded. The Commission was scheduled to meet every week, but much of its actual work was conducted within the three committees.

Not surprisingly, the Commission was furnished with limited resources and inadequate facilities. Its secretariat consisted of only a secretary-general, a liaison officer, and three clerks. The Commission was given no lawyers, investigators, technical assistants, or other specialists. Except for clerical tasks, all work was performed by the representatives and their deputies. Furthermore, Commission representatives, with the excep-

tion of those from the United States and the United Kingdom, held other positions and could devote only part of their time to Commission affairs.

Legal Issues

The first question on which the Commission had to determinations was: What is a war crime? No agreed-upon definition existed, nor did there exist a binding list of war crimes. In early December 1943 the UNWCC, instead of compiling an extensive and binding list of war crimes, decided to adopt the list of war crimes that had been prepared by the 1919 Commission on the Responsibility of the Authors of the War and on the Enforcement of Penalties established by the preliminary peace conference of Paris in January 1919. Not only did this measure reduce the risk of being criticized for inventing new war crimes after the acts had been perpetrated, but Italy and Japan had been parties to the preparation of the 1919 document and Germany had never objected to it. Commission members recognized, however, that this list could be neither final nor definitive, and saw it as a starting point and a practical foundation for their work. Accordingly, there was no steadfast definition of the term *war crime* until the end of the war.

Another point of debate that the Commission failed to reach agreement on until the end of the war was the question of whether a war of aggression amounted to a war crime. There were two competing schools of thought. One school of thought held that acts committed by individuals for the purpose of launching an aggressive war were, strictly speaking, *lega lata,* not war crimes; the other maintained that international law had developed in such a way as to almost guarantee that aggressive war amounted to a war crime that entailed individual liability. All agreed, however, that the launching and waging of a war of aggression was illegal. Only after the London Conference (June 26, 1945–August 8, 1945), where delegates of the United States, Great Britain, the Soviet Union, and France negotiated the guiding principles for prosecuting war criminals at the insistance of the United States, had incorporated the notion of aggressive war into the Charter of the International Military Tribunal and identified aggressive war as a war crime did the War Crimes Commission include this high crime as being within its purview.

International law did not recognize war crimes as any offenses committed by an enemy nation against its own nationals or those of other enemy countries. The initiative to limit the War Crimes Commission's jurisdiction to investigating crimes committed against nationals of the Allied nations came from the British. According to this notion, German atrocities perpetrated against, for example, Polish citizens were considered war crimes, whereas atrocities perpetrated against Hungarian, Romanian, or, of course, German nationals were not. The latter were deemed to appertain to the domestic policy of sovereign states, and were therefore to be prosecuted by the successor governments of former enemy countries, Germany included. This reasoning would of course have bearing on Hitler's principal victims—European Jews, but also on populations such as the nationals of neutral countries, stateless persons, and non-Jewish nationals of the Axis.

Several UNWCC members, however, objected to such an asymmetrical interpretation of the term *war crime*, and the ensuing discord developed into a severe crisis of confidence between, on the one hand, the American and British representatives on the Commission and, on the other, their respective foreign ministries. Shortly after the UNWCC began its work, Pell raised the question of crimes perpetrated by Germans against citizens of the Third Reich and insisted on allowing the Commission to investigate such offenses. He wanted all such atrocities committed after January 30, 1933—the day Hitler became Germany's Chancellor—to be classified as war crimes. In addition, he recommended that the term *crimes against humanity* (which was hardly common at that time) should refer to, among other things, crimes committed against stateless persons or against any persons by reason of their ethnicity or religion.

The members of Committee III, having been appointed to make determinations on the kinds of crimes that would make up the Commission's scope of work, proposed as one category of crime: ". . . crimes committed against any person without regard to nationality, stateless persons included, [as well as crimes committed] because of race, nationality, religious, or political belief, irrespective of where they have been committed." Accordingly, Hurst notified the British government of the Commission's readiness to investigate atrocities that had been committed on racist, political, or religious grounds. Any decision in this regard, however, depended on the concurrence of the British and U.S. governments. As late as mid-November 1944 (after the United States had been consulted), Hurst was notified by officials of the British government that the crimes that Committee III was putting forward were not to be considered war crimes. He was also notified that the Commission could collect evidence with respect to the German campaign of mass murder—though the British government thought that it would be a mistake for the Commission to undertake this additional and heavy burden.

Pell was no more successful with U.S. government officials, who continued to endow the term *war crime* with a narrow interpretation. But through his repeated appeals (some made directly to Roosevelt), Pell prevented the U.S. administration from pushing the issue aside. The United States reversed its position when it realized that the American public would not accept distinctions made among the victims of Axis nation atrocities according to whether they were Allied or Axis nationals—particularly after the massacre of European Jewry had been publicly revealed. The altered U.S. position led to the incorporation of the notion of crimes against humanity into the Nuremberg Charter of August 8, 1945 (admittedly in its narrow form), and so into international law. When Pell was discharged from the Commission in January 1945, it would take until January 1946 for the Commission to agree that crimes against humanity as described in the London Charter were war crimes within its jurisdiction.

Evidence and Cases

The Commission's prime task was, as stated previously, to investigate allegations of war crimes, and (where possible) to record evidence of the crimes and identify the perpetrators. In December 1943 each of the member governments of the UNWCC was asked to establish its own National War Crimes Office for the purpose of investigating war crimes that had caused detriment to it or its nationals, preparing charges against the alleged war criminals, and transmitting the charges, along with the relevant information and material, to the Commission for examination. The National War Crimes Offices were also encouraged to transmit to other governments information pertaining to war crimes that might be of value to those governments. In other words, the responsibility for field investigations and the preparation and transmission of charges fell to the individual National Offices. The War Crimes Commission had to examine the charges in the presence of representatives of the National Office that had made the allegations. Whenever the Commission then determined that there appeared to be sufficient evidence that a war crime had been committed, it placed the names of the alleged war criminals on its list.

Until the end of the war the number of charges that had been transmitted to the Commission by the National Offices remained small, relative to the enormous number of crimes that had been perpetrated. In an effort to overcome this difficulty, Committee I adopted the practice of listing the names of persons belonging to an entire military unit when it appeared that war crimes had been committed on such a scale that all members of that unit could be presumed to have taken part in them. The Commission also wanted the governments of enemy-occupied countries to submit to the Commission lists of all enemy personnel in authority, military and civilian, in each occupied district since 1939. Moreover, the Commission suggested that all members and former members of the SS and the Gestapo be apprehended and interned. It was anticipated that there would be difficulties with regard to identifying, investigating, and convicting members of these notorious organizations, and the arrest of these persons was meant to assure that they would be available on request. The Commission, in fact, had adopted the view that these organizations were, by definition, criminal, and that membership in them, by itself, was sufficient evidence against to warrant the accused for the purpose of both his being listed by the Commission and put on trial. In this instance also, the Commission made a final decision only after the Americans had incorporated the concept of criminal organizations into their memorandum, "The Trial and Punishment of Nazi War Criminals," which would become the core of the Nuremberg Charter.

The UNWCC completed its first list of German and Italian war criminals in December 1944. It contained 712 names, all of them submitted by European governments. Among those named were forty-nine high-ranking Nazi officials. In addition to Adolf Hitler, Hermann Göring, Joseph Goebbels, Heinrich Himmler, and Hans Frank, the group of forty-nine consisted of generals, administrators of occupied regions, and political appointees such as Joachim von Ribbentrop, Konstantin von Neurath, Hjalmar Schacht, and Arthur Seyss-Inquart. The Commission was of the opinion that the proper course for bringing these high-ranking war criminals to justice was to try them in a court of law—not to impose penalties by political fiat. Furthermore it rejected as irrelevant the doctrine of the immunity of heads of state or members of government.

An International Court

Still another complex issue, one that had preoccupied the UNWCC from its earliest meetings, centered on the type of court that should be used to try persons accused of war crimes. Although legal proceedings were beyond the Commission's jurisdiction, its members insisted on examining the issue. On February 25, 1944, Committee II, under Pell's chairmanship, began to examine prospects for the creation of an international court. No consensus was reached as to whether such a court would be a body composed exclusively of jurists or some sort of military tribunal. Most Committee members seemed to prefer a combination of the two. For his part, Pell preferred a judicial body that would be composed of jurists, military officers, and lay persons. He wanted the prospective court's trial judges to recognize that a

major part of their endeavor would be to make the outbreak of future wars less probable.

The creation of an international court quickly became a focal point of discord between the UNWCC and the British government. The increasing disposition of the Commission members to delve into questions such as the type of court or code of law to be used greatly troubled the British Foreign Office, which objected to the creation of a court or any other judicial machinery. The Foreign Office wanted persons accused of war crimes to be tried by military courts or, in some countries, civil courts that would apply existing laws and principles. Each Allied government was to be entrusted with trying all cases that arose from allegations of offenses that had been committed on its own territory or against its own nationals.

Nevertheless, in September 1944, the Commission approved a final draft of the Convention for the Establishment of a UN Joint Court. It contained twenty-nine Articles, but did not include a detailed list of war crimes. Instead, the court would handle allegations of offenses committed against the laws and customs of war. The Commission wished to endow the Court with the latitude of action to carry out the intentions of the Allied governments—such as they had been expressed in numerous public statements and in general international treaties or conventions pertaining to the laws of war. Although it proposed that the court be given the power to impose the death penalty, the draft convention made sure to protect the rights of defendants.

Yet members of the Commission realized that setting up such a court would be a long process, and that therefore interim courts would be needed. Moreover, Pell, who was aware that both the President and the U.S. State Department of favored military courts, had put much effort into convincing Commission members to support the idea of interim military courts. According to the draft convention, "mixed military tribunals" would have the jurisdiction to try nationals of enemy countries accused of having committed war crimes. The judges were to be nationals of Allied countries, and each tribunal would consist of no less than five members. The rules of procedure were to be consistent with practices that were habitual in the Allied nations and to be framed by the tribunals' appointing authorities. Prosecution was to be left to the relevant nation, and the tribunals would have the power to subpoena persons and documents. Trial in a mixed military tribunal would not bar proceedings before an international tribunal. The Commission regarded both types of courts—an eventual UN Court (to be created by treaty) and mixed military tribunals to be appointed by military commanders—as complementary, not as competitors.

Strongly opposed to the UNWCC proposal of a treaty court, the British government tried to enlist Washington's support in its effort to have the proposal withdrawn, and meanwhile held back its response to the UNWCC. Frustrated, Hurst reached the conclusion that the Foreign Office was once again disregarding Commission proposals. Similarly, Pell was extremely disappointed when he found that neither the President nor Secretary of State of the United States had reacted in a positive way to what he regarded as his major achievement—convincing the Commission to propose the establishment of a military court. When the two governments finally adopted the military tribunal proposal, both Pell and Hurst were no longer the respective American and British representatives to the UNWCC.

Hurst felt he had been put in an impossible position being unable to decipher the views of the British government, and therefore unable to relay them to Commission members. As chairman, he found it increasingly difficult to contend with the repeated complaints within the Commission about the scarcity of attention or guidance coming from London, and he resigned in early January 1945—ostensibly for medical reasons. The British government quickly appointed William Viscount Finlay to replace him, who had been a judge in England since 1924 and during World War II served as Chairman of the Blockade Committee at the Ministry of Economic Warfare. It was calculated that the appointment of this prominent figure was done to dispel accusations of Britain's indifference to the Commission. When Finlay died a few months later, on July 4, 1945, Sir Robert Craigie replaced him.

The British government was extremely fearful that Pell would become UNWCC chairman. In the end, Lord Robert Alderson Wright, a senior British judge who was the Commission's nominal Australian representative, was elected chairman, on January 17, 1945. The British were not alone in opposing Pell. Relations between Pell and the U.S. State Department, tense from the outset, had grown worse. The State Department, motivated in part by animosity toward Pell, had worked to constrain whatever actions he wished to take, to reject most of his initiatives, and to undermine his position in the eyes of the British. State Department officials could not abide Pell's independence of judgment and action. Perhaps the best explanation for the clash between Pell and the U.S. government lay in the U.S. government's lack of an established policy or even principles vis-à-vis the treatment of suspected war criminals, and in the State Department's predilection for postpon-

ing decisions on the issue. Pell, who regarded himself as a statesman and not a bureaucrat, had believed (erroneously) that he could influence overall U.S. policy toward Germany. His limited legal knowledge had naturally prompted him to focus on policy matters. When, shortly after his appointment, Pell realized that the State Department did not regard the question of the treatment of suspected war criminals as a serious matter and that no one in the State Department actually cared much about the UNWCC, he decided that he had better act on his own initiative to further the development of a policy toward war criminals. Taking advantage of the fact that he had been Roosevelt's appointee, Pell did not hesitate to bypass the State Department and attempt to enlist Roosevelt's support for his proposals directly. Inevitably, the poor relations between the State Department and Pell influenced the State Department's overall attitude toward the UNWCC. In the end, the State Department maneuvered to have Pell replaced (as the Commission's U.S. representative) by his deputy, Colonel Joseph V. Hodgson.

With the conclusion of the war, Wright was determined to prevent the Commission from being pushed to the sidelines. He even sought to have the scope of the Commission's mandate expanded and to have the Commission play an active part in the gathering of evidence on war crimes. However, when he proposed to set up a War Crimes Investigation Team at the Supreme Headquarters of the Allied Expeditionary Force (SHAEF, the command headquarters of the commander of Allied forces in Europe), the British government ruled out the possibility because of its longstanding low appreciation of the UNWCC and its interest in transferring responsibility for dealing with war criminals to the individual countries. Wright had more success in furthering the goals of the Commission when he convened a conference of representatives of the various National War Crimes Offices, which took place in London on May 31, 1945. At the conference he spoke about the importance that the UNWCC had ascribed to the work of the National War Crimes Offices, and explained that the Commission's primary function had been to act as a sort of central clearing house for the written statements in which war crimes were alleged. The Commission had promulgated its conviction that justice and not revenge should be the aim of those working to prosecute alleged war criminals. With this in mind, Wright wanted the Commission to act as a central advisory bureau and liaison that could coordinate the activities of the National War Crimes Offices and military authorities in Germany and Austria.

The Commission's wish to cooperate with military authorities was partially fulfilled when the Allied theater commanders in Germany and Austria were authorized to accept lists of war criminals directly from the Commission, and to apprehend and detain those listed in the absence of further proof of their having committed war crimes. An officer of SHAEF, furthermore, had been attending the Commission's meetings regularly, starting in May 1945. Wright also succeeded in coming to an agreement with U.S. Supreme Court Justice Robert J. Jackson, who had been appointed Chief of Counsel for the Prosecution of Axis Criminality by president Harry S. Truman on May 2. Jackson regarded the Commission as a supporting body, and expected it to provide him with evidence that would help him to acquire an overview of the war crimes that had been perpetrated by the highest-ranking Axis authorities. Following Jackson's appointment, there were close contacts between the Commission and the staffs of the Chief Prosecutors of the United States, Great Britain, and France, prior to and during the trial of the major war criminals at Nuremberg—as well as between the Commission and the attorneys preparing the subsequent proceedings. The UNWCC furnished the prosecution with first-hand information and evidence of crimes committed in the occupied countries.

In the final analysis, despite the obstacles put up mainly by the British Foreign Office and U.S. State Department, the UNWCC was successful in its undertaking to formulate a policy on the handling of war criminals, and had prompted individual governments to grapple with the question of which policies they would adopt. The most important of the UNWCC proposals that made their way into the U.S. ground plan for punishing war criminals and, thereafter, into the Charter of the International Military Tribunal, were the concepts of aggressive war, criminal organizations, mixed military courts, and crimes committed by an enemy against its own nationals. Summing up the importance of the Commission's activities for the year 1944 and the beginning of 1945, Wright would declare, in the official history of the UNWCC, that "[T]he United Nations had ready to their hands when the time came, a more or less practical scheme for the prosecution and punishment of war criminals, which was capable of being completed and put into effect when the Nazi resistance collapsed." The UNWCC ultimately presented 80 lists that contained the names of 36,529 suspected war criminals (of whom 34,270, were German and 1,286 Italian).

SEE ALSO Jackson, Robert; London Charter; Morgenthau, Henry; Nuremberg Trials; War Crimes

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Arieh J. Kochavi

United States Foreign Policies Toward Genocide and Crimes Against Humanity

Since World War II, many instances of genocide have been alleged to have occurred in all regions of the world. They have presented serious challenges to foreign policymakers in many countries including the United States. The United States has, historically, projected itself as a democratic state that champions respect for human rights and fundamental freedoms. American officials and diplomats have repeatedly reaffirmed these principles at international conferences and forums. Presidents have enshrined them in doctrines that underpin the course of United States foreign policy at different times in American history. Given the heinous nature of the crime of genocide, it is unsurprising that the United States would at least take action, if not exercise leadership, in dealing with the crime whenever it occurs.

In principle, there are at least two ways in which the United States could react to genocide, or allegations of genocide. One is at the level of norms and principles. In other words, the United States could work to promote the development and acceptance of international norms and rules regarding genocide. In this connection, playing an active role in drafting, and vigorously supporting the application of, a treaty like the Genocide Convention comes to mind. The United States could also actively support the creation of international bodies such as courts to conduct trials of people accused of committing genocide. Alternatively, and perhaps in conjunction with the development of norms and rules, the United States could take concrete measures in cases of genocide, or when allegations of genocide are made. These could involve taking timely measures to prevent genocide before it occurs, especially in cases where there is advance warning. Or, they could involve proposing and supporting the application of sanctions—political, economic, and military—in order to bring an end to the atrocities and to bring the perpetrators to justice.

The United States' experience in dealing with the issue of genocide involves its participation in the development and advancement of international norms and rules on genocide and its official reaction to various instances of genocide. It is possible to assess how and how well United States foreign policymakers have taken concrete measures to deal with the atrocities that were committed in those cases.

The United States and the Development of Norms and Rules on Genocide

United States policymakers had their first opportunity to contribute to the elaboration of international norms and rules regarding the crime of genocide in the period immediately following World War II. The genocide of World War II was on the agenda of the first session of the United Nations General Assembly in 1946. Diplomats as well as activists, including Raphael Lemkin, had lobbied the General Assembly to take the issue up and to consider what measures could be taken to deal with any future cases of genocide. With U.S. support, the General Assembly adopted a resolution that branded genocide a crime under international law and called for the adoption of an international treaty on the subject. The treaty, the Genocide Convention, was completed two years later, in December 1948.

The most important negotiations on the Genocide Convention took place in the Sixth (Legal) Committee of the General Assembly, although at various stages during the negotiation process, the United Nations Secretariat and the Economic and Social Council (ECOSOC) made proposals that influenced the final product. United States diplomats were actively involved, making constructive contributions throughout the drafting process, especially in the ECOSOC and the Sixth Committee. They negotiated significant compromises on contentious issues related to the definition of the crime of genocide. They also advanced and successfully de-

First Lady Eleanor Roosevelt addresses a meeting of the American Red Cross on April 11, 1934, in Washington, D.C. She had joined the American Red Cross as a private citizen in 1912. [AP/WORLD WIDE PHOTOS]

fended the inclusion of an article in the Convention that contemplated the creation of a permanent international court to try those accused of committing genocide; and defended a role for the International Court of Justice in dealing with issues of state responsibility for genocide.

The compromises that the United States delegates worked out on these issues were not easy to reach. The issues were important to many states, some of which, especially the Soviet Union and its supporters, were determined to preserve maximum discretion for individual states in dealing with the genocide of the recent past as well as any future cases that may occur. In brief, the Soviet Union and its supporters were concerned about the impact that the Convention could have on their freedom of action and their exercise of national sovereignty. In the end, however, the United States representatives carried the day on all the issues that were important to them.

When the work on the Genocide Convention was completed, one would have expected that the United States would have moved quickly to ratify it, accepting it as the cornerstone international legal document on genocide. After all, the United States was the major ally during World War II in the defeat the Nazi regime, whose practices had led to the adoption of the Convention in the first place. The United States had also championed the creation of the Nuremberg Tribunal, and been a major participant in it. And it had been successful in the negotiations on the convention itself. Thus, one might have expected that the United States Senate, the only chamber of the Congress that must give advice and consent to the ratification of treaties, would have quickly given its approval to the convention. However, this was not to be. In June 1949 president Harry Truman formally requested the Senate's advice and consent to ratification; but it was not until almost forty years later, in February 1986, that the Senate actually did so, and even then it imposed a number of conditions that seriously undermined the main object and purpose of the Convention. Further, it was not until October 1988 that the Congress adopted the legislation needed to implement the Convention, finally opening the way for president Reagan to deposit the United States instrument of ratification at the United Nations. The Convention formally became binding on the United States in February 1989.

During the intervening forty years, between the time when president Truman requested advice and consent to ratification and the time when the Senate agreed to do so, the Senate Committee on Foreign Relations held several hearings on the Convention. During the 1970s, the committee at times seemed poised to recommend ratification to the Senate as a whole, but every time, the hopes of the Convention's most ardent supporters were dashed.

The arguments that were advanced against ratification of the convention by its most vociferous critics changed very little over those forty years. They criticized specific aspects of the definition of the crime, quibbling over the groups that were the object of protection of the convention (Article II) and over the specific acts that could be considered genocidal (Article III). They also expressed grave concern about the creation of an international criminal court to try anyone accused of committing genocide (Article VI), fearing that Americans, especially members of the U.S. armed forces, would be dragged into such a court on trumped up charges of genocide. In addition, they opposed the role of the International Court of Justice (in Article IX) in resolving disputes among states regarding the interpretation or application of the Convention. The critics of the convention in the United States used essentially the same arguments as those used by the Soviet Union's representatives during the negotiations on the Convention: they were concerned about the possible negative

impact that the Convention could have on the freedom of action of the United States and its exercise of national sovereignty.

The executive branch was generally supportive of ratification through all the years the Genocide Convention was under consideration in the Senate. Presidents Truman, Nixon, and Carter were especially supportive. President Reagan endorsed ratification shortly before his re-election bid in 1984, although he had not supported ratification earlier in his first term. Diplomats and other government officials were also often supportive, and testified before Senate committees. In general, the Convention's supporters argued that ratification was important from the standpoint of the image of the United States as a champion of freedom and human rights throughout the world. Indeed, some supporters, especially diplomats, made a point of noting that the United States was often taken to task in international forums for not having ratified the Convention, and that its failure to do so had undermined its effort to exercise leadership in dealing with genocide and other serious human rights abuses.

Most of the opposition to ratification came from extremely conservative members of the Senate, mainly Republicans, who were supported by extreme right-wing nongovernmental organizations like the Liberty Lobby. However, representatives of the prestigious American Bar Association also criticized the convention relentlessly at the 1950 Senate hearings. The association changed its position to support the ratification effort in the 1970s, but many of its earlier criticisms continued to haunt the debate, undermining efforts to secure ratification. In the end, while those who favored ratification won the battle—after all, the Senate eventually gave its advice and consent to ratification—the opponents of ratification effectively won the war. They were able to impose conditions on the ratification—a package of understandings and reservations collectively known as the Lugar-Helms-Hatch Sovereignty Package—that effectively gutted the main object and purpose of the treaty. The Sovereignty Package rejects the authority of the International Court of Justice to deal with disputes regarding the interpretation and application of the Convention that might involve the United States, except with the specific consent of the United States. It also affirms the supremacy of the U.S. Constitution over the Convention and expresses reservations about the creation of a permanent international criminal court to try perpetrators of genocide. Several West European allies of the United States expressed objections to the terms of the Sovereignty Package, but in the end the United States became a party to the treaty in accordance with the terms of the package.

The terms of the Sovereignty Package has undermined the moral position of the United States in dealing with cases of genocide, and they have had serious practical implications as well. For example, the reservation to the authority of the International Court of Justice to deal with disputes regarding the interpretation and application of the Convention effectively insulated the United States from any challenges to its exercise of discretion in interpreting and applying the convention. At the same time, however, it made it impossible for the United States to take any other country to task for its practices, however heinous, because that country could, under the doctrine of reciprocity in international law, invoke the United States' reservation in self-defense. Indeed, the purpose of the Sovereignty Package was to reduce the U.S. ratification of the Convention to a merely symbolic gesture, and in that, it succeeded.

Recent events suggest that the situation has not changed much, and may even have worsened. The United States' reaction to the recently created International Criminal Court provides a case in point. The U.S. negotiators on the Genocide Convention secured the adoption of an article (Article VI) that contemplated the creation of a permanent international criminal court to try anyone accused of committing genocide. The General Assembly followed up on this article and charged the International Law Commission with studying the possibility of creating such a court. However, the discussion in the commission in the late 1940s was rapidly brought to a close by the political tensions brought on by the emerging cold war between the United States and the Soviet Union. Profound disagreements among various parties involved in the project as to the nature and functioning of such a court also contributed to the problem.

Although some scholars and diplomats tried to keep the issue of creating a court alive during the post-World War II period, it was not until the 1990s that concrete achievements were made. The UN Security Council, with United States support, created two ad hoc international criminal tribunals to deal with cases arising from the Bosnian and Rwandan genocides in the early 1990s. Although these courts will cease to exist when they have fulfilled their mandates, the genocides they were created to deal with stimulated renewed and serious discussion about the need to create a permanent international criminal tribunal to deal with genocide as well as other significant crimes, such as war crimes and crimes against humanity.

The discussions, which took place through the mid-1990s, concluded in a major conference in Rome in July 1998, attended by representatives of 160 coun-

tries, including the United States. The vast majority of countries that attended the conference voted to adopt the statute for the court (the Rome Statute) that emerged from it, but seven countries, including the United States, voted against it. The statute was quickly and broadly accepted, however, and the International Criminal Court (ICC) came into existence in July 2002.

The ICC could try individual persons charged with committing genocide, war crimes, and crimes against humanity. Cases could be referred to it in various ways, including the Security Council, the states that are parties to the statute, and the court's prosecutor. The United States had voted against the statute because of disagreements over several issues, including circumstances under which the court could exercise jurisdiction, especially the possibility that the court would exercise jurisdiction over persons from countries that are not a party to the statute. The statute became the subject of lively debate within the United States, with many distinguished professionals in international law arguing that the United States' fears and concerns were exaggerated, if not unfounded. The court's supporters urged president Clinton to reconsider the U.S. position and to at least sign the statute. The president's signature would indicate that the United States approved the creation of the court in principle, although it would not be legally bound by the court's statute until it ratified it. In December 2000, shortly before leaving office, president Clinton signed the statute, but not with unreserved enthusiasm. He believed that his signature would reaffirm the United States' support for international accountability for grave crimes such as genocide, and would make it possible for the United States to remain engaged in making the court an instrument of impartial justice in the years ahead. However, he remained concerned about flaws in the statute, in particular that the court might exercise jurisdiction over persons from countries that had not ratified the statute, and he indicated that he would recommend to his successor that the statute be withheld from the Senate, postponing any request for advice and consent to ratification until these concerns were addressed.

Although president Clinton was persuaded to sign the statute, even with misgivings, some members of Congress expressed outrage, stating that they would never approve a resolution of ratification. Moreover, the Clinton's successor went substantially beyond his recommendation. Unlike the controversy over the Genocide Convention, where the executive branch was usually supportive—and never vocally opposed—to ratification, incoming President George W. Bush joined the opposition to the court. In fact, president Bush took the unprecedented step of the statute, delivering notice to the United Nations that the United States had no intention of becoming a party to it. Among other things, the administration claimed to want to protect American servicemen from being arbitrarily accused of committing genocide (or war crimes or crimes against humanity) and dragged before the ICC to stand trial. This was the same argument that had been made repeatedly in the Genocide Convention debates in the Senate. The Bush administration did not stop with unsigning the statute. It demanded that individual countries sign agreements stating that they would not hand over to the court any U.S. nationals who might be accused of genocide, war crimes, or crimes against humanity, and it threatened to terminate military assistance to countries that refused to sign such agreements. It also demanded that the United Nations Security Council agree to immunities for U.S. military personnel involved in UN peacekeeping operations, a move that provoked dismay among diplomats and high-ranking civil servants, such as Secretary-General Kofi Annan.

Clearly, the United States has experienced difficulty in dealing with the elaboration and acceptance of international norms and rules on genocide and related crimes. On the one hand, policymakers at the highest levels have repeatedly condemned genocide, war crimes, and crimes against humanity, and they have affirmed the United States' commitment to freedom, respect for human rights, and a stable international order based on respect for law. Nonetheless, there have been serious disagreements on how best to realize those commitments. Although U.S. negotiators have been active in framing norms and rules, strong opposition to accepting legal obligations in this field has been expressed in various quarters, especially among the most conservative members of Congress. The result—in the case of the Genocide Convention a symbolic acceptance; in the case of the ICC, outright hostility—has led many to conclude that the United States may say that it wants a stable international order based on law, but is not willing to be held accountable to the same rules that it expects everyone else to accept.

The United States' Reaction to Instances of Genocide

Genocide has occurred on numerous occasions, both before and after World War II. The most prominent cases occurred in Cambodia in the mid-1970s, Bosnia in the early 1990s, and Rwanda in 1994. Some say that genocide occurred in other instances as well. One example that predates World War II was the slaughter of ethnic Armenians in Ottoman Turkey during the years 1915 and 1916. Others took place in the postwar years—in Indonesia, for example, in the slaughter of hundreds of thousands of communists in the mid-

1960s, and in the invasion and occupation of East Timor, beginning in the mid-1970s; in Paraguay against the Ache Indians, in the early 1970s; in Burundi in sporadic strife between Hutus and Tutsis from the early 1970s to the 1990s; in Iraq in the late 1980s in what came to known as the Anfal campaign against the Kurds and at the time of the first Gulf War against the Marsh Arabs; and in Kosovo in the late 1990s.

All of these instances of alleged genocide, each occurring under their own specific historical and political conditions, challenged U.S. policymakers to develop appropriate responses. At the time of the Armenian genocide, the United States had not yet emerged as the major world power that it became in the post World War II period. In some cases, the genocide occurred under conditions that might be called a civil war, in other cases, not. Even the magnitude of the genocides, in terms of victims and the length of time over which they occurred, differed. Nonetheless, research has shown that the United States' reaction to the genocides has varied relatively little over time. Numerous obstacles have usually stood in the way of taking concrete action, and such measures as have been taken have usually been taken late, aimed more at dealing with post-genocide issues than at saving lives.

The Armenian genocide provides a good starting point for understanding how genocides can occur with impunity because those who might be in a position to prevent or mitigate the effects of the crime have failed to take effective measures. U.S. government officials and foreign dignitaries at various levels took an interest in the plight of the Armenians. The United States Ambassador in Constantinople at the time, Henry Morgenthau, Sr., labored strenuously to try to protect the Armenians, meeting with Ottoman officials to protest their treatment, sending numerous cables to State Department officials urging action, and even raising funds to try to assist survivors and to relocate hundreds of thousands of them to the United States. After almost two years of fruitless work, he returned to the United States, frustrated that he had been unable to stop the bloodshed. It is estimated that one million Armenians were either killed outright or died as a result of the conditions of life imposed on them between 1915 and 1916.

Despite the pleas of Morgenthau and others, and reports of the atrocities in some of the mass media, the United States refused to take the side of its allies, Great Britain and France, who condemned the slaughter, or to approach Germany, which was allied to the Ottoman Empire, because it did not want to abandon its neutral stance at that time. Top-level policymakers even advised Ambassador Morgenthau not to protest too strongly to the Ottoman officials about the genocide. He was counseled to be respectful of their claim that their actions were domestic and not of concern to outside powers, and even that there was some validity to their claim that their actions were aimed at dealing with a national security threat. In short, intervention in this case was not deemed wise because it was not perceived as falling within the national interest of the United States.

This pattern of dealing with the Armenian genocide set a precedent, and in later instances of genocide similar arguments were advanced as to why the United States could not take measures on behalf of the victims. Even during World War II, at a time when the Nazi regime in Germany was engaged in the genocide that would eventually take the lives of an estimated six million Jews and members of other groups, reports of the atrocities were greeted in U.S. policymaking circles with incredulity, disbelief, and even lack of interest. What British Prime Minister Winston Churchill called the "crime without a name" was already evident, yet it was greeted by denial or indifference. All efforts were directed at winning the war against Hitler's Germany, which was seen as the only effective way of stopping the atrocities. It was only after the war that statesmen were prepared to come to terms with the truth of what had happened, and they established measures such as the Nuremberg Tribunal to punish the perpetrators, bringing some sense of justice to survivors and relatives of victims.

The Armenian genocide and the genocide of World War II occurred at times when international communications and transportation were slow and cumbersome. Yet reliable information about what was going on in these instances of genocide was abundant and ready at hand. The problem was not really a lack of awareness or information; it was a lack of political will to do anything about the problem under the circumstances. More recent instances have occurred under different circumstances, when communications are virtually instantaneous, and improvements in transportation have reduced the time it would take to get to a trouble spot to hours rather than days and weeks, but still a lack of will has prevailed. The Cambodian, Bosnian, and Rwandan genocides illustrate how, even under a different kind of international system brought about in part by advances in technology the arguments against taking action in clear cases of genocide remain essentially the same.

Cambodia has a long and sometimes tragic history, but it surely entered into its darkest period in April 1975, when the Khmer Rouge, headed by the infamous Pol Pot, triumphantly entered the capital city of Phnom

Penh after having won a five-year civil war. Previous to this momentous event, many foreign observers as well as Cambodians saw the Khmer Rouge fighters as potential liberators of the country, and believed that better times would follow their victory. Instead, the victory of the Khmer Rouge immediately turned into a nightmare of unimaginable proportions. During the three and a half years that the Khmer Rouge was in control, some 1.5 million people out of a total population of about 8 million people died.

In the West in general, and the United States in particular, the initial reaction to the Khmer Rouge's victory and atrocities was muted. In fact, there was a tendency to engage in a form of denial, to believe that the slaughter would stop, that it would not be indiscriminate and was, instead, targeted at a relatively small group of political opponents. This form of denial was sometimes accompanied by a debate over whether or not genocide was actually occurring in Cambodia. It was clear that Cambodians were killing Cambodians, but did this constitute genocide? Or were the Khmer Rouge engaged in what might be called "politicide"; that is, the killing of persons for political reasons.

To say that the Khmer Rouge was engaged in genocide in the sense that the crime is defined in the Genocide Convention would have required that the targeted groups be national, ethnical, racial or religious, not political. Even in the earliest stages, it was clear that certain categories of persons—for example, former military officers, policemen, and government officials—were targeted, and it is known that such persons were executed along with members of their families, including infants and children. Moreover, although most of the victims were, in fact, Cambodians, there seems no doubt that certain specific ethnic groups including Vietnamese, Chinese, and Cham minorities, were targeted for elimination, and that the Khmer Rouge also set out to eliminate Buddhism as a religious force in Cambodian society. They actually succeeded in achieving these objectives to a large extent, and these actions were surely genocidal in nature, consistent with the terms of the Genocide Convention.

Given the magnitude of the crimes, what could or should the United States have done? In retrospect, it is easy to say that concrete actions could have been taken in an effort to stop the atrocities. But it must be borne in mind that, at the time the Khmer Rouge came to power in Cambodia, the Vietnam War was drawing to a close. That war had become so unpopular in the United States and elsewhere that it would have been impossible for anyone to argue in favor of U.S. military intervention, even it it was motivated by a desire to stop the slaughter. In fact, there were some who argued that U.S. policies during the Vietnam war—the bombing raids on Cambodia, the "incursion" in 1970, and the financial and military support of the Lon Nol government—had all actually contributed to the Khmer Rouge victory.

If military intervention was not in order, what else could the United States have done? President Gerald Ford, and some high-ranking government officials like Secretary of State Henry Kissinger, occasionally addressed the unfolding tragedy, making statements about the "bloodbath" taking place. Apart from that, the United States largely ignored the tragedy. It maintained an economic embargo against Cambodia, but such policies are rarely if ever effective. During the presidential campaign in 1976, then-candidate Jimmy Carter argued in favor of restoring morality to American foreign policy, but when he became president in 1977, he found it difficult to translate these goals into reality. Yet, the reports coming out of Cambodia provided chilling details of the genocidal massacres that were underway, and they were widely discussed in Congress. In April 1978, President Carter denounced the government of Cambodia for its policies and called upon other members of the international community to protest the genocide. In 1978 and 1979, congressional hearings were held on the subject, and investigations were conducted by the United Nations. Both Congress and the UN concluded that there was growing evidence that genocide had occurred in Cambodia. However, it fell to the Vietnamese to do something about the matter. Vietnamese forces invaded Cambodia in January 1979 to overthrow the Pol Pot government and impose a new order.

It can be argued that the Vietnamese invasion of Cambodia was a significant contribution to humanity, but it was not received as such in much of the world. At the time of the invasion, the United States was concerned with improving relations with China, which was the principal backer of the Khmer Rouge, as a way of bringing pressure to bear on the Soviet Union to be more amenable to U.S. interests. Moreover, the United States, along with other states in the region, found it difficult to accept without protest the invasion of one state by another, fearing that a dangerous precedent could be set. Incredible as it may seem, when controversy arose over which delegation to seat in the fall 1979 United Nations General Assembly meeting in New York—the ousted Pol Pot regime or the Vietnamese backed regime then in control of the country—the Association of Southeast Asian Nations (ASEAN) and China argued strongly in favor of the Pol Pot regime. The dispute had to be resolved by committee, in which the United States bowed to Chinese and ASEAN inter-

ests and voted to seat the Pol Pot regime. The United Stated did, at least, go on to claim that the issue of seating a delegation was purely technical and legal, and that its support of seating the Pol Pot regime did not imply approval of that regime's policies. The United States maintained this stance during the Reagan administration and beyond, supporting at one time the seating of a coalition delegation that consisted of some Khmer Rouge elements.

Even though statesmen missed opportunities to apply the Genocide Convention for various political reasons, the Cambodian genocide remained a matter of concern to scholars, activists, and politicians in the United States and abroad during the 1980s and 1990s. Some argued in favor of bringing a case against the Khmer Rouge to the International Court of Justice under Article IX of the Genocide Convention, which authorizes the ICJ to deal with the matter of state responsibility for genocide. Cambodia had ratified the convention with no reservation to Article IX, so there was no legal hindrance for another state party to the convention to bring a case relating to state responsibility. However, efforts to persuade another party to the convention to take up the case were to no avail. So far as the United States was concerned, it could not have brought a case to the court after becoming a party to the convention in 1989 because of its reservation to Article IX, as set forth in the Sovereignty Package, which blocks the court from dealing with a case involving the United States without the specific consent of the United States. Under the doctrine of reciprocity in international law, Cambodia could invoke the U.S. reservation in self-defense.

The possibility of bringing the surviving perpetrators of the Cambodian genocide to trial came to the forefront in the 1990s. In 1998, during the administration of President Clinton, the United States expressed interest in putting Pol Pot on trial, but he died in April 1998, escaping, as it were, a judgment day. However, a number of his accomplices were still alive, and the Clinton administration argued in favor of exploring ways of bringing them to trial. Finally, in 2000, the United Nations and the Cambodian government reached preliminary agreement on the creation of a mixed tribunal, consisting of Cambodian as well as international judges. The Cambodian parliament approved the agreement, but subsequent disagreements over issues of Cambodian sovereignty delayed its work. Justice for the victims of the Cambodian genocide therefore remained elusive.

The Cambodian genocide occurred in a remote region of the world at a time when an unpopular war was being brought to a close. In contrast, the Bosnian genocide in the early 1990s occurred in Europe at a time when profound changes for the better were occurring in the international system—namely, the end of the cold war. Under these fundamentally different circumstances, it would seem that a case for the application of the Genocide Convention would have been easy to make. However, no firm action was taken, either in the early stages of the genocide or later, as it unfolded, and such actions as were eventually taken, important though they were, were mainly in the form of post-genocide actions.

United States policymakers failed to take effective measures to put an early stop to the genocide in Bosnia, in part because of a lack of will, and in part because of uncertainty about what the United States' role should be. Analysts and policymakers engaged in a seemingly endless debate over the question of the cause of the conflict. Some argued that the killing simply reflected the reemergence of age-old hatreds that had characterized ethnic relations in Yugoslavia for hundreds of years. Communist oppression had muted these hatreds for several decades, it was argued, but with the end of the cold war and communist rule in Yugoslavia, the hatreds had reappeared with a vengeance. Thus, no outside intervention would be able to stop the conflict. Even Lawrence Eagleburger, an acknowledged expert on Yugoslavia, who became Secretary of State toward the end of president George W. Bush's administration, held this viewpoint.

Those who advocated some form of intervention pointed out that such views ignored the fact that Bosnians of various religious and ethnic backgrounds had intermarried in large numbers, that they lived in ethnically mixed communities, and that strife among the various communities was virtually nonexistent. The administration, however, held firmly to the position that the conflict was not one in which the United States should become involved. In fact, the United States initially disapproved of the secession of Slovenia, Croatia, and Bosnia from the Yugoslav federation, and only reluctantly agreed to recognize their independence in April 1992. The administration also repeatedly stressed that the problem was a European one and had to be settled by the European states, a position that accurately reflected the European viewpoint at the time. Thus, until the end of the Bush administration, the United States concentrated on encouraging humanitarian actions that could be taken by the United Nations to try to relieve hunger and ensure the availability of medical supplies in Bosnia.

The Clinton administration, which came into office in January 1993, at first seemed poised to take concrete action. The president had himself addressed the

UN Secretary General Kofi Annan shakes hands with a survivor of the Rwandan genocide, May 1998. It was during this trip to Rwanda that Annan apologized to the Parliament of Rwanda for the United Nations great failure to intervene. [AP/WORLD WIDE PHOTOS.]

Bosnian genocide during the presidential campaign, and he spoke eloquently of the need for action and of the United States' commitment to respect for human rights. High-ranking officials, including Secretary of State Warren Christopher, addressed the issue in congressional hearings and elsewhere early during the administration. However, there remained opposition in important circles to any intervention by the United States to end the genocide. General Colin Powell, for example, was opposed to intervention. Some of President Clinton's aides were also opposed, expressing concern that entanglement in a controversial international conflict might jeopardize important domestic policy initiatives. Consequently, while the Serbians continued their policy of ethnic cleansing, the administration retreated from its earlier strong position and the president pursued an ineffective policy of engaging in a lot of rhetoric to condemn the genocide but failing to follow up the rhetoric with action.

A combination of measures taken by the United States, the United Nations, and NATO beginning early in 1994 slowly, but finally, brought an end to the genocide. So far as the United States was concerned, the Clinton administration was moved to act by increasing domestic political pressure in Congress, the media, and public opinion to do something about Serbian atrocities against civilians, which were now widely reported in the media. The United States supported United Nations resolutions calling for the end of the arms embargo, which would allow the Bosnians to fight back against the Serbian forces. NATO involvement began extremely slowly, with air strikes against Serbian military installations. The Serbians remained defiant through most of 1994 and into 1995, carrying on their policy of ethnic cleansing with impunity. Toward the end of 1995, substantial NATO air strikes against Serbian military positions forced Serbia to the negotiating table, and the Dayton Peace Accords were signed in December 1995. One of the key provisions of the accords was that the parties to the agreement were bound to cooperate fully with the International Criminal Tribunal for the former Yugoslavia, which had been set up by the United Nations Security Council, with United States backing, in May 1993.

In contrast to the Cambodian and Bosnian genocides, which occurred over a period of several years, the

Rwandan genocide in 1994 lasted for only about three months, from April to June. Again, the United States—indeed, the entire international community—missed the opportunity to act in a timely manner consistent with the terms of the Genocide Convention to stop the slaughter and save perhaps hundreds of thousands of lives. The actions that were eventually taken, important as they may have been, were more along the lines of post-genocide measures designed to try to bring to justice the perpetrators and to help the victims and their survivors to resume a more or less normal life.

United States policymakers reacted to the outbreak of the Rwandan genocide much as those in other countries did. In response to the immediate outbreak of violence, President Clinton ordered the evacuation of Americans in Rwanda into neighboring Burundi, and U.S. troops were dispatched to provide protection to the evacuees, if necessary. Beyond that, however, the administration tended to view the early stages of the crisis more as a civil war than as a huge humanitarian crisis such as genocide. The administration was not inclined to intervene in a civil war in Africa because of events that had occurred in Somalia in October 1993. At that time, the United States had participated in a United Nations mission in Somalia to provide famine assistance in the wake of devastation arising from feuding among warlords. However, in October 1993, American soldiers were attacked and many were killed. The corpses of some of those soldiers were dragged through the streets of Mogadishu by an angry mob. This episode led to the withdrawal of U.S. forces from Somalia, and a rethinking on the part of the Clinton administration of the conditions under which U.S. forces would be used abroad in support of United Nations actions.

The new US policy, which clearly implied a reduced U.S. participation in UN peacekeeping activities, had a decisive impact on the question of intervening to stop the Rwandan genocide. At the time the genocide began, the United Nations had a small force in Rwanda (the United Nations Assistance Mission in Rwanda, or UNAMIR), which had been sent in to support the implementation of the Arusha Accords of August 1993. The accords had been adopted at the conclusion of negotiations that were held in Arusha, Tanzania, to try to resolve growing tensions between Hutus and Tutsis in Rwanda. Among other things, the accords called for the establishment of a transitional government including representatives of both Hutus and Tutsis. However, the small UNAMIR force was inadequate to halt the growing violence in Rwanda. When UN Secretary-General Boutros Boutros-Ghali urged the drastic expansion of the force, the United States objected and, instead, demanded that the force be withdrawn. Still remembering the events of Somalia, the United States was prepared to support humanitarian assistance, which became especially important when hundreds of thousands of refugees, Hutus as well as Tutsis, began to flow into neighboring countries, where the genocide continued, but opposed the use of force. Even after the United Nations agreed to expand the size and mandate of UNAMIR in May 1994, the United States quibbled over which countries should provide military personnel, and disputed the kind and quantity of equipment that would be needed. Officials could not even agree on measures short of military force, such as destroying the Hutu-controlled radio and television services, or jamming broadcasts that exhorted Hutu to exterminate Tutsi. The administration even refused to use the word "genocide" to describe the events going on in Rwanda.

Like the Bosnian genocide, the Rwandan genocide led to demands for justice in the wake of the disaster. Here the United States has played a significant role. In November 1994, it supported a UN Security Council resolution to create an international criminal court to try persons accused of committing crimes in Rwanda and in neighboring states. Specifically, the mandate of the International Criminal Tribunal for Rwanda is to try persons accused of committing genocide and other violations of international humanitarian law in the territory of Rwanda between January 1, 1994, and December 31, 1994. It may also try Rwandan citizens for committing genocide or other violations of international human law during the same time period in the territory of neighboring states, which means that the tribunal can exercise jurisdiction over crimes committed in the refugee camps that had been established in neighboring countries as Rwandans fled their own country.

SEE ALSO African Crisis Response Initiative; Armenians in Ottoman Turkey and the Armenian Genocide; Bangladesh/East Pakistan; Cambodia; East Timor; El Salvador; Genocide; Guatemala; Hiroshima; Holocaust; Indonesia; Iran; Iraq; Jackson, Robert; Khmer Rouge; Kosovo; Kurds; Lemkin, Raphael; Morgenthau, Henry; Pinochet, Augusto; Pol Pot; Proxmire, William; Refugees; Rwanda; Somalia, Intervention in; Tibet; United Nations Security Council; Yugoslavia

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Lawrence J. LeBlanc

Universal Jurisdiction

Like every concept, *jurisdiction* may have different meanings. The word comes from Latin roots: *jus* or *juris* means "law," and *dicere* means "to say" or "to read." Therefore, "jurisdiction" can be understood to mean; "to say the law" and, as a derivative, "the power to say the law." Presently, jurisdiction is understood as the legislative, adjudicative, and executive power that provides, respectively, the competence to prescribe, adjudicate, or execute the law. In particular, it refers to the territorial competence of courts. Jurisdiction in criminal matters may be considered either as substantial or procedural law.

Prescriptive jurisdiction basically depends upon the enactment of laws by individual states, or by the state's adoption of international conventions. In the case of genocide, most states have become parties to the 1948 Genocide Convention, and the majority of states have incorporated the convention into their internal legal order. No international convention yet exists on crimes against humanity, except for where they may be found within the conventions that create international criminal tribunals. Executive power, in criminal law, is one of the forces (such as the police) that is permitted to intervene to enforce a search or arrest warrant. In principle, no state is allowed to exercise executive power on the territory in other states. The courts within a particular state exercise adjudicative jurisdiction, which is the authority to render a decision on a case.

Adjudicative Jurisdiction

Adjudicative jurisdiction can be discussed on a material, personal or territorial level. With genocide, the material jurisdiction is given by the crime itself, which has been largely uniformly understood and defined worldwide since the 1948 Genocide Convention. On the personal level, there is an onus in criminal law that every natural person over a certain age can be prosecuted for a crime, which is committed within the boundaries of a state's borders. For personal jurisdiction, therefore, it is more a question of defining the exceptions than of defining the rule. For instance, there are exceptions for some persons under a certain age; persons eligible for or having been granted immunities; or persons of a certain status, such as military persons serving duty in foreign states, when the state they serve has signed specific conventions with the state in which they committed the act.

The most controversial question debated in recent years is the extent the courts of a particular state can adjudicate crimes which have been committed outside the territory of that state. In criminal law there are different means of jurisdiction over an accused; but the means are not recognized equally by all states. The most easily recognizable and applicable basis of jurisdiction is the *territorial principle,* whereby persons may be tried and punished for crimes committed on the territory of the state that seeks to prosecute them. Further, persons may be prosecuted by their state of nationality for a crime no matter on which territory they commit it. This is called the *active personality principle*. In the first means of claiming jurisdiction, the primary interest of a state is to maintain law and order in its territory, which is the most basic duty and prerogative of states. In the second case, states may be interested in maintaining a certain level of morality among their citizens, even when those citizens act abroad. More controversial is the right for states to adjudicate crimes that have been committed abroad by foreigners but against their own citizens. This is the *passive personality principle*. Normally, it should be in fact the duty of the state where the crime has been committed, or even the state

of the nationality of the author of the crime, to prosecute the person who has committed the crime. Yet, most states still maintain the prerogative to exercise the passive personality principle, if only to avoid a denial of justice if the territorial or the national states do not proceed against the author of the crime.

Universal Jurisdiction

One even more controversial issue is whether states are allowed to judge foreign persons who have committed crimes abroad against other foreigners. In this case, the state doing the judging has no connecting link with the persons or the crimes, except for the fact that the suspects are possibly present on their territory. This principle is usually known as the *universality principle,* or as *universal jurisdiction.*

One view is that this principle is recognized when states expressly or tacitly allow other states to proceed against their own citizens, or permit another state to prosecute individuals for crimes that have been committed on their own territory. In such cases, jurisdiction may be transferred to another state through ad hoc agreements, bilateral treaties, or through multilateral treaties. Customary law may also allow the application of this principle, as is historically the case with piracy. Universal jurisdiction, therefore, is not new. During the Middle Ages, it was primarily applied by small states in Europe when they were fighting gangs of international thieves.

Among the many multilateral treaties which allow adjudicative jurisdiction to be delegated in such a way, are those intended to fight transnational criminality such as terrorism, narcotics, or in certain fields of international humanitarian law and human rights (torture, for example). Indeed, states consider that serious transnational crimes and criminals can only be dealt with by promoting transnational accountability and mutual assistance in criminal matters, including allowing all the states party to certain treaties to prosecute the criminals where they can catch them.

Of course, this kind of jurisdiction implies that states agree on the definition of the crimes that can be prosecuted, and that they trust each other's respective legal systems. At the very least, the states must agree that the possible evil of the prosecution by dubious foreign judicial systems is matched by the necessity to severely repress certain crimes and criminals. It is a matter of weighing the need for crime control against a possible lack of procedural guarantees.

One other view, more naturalist, and which believes in the existence of a legislative power above the individual states, is that universal jurisdiction applies to crimes that affect the international community and are against international law, and are therefore crimes against mankind. Those who commit such crimes are considered to be enemies of the whole human family (*hostes humani generic*), and should be prosecuted wherever they are. In this view, the international community as a whole delegates to individual states the task of judging certain crimes and some criminals of common concern.

The *Lotus* Case, 1927

The ambit (sphere) of the jurisdiction of states in criminal law has been dealt with by numerous specific international treaties, yet no general treaty provides for a comprehensive solution of the jurisdiction of states in criminal cases. The most comprehensive and authoritative opinion to date was issued by the Permanent International Court of Justice in the *Lotus* Case of 1927.

In this case, the court had to deal with a case of collision between two ships, one French (*Lotus*) and one Turkish (*Boz-Kourt*), in the Mediterranean high seas, which caused loss of life among the Turkish sailors. On the arrival of the *Lotus* in Constantinople, the French lieutenant and officer on the bridge at the time of the collision was arrested and prosecuted by the Turkish authorities on a charge of homicide by negligence. The Turks invoked Article 6 of the Turkish Penal Code, which gave the Turkish courts jurisdiction, on the request of the injured parties, to prosecute foreigners accused of having committed crimes against Turkish nationals. The French government protested against the arrest, and the two states agreed to consult the Permanent Court of International Justice to determine whether Turkey had acted in conflict with the principles of international law by asserting criminal jurisdiction over the French officer. France alleged that Turkey had to find support in international law before asserting its extraterritorial jurisdiction, whereas Turkey alleged that it had jurisdiction unless it was forbidden by international law.

In its judgment, the court decided with the thinnest majority that Turkey had not infringed international law. It ruled, instead, that France had not proven its claim that international law provided a restriction of adjudicative jurisdiction. As president of the court Max Huber clearly stated: "restrictions upon the independence of States cannot be presumed." Where international law does not provide otherwise, states are free to adjudicate cases as long as their executive power is not exercised outside its territory:

> far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property, and acts outside their terri-

> tory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.

According to this case, states would be free to adjudicate cases of genocide committed abroad, even by foreigners against foreigners, as long as third-party states cannot prove that this extraterritorial jurisdiction is prohibited. The burden of proof that a state acts in contradiction to international law, at least as far as its jurisdiction is concerned, lies on the plaintiff state. Both treaties and the development of customary law (as evidence of a general practice accepted as law) are, of course, the best sources from which to discover whether individual states use a recognized principle of jurisdiction or if they trespass the limits and interfere with other states' internal and domestic affairs.

The Nuremberg Statute and the Post–WWII Prosecutions

The Nuremberg Statute of 1945, provided the first express prohibition of crimes against humanity. The term genocide has also been used in several indictments by national courts that have judged Nazis after the end of the war.

Yet, the Nuremberg Statute was only applicable to the crimes committed by the Nazis and their allies, although those crimes may have been committed on non-German territory. In addition, it has been argued that the jurisdiction of the Allies to judge the Nazis for the core crimes of aggression, war crimes, and crimes against humanity either stemmed from Germany's surrender to the Allies, and therefore from the jurisdiction of Germany itself to judge its own nationals, or was derived from the fact of Germany's occupation.

The 1948 Genocide Convention

The clearest ambit of the adjudicative jurisdiction of states for crimes of genocide is provided by Article 6 of the 1948 Genocide Convention, which states that:

> 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 jurisdiction.

The question to be raised is whether states that are parties to this convention allow themselves to prosecute persons who have committed or participated to a genocide in a third country, whether or not such persons are nationals of the state that wants to prosecute them. The text of Article 6 does not say whether the term "shall be tried," provides for compulsory territorial jurisdiction or whether a state may, on the basis of customary international law, bring someone accused of genocide before its own courts on the basis of either extraterritorial jurisdiction or universal jurisdiction.

As a matter of fact, the preparatory work of the treaty shows that the authors of the working draft clearly contemplated universal jurisdiction. Yet, an historical analysis of the Convention leads to the conclusion that most states, at the start of the cold war, clearly wanted to avoid such a broad interpretation. The Soviet representative at the conference, for instance, stated "no exception should be made in the case of genocide to the principle of the territorial jurisdiction of states, which alone was compatible with the principle of national sovereignty." According to the Egyptian representative, "it would be very dangerous if statesmen could be tried by the courts of countries with a political ideology different from that of their own country." This opinion was also shared by the American representative, who thought that prosecution for crimes committed outside the territory of a state could only be allowed with the consent of the territorial state. The representatives of some countries, including Burma, Algeria, and Morocco, even made formal declarations according to which no crime of genocide committed on their territory could be judged by state courts other than their own.

The jurisdiction of an international penal tribunal was agreed upon as a compromise between the states that wanted to limit jurisdiction to the territorial principle and those that wanted to broaden its meaning.

The preparatory work of a treaty merely provides a "supplementary means of interpretation," to be used only when ordinary interpretation leaves the meaning ambiguous or obscure, or leads to a result that is manifestly absurd or unreasonable. Besides, the 1948 Genocide Convention is more than fifty years old and the jurisdiction of states to prosecute crimes of genocide must be reviewed according to the evolution undergone by customary law in the time since it was first written. Indeed, the very restrictive approach of Article VI has been criticized by some authorities, who sometimes base their opinion on the specific nature of the crime considered. This can be seen in the work of the International Law Commission (2000); the American Law Institute, in its *Restatement of the Foreign Relations Law of the United States* (1987); and the International Court of Justice (ICJ), in the *Genocide* case (1993). It is similarly apparent in the opinions handed down by individual judges in the *Arrest Warrant* case (2002) as well as in the work of the International Criminal Tribunal of Former Yugoslavia (ICTY), for example in the

Tadic case (1995). This view is also shared by a considerable number of academics and authors, who propose that the crime of genocide, or even crimes against humanity, should be prosecuted on the basis of universal jurisdiction.

For these authorities and authors, Article VI of the 1948 Genocide Convention, by obliging states to prosecute crimes of genocide committed on their territory, does not prevent states from prosecuting them if they are committed in third countries. They also generally insist on the fact that genocide is a crime of concern not only for individual states but for the international community as a whole.

International law is created by states, however, and not by "authorities" or by doctrine. It is therefore necessary to verify whether the evolution of the practice of the states and their *opinio juris* expressed since 1948 can match the evolution of the doctrine. As a matter of fact, it is hard to find many cases of prosecutions for acts of genocide outside the territorial state where the acts have been committed.

The Eichmann and Demjanjuk Cases in Israel

In 1961 Adolf Eichmann was abducted in Argentina by Israeli agents and taken to Israel, where he was prosecuted and condemned for his participation in the genocide committed by the Nazis. Argentina strongly protested the abduction, although its opposition to the judgment itself was less vocal. In any case, the German authorities clearly agreed that Eichmann, a German citizen having committed crimes in Germany, should be prosecuted by Israel. The German authorities probably did not feel that they were acting in accordance with customary law. It is likely, instead, that they approved Eichmann's prosecution in Israel for political reasons and because they did not want to hamper the repression of Nazis.

On the other hand, the Israeli courts did not rely on Germany to assert their competence to judge Eichmann. Instead, they acted on two different grounds. The first was an invocation of the passive personality principle, whereby the state of Israel asserted its legitimacy to judge acts that had been committed against Jews even before the state of Israel existed. The second ground underlying the Israeli courts' claim of jurisdiction was a reference to a mix of international morality and law:

> [T]hese crimes constitute acts which damage vital interests; they impair the foundations and security of the international community; they violate the universal moral values and humanitarian principles that lie hidden in the criminal law systems adopted by civilised nations. The underlying principle in international law regarding such crimes is that the individual who has committed any of them and who, when doing so, may be presumed to have fully comprehended the heinous nature of his act, must account for his conduct

The reasoning of the Israeli court was that a crime can be defined by the "international community", and that states are empowered to serve as "executive agents" of that international community, as long as the instruments under international law are not enacted and in force.

What is interesting about the Eichmann case is not the declarations of the Israeli courts, but the fact that most other states did not react negatively against the application of universal jurisdiction by Israel for its prosecution of a case of genocide. Even Argentina, which did protest harshly against the abduction of Eichmann from its territory, did not go so far as to lodge a formal complaint against the judgment of the Israeli courts.

Another case concerning the Nazi genocide occurred in 1986, when a U.S. court agreed to extradite John Demjanjuk, alleged to have been a camp warden in Treblinka. By agreeing to the extradition, the United States recognized the jurisdiction of Israeli courts to judge Demjanjuk, who had become a naturalized U.S. citizen after the end of World War II. Demjanjuk was tried in Israel and acquitted on the merits of the case. However, neither the Eichmann case nor the Demjanjuk case can be considered as setting a precedent for other states.

Other Relevant Examples

The jurisdiction of states to judge acts of genocide that have been committed in other states has been considered in various cases arising out of the genocide in Rwanda, which occurred in 1994. Overall, however, the invocation of universal jurisdiction has been rather heterogeneous and ambiguous.

In 1994, for instance, Austria put the former commander of a Serbian military unit, Dusko Cvjetkovic, on trial for acts of genocide committed in the former Yugoslavia. The defense protested that Austria did not have jurisdiction, but the Appeals Court justified the Austrian court's right to conduct the trial in the following terms:

> Article VI of the Genocide Convention, which provides that persons charged with genocide or any of the acts enumerated in Article III shall be tried by a competent tribunal of the State where the act was committed, or by such international penal tribunal as may have jurisdiction with re-

> spect to those Contracting Parties which shall have accepted its jurisdiction, is based on the fundamental assumption that there is a functioning criminal justice system in the locus delicti (which would make the extradition of a suspect legally possible). Otherwise—since at the time of the adoption of the Genocide Convention there was no international criminal court—the outcome would be diametrically opposed to the intention of its drafters, and a person suspected of genocide or any of the acts enumerated in Article III could not be prosecuted because the criminal justice in the locus delicti is not functioning and the international criminal court is not in place (or its jurisdiction has not been accepted by the State concerned) (Reydams, 2003).

Cvjetkovic was tried in Austria, and a jury acquitted him of all charges.

In 1996 in France, the Appeal Court of Nîmes expressly rejected the French assertion of jurisdiction in the case Wanceslas Munyeshyaka, stating that Article VI of the Genocide Convention did not allow the application of universal jurisdiction for cases of genocide. This judgement was overruled by the French Supreme Court, but only on the very technical ground that alternative justifications for claiming jurisdiction were available: France could invoke either the Torture Convention of 1984, or it could base its jurisdictional claim on a specific law, based on UN Security Resolution 955, which had been adopted in France in response to the genocide in Rwanda.

In Switzerland, Fulgence Niyonteze, former mayor of Mushubati, Rwanda, was tried in 1997 by the military courts for his participation in the genocide. Although the prosecutor had indicted Niyonteze for murder, grave breaches of international humanitarian law, genocide, and crimes against humanity, the Swiss court refused to judge him for genocide or for crimes against humanity because Switzerland was not, at the time of the trial, a signatory to the 1948 Genocide Convention and had incorporated no provision for genocide or crimes against humanity in its domestic laws. The court did, however, convict Niyonteze for murder, incitement to murder, and grave breaches of the Geneva Conventions arising from his participation in the internal conflict of Rwanda.

The Military Court of Appeal dismissed the judgement of the Swiss court on indictment of murder and incitement to murder, retaining only the conviction regarding grave breaches of the Geneva Conventions. Unlike the Genocide Convention, the Geneva Conventions expressly provide for the possibility to judge a person on the basis of universal jurisdiction.

In 1998 a German court sentenced a Serb named Nikola Jorgic to life imprisonment for acts of genocide, basing its claim to jurisdiction on the German Criminal Code, which provided for universal jurisdiction in cases of genocide. Interestingly, the Higher Court expressly mentioned "the generally accepted nonexclusive interpretation of Article VI of the 1948 Genocide Convention" to assert that there is no prohibition of universal jurisdiction under international law regarding the prosecution of acts of genocide. The Federal Supreme Court confirmed that a hypothetical norm forbidding the application of universal jurisdiction would be contrary to the rule prohibiting genocide, which is a peremptory (*jus cogens*) norm. In a later case, Maksim Sokolovic (1999), the Federal Supreme Court even dropped the requirement that a special link exist between the accused person and Germany in order to prosecute him for genocide on the basis of universal jurisdiction.

In 2001 four Rwandese were prosecuted in Belgium for having participated in the Rwandan genocide in the Butare province. However, Belgium applied universal jurisdiction in order to judge them for war crimes only. They were not charged with crimes against humanity or genocide, apparently because universal jurisdiction for these crimes had only recently (in 1999) been added to the 1993 Act Concerning the Punishment of Grave Breaches of International Humanitarian Law, 1993. In this case, as in the French and Swiss trials, the Republic of Rwanda never challenged the assertion of universal jurisdiction.

In fact, in many cases where universal jurisdiction has been used to judge suspects of the genocide in Rwanda, the prosecuting states have either indicted and sentenced the accused on the basis of national provisions of humanitarian law, or they have enacted a special law on the implementation of the status of the International Criminal Tribunal for Rwanda. Indeed, the states that applied universal jurisdiction for acts of genocide committed in Rwanda were encouraged to do so by the international community, and especially by the UN Security Council. Therefore, it is difficult to draw definitive conclusions on the general acceptance by states of the universal jurisdiction for the crime of genocide.

Legislative Practice of States

Some states have implemented legislation that allows the prosecution of crimes of genocide and crimes against humanity according to universal jurisdiction. For example, Australia, Belgium, Canada, Germany, The Netherlands, Spain and, to some extent, Argentina, Ethiopia, and Venezuela allow for judging these crimes

even if they have been committed abroad. Switzerland, which only became a party to the Genocide Convention in 2000, expressly enacted a law providing for universal jurisdiction for the crime of genocide by including the following passage in the Message of the Council of Ministers:

> with the view of the "jus cogens aspect" of the prohibition of genocide as well as of its effects "erga omnes," there is no doubt that the prosecution of the crime of genocide must be based, in international law, on universal jurisdiction. Therefore, States may—and even must—prosecute or extradite foreign nationals or their own nationals who are suspect of having committed an act of genocide, even if the act has not been committed on their territory. This does not constitute a violation of the principle of non-intervention in other States' internal affairs.

Unfortunately, there has been no instance in which, at the time of becoming party to the Genocide Convention, a state has made a formal declaration on the question of the extent of jurisdiction as provided for by Article VI. The reaction of the international community to such an interpretation would provide good evidence of the state of customary law on this matter.

In all the cases where states adopted universal jurisdiction into their own legislation, customary law was consolidated. The states also put themselves in a situation where they cannot deny other states the right to prosecute one of their nationals for crimes of genocide. On the other hand, the huge majority of states seem neither to have implemented the Genocide Convention into their own legal system, nor to have extended their own jurisdiction for genocide to universality. Most recently, some states have shown a strong opposition against extraterritorial jurisdiction and against states that allow themselves, by law, to exercise such jurisdiction. Others became aware of the excesses universal jurisdiction could trigger and so downplayed its importance. The Belgian legislation on universal jurisdiction and its application by investigating judges and courts was notably the focal point of heated debate in doctrinal and political circles.

Universal Jurisdiction and the International Criminal Court

These developments, which may give the appearance that customary law could have evolved towards a more permissive jurisdiction, at least as far as a crime of genocide is concerned, have to be reconsidered since the Rome Statute of the International Criminal Court (ICC) was adopted in 1999.

The Rome Statute provides for the jurisdiction of the ICC for crimes of genocide and for crimes against humanity, with the definition of genocide being the same as under the 1948 Genocide Convention. Therefore, it is argued, states that are party to both the Genocide Convention and the Rome Statute wished to favor either the territorial or the active personality principle on the one hand, or the jurisdiction of the ICC on the other. With the emergence of the ICC, the first justification of the exercise of universal jurisdiction by a state—the Israeli explanation that the competence of its own courts derived from the fact that there was no international court allowed at that time to prosecute international crimes, in particular genocide—would now be invalidated.

Yet, the ICC only has jurisdiction when a crime has been committed on the territory of a state party to the Rome Statute or by a national of a state party to the Statute. Therefore, it is argued that universal jurisdiction could still be applied by states that are parties to both the 1948 Genocide Convention and to the Rome Statute when the crime which is prosecuted has been committed on the territory of states—and by a national of states—which are not parties to the Rome statute.

Cases Heard before the International Court of Justice

The question of the admissible extension of a state's criminal jurisdiction could have been laid to rest by the International Court of Justice (ICJ) in the case of the Arrest Warrant of April 11, 2000, issued by the Democratic Republic of Congo (DRC) against Belgium. In this case, an investigating judge of Belgium issued an arrest warrant for grave breaches of international humanitarian law against the Minister of Foreign Affairs for DRC President Laurent Desire Kabila. Belgium had no connecting point with the case, except that the plaintiffs were residing in Belgium. The DRC had two main points of contention about the arrest warrant. The first was that Belgium had applied extraterritorial jurisdiction to events that had taken place in the DRC, and therefore had violated its territorial authority and the principle of sovereign equality among all members of the United Nations. The other was that Belgium had violated customary law regarding the diplomatic immunity of Ministers of Foreign Affairs while still holding office.

Unfortunately for the sake of international law, Congo later abandoned its claim that the *in absentia* proceedings against its minister was an exorbitant exercise of Belgium's jurisdiction. Moreover, the court could save its reasoning on universal jurisdiction because it found, by thirteen votes to three, that Congo was right to complain on the basis of the sovereign immunity argument.

In another case, the Republic of the Congo filed an application on December 2002 to the ICJ, instituting proceedings against France. The application sought to annul the investigations and prosecution measures taken by a French investigating judge following a complaint concerning crimes against humanity and torture allegedly committed in the Congo by Congolese officials against individuals of Congolese nationality. Among the individuals targeted by the French measures were the President of the Republic of the Congo, the Congolese Minister of the Interior, and some generals, including the Inspector-General of the Congolese Armed Forces and the Commander of the Presidential Guard. France is a party to the 1984 Torture Convention, and it has implemented a provision in its Criminal Procedure Code expressly allowing for universal jurisdiction in its courts in cases of torture. Congo, however, is not a party to the Torture Convention. It therefore considers that the issuing of the arrest warrant against Congolese authorities is a violation of its sovereignty. In its complaint, the Congo complained that

> by attributing itself universal jurisdiction in criminal matters and by arrogating to itself the power to prosecute and try the Minister of the Interior of a foreign State for crimes allegedly committed by him in connection with the exercise of his powers for the maintenance of public order in his country [France violated] the principle that a State may not, in breach of the principle of sovereign equality among all Members of the United Nations (. . .) exercise its authority on the territory of another State.

In this case, the question of immunity could allow the court to avoid rendering a judgment on the merits of universal jurisdiction, at least as far as the Congolese president and minister of the interior are concerned. It would be difficult, however, to see how the court could avoid making a decision on universal jurisdiction in the case of the generals, who most probably do not qualify for any claim of immunity. Therefore, the question to be decided by the court is whether states are allowed to prosecute a person on the basis of universal jurisdiction when the territorial state or the state of the nationality of the author of the alleged crime is not a party to a convention that provides for universal jurisdiction.

Some Practical Considerations

Even if the ICJ allows France to prosecute actors of crimes against humanity on the basis of universal jurisdiction in the *Congo v. France* case, it is unlikely that national courts will rush to judge cases committed abroad by foreigners against foreigners. Indeed, many obstacles still remain.

One of the most obvious obstacles is the difficulty for states to allocate important human and financial resources to investigate cases, to prosecute, judge, and possibly imprison persons who perhaps disturbed the morale and security of the community of nations, but who did not specifically endanger the public order of the State where the arrest was carried out. For this reason, states more likely will be tempted to deny the entrance onto their territory of persons suspected of having committed acts of genocide, or, if such persons are found on their territory, to extradite them rather than to judge them.

It is also very difficult for states to judge cases of genocide or crimes against humanity committed outside their borders. Such states could face grave political problems. In addition, the difficulty of gathering evidence would force the prosecuting state to rely on assistance from the territorial States, which are not likely to provide assistance if they deny the jurisdiction of the prosecuting state. Finally, cultural and linguistic differences between the state of judgment and the persons to be judged present further obstacles. With all these elements in mind, it would appear to be highly preferable that each state be encouraged to judge the acts of genocide or crimes against humanity, which have been committed on its territory. This could be encouraged through assistance from the international community, or by allowing the International Criminal Court to judge such cases.

SEE ALSO Eichmann Trials; Extradition; Immunity; National Prosecutions; Pinochet, Augusto; War Crimes

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Utilitarian Genocide

The pioneer genocide scholar Vahakn Dadrian introduced the concept of "utilitarian genocide" in a landmark 1975 article, "A Typology of Genocide." He identified five "ideal types" of genocide, based mainly on the primary objective of the perpetrator:

- cultural genocide, aiming at assimilation;
- latent genocide, a by-product of war;
- retributive genocide, localized punishment;
- utilitarian genocide, to obtain wealth;
- optimal genocide, aiming at total obliteration;

As examples of utilitarian genocides, Dadrian cited the atrocities committed against Moors and Jews in the course of dispossesing them of businesses during the Spanish Inquisition, the forced removal and "decimation" of the Cherokees in the U.S. southern state of Georgia in 1829, and the ongoing enslavement and killing of Indians in Brazil.

Even though some contemporary scholars use expressions such as "economically motivated" or "developmental genocide" instead of the actual term *utilitarian genocide,* there is broad agreement that (1) these terms basically cover systematic persecution and mass killings in order to obtain and/or monopolize access to land and to resources like gold or lumber; (2) generally, this type of genocide has been committed by European settlers or their descendants, with direct or indirect state authorization, against indigenous peoples in the Americas, Africa, and Australia; and (3), utilitarian motives are often mixed with or bolstered by racism and dehumanizing images.

Most scholars also agree that the destruction of indigenous peoples still continues, especially in Latin America. A case in point is the nearly total extermination of the Aché (Guayaki) Indians in Paraguay during the 1970s.

The subsequent scholars who have adopted either the term *utilitarian genocide* or its basic propositions include Irving Louis Horowitz, who in 1976 noted that "the conduct of classic colonialism was invariably linked with genocide" (pp. 19B20). Helen Fein, in 1984 used the synonym *developmental genocide,* that is, "instrumental acts to rid of peoples outside their [the colonizer's] universe of obligations who stood in the way of economic exploitation" (p. 5), and in 1987, Roger Smith observed that "the basic proposition contained in utilitarian genocide is that some persons must die so that others may live" (p. 25). In 1990 Frank Chalk and Kurt Jonassohn included genocide "to acquire economic wealth" in their typology of four types of genocide based on the primary motive of the perpetrator.

Even though the term *utilitarian genocide* is relatively new, it has long been acknowledged that utilitarian motives have played an important part in the destruction of groups, particularly in the New World. In his classic account of Spanish policy towards the Native population of the Americas, *The Tears of the Indians,* Dominican cleric Bartolomé de Las Casas wrote about two stages of *extirpation*: "the first whereof was a bloody, unjust, and cruel war they made upon them, a second by cutting off all that so much as sought to recover their liberty, as some of the stouter sort did intend. . . . That which led the Spaniards to these unsanctified impieties was the desire of Gold" (pp. 3B4).

SEE ALSO Amazon Region; Genocide; Indigenous Peoples

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Utopian Ideologies as Motives for Genocide

Genocides have existed for as long as humans have recorded history. There are instances of the intentional destruction of an entire group of people in the Hebrew Bible, and the Romans destroyed Carthage in a manner that sought to make impossible the continued existence of Carthiginians. In the Middle Ages the papacy launched a crusade designed to annihilate physically every follower of the Albigensian heresy. Since the late fifteenth century instances of colonial genocides—in the Caribbean, North America, Australasia—have been entwined with the history of European expansion around the globe.

Some of these acts certainly had an ideological dimension. When the Israelites conquered Canaan and "devoted to destruction by the edge of the sword all in the city, both men and women, young and old" (Joshua 6:21–24), they were, in the Bible's recounting, inspired by God and his promises to them as his chosen people. The medieval church also believed it was acting in God's name and for the cause of Christianity when it stamped out heresies. But more typically, other genocides were acts of revenge and retribution in war, as with the Roman conquest of Carthage, or simply efforts to obtain land and wealth. In the colonial period Europeans conducted brutal attacks on people considered inferior, but the motivation was generally control over resources. In these actions little evidence of a fully articulated political ideology existed.

In the twentieth century, however, genocides became more systematic, more extensive, and more deadly. They also became far more thoroughly imbued with an ideological character, with the claim, by perpetrators, that the utter destruction of an enemy group would pave the way toward a future of unlimited prosperity, uncontested power, and cultural efflorescence for the dominant group. In short, regimes that practiced genocide promised utopia to their followers.

The word *utopia* generally conjures up images of peace and harmony, of a society marked by well-being and cozy comfort. Thomas More's classic sixteenth-century fable *Utopia* (from which the word derives) conveys this vision, although More may well have been writing in an ironic mode. Many religious communities, such as the Anabaptists and Quakers, have seen themselves as the harbingers of the ultimate utopia, God's kingdom on earth. Nineteenth-century liberals and socialists also imagined a utopian world free of hostile conflict, one in which either the natural workings of the market or the social ownership of property would bring prosperity to all and, in the socialist version, social equality as well. Nationalists such as Guiseppe Mazzini believed that once every group had its own state, individual nations would flourish and create a harmonious community of nations.

Utopian goals of these kinds have never been fulfilled, but their advocates struggled mightily and contributed powerfully to many of the democratic and socially progressive advances of the modern era, from universal suffrage to the abolition of slavery to social welfare programs. However, there has also been an underside to utopianism. Invariably, its advocates have imagined a homogeneous society of one sort or another. In religious versions of utopia everyone would follow one god and one set of beliefs. In liberal utopias every country would operate according to the same market principles, and nationalists and socialists imagined each country possessing the same sort of political institutions.

These utopian visions have constantly come up against the sometimes harsh reality of human difference. For all the advocacy of equality many utopians presumed the inferiority of women. Nineteenth-century advocates of political rights and social equality often reserved these advances for men of property and the white race. The rest of the world, including eastern and southeastern Europeans in the view of some, was presumed to be too backward to excercise their rights responsibly, either because the populations had not yet reached the proper stage of development or were constitutionally inferior, usually by virtue of race, of ever reaching that level.

Utopianism became far more dangerous in the twentieth century because it so often was linked to mass-based social movements that seized power, established revolutionary regimes, and venerated the state as the critical agent of social transformation. By no means were all these states practitioners of the worst kinds of violence against civilian populations. At the same time the most prevalent perpetrators of genocides in the twentieth century were revolutionary regimes of either

An artist has portrayed a rather idealized tableau of the Soviet Union, with Lenin's portrait in the upper left-hand corner. [THOMAS JOHNSON/SYGMA/CORBIS]

fascist or communist commitments (Nazi Germany, the Stalinist Soviet Union, Cambodia under the Khmer Rouge) or states in the throes of some kind of uneasy revolutionary transformation (the late Ottoman Empire under the Young Turks, the former Yugoslavia under Slobodan Milosevic, Rwanda under the Hutu).

The particular utopias these regimes or states advocated varied significantly. Yet every one of them envisioned a homogeneous society of one sort or another, which necessarily meant the expulsion or extermination of particular groups. Indeed, all these regimes claimed that utopia would be created only through the destruction of one or more enemy groups. The historian Saul Friedländer has coined the powerful term *redemptive anti-Semitism* to describe the Nazi hatred of Jews. According to the Nazis, Aryan life would flourish once Jews had been driven completely from the German realm. Similarly, one can see a kind of redemptive vision at work in the Young Turk attack on Armenians, the Khmer Rouge assault on Muslim Chams and Vietnamese, and the murderous actions of the Hutu against Tutsi. Each of these regimes promised their followers a brilliant future once the enemy was destroyed. The redemptive vision, the annihilation of one group as the decisive means for creating the future, marked the road to utopia.

The regimes defined by explicitly national or racial ideologies were most open about the enemy status of the "other." In a Nazi-dominated Europe so-called Aryans would stand astride a continent cleansed of Jews, while Slavs would be reduced to subordinate status. In the Greater Serbia envisioned by Slobodan Milosevic and his supporters, there could be no place whatsoever for Muslims and Croats. Even under some communist regimes, the differences among people would be reduced to mere exotica, whereas the fundamental institutions and life forms would be the same. Those who refused to follow the socialist path (Chechens and Tatars in the Stalinist Soviet Union, Cham and Vietnamese in Cambodia) would either be driven out or killed. All these genocidal regimes expressed in their propaganda and policies the sharp, binary distinction they drew between the goodness of the dominant group and the utterly benighted and dangerous character of the enemy population.

The Bolsheviks took power in Russia in 1917 fully confident that they could create a classless, egalitarian society. By clearing away the rubble of the past, they

believed, the path would be opened to the creation of the new society that would permit the ultimate efflorescence of the human spirit. In Marxian terms the "realm of necessity" would finally be surmounted by the "realm of freedom," material prosperity in conditions of social equality would lay to rest all the pathologies of class-riven societies and the nefarious traits of individual human beings. Within the harmonious socialist society human freedom would develop in unimaginable ways, resulting in a society marked by unbounded prosperity and cultural creativity and the emergence of the new Soviet man and woman. However, the creation of that society first required the pursuit of the class opponents who would never be reconciled to the socialist vision.

From the civil war of 1918 and 1920 to the forced collectivization campaign of the late 1920s and early 1930s, the Soviets developed a set of purge practices targeting entire population groups characterized as the enemies of socialism. Then in the 1930s and extending until Stalin's death in 1953, the designated enemies were increasingly defined as members of particular ethnic and national groups, including Koreans, Chechens and Ingush, Crimean Tatars, Germans, Jews, and many others. All of them were viewed as security concerns, but even more important, as somehow constitutionally resistant to the siren song of Soviet socialism. As Stalin elevated the Russian nation to the most heroic and progressive within the Soviet federation, certain other nationalities and ethnicities were assigned the typical Soviet language for outcasts: traitors, vermin, bloodsuckers, parasites. This kind of biological language indicated a racialization of nationality and ethnicity, because virtually every single Korean or Chechen was seen to carry the nefarious traits within his or her body. Soviet socialism could only be saved by the purge of these groups, usually forced deportation in such horrendous conditions that the results were extremely high mortality rates.

The Nazis claimed that only Aryans were a "culture-producing" and economically productive people, who, therefore, were entitled to dominate others. Aryans are the "Prometheus of mankind from whose bright forehead the divine spark of genius has sprung at all times," Adolf Hitler wrote in *Mein Kampf*. In contrast, Jews were a "culture-destroying race" who embodied filth and disease. Through their inherent, biologically driven desire for domination, they threatened to overwhelm Aryans. Hard-fought racial struggle, through which Aryans would demonstrate their mettle, was the path to the utopian future. This would be a war of annihilation in which one side would triumph and the other would be utterly destroyed. Aryan health and prosperity would be restored and become even greater through the victorious struggle against the Jews. With final victory Germany as a nation would be powerful, its rule uncontested, its domination feared. As a people, Germans would be productive and prosperous, the masters of nature through engineering and science, yet at the same time they would be able to revel in the retreat to a pristine natural order. Everyone would be joined in a racially homogeneous grouping, with healthy members and the elderly well cared for. This was the Nazi ideal of *Volksgemeinschaft,* the organically unified, racially select people's community that would create a new culture that brought together rural and urban, menial and intellectual workers. As Hitler claimed in 1937, "a new feeling of life, a new joy in life" and a "new human type" were emerging, with men and women who would be "healthier and stronger."

The post-World War II genocidal regimes also espoused utopia coupled with the utter castigation of those perceived to stand in the way of its fulfillment. On the second anniversary of the Khmer Rouge victory, President Khieu Samphan depicted in bucolic terms a Democratic Kampuchea with freely flowing water, freshly flowering plants, and smiling people. Radio Phnom Penh described Cambodians of all sorts toiling together happily in the fields, harvesting rice, building dams, and clearing forests as they developed a new, prosperous, and egalitarian society. According to the Khmer Rouge vision, proper politics would enable Cambodians to vastly increase the rice harvest, and all of Cambodia's peasants would benefit from electricity and tractors. This was a developmental vision, but also a deeply utopian one in which efforts of will would surmount existing limits of production. "When a people is awakened by political consciousness, it can do anything," suggested one party slogan. Cambodians were to become "masters of the earth and of water," "masters of the rice fields and plains, of the forests and of all vegetation," "masters of the yearly floods."

With its completely collectivized society, Democratic Kampuchea had even surpassed the fellow communist states of China, Vietnam, and North Korea. But the enemies of the revolution, urban dwellers, peasants who retained "individualistic" views, and, especially, ethnic and religious minorities, were beyond the pale. They were deemed impure and unclean, and therefore threatened the health of the noble Khmer population. Echoing the biological language that both the Nazis and Soviets used, the Khmer Rouge claimed that enemies were microbes, which, if not removed, would burrow their way into the healthy population. Rotten, infected parts of the population had to be removed and eliminated, and this applied especially to the Vietnamese and Cham.

The leaders of Yugoslavia in the late 1980s and 1990s also projected a utopian future based on the exclusive reign of one particular segment of the population, the Serbs. Over and over Slobodan Milosevic and other Serb nationalist leaders invoked the supposedly glorious history of Serbs and their tragic present, in which, it was claimed, Serbs were oppressed by the inferior peoples around them, whether Muslims, Croats, or Westerners of various stripes. Serbian Orthodox clerics associated with the national cause claimed that God looked down with special grace on the Serb people. Others claimed that Serbs were the "historic" people of the South Slav lands, who for hundreds of years had fought heroically against the Turks and in the nineteenth and twentieth centuries had led courageous struggles for democracy and national independence. Places of mixed ethnicity such as Sarajevo and Dubrovnik were thus sites of pestilence and prostitution. Muslims especially were called dogs, even packages or cabbages, particularly dehumanizing terms that perpetrators used to refer to their victims. Only an exclusive nation-state, cleansed of Muslims, Croats, and any non-Serbs, Serb nationalists claimed, would allow the potential of the people to burst forth in torrents of creativity and development.

Cleanliness and purity are terms that, necessarily, signify their binary opposites, the unclean and the impure. In all these instances, and others as well, such as the genocide of Armenians in the late Ottoman Empire, those who were considered unclean were an active source of pollution that threatened to contaminate the clean and the pure. Hence, they had to be at least quarantined and, in the most extreme cases, eradicated altogether. For some of the powerful revolutionary systems of the twentieth century, the dirt that anthropologist Mary Douglas famously described as "matter out of place" was, in fact, human matter, and it had to be eradicated through political action. In excluding "dirt," these systems were reshaping the very composition of their societies.

Such immense, wide-ranging efforts required the mobilization of populations, both as active participants and complicit bystanders. Regular security forces did not suffice for actions that involved the killing of hundreds of thousands and even millions of people. The active killers in the armies and internal security units were supplemented by paramilitaries, and also by the citizens who denounced their neighbors to the authorities and seized the property and possessions of those who had been deported and killed. In this manner twentieth-century genocides became social projects.

Utopian ideologies have often generated activism directed at a more humane and peaceful future. But the propensity of utopians to think in homogeneous terms, of creating societies devoid of difference, also lurks behind many of the massive violations of human rights that have occurred in the twentieth century. In so many instances the perpetrators of genocides were those who believed that it was indeed possible to create a future of unlimited prosperity and creativity once the enemies—so often defined in national or racial terms—had been eliminated. Utopian ideologies, alongside the immense organizational capacities of the modern state, helped to make genocides prevalent and the number of their victims staggering in the twentieth century.

SEE ALSO Cambodia; Developmental Genocide; Genocide; Hitler, Adolf; Linguistic Genocide; Milosevic, Slobodan; Pol Pot; Stalin, Joseph; Union of Soviet Socialist Republics; Utilitarian Genocide

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Eric D. Weitz

Victims

Under international law, victims of human rights abuse have a right to a remedy and to reparations for violations committed by or with the acquiescence of the state. Thorny questions arise over who can be considered a victim, the types of damages or reparations available, and the relationship of victims to the prosecution of offenders.

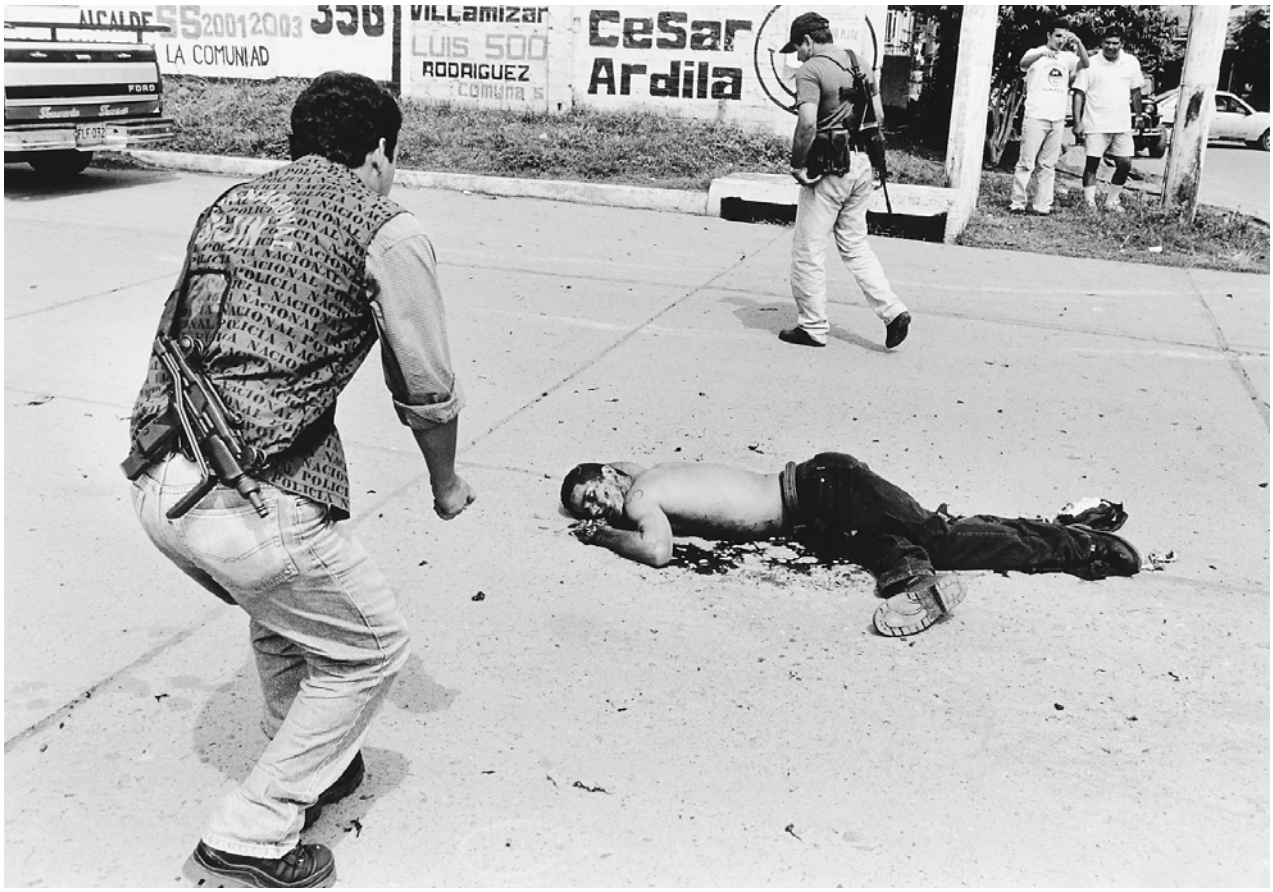
Starting in 1989, the United Nations Sub-Commission on Human Rights developed a set of principles on reparations, now known as the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law. In addition, the UN human rights treaty bodies and the regional human rights commissions and courts, especially in Latin America and Europe, have considered several aspects related to victims and reparations. National courts and administrative compensation schemes have also contributed to defining issues involving victims.

Who are Victims?

The UN's Basic Principles document, in paragraph 8, defines a victim as follows:

> A person is a "victim" where, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A "victim" may also be a legal personality, a dependant, or a member of the immediate family or household of the direct victim, as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm.

Defining who is a victim in concrete circumstances can often prove difficult and controversial, especially where there are large numbers of potential victims. In the wake of large-scale atrocities, countries have grappled with defining victims for purposes of government-created reparations programs. For example, in Chile the government decided to focus solely on those killed and disappeared by the security forces, leaving aside the vastly larger number of those who were tortured while in detention and survived, and those who were forced into exile. While this decision was justified as a way to spend limited funds on the "worst" violations, the effect was to infuriate survivors. According to a 2002 study by the Chilean human rights group CODEPU, survivors read this as a lack of recognition for the severity of their own suffering and an attempt to paper over the extent of the crimes. In South Africa, the mandate of the post-apartheid Truth and Reconciliation Commission similarly restricted the category of "victim" to those who suffered from the gross violations—killing, torture, abduction—prohibited under South African as well as international law. Critics of the TRC pointed out that this limited mandate excluded the legal pillars of *apartheid:* forced removals, passed laws, residential segregation and other forms of racial discrimination and detention without trial. By doing so, it shifted the focus from the complicity and benefits of *apartheid* to whites as a group to the misdeeds of a



In March 2001 army-backed paramilitary forces increased their raids on Barrancabermeja, Colombia. A victim lies dead on the street while others look on or walk away. [TEUN VOETEN]

smaller group of security force operatives, easily characterized as "bad apples." The definition of "victim" thus acts to limit and frame discussion over reparations.

The definition of *victim* can also raise difficult issues that touch on family and customary law. In both court-generated and administrative reparations schemes, it has been easy to define the persons who have been physically or mentally harmed, and their spouses and children if they are deceased, as victims as a result of that loss. Moreover, courts, including the European Court of Human Rights, have found that the family members of the victim of a forced disappearance are themselves victims, as the product of the anguish and uncertainty of not knowing the fate of their loved one, or, more generally, of a human rights violation and the subsequent impunity of the perpetrators. Administrative compensation schemes have taken one of two routes: either they have compensated the immediate victims, and allowed their heirs and successors (as defined in local law) to receive the compensation if the victims were dead or disappeared, or they have specified the percentage of awards to be paid to each category (spouse, child, etc.) of surviving relatives in cases of death.

Regional human rights courts have also grappled with the definition of *victim* for purposes of assigning compensation. In the case of injuries resulting in death, both the European and Inter-American Courts of Human Rights allow claims for the harm to the victims themselves prior to death, to their families for wrongful death, and for family members' own harms in conjunction with the abuses against the persons killed. Both economic and moral damages are covered. The Inter-American Court, in its extensive jurisprudence on reparations, has developed a particularly expansive definition of family, which includes siblings as well as spouses, parents, and children of the person killed or disappeared. If the victim survives, he or she can of course bring claims on his or her own behalf, but the court has also presumed (in a 1999 case involving Ecuador) that close family members have suffered in cases of detention, torture or unfair trial, and awarded compensation to them. In addition to suffering and health

damage, the court has awarded family members compensation for the costs of burial, and for the costs (including lost income) incurred in looking for the victim.

The court has also taken cultural attributes of the victim into account in awarding reparations. Rather than strictly apply national laws on inheritance, the court has defined its own principles, which includes taking into account "local law," including customary law. In the 1994 *Aloeboetoe* case, the court found that customary law among the Saramacas, or Maroons, of Suriname, included multiple marriages. In a case involving the summary execution of a number of Saramaca men, the court allowed reparations for the multiple wives and children of the victims. In a 2002 case involving the disappearance of a Guatemalan Ma'am indigenous leader, the court allowed damages for support of the victim's father and half-sister, based on evidence that Ma'am culture required the elder brother to support parents and younger siblings.

Victims can be collectivities as well as individuals and family members. The clearest example is the destruction of property as part of a campaign of genocide or "ethnic cleansing." The destruction of a mosque, church, temple, or synagogue creates a collective harm to the community that worshiped there, and that community (perhaps represented by the religious authorities) is the victim. More generally, collective reparations may be needed when the destruction of a community has been so thorough that there are few survivors left to file claims or they have been dispersed so widely that the original community has ceased to exist. Compensation may include payment for the loss of community cohesion, community institutions and culture.

Individual reparations fail to capture the collective element of the harm in situations of genocide or crimes against humanity. A major aim of the organizers of atrocities is the destruction of the community fabric. The attempt is not simply to kill, but to isolate, terrorize, and sow distrust. Military forces may seek to make local civilians complicit in atrocities, forcing them to watch or even to participate in the violations of their neighbors' basic human rights. These harms to community life and trust cannot easily be redressed through individual awards.

In addition to individual claims for loss of life or liberty, damage to health, loss of jobs, pensions, and economic prospects, Germany paid collective reparations to Jewish organizations and to the State of Israel after the Holocaust. Survivor organizations argued that collective reparations were necessary to compensate for the property, lives, and suffering of those with no living heirs or dependants, for the loss of institutions and communities, and for the damage to the very fabric of the Jewish people's existence. A total of $3.45 billion deutsch marks were eventually paid to Israel for acts against the Jewish people, in addition to substantial amounts of compensation to other European states and to individual victims and survivors.

Courts have generally been reluctant to design categories of collective reparations. In the above-referenced *Aloeboetoe et al.* case before the Inter-American Court of Human Rights, the court grappled with the issue of collective moral reparations. The court first discussed and ultimately denied the request for monetary compensation, as follows:

> [T]he Court believes that all persons, in addition to being members of their own families and citizens of a State, also generally belong to intermediate communities. In practice, the obligation to pay moral compensation does not extend to such communities, nor to the State in which the victim participated; these are redressed by the enforcement of the system of laws. If in some exceptional case such compensation has been granted, it would have been to a community that suffered direct damage (*Aloeboetoe et al.*, paragraph 83).

However, in the final statement of reparations, the court, in paragraph 95 of its decision, "orders the State of Suriname, as an act of reparation, to reopen the school house located in Gujaba and staff it with teaching and administrative personnel so that it will function on a permanent basis as of 1994, and to make the medical dispensary already in place in that locality operational during that same year." These measures to provide education and health care to the community in effect formed a kind of collective reparations.

A second case in which the Inter-American human rights system grappled with the prospect of collective reparations is *Chanay Pablo v. Guatemala,* more commonly referred to as the *Colotenango* case. Members of a paramilitary civil patrol opened fire on a group of protesters in the town, killing Juan Chanay Pablo and injuring several others. The victims filed a complaint in the courts and subsequently in the Inter-American Commission on Human Rights. Throughout this period, civil patrol members frequently intimidated and attacked the witnesses, the accusers, and an attorney participating in the case. Guatemala and the Commission, were able to reach a friendly settlement in March 1997. Guatamala agreed to provide Q300,000 (some $43,000) to financially compensate the individuals directly affected by the Colotenango attack, and to ensure that justice was done. In addition, "the State of Guatemala shall provide communal assistance to the affected

communities of Colotenango, in accordance with a program of projects agreed upon by the parties."

Outside the context of collective victims, courts and administrative schemes have generally not recognized bystanders or witnesses to crimes against humanity as victims for purposes of reparations, at least without a showing of personal harm. One question that has arisen is whether those who are not part of the target ethnic group, but who are killed because they are attempting to defend the target group, can be considered victims of genocide. In a case involving genocide against the Mayan people of Guatemala, brought in Spain, a bare eight-judge majority of the Spanish Supreme Court found in 2003 that Spanish priests who had been killed or disappeared for their work with poor, mostly Mayan communities could not bring genocide charges on their own behalf, as Spanish citizens had not themselves been the target of a genocidal campaign. The seven dissenting judges argued that, as victims targeted because they were defending others from genocide, the priests should be considered equally as victims of genocide.

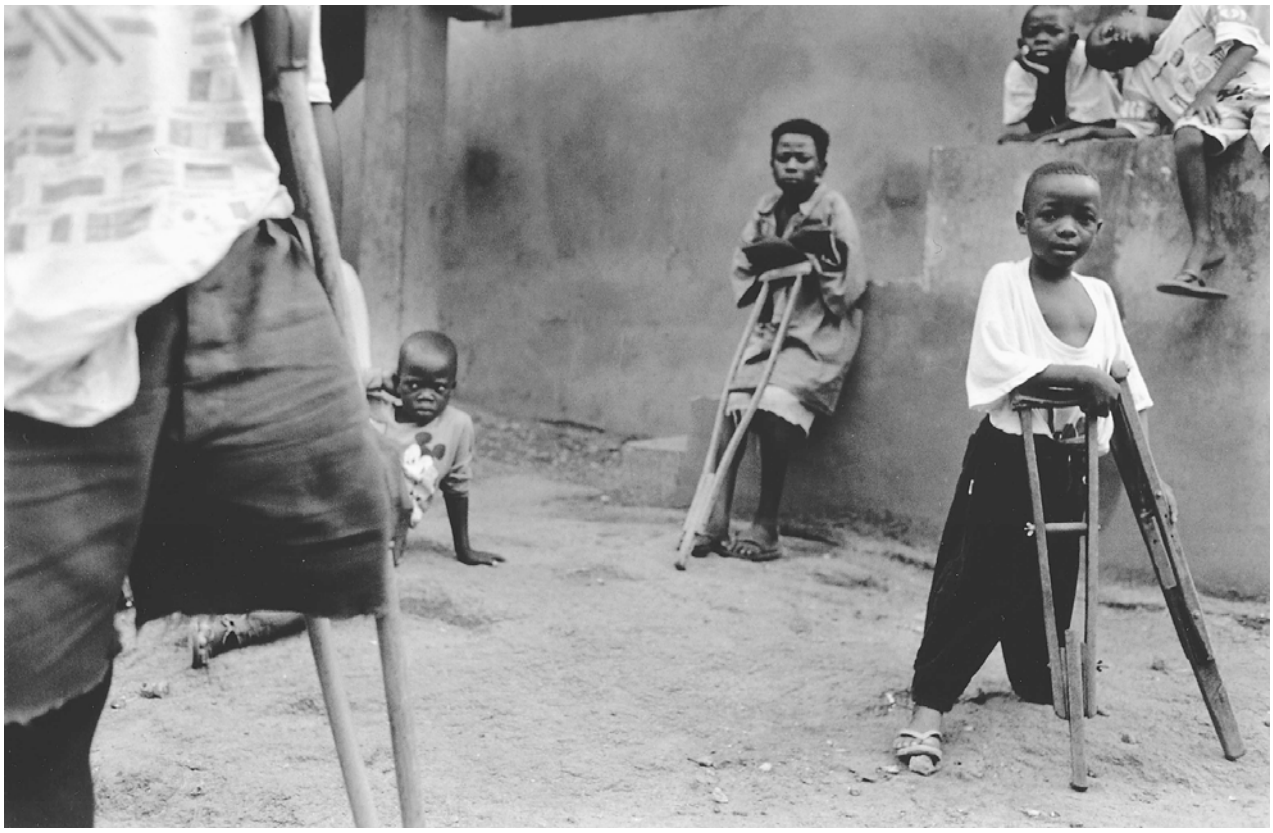
In situations of genocide or massive crimes against humanity, international tribunals have not to date provided specific help to victims. In Rwanda, the International Criminal Tribunal for Rwanda (ICTR), through the Office of the Registrar, attempted to provide minimal support for witnesses coming before the Tribunal, who were often in desperate financial straits. On its own initiative, in September 2000, the Registrar's office launched an initiative to provide legal advice, psychological counseling, physical therapy, and monetary assistance, and also contributed to a number of projects in Taba township, the locality where the mayor was convicted of genocide and where there were hundreds of survivors, most of them destitute women. But the Tribunal soon found that the needs far exceeded its capacity, that it was ill-equipped to design and administer reparations schemes, and that to do so adequately would require the amendment of the Tribunal's statute and rules. The effort was scaled back, although the judges and prosecutor agreed that the Security Council should amend the ICTR's statute to allow it a greater role in compensation. The statute of the International Criminal Court (ICC) allows the ICC to award reparations, and sets up a trust fund to compensate victims of genocide, crimes against humanity, and war crimes, but as of 2004 it had minimal resources and had not yet made any awards.

What Rights Do Victims Have?

First, and most importantly, victims have a right to a remedy, and to reparations for harm done. The law on reparations arises in part from the requirements of international human rights treaties, and in part evolves from the law of state responsibility, which prescribes the reparations states must pay to other states for international law violations, including harm to the citizens of the aggrieved state. The basic human rights instruments encompass a "right to a remedy." Article 8 of the Universal Declaration of Human Rights holds that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." Article 2 of the International Covenant on Civil and Political Rights, in subsection 3, requires parties to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity," and article 9, subsection 5 requires compensation for unlawful detention, article 14, subsection 6, specifies compensation for wrongful conviction. Articles 6 and 13 of the European Convention, and articles 8 and 25 of the American Convention on Human Rights have similar provisions, as do the Convention against Torture and the Convention on the Elimination of Racial Discrimination, in Articles 14 and 6, respectively. Other specialized treaties and non-binding human rights instruments also call for compensation to victims. The statute of the International Criminal Court recognizes that individual offenders can also owe reparations, and sets out provisions on reparations in articles 75 and 79.

The UN Draft Principles recognize both material and moral elements to reparations. Material reparations for an individual may include the restitution of access to, and title of, property taken or lost, a job, freedom, or a pension or a person's good name. They may include medical, psychiatric, or occupational therapy aimed at rehabilitation. They may encompass monetary compensation in the form of a lump sum, a pension, or a package of services for the victim and for the survivors of those killed. For collectivities, restitution of cultural or religious property, communal lands, or confiscated public buildings, and compensation for such property as cannot be returned, are options.

Moral reparations are as important—generally more important from the victims' perspective—than material ones. They cover a wide range of measures, most having to do with a felt need for telling the story, for justice, and for measures to avoid the repetition of crimes. They may include disclosure of the facts of a victim's mistreatment or a loved one's death, disclosure of the names and positions of those responsible, and disclosure of the patterns of repression. They may in-



The most brutal violence in Sierra Leone was often perpetrated against children. Several with amputated limbs stay at a shelter in Freetown, 1999. [TEUN VOETEN]

clude official acknowledgement that government agents wronged the victims, and an apology may be officially offered. They may also include the guarantee that those responsible suffer consequences, whether criminal, civil, or administrative will be brought to justice and removed from positions of power.

Moral reparations may also be as basic as the identification and exhumation of the bodies of victims, and assistance in reburials and culturally appropriate mourning ceremonies. Assistance with finding the bodies of the dead or disappeared (that is, those kidnapped and surreptitiously killed, usually by security forces) is particularly key. These moral reparations also have a collective aspect, when entire communities dedicate memorials or markers to their dead. Other collective measures of moral reparation may include days of remembrance, the dedication of parks or other public monuments, renaming of streets or schools, preservation of archives or of repressive sites as museums, or other ways of creating public memory. Educational reform, the rewriting of history texts, and education in human rights and tolerance are all encompassed within the idea of "guarantees of non-repetition." So too, in a broader sense, are the reform of courts, police and military forces, and other arms of state authority that may be implicated in the original violations.

The trend in international law, finally, is to open up both civil and criminal court processes to allow increased access and voice to victims. Thus, the Inter-American Court of Human Rights in 1997 changed its procedures to allow victims direct representation before the court, rather than indirect representation through the Inter-American Commission. The European Convention on Human Rights has allowed direct victim representation since its Protocol 11 entered into force in 1998. The Rome Statute of the ICC similarly allows victims to be present, and at certain points to make representations before the court. The Colombian Constitutional Court, in the 2003 *Acevedo Martelo* case, held that in cases of human rights violations (as opposed to common crimes), the rights of victims had to be given considerable weight, and could override the rights of defendants to not have their cases reopened.

The rights of victims to be granted access to a remedy, to reparations, and to some level of participation in criminal processes will, of course, be more complex in situations of genocide or crimes against humanity,

given the sheer numbers of victims and the limited resources available. A mixture of individual and collective measures, and of moral and material reparations, will, under the best of circumstances, be the most that can be done, and yet be less than ideal. Creativity and attention to how these issues fit into larger reconstruction and development processes will be needed in such situations, if these rights are to be made a reality.

SEE ALSO Compensation; Psychology of Survivors; Reparations

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Naomi Roht-Arriaza

Videotaped Testimonials

Most survivor narratives of genocidal acts generated in the twentieth century exist in written or audio format. If survivors spoke about their experience in front of a camera, it was either in a war crimes trial setting or for a documentary filmmaker. The development of easy-to-use, affordable video technology in the early 1980s enabled oral history projects not only to record the voice but also the face of the interviewee. Early videotaping projects focused primarily on Holocaust survivors, while others gathered the testimonials of survivors of the Armenian genocide. Aging survivors, the awareness that their stories would soon be lost, and a growing trend toward a visually oriented society generated a multitude of videotaping projects in the 1980s and 1990s. The projects vary in size (amount of testimonies), scope (domestic vs. international), content (types of experiences covered), methodology (interview format and location of interview), and purpose (memorialization, therapy, research, education).

Survivor and remembrance groups as well as research- and education-oriented institutions such as universities, research centers, and museums began to recognize the need for visual history. From large institutions or projects that engage in local and international videotaping of Holocaust survivors (e.g., the Fortunoff Video Archive for Holocaust Testimonies at Yale, United States Holocaust Memorial Museum, Yad Vashem) to smaller, locally oriented groups like memorial sites (e.g., the National Museum at Auschwitz, Ravensbrück Memorial Museum), videotaping survivors while they speak about their experience has become much more common among not only Jewish Holocaust survivors but also other victim groups and witnesses to the Nazi program of mass murder, such as the Sinti and Romani (so-called gypsy) survivors, rescuers, and liberators. By the end of 2003 an extraordinary amount of such survivor and witness accounts—estimated to number around 70,000—had been gathered worldwide. The majority (75%) of this massive data was collected by one project—the Survivors of the Shoah Visual History Foundation. Founded by filmmaker Steven Spielberg, it began to videotape survivors and other witnesses in 1994 and concluded its collection phase by 1999. Unprecedented on many levels, as of 2004, the foundation remains the largest archive of videotaped testimonials of Jewish Holocaust survivors, Sinti and Romani survivors, and other witnesses.

Projects documenting genocidal crimes in places like Bosnia, Cambodia, and Rwanda as well as South Africa have consulted some of the larger Holocaust video archives on issues regarding videotaping survivors. The use of a video camera as a tool to create testi-

monials also plays a crucial role in a project called WITNESS. Founded in 1992 by the musician Peter Gabriel, the Lawyers Committee for Human Rights, and the Reebok Foundation, WITNESS provides guidance, encouragement, and funding to local grassroots efforts to document human rights abuses with a video camera and to use the resulting video to expose those abuses and stimulate change.

Videotaping techniques and interviewing styles vary widely, and numerous factors determine the most suitable methodology. The projected purpose of the testimonies, the financial resources available, and the intended location of the interviews are just a few elements to consider. Resources may impose limits on the kind of video-recording equipment available and thus influence the visual quality of the testimony. The quality of video may be important because the resulting testimonies could be intended for use in museum exhibits or documentaries, so broadcast-quality video may be required. Or, videotaping in remote geographic areas may limit the options on video equipment. Projects also differ in the choice of a specific setting for taping. There could be a number of different settings in which to conduct interviews: in a studio, interviewee's home, or another location relevant to the interviewee's experience. A studio can create a neutral environment, whereas the interviewee's home can provide a personal environment and degree of comfort that may help the interviewee to recall his or her memories in addition to providing a visual background unique to each interviewee. Videotaping testimonials on location of the former sites of persecution or genocidal acts can provide an additional visual and create a direct link between the past event (interviewee's narrative) and the present (a visual of the interviewee in the actual location) or give "physical evidence such as . . . forensic documentation of corpses or mass graves" (Stephenson, 2000, p. 44).

The size and intent of a project may determine whether the interview will be conducted with a time limit. If no such limitation exists, survivors have the opportunity to tell as much as they can remember and/or even correct previous statements in follow-up sessions. A time restriction is often implemented to enable a greater number of interviewees to tell their stories. The interviewing methodology ranges from a free-flowing approach, in which interviewers only ask questions for follow-up or clarification, to a more structured approach, in which interviewees are guided to tell their story in a more chronological manner, to those conducted in an investigatory manner. Historians interested in specific events and individuals involved in criminal investigations or trials prefer the more directed approach with as many clarifying questions asked as possible. However, this does not preclude other interviews from yielding equally important information. Ultimately, the "quality"—a very subjective and not easily defined descriptor—of an interview is shaped by the interviewee, not the interviewer. The interview may include descriptions of life before, during, and after the event. Some projects focus exclusively on the actual event and are less concerned with the before and after an approach often taken if the intent is to document the event for legal purposes or if the project's limited resources make a closer focus imperative. It is important to include narration on the life led before the act of genocide occurred if that way of life became extinct as a result. Therefore, allowing survivors to verbally recreate the past adds historical value. Equally important is the discussion of survivors' experiences after the event up to the time of taping, especially if the interview occurs many years after the fact. How does one cope with the experience? How does one go on living? Videotape also allows for the inclusion of additional documentary evidence-showing on camera a prisoner uniform worn in a concentration camp, a number tattooed on one's arm, or photos of family members who perished are just a few examples. A commonality exists among these approaches: allowing the survivors to tell the story in their own words.

First-person accounts have been considered by some as questionable historical resources. Memory is deemed too unreliable, particularly if testimonies are taken many years after the event. In 2000, however, historian Christopher Browning noted about his research on a Jewish forced labor camp, for which he used Holocaust survivor testimonies taken over several decades after World War II ended, that those testimonies were "more stable and less malleable" than he had anticipated (p. 91). The argument that only sources created at the time of the event are reliable should also be questioned. German documents created during the 1940s were often "designed to mislead rather than to inform, to hide rather than to reveal"(Bauer, 2001, p. 23). Videotaped survivor testimonies are especially crucial when historical knowledge has largely been based on perpetrator documentation and, as in the case of the Holocaust, the perpetrators tried to eradicate not only a people but also all documentation of that eradication itself.

Many efforts to collect Holocaust survivor testimonies audiovisually have been initiated to preserve the past and to educate future generations. Video records simultaneously the words, facial expressions, body language, and visual context surrounding survivors while they recount their experience and, as such, makes history not only come alive but also gives it a human dimension.

The videotaped interviews with Holocaust survivors and witnesses to the atrocities of World War II in the 1970s, 1980s, and 1990s present a unique opportunity for future generations of educators, students, and researchers. However, the faces and voices of survivors of other genocides should be included to create comprehensive documentation on genocides in general.

SEE ALSO Evidence; Films, Armenian Documentary; Films, Holocaust Documentary; Memoirs of Survivors; Memorials and Monuments; Television

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Karen Jungblut

Wallenberg, Raoul

[AUGUST 4, 1912–JULY 17, 1947]
Swedish diplomat

Raoul Wallenberg has entered history as a humanitarian an activist who took considerable personal risks to save men, women, and children from impending genocide. In the summer and fall of 1944, and until his disappearance in January 1945, Wallenberg was affiliated with the Swedish Legation in Budapest, Hungary, where he conducted a special rescue mission to save many thousands of Hungarian Jews from deportation to the Nazi extermination camps. Wallenberg had no kinship to the victims; he was a Lutheran by faith and a neutral Swede by nationality. Yet he accepted a difficult and dangerous assignment in a foreign country—a mission which he carried out with skill, determination, and courage.

Early Life and Humanitarian Appointments

Wallenberg was born in 1912 in Stockholm to an aristocratic family of industrialists and bankers. In 1930 he graduated from secondary school with top grades, in particular in Russian, which would serve him well in his later career. Following compulsory military service, he traveled to the United States to study architecture at the University of Michigan in Ann Arbor, from which he received his B.S. degree in 1935. Following his return to Sweden, he took a position with a Swedish firm in Cape Town, South Africa, engaged in the sale of building materials. In 1936 he was employed at a branch office of a Dutch bank in Haifa, Palestine (present-day Israel). In Palestine he met Jews who had fled from persecution in Germany. Back in Sweden, Wallenberg became the business partner of Kálmán Lauer, a Hungarian Jew based in Stockholm and director of the Central European Trading Company, an import and export firm specializing in fine foods such as *foie gras.* In 1941 Wallenberg became foreign trade representative of the firm and in this capacity traveled to many European countries, including Hungary, Germany, and Nazi-occupied France.

World War II is remembered as the stage for the major genocide of the twentieth century, following the Ottoman extermination of Armenians. Adolf Hitler's "final solution of the Jewish question" first consumed the Polish, Baltic, Ukrainian, Russian, and West European Jews from countries under Nazi occupation. Until 1944 the 700,000 Jews in Hungary had been spared, since Hungary's head of state, Admiral Miklós Horty, was an ally of the Germans, and thus Hitler's henchmen could not freely operate there. This situation changed when Hungary was occupied by the Nazis in March 1944, and the deportation of Hungarian Jews to Auschwitz-Birkenau began. The first victims were the Jews from the countryside, more than 400,000 of whom were deported in the months of May and June 1944.

Faced by grave danger, some of the Jews in Budapest sought protection from the embassies of neutral countries, especially those Jews who could show some links with those countries and thus request special passports. The Swedish Legation in Budapest issued some seven hundred temporary passports; those possessing the passports were exempted from having to wear the Star of David. In view of the magnitude of the

Raoul Wallenberg, Swedish Renaissance man and diplomat, used his diplomatic status to save Hungarian Jews during the Holocaust. He also negotiated with Adolf Eichmann and other Nazi officers for the cancellation of deportations to concentration camps by playing on their fears that the Allies would eventually prosecute those responsible for such war crimes. [USHMM]

problem, Valdemar Langlet, head of the Swedish Red Cross, provided assistance to the Swedish Legation. He rented buildings in the name of the Red Cross and identified these buildings as the "Swedish Library" or "Swedish Research Institute," although they were essentially intended as hiding places for Jews. Furthermore, the Legation turned to the Ministry of Foreign Affairs in Stockholm and requested more staff.

Meanwhile, following the establishment of the American War Refugee Board in 1944, an organization whose task was to save Jews from Nazi persecution, the World Jewish Congress, held a meeting in Stockholm to organize a rescue mission for the Hungarian Jews. The organization considered sending Count Folke Bernadotte, chairperson of the Swedish Red Cross and a relative of King Gustav V. When the Hungarian government did not approve Bernadotte, Lauer proposed that Wallenberg be sent instead.

In late June 1944 Wallenberg was appointed first secretary of the Swedish Embassy in Budapest. The embassy granted him very broad powers of initiative, and he did not have to clear his decisions concerning the rescue mission with Stockholm or with the Swedish Legation in Budapest, which at the time was headed by Minister Carl Ivar Danielsson and assisted by his deputy Legation secretary Per Anger.

Assisting the Jews

When Wallenberg arrived in Budapest on July 9, 1944, about 200,000 Jews were still in the capital. SS-Obersturmbannführer Adolf Eichmann intended to deport all of them within a few days, but King Gustav V addressed a letter to Horty containing a humanitarian appeal to stop the deportation of Jews. Upon Horty's intercession, the deportations were canceled. Historians speculate that the cancelling of deportations was in part due to SS-Chief Heinrich Himmler, who was attempting to negotiate a separate peace agreement with the Western Allies and thus believed he would improve his negotiating position by making certain concessions toward the Jews.

Wallenberg's first task in Budapest was to design a Swedish protective passport (*Schutz-Pass*), printed in blue and yellow (Sweden's national colors), bearing the Three Crowns heraldry in the center. Although these "protective passports" were not documents customarily recognized in international diplomatic practice, they did appear official enough and impressed the German and Hungarian authorities sufficiently to persuade them to leave the bearers in peace. Initially 1,500 such passports were issued, soon thereafter another 1,000, and eventually the quota was raised to 4,500. Scholars estimate that Wallenberg actually issued three times that amount. Meanwhile his department at the Swedish Legation continued to grow, eventually employing 340 persons and volunteers, and harboring 700 persons who lived on the premises of the Legation.

When on October 15, 1944, Horty announced that he was seeking a separate peace agreement with the Russians, German troops quickly deposed him, and he was replaced by the leader of the Hungarian Nazis, Ferenc Szálasi, the leader of the Arrow Cross movement. Thereupon Wallenberg proceeded to expand the "Swedish houses" to thirty-two buildings, mostly in Budapest, where many of the Jews resided. The number of inhabitants of these houses reached 15,000. Other diplomatic missions in Budapest also started issuing protective passports.

In November 1944 Eichmann forced thousands of Jews to leave Hungary by foot, some 200 kilometers to the Austrian border. Wallenberg distributed protective passports, food, and medicine to many victims of these forced marches, and by threats and bribes persuaded the Nazis to release those who had been given Swedish passports. Then followed the deportations by trainloads, and again Wallenberg personally went to the

A four-meter-high (13-feet-high) bronze monument to Raoul Wallenberg, the Swedish diplomat who saved tens of thousands of Hungarian Jews in World War II, was unveiled Friday May 28 1999, in the Stockholm suburb Lidingo, where he was born. The sculpture symbolizes Wallenberg with hands behind his back, clandestinely giving out Swedish passports. [AP WIDE WORLD PHOTOS]

train stations to save individuals. Reports claim that he climbed on trains and passed bundles of protective passports to the occupants.

Early in January 1945 Wallenberg learned that Eichmann was about to liquidate the Jews in the ghettos. Wallenberg, with the assistance of an Arrow Cross member Pa'l Szalay, whom he had bribed, approached General August Schmidthuber, commander of the German troops in Hungary. Due to this intervention, the massacre was averted. On January 12, 1945, Soviet troops entered Budapest and found some 120,000 Jews still alive in the city. On January 17, Wallenberg and his chauffeur traveled to the Soviet military headquarters in Debrecen, in eastern Hungary. It appears that there he was arrested on suspicion of espionage for the United States and taken to Lubjanka Prison in Moscow, where, according to Soviet sources and the so-called Smoltsov Report, he died of a heart attack on July 17, 1947. Another version of the story stated that Wallenberg was still alive in the 1970s and 1980s. Following the collapse of the Soviet Union, new efforts were undertaken to clarify his fate, and in confidential talks between Russian and Swedish diplomats, the version emerged that he had been executed in 1947. A Swedish-Russian working group that investigated the matter found no hard evidence to support this theory.

Wallenberg's Legacy

It is not certain exactly how many persons were directly or indirectly saved by Wallenberg's mission. Certain is that his tireless efforts, combined with the initiatives taken by the Swedish Red Cross, the International Committee of the Red Cross, other diplomatic missions in Budapest, and the papal nunciature, saved as many as 100,000 Hungarian Jews from the Holocaust.

There are many parks, monuments, statues, and institutes named after him, notably the Raoul Wallenberg Human Rights Institute at the University of Lund in Sweden.

On June 20, 2000, the United Nations Secretary-General Kofi Annan remarked at a memorial service in Budapest that "Raoul highlighted the vital role of the bystander, of the third party amidst conflict and suffering. It was here, in the face of despair, that his intervention gave hope to victims, encouraged them to fight and resist, to hang on and bear witness."

Wallenberg is an honorary citizen of the United States, Canada, Israel, and the city of Budapest.

SEE ALSO Rescuers, Holocaust

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Alfred de Zayas

Wannsee Conference

On January 20, 1942, Reinhard Heydrich, the head of the Nazi Security Police and the SS Security Service, and fourteen other senior SS officers, Nazi Party officials, and civil servants met in a villa in the Berlin suburb of Wannsee to discuss preparations for the Final Solution. When American legal investigators uncovered minutes (the sixteenth copy out of an original thirty) for the meeting among German Foreign Office records in March 1947, the meeting rapidly attained postwar notoriety and became known as the Wannsee Conference.

The conference's impact lay partly in the clarity with which its minutes (or so-called Protocol) revealed Nazi thinking. Consisting largely of an extended presentation by Heydrich, the Protocol offered a sober account of the evolution of Nazi policy on the Jews, culminating in "new possibilities in the East." A table slated 11 million European Jews, divided up by country, for inclusion in the plan. Although murder was not explicitly proposed, one section of the Protocol was unequivocal:

> In large, single-sex labour columns, Jews fit to work will work their way eastwards constructing roads. Doubtless the large majority will be eliminated by natural causes. Any final remnant that survives will doubtless consist of the most resistant elements. They will have to be dealt with appropriately, because otherwise, by natural selection, they would form the germ cell of a new Jewish revival.

None of the participants at the meeting, many coming from long-established ministries—the Ministry of the Interior, the Ministry of Justice, the Foreign Ministry, and the Reich Chancellery—protested. To many postwar observers it seemed incredible that such educated men, eight of them holding doctorates, had gone along with such proposals. As a symbol of the orderly governance of genocide, the protocol remains without parallel.

A more contentious subject among scholars is the meeting's policy significance for the emergence of the Final Solution. Heydrich's invitation and opening remarks suggested that the meeting was of great importance and was needed to clarify fundamental issues. Postwar investigators were also aware that around December, when the meeting was originally scheduled to take place, Hans Frank had alluded in Poland to fundamental discussions taking place in Berlin. For these reasons and coupled with the Protocol's systematic listing of all European Jews, many postwar observers believed it was at the Wannsee Conference that genocide had been decided. What cast doubts on this assertion, however, are the facts that mass killings had begun in Russia six months earlier, preparations for the Belzec camp were well underway, and the Chelmno death camp had been in operation since early December 1941. Moreover, it is not clear that Heydrich or his guests were senior enough to make important decisions about the Final Solution.

Historians have therefore puzzled over a meeting that seemed to be asking questions well after the shooting had started. Their answers have varied according to their broader understanding of how genocidal policy emerged. For those who believe a fundamental command was uttered in July 1941 or indeed earlier, Wannsee's function seems, at best, secondary and may have been almost entirely symbolic—as the historian Eberhard Jäckel argued in a seminal article in 1992. For those historians, by contrast, who believe that a decision to murder all European Jews—as opposed to the Soviet killings—crystallized piecemeal over the second half of 1941, the meeting's timing makes more sense as a response to an emerging consensus among Nazi leadership about the way to go forward. The timing may also have resulted from the negative reaction among some Berlin officials to the rapidly disseminated news that Berlin Jews had been shot on arrival in Riga on November 29 and 30, 1941. One of the first mass executions of German Jews, this had a different psychological significance than the already familiar content of the *Einsatzgruppen* reports from Russia. Wannsee was thus partly convened to ensure that the Reich's ministries were on board.

What is also clear is that Heydrich invited many of the agencies with whom his security police had regularly experienced disputes over lines of authority. Indeed, some agencies, notably representatives of the general government, were added only as an afterthought when

new evidence of their resistance to his mandate came to light. Heydrich wanted to assert the SS's and specifically his leadership on the Jewish question. Moreover, to remove potential opposition to the deportation of more German Jews, he wanted to obtain agreement on any special categories to be exempted—highly decorated Jewish veterans from World War I, Jews in mixed marriages, and so forth. Much of the Protocol was taken up with these matters, and it is clear that Heydrich sought to undo most of the protection for half-Jews and also quarter-Jews that the Ministry of the Interior had thus far managed to maintain. This was the one significant area in which the Protocol registered any dissent from Heydrich's proposals, although in advocating the "compromise" of sterilizing all half-Jews, the Interior Ministry's Wilhelm Stuckart went much further in Heydrich's direction than had previously been the case.

The Wannsee Conference's true impact is hard to gauge. It is known that Heydrich was pleased with the outcome, and he conveyed to his subordinates the notion that the Security Police's authority had been enhanced. The deportation of German Jews, and the killing rate, both accelerated in the spring. On the question of the *Mischlinge* (half-Jews), however, followup meetings showed that considerable resistance to their being equated with "full Jews" remained, and in this regard Heydrich did not achieve the breakthrough he had hoped for.

SEE ALSO Germany; Heydrich, Reinhard; Holocaust

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Mark Roseman

War

For many centuries, western European attitudes toward the legality of war were dominated by the teachings of the Roman Catholic Church. War was regarded as a means of obtaining reparation for a prior illegal act, and was sometimes regarded as being commanded by God. In this way much of the debate centered on the distinction between just and unjust wars, a distinction that began to break down in the late sixteenth century. In time, leaders justified wars if they were undertaken for the defense of certain vital interests, although there were no accepted objective criteria for determining what those vital interests were. In the twenty-first century, international lawyers and states rarely use the term *war*. This is because "war" has a technical and somewhat imprecise meaning under international law, and states engaged in hostilities often deny there is a state of war. The difference between war and hostilities falling short of war may appear very fine, but it can have important consequences especially in regard to the relations between states. Since the adoption of the United Nations Charter in 1945, there is a general prohibition on the use of force by states except in accordance with the provisions of the Charter itself. In this way the question is more about the use of force than the right to declare war. This is reflected in the difficulty government representatives have had in finding an acceptable definition for the crime of aggression under the 1998 Rome Statue of the International Criminal Court.

Laws of War/International Humanitarian Law

Among the equivalent and interchangeable expressions, the "laws of war," the "law of armed conflict," and "international humanitarian law," the first is the oldest. War crimes come under the general umbrella of international humanitarian law, and may be defined as the branch of international law limiting the use of violence in armed conflicts. The expression "laws of war" dates back to when it was customary to make a formal declaration of war before initiating an armed attack on another state.

In the twenty-first century, the term *armed conflict* is used in place of *war,* and while the military tend to prefer the term *law of armed conflict,* the International Committee of the Red Cross and other commentators use the expression "international humanitarian law" to cover the broad range of international treaties and principles applicable to situations of armed conflict. The fundamental aim of international humanitarian law is to establish limits to the means and methods of armed conflict, and to protect noncombatants, whether they are the wounded, sick or captured soldiers, or civilians.

International humanitarian law is comprised of two main branches; the law of the Hague and the law of Geneva. The law of the Hague regulates the means

Refugees forced from their homes as a result of the Spanish Civil War arrive at the French border town of Luchon. [HULTON-DEUTSCH COLLECTION/CORBIS]

and methods of warfare. It is codified primarily in the regulations respecting the Laws and Customs of War on Land ("the Hague Regulations") annexed to the 1907 Hague Convention IV ("the Hague Regulations"). These govern the actual conduct of hostilities and include matters such as the selection of targets and weapons permissible during armed conflict. The law of Geneva is codified primarily in four conventions adopted in 1949, and these are known collectively as the Geneva Conventions for the Protection of War Victims. Their aim is to protect certain categories of persons, including civilians, the wounded, and prisoners of war.

After the piecemeal development of international humanitarian law at the end of the nineteenth century and the beginning of the twentieth century, the experience of World War II exposed the shortcomings in the legal regulation of this field dramatically. This realization led to the adoption of the four Geneva Conventions for the Protection of War Victims in 1949. The adoption of the Conventions, coupled with the earlier well developed body of Hague law governing the conduct of hostilities by armed forces, meant that traditional interstate wars, or "armed conflicts" to use the language of the Conventions, were now well-regulated, in theory at least. The phrase "armed conflict" was employed to make it clear that the Conventions applied once a conflict between states employing the use of arms had begun, whether or not there had been a formal declaration of war.

As the majority of armed conflicts in the cold war period were not interstate wars of the kind envisaged by traditional international humanitarian law, obvious gaps in the legal regulation governing armed conflicts remained. The adoption of the Geneva Conventions marked a break with the past in that Article 3, which was common to all four Conventions, sought to establish certain minimum standards of behavior "in the case of armed conflict not of an international character." In an attempt to address deficiencies in the 1949 Geneva Conventions, Additional Protocols I and II were adopted in 1977.

Protocol I applies to international armed conflict and brought what was often referred to as "wars of national liberation" within the definition of international conflicts. Protocol II, on the other hand, did not apply to all noninternational armed conflicts, but only to those that met a new and relatively high threshold test. Despite the time and effort that was involved in drafting and agreeing the Protocols, the result was less than satisfactory, especially from the point of view of classifying armed conflicts to determine which Protocol, if any, applies in a given case. The applicability of Protocol II is quite narrow, and this helps explain in part why so many states are party to it.

Codification of War Crimes

The United Nations Commission for the Investigation of War Crimes was established in the aftermath of World War II in order to prepare the groundwork for the prosecution of war criminals arising from atrocities committed during the war. One of the features of the 1945 Charter of the International Military Tribunal at Nuremberg is that the crime of genocide did not appear in its substantive provisions. Consequently, the Tribunal convicted the Nazi war criminals of "crimes against humanity" for the crimes committed against the Jewish people in Europe.

The relationship between war crimes, genocide, and crimes against humanity is somewhat complex due to the historical development of each category of international crime. The most significant practical legal issue to be considered is the necessity for some form of armed conflict before there can be a war crime. In the case of genocide, there is no requirement for such crimes to take place in the context of a war or armed conflict. However, such crimes can often be committed as part of a wider conflict to achieve some of the broader aims of participants. The chaos and breakdown in

law and order characteristic of armed conflict provides potential perpetrators with an opportunity to pursue illegitimate objectives and methods.

Historically, it was also probably easier to evade responsibility for such crimes when they were committed in the course of an armed conflict. With the advent of the International Criminal Tribunals for the former Yugoslavia and Rwanda, Special Courts and the International Criminal Court, this situation no longer prevails.

The concept of a war crime is broad and encompasses many different acts committed during an armed conflict. It is synonymous in many people's minds with ethnic cleansing, mass killings, sexual violence, bombardment of cities and towns, concentration camps, and similar atrocities. War crimes may be defined as a grave or serious violation of the rules or principles of international humanitarian law—for which persons may be held individually responsible. The Geneva Conventions oblige states to provide effective penal sanctions for persons committing, or ordering to be committed grave violations of the Conventions. In fact, in such cases all states are required to assume power to prosecute and punish the perpetrators. Such provisions only apply if the violations were committed in the course of an international armed conflict. In reality, it is often difficult to determine if a particular situation amounts to an "international" or a "noninternational armed conflict." However, although legally of some significance, it does not alter the serious nature of the crimes in the first instance.

Furthermore, decisions of the International Criminal Tribunals for the former Yugoslavia and Rwanda have ruled that many principles and rules previously considered applicable only in international armed conflict are now applicable in internal armed conflicts, and serious violations of humanitarian law committed within the context of such internal conflicts constitute war crimes. Such decisions, and the adoption of the Rome Statute of the International Criminal Court, have tended to blur the legal significance of the distinction between international and noninternational armed conflicts.

Genocide and Crimes Against Humanity

The judgment of the International Military Tribunal at Nuremberg was controversial in some respects. One of the main reasons why it was considered necessary to draft a convention that dealt specifically with the crime of genocide was the limited scope given to "crimes against humanity" at the time.

A crime against humanity referred to a wide range of atrocities, but it also had a narrow aspect, and the prevailing view in the aftermath of World War II was that crimes against humanity could only be committed in association with an international armed conflict or war. The Allies had insisted at Nuremberg that crimes against humanity could only be committed if they were associated with one of the other crimes within the Nuremberg Tribunal's jurisdiction, that is, war crimes and crimes against peace. In effect they had imposed a requirement or nexus, as it became known, between crimes against humanity and international armed conflict. For this reason many considered that a gap existed in international law that needed to be addressed. The General Assembly of the United Nations wanted to go a step further recognizing that one atrocity, namely genocide, would constitute an international crime even if it were committed in time of peace. The distinction between genocide and crimes against humanity is less significant today, because the recognized definition of crimes against humanity has evolved and now refers to atrocities committed against civilians in peacetime and in wartime. The Rome Statute of the International Criminal Court provides that crimes against humanity must have been committed as part of a "widespread or systematic attack directed against any civilian population."

Some states were concerned that international law did not seem to govern atrocities committed in peacetime (as opposed to during a time of armed conflict or war) and called for the preparation of a draft convention on the crime of genocide. The Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1948, and entered into force on January 11, 1951.

Under the Convention, the crime of genocide has both a physical element—certain listed acts such as killing, or causing serious mental or bodily harm to members of a racial group—and a mental element, which upholds the acts must be committed with intent to destroy, in whole of in part, a national, ethnic, racial or religious group "as such." Although earlier drafts had included political groups, this was later dropped during final drafting stages. In this way, the killing of an estimated 1.5 million Cambodians by the Khmer Rouge is not generally considered to have been genocide as defined under the Genocide Convention (both the perpetrators and the majority of the victims were Khmer). However, its widespread and systematic nature qualifies it as one of the twentieth century's most notorious crimes against humanity. The definition in the Convention is essentially repeated in Article 6 of the Rome Statute of the International Criminal Court, and in the relevant statues of the International Criminal Tribunals for the former Yugoslavia and Rwanda.

SEE ALSO International Criminal Court; International Criminal Tribunal for Rwanda; International Criminal Tribunal for the Former Yugoslavia; Nuremberg Trials; United Nations War Crimes Commission; War Crimes

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Ray Murphy

War Crimes

Grave offenses against the laws of warfare entailing the penal responsibility of individuals constitute war crimes, long punished according to national laws and procedures. At the international level, war crimes were first clearly defined after World War II by the Charter of the International Military Tribunal. The international experience with prosecuting and punishing war criminals was followed by the codification of rules in the 1949 Geneva Conventions, the 1977 Additional Protocols, the statutes of international criminal tribunals for former Yugoslavia and Rwanda, and most recently, in the Statute of the International Criminal Court.

Much earlier precedents for punishing war crimes can be found in ancient Greece and Rome, the Laws of Manu in India, the code of Bushido in Japan, the Old Testament and the Qur'an. Violations of the laws and customs of war were punished by military commanders or national tribunals. Internationally, the first reported trial against a war criminal took place in Breisach in 1474, and in which Peter of Hagenbach was condemned for "crimes against the laws of man and of God."

The Lieber Code, promulgated by President Lincoln during the U.S. Civil War in 1863, was one of the first attempts to codify laws of war on national level. It provides for the following:

> all wanton violence committed against persons in the invaded country, all destruction of property . . . all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense. A soldier, officer, or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

The Oxford Manual on the laws of war on land, adopted in 1880 by the Institute of International Law, provided in Article 84 that "offenders against the laws of war are liable to the punishments specified in the penal law." Article 3 of the 1907 Hague Convention respecting the laws and customs of war on land only required that "a belligerent party which violates the provisions of the . . . Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." No individual personal responsibility was yet introduced into international law.

World War I

World War I led to a major step forward in the development of the rules concerning war crimes. Offenses against the law of war were prosecuted by national

courts of several belligerent countries, and the Treaty of Versailles (1919) proclaimed that the responsibility for these offenses fell to the German emperor. However, an attempt to create an international court was opposed by the United States. The Dutch government granted asylum to the now-deposed emperor, William II of Hohenzollern, who could then not be tried by the special tribunal envisaged by the treaty.

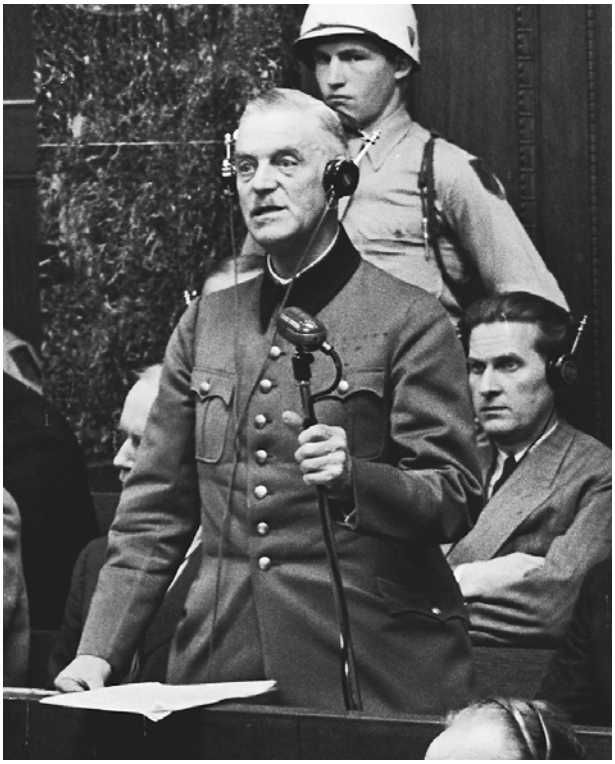
Article 228 of the treaty also stated that "the German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war." The persons accused of the crimes, however, were not handed over. Instead, Germany tried some of the accused before the Supreme Court of Leipzig, created expressly for this purpose. Of the 896 individuals accused of war crimes, only 45 were tried, and only 9 were convicted. The sentences were light and the convicted prisoners were pardoned a few years later.

Prosecution of War Crimes during and after World War II

Determined not to repeat the problem of allocating war-crimes responsibility after World War I, the Allied powers tried a new approach during World War II. They repeatedly warned the Axis powers of their responsibility for war crimes. The Moscow Declaration of 1943 distinguished between two sorts of war crimes. The first category of crimes were committed by German soldiers and members of the Nazi party who were responsible for, or took a consenting part in atrocities, massacres, and executions. They were sent back to be tried and punished in the countries where their crimes had been committed. The second category of German war criminals constituted those whose offenses had no particular geographical localization. These would be punished by joint decision of the governments of the Allies.

For the first category of war criminals, the first trials were held in Krasnodar (Russia) and Kharkov (Ukraine) in 1943, before the war had ended. Military tribunals for the second category of criminals were set up in Germany's occupation zones and were regulated by Law No. 10, of the Allied Control Council, which was passed on December 20, 1945 and which established a uniform basis of material law and procedure.

International prosecution was based on the London Agreement for the prosecution and punishment of the major war criminals of the European Axis Power, signed on August 8, 1945. This agreement includes the Nuremberg Charter of the International Military Tribunal. Article 6 of the charter established individual responsibility for crimes against peace, war crimes, and crimes against humanity. It was the first time that this terminology appeared in an international treaty. The definitions of each category of crime, as given by the charter, was only exemplary, not exhaustive.



Field Marshal Wilhelm Keitel on trial at Nuremberg. Convicted of war crimes for planning and overseeing Germany's military campaigns during World War II, he was hanged at dawn on October 16, 1946, his final request to be shot by a firing squad, as befits a loyal soldier, having been denied. [HULTON-DEUTSCH COLLECTION/CORBIS]

The principles established by the Charter and the judgment of the Nuremberg tribunal were affirmed and recognized by the United Nations General Assembly Resolution 95(I), which was adopted on December 11, 1946. They were not fully formulated until later, however—in 1950, by the International Law Commission. Another tribunal, similar to that of Nuremberg, was established in Tokyo and was based on a Special Proclamation of General Douglas MacArthur as the Supreme Commander in the Far East. MacArthur took this action by virtue of the authority delegated to him by the four Allied Powers at war with Japan.

Non-Applicability of Statutory Limitations

In order to avoid the accused escaping prosecution because of statutory limitations to the crimes committed during the World War II, member states drafted the

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which was adopted by the United Nations General Assembly on November 26, 1968. At the regional level, the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes was signed at Strasbourg on January 25, 1974. This new convention narrowed the definition of crimes against humanity in comparison with the United Nations Convention.

The 1949 Geneva Conventions and 1977 Additional Protocols

The four Geneva Conventions adopted on August 12, 1949, underlined the importance of domestic legislation and domestic jurisdiction in the prosecution and punishment of war criminals. According to the Conventions, the contracting parties must:

- enact legislation necessary to provide effective penal sanctions for grave breaches;
- search for those who have committed or gave the order to commit grave breaches;
- bring such persons before its courts, regardless of their nationality, or hand over such persons for trial to another contracting party for trial and punishment; and
- take measures necessary to suppress all acts contrary to the provisions of the convention other than the grave breaches.

Grave breaches are defined in common Articles 50/51/130/147 as acts committed against persons and property protected by the conventions, including:

- willful killing;
- torture or inhuman treatment, including biological experiments;
- willfully causing great suffering or serious injury to body or health;
- unlawful deportation or transfer or unlawful confinement of a protected person under the Fourth Convention;
- compelling a protected person to serve in the forces of a hostile Power; willfully depriving a protected person of the rights of fair and regular trial prescribed in the conventions;
- taking of hostages
- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

The First Additional Protocol revisited the definition of war crimes, specifying the conditions that would render such crimes punishable by law. It is important to emphasize that not all war crimes are, in fact, "grave breaches" as listed in the Geneva Conventions and the First Additional Protocol. The broader conceptual category of war crimes covers both grave breaches and other serious violations of the laws and customs of war, but according to the First Additional Protocol, not every violation of the laws of warfare "would of necessity constitute a punishable act."

The First Protocol supplemented, developed, and clarified the "system of repression" stipulated in the 1949 Geneva Conventions by explicitly accepting the same list of "grave breaches" as were defined in the Conventions, and by requiring that the system of repression, whereby war crimes may be prosecuted and punished, be applied to these grave breaches. In addition, the protocol expanded the list of grave breaches to include any willful act or omission that seriously endangers the physical or mental health or integrity of any person who is in the power of an enemy and which violates any in a series of specified prohibitions. The specified prohibited acts include any unjustified act or omission or medical procedure not required by the state of the victim's health; physical mutilation; medical or scientific experiments; or the removal of tissue or organs. For an act to constitute a violation it must have been committed willfully, in violation of relevant provisions of the Protocol, and it must have caused death or serious injury to body or health. The Protocol goes on to list the following acts as criminal under international law

- Making the civilian population or individual civilians the object of attack;
- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- Making non-defended localities and demilitarized zones the object of attack;
- Making a person the object of attack in the knowledge that he is *hors de combat*;
- The perfidious use of the distinctive emblem of the red cross, red crescent, or red lion and sun, or of other protective signs recognized by the Conventions of this Protocol;
- The transfer by an occupying power of parts of its own civilian population into the territory it occu-

Ofuna prison, a POW camp in Yokohoma, Japan, August 1945. The Japanese interrogation camp was described by American prisoners of war as one of the worst in the area. [AP/WIDE WORLD PHOTOS]

pies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

- Unjustifiable delay in the repatriation of prisoners of war or civilians;
- Practices of apartheid or other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
- Intentionally targeting clearly recognized historic monuments, works of art, or places of worship which constitute the cultural or spiritual heritage of peoples, resulting in the extensive destruction thereto, when such locales or objects have been accorded special protection and when these targets are not located in the immediate proximity of military objectives;
- Depriving a person protected by the Conventions and the Protocol of the rights of fair and regular trial.

In addition to the grave breaches, other serious violations of the laws and customs of war, including those stipulated in Article 23 of the 1907 Hague Regulations, remain war crimes and are punishable within the framework of customary international law.

The Nuremberg principles specified that complicity is also a crime under international law. Therefore, joint offenders and accessory accomplices are also punishable. An individual who commits a war crime is personally liable, regardless of his rank or governmental position. The commander is responsible, as are his subordinates for such violations. Military commanders must prevent or suppress war crimes, report breaches,

and ensure that members of armed forces under his command are aware of their obligations.

Treatment of Offenders

An offender who benefits from the status of prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts and the same procedure as would be used in trying the members of the armed forces of the detaining power. The Convention and the Protocol prescribe judicial guarantees of the fair treatment for all military and civilian offenders. Even if a person does not benefit from the status of protected persons, that person will always benefit from the fundamental guarantees provided by human rights and by Article 75 of the Protocol, which express rules of customary law. The death penalty cannot be imposed if such penalty has been abolished by the detaining power.

Repression of War Crimes after 1945

Several domestic jurisdictions prosecuted and punished war criminals after 1945. One case was the massacre of forty-seven Arabs in Kafr-Kassem in October 29, 1956. Another occurred in 1958, when a military tribunal in Jerusalem condemned two officers and six border guards to seven to seventeen years imprisonment. The sentence was later reduced. In the United States, in 1971, a court martial sentenced U.S. Lieutenant William Calley to life imprisonment for his responsibility in the My Lai massacre of March 16, 1968, in which 347 civilians were killed in a village 510 kilometers outside of Saigon, Vietnam. His sentence was later reduced to 20 years, and he was paroled in 1974. Two other officers received disciplinary sanctions for their involvement in the same incident.

After the invasion of Kuwait in 1990, the United States, the United Kingdom, and the UN Security Council warned Iraqi authorities to respect the rules of war. The Security Council passed Resolution 674 in October 29, 1990, reaffirming the duty of Iraq "to comply fully with all terms" of the Fourth Geneva Convention and proclaiming Iraq's liability, as well the liability of individuals, for grave breaches. The resolution invited the UN member states "to collate substantial information in their possession or submitted to them on the grave breaches by Iraq . . . and to make this information available to the Security Council." In the wake of the second Iraq war, the provisional Iraqi government adopted the statute of a special tribunal in 2003 to try war criminals, including Iraq's former president, Saddam Hussein.

Crimes Committed in Former Yugoslavia and in Rwanda

During the conflicts in Yugoslavia, the UN Security Council required compliance with the rules of international humanitarian law and affirmed individual responsibility for violations. The United Nations created a commission of experts to investigate the crimes committed on the territory of former Yugoslavia. With Resolution 808 (1993), the Security Council established the International Tribunal for the Former Yugoslavia (ICTY). The tribunal deals with grave breaches of the Geneva Convention, violations of the laws and customs of war, genocide, and crimes against humanity (Articles 2 through 5). The definition of war crimes was based on the provisions of the Geneva Conventions and customary rules of international law.

With Resolution 955 (1994), the Security Council established the International Criminal Tribunal for Rwanda (ICTR), which was responsible for prosecuting genocide and other serious violations committed in the territory of Rwanda and its neighboring between January 1 and December 31, 1994. The list of crimes includes genocide, crimes against humanity, and violations of Article 3 of the Geneva Conventions and of the Convention's Additional Protocol II. The crimes were limited to those committed in the course of the internal conflict.

The statutes of both tribunals affirmed the principle of individual responsibility for planning, instigating, ordering, committing, or otherwise aiding and abetting in the planning, preparation, or execution of such acts. The concept of command responsibility was included: the official position of the accused does not relieve the person of responsibility nor mitigate the punishment, nor does the fact that the person ordered the acts but did not commit them personally. The fact that an accused person acted on the orders of a superior does not relieve the person of responsibility, either, but "may be considered in mitigation of the punishment."

By April 2004, the ICTY had tried forty-six individuals accused of genocide, war crimes, and crimes against humanity: Twenty-five of the defendants were judged guilty and began serving their sentences, A further sixteen were found guilty but began the process of filing appeals. Three persons were found not guilty on appeal. Two of the accused were acquitted. By the same date, the ICTR had completed trials for twenty cases.

The tribunals have concurrent jurisdiction with national courts, but in cases of conflict, the international tribunals have primacy over national courts and may formally request national courts to defer to them. Both tribunals made significant contributions to the development of international humanitarian law and to crimi-

nal law in general. They also helped to define and explain legal norms and establish the path for the future International Criminal Court (ICC). For instance, the appeals chamber of the ICTY, after hearing the *Tadic* case, came to the conclusion that "customary international law imposes criminal liability for serious violations of common Article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in civil strife."

The Special Court for Sierra Leone

The Special Court for Sierra Leone was established on January 16, 2002, by joint agreement of the government of Sierra Leone and the United Nations. The court was mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean domestic criminal law committed in the territory of Sierra Leone since November 30, 1996. As of November 2003, thirteen persons from all three of the country's former warring factions were indicted by the special court. They were charged with war crimes, crimes against humanity, and other serious violations, including murder, rape, extermination, acts of terror, enslavement, looting and burning, sexual slavery, conscription of children into an armed force, and attacks on UN peacekeepers and humanitarian workers.

International Criminal Court

After several attempts in the past, most notably in 1919 and 1937, the United Nations adopted the Rome Statute of the International Criminal Court on July 17, 1998. The ICC is independent from the United Nations, and its relations with them is governed by an agreement that has been approved by the UN General Assembly. The treaty creating the ICC came into force on July 1, 2002, and by February 19, 2004, ninety-two states had become signatories to the treaty. The ICC's judges and prosecutor were elected in 2003. The court is based in the Hague.

In its founding statute, the ICC enumerates the crimes over which it has jurisdiction. These include genocide, war crimes, crimes against humanity, and crimes of aggression. The ICC accepts the 1948 Genocide Convention's definition of what constitutes the crime of genocide. The Rome Statute also provides a detailed definition of what constitutes a crime against humanity, which is markedly better developed than the definition provided in the Nuremberg Charter. It also defines several other essential terms, including extermination, enslavement, deportation and forcible transfer or torture.

It was only long after the fact that some war crimes became the subject of public scrutiny, including the atrocities committed by the Japanese during its "Rape of Nanking" in December 1937. Here, captors and prisoners party to this massacre watch from above while Japanese soldiers below taunt, and then bayonet, their Chinese victims. [BETTMANN/CORBIS]

The ICC assumes jurisdiction over war crimes that have occurred "as part of a plan or policy or as part of a large-scale commission of such crimes." These are not the only acts against which the ICC can take action however. According to the Rome Statute, the ICC can prosecute

(1) Grave breaches of the Geneva Conventions of August 12, 1949;

(2) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law. The statute then goes on to descript 26 specific prosecutable acts that may be committed in international armed conflicts;

(3) In the case of an armed conflict not of an international character, the ICC may prosecute any violations of the 1949 Geneva Conventions that have been committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those who are no longer in active combat due to sickness, wounds, detention, or any other cause;

(4) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, referring to the provision of Protocol II and customary rules of international law.

The Statute specifies that its right to prosecute acts perpetrated in "armed conflicts not of an international character" does not apply to situations of internal disturbances and tensions such as riots, isolated and sporadic acts of violence, or other acts of a similar nature. Moreover, it presupposed that prosecutable violations in noninternational armed conflicts must have taken place in the territory of a state when there is protracted armed conflict between governmental authorities and organized armed groups, or a similarly protracted armed conflict between such groups.

The Rome Statute affirms several broadly accepted legal principles such as *nullum crimen sine lege* and *nulla poena sine lege* (there can be no prosecution, nor punishment, for acts that were not prohibited by law at the time). This establishes that, even though an act may today be defined as illegal, that law cannot be applied retroactively to a time when it was not yet a part of the legal code. The statute also affirms the concept of *non bis in idem*, which disallows double jeopardy: an individual cannot be tried twice for the same offense. In addition, it affirms the principle of individual responsibility, denies prosecutorial jurisdiction over persons less than 18 years of age, and establishes that there is no statute of limitation for the crimes under its jurisdiction. Finally, it expressly holds commanders and other superior officers responsible for acts carried out under their orders, and rejects the defense strategy of claiming immunity for individuals who hold (or held, at the time of the violation) head-of-state status.

These provisions constituted a significant step forward in international criminal law, particularly by filling certain gaps that had been left unaddressed in the Geneva Conventions. For instance, neither the Geneva Conventions, nor their Additional Protocols included a provision to address the defense that an accused was innocent by virtue of acting on the orders of a superior. Article 33 of the ICC's Rome Statute states that, a person who commits a prosecutable crime on the orders of another (a government or military superior) cannot escape criminal responsibility except in certain specific circumstances. The defendant, in such a case, must be able to show the law was manifestly lawful, or that he or she was under a legal obligation to obey orders of the Government or the superior in question or did not know that the order was unlawful. By the very definition of genocide or crimes against humanity, however, any orders to commit such crimes are manifestly unlawful, which makes the defense of "acting on superior orders" extraordinarily difficult to sustain.

The creation of the International Criminal Court is due, in large part, to the efforts of non-governmental organizations (NGOs). A coalition of thirty NGOs was created on February 25, 1995, which quickly grew to 800 by the opening of the Rome Conference (at which the ICC was created) in June 1998, of which 236 were in attendance at the meetings. During the conference, attendees focused on substantive issues and sought to establish the broadest possible jurisdiction for the newly created court. They also worked to create a system of complementarity, by which national courts held primary responsibility for prosecutions; an independent prosecutor, and a court that was free from the interference of any political body, including the Security Council. Other issues addressed by the conference included provisions for restitution for victims, the incorporation of gender concerns within the definition of actionable crimes; and a mechanism to assure the court with adequate funding over the long term.

SEE ALSO Geneva Conventions on the Protection of Victims of War; Hague Conventions of 1907; Humanitarian Law; Nongovernmental Organizations

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Jiri Toman

Weapons of Mass Destruction

Genocide and crimes against humanity are "weapons neutral." They can be effected with simple tools like guns and machetes, or with sophisticated ones like atomic bombs or asphyxiating gas. Thus, in addition to proving the use of such weapons, a prosecutor would need to show the necessary intent against a group in the case of genocide, or the knowledge that the use was part of an attack on a civilian population in the case of crimes against humanity. The efforts to make weapons of mass destruction unavailable for genocide, or any other purpose, will be explored here.

Early Usage of the Term

The term *weapons of mass destruction* was apparently coined by the *London Times* in 1937 to describe the bombing and destruction of the Basque town of Guernica by German planes assisting the rebels in the Spanish Civil War. As such, it referred to fairly conventional weaponry, used in massive amounts. It soon came to bear a more restrictive meaning, applying to certain unconventional weapons. Thus, the very first resolution adopted by the United Nations (UN) General Assembly at its initial session in 1946 created an Atomic Energy Commission, whose major task was drawing up proposals "for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction." A parallel body, the Assembly's Commission on Conventional Armaments, in 1948 addressed the difference between conventional armaments and weapons of mass destruction. "Weapons of mass destruction," it suggested, "should be defined to include atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above." Physicist Albert Einstein and mathematician/philosopher Bertrand Russell had hydrogen bombs particularly in mind when they issued their so-called Pugwash Manifesto in 1955, calling on scientists to "assemble in conference to appraise the perils that have arisen as a result of the development of weapons of mass destruction."

After the terrorist attacks in New York City and Washington, D.C., in September 2001, which some categorized as crimes against humanity, the term seemed again to acquire a broader connotation. Now it included the use of planes being deliberately crashed to wreak death and destruction, and suicide bombers attempting indiscriminate killing. In this respect, weapons of mass destruction came close to the concept of terrorist bombing, criminalized by treaty. The 1998 International Convention for the Suppression of Terrorist Bombings prohibited the use of explosives or other lethal devices in public places. "Explosive or other lethal device" was defined as an explosive or incendiary weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage; or a weapon or device that is designed, or has the capability, to cause death, serious bodily injury, or substantial material damage through the release, dissemination, or impact of toxic chemicals, biological agents or toxins or similar substances, or radiation or radioactive material. The definition, however, in its narrower meaning, referred solely to nuclear, biological, and chemical weapons, the kind that

A bystander examines the rusted remains of Iraqi missile heads at Aziziyah, 90 kilometers south of Baghdad, February 27, 2003. Although the United States believed Saddam Hussein's regime possessed weapons of mass destruction when it invaded Iraq, none were found. [REUTERS/CORBIS]

Iraq's alleged possession of the United States used to justify its invasion of that country in 2003.

As in 1946, the General Assembly is still concerned with the general issue, and the problem may be proliferating. The Assembly's provisional agenda for its sixtieth session in 2005 includes an item on "the development and manufacture of new types of weapons of mass destruction and new systems of such weapons."

Banning Barbaric Weapons in the Law of Armed Conflict

Eliminating specific kinds of barbaric weapons (and certain other tactics of war) has a long history in codes of chivalry and customary international law. Efforts to proscribe weapons of mass destruction (especially through the negotiation of treaties) are thus part of a broader movement that has defined the objects to be banned in various general (and overlapping) categories. Multilateral treaty-making concerning barbaric weapons began with the Declaration of St. Petersburg in 1868 and has proceeded at two levels of abstract thought that might be described as principles and rules.

At the level of principle are propositions such as "means of injuring the enemy are not unlimited," or "it is forbidden to use weapons of a nature to cause superfluous injury or unnecessary suffering, or which fail to discriminate between soldiers and civilians." The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (hereafter referred to as the Biological and Toxin Weapons Convention) describes the use of such weapons as "repugnant to the conscience of mankind." Sometimes, these principles are promulgated as standards to govern broad categories. Other times, they lead to narrow agreement that a particular weapon is illegal, but a very similar practice is perhaps not. So it was that the Declaration of St. Petersburg avowed that the legitimate objective of war, to weaken military forces of the enemy, "would be exceeded by the em-

ployment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable." Notwithstanding this generality, the parties agreed specifically only to "renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grams, which is either explosive or charged with fulminating or inflammable substances."

Parties attending the First Hague Peace Conference in 1899 agreed not to use expanding bullets or "projectiles, the sole object of which is the diffusion of asphyxiating or deleterious gases." At the Second Hague Peace Conference in 1907 participants concurred that it was "especially forbidden . . . to employ poison or poisoned weapons." As "especially forbidden," in more general terms, was the employment of "arms, projectiles, or material calculated to cause unnecessary suffering." These became the fundamental principles of the laws of armed conflict, or international humanitarian law.

Although the term *weapons of mass destruction* had not yet been coined, the first treaty that can be regarded, in retrospect, as addressing them is the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (otherwise known as the Geneva Protocol of 1925). The Protocol proclaims, "the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids materials or devices, has been justly condemned by the general opinion of the civilized world." It then adds: "The High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this Declaration." Many member states ratifying the Protocol entered a reservation (or exception) that turned it into a promise not to be the first in a particular conflict use the prohibited weapons, but left retaliatory use open. Implicit was the assumption that it was legal to develop and possess such weapons, although illegal to use them in making the first strike (or at all). Thinking about development and possession leads a state inevitably to contemplating arms control or disarmament, rather than merely forbidding use.

Sophisticated weapons, such as nuclear bombs, require testing (or they did until the recent development of sophisticated computer models significantly obviated that need). Both the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, and the 1968 Treaty on the Non-Proliferation of Nuclear Weapons addressed, albeit weakly, the development and possession of nuclear weapons. The 1963 treaty still permitted underground tests, and the 1968 treaty acknowledged the nuclear status of the five countries that originally possessed the bomb, although this was subject to an as yet unrealized obligation to negotiate disarmament. Nuclear weapons were also addressed in numerous condemning resolutions adopted by the General Assembly that many diplomats and commentators believed represented international customary law in declaring their use illegal against people. A majority of the International Court of Justice (ICJ) took a different view, however, of the status of these resolutions in the 1996 *Advisory Proceedings* on the Legality of the Threat or Use of Nuclear Weapons, saying nuclear weapons were not totally illegal in themselves; each case turned on proving the necessary breach of more general rules. In a 1963 resolution adopted unanimously by acclamation, the General Assembly solemnly called on states "to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner."

A more comprehensive assault on development and acquisition of certain weapons of mass destruction is the 1972 Biological and Toxin Weapons Convention. It bans a type or quantity of biological agents or toxins that is not justified for prophylactic, protective, or other peaceful purposes, and equipment or means of delivery designed to use them in armed conflict. Parties undertake to destroy or divert to peaceful purposes, not later than nine months after the treaty's entry into force, all agents, toxins, weapons, equipment, and means of delivery in their possession or under their jurisdiction or control. The reference to prophylactic, protective, and other peaceful purposes has created an opportunity for some slippage, as the Convention does not provide for inspections or other means of enforcement. In the early 1990s, when Russia revealed the extent of cheating by the former Soviet Union and the international community became concerned about Iraq's pursuit of weapons of mass destruction, negotiations began for a Protocol (or amendment) to the Convention that might provide for monitoring. These efforts collapsed early in the twenty-first century when the administration of President George W. Bush took a different approach to inspection regimes that could be potentially applied to the United States itself. Instead, the National Strategy to Combat Weapons of Mass Destruction, a policy statement issued by the U.S. government in December 2002, emphatically asserts a right to use overwhelming force, including nuclear weapons, and even preemptively, to counter threats of use of any kind

of weapon of mass destruction against the United States or its allies.

Enforcement Mechanisms in Treaties Banning Weapons

The 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (often referred to as the 1993 Chemical Weapons Convention) contains enforcement mechanisms that could potentially be highly intrusive. It established in the Hague an international organization, the Organization for the Prohibition of Chemical Weapons (OPCW), whose functions include verification of compliance. The Convention's basic obligations are starkly comprehensive:

> 1. Each State Party to this Convention undertakes never under any circumstances: (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly chemical weapons to anyone; (b) To use chemical weapons; (c) To engage in military preparations to use chemical weapons; (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention. 2. Each State Party undertakes to destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention. 3. Each State Party undertakes to destroy all chemical weapons it has abandoned on the territory of another State Party, in accordance with the provisions of this Convention. 4. Each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention. 5. Each State Party undertakes not to use riot control agents as a method of warfare.

Paragraph 5's prohibition of riot control agents in warfare settles an issue much disputed in earlier international practice. The Convention defines riot control agents as chemicals that "can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure." If riot control agents are banned specifically in war, however, by implication they may be legal in domestic law enforcement. At a review conference on the Convention in 2003, the International Committee of the Red Cross (ICRC) expressed concern about increasing interest among police, security, and armed forces in incapacitating chemical agents. The ICRC fears that the development of new incapacitants domestically could undermine both the Convention and its underlying humanitarian norms. If it is "legal" for a state to use a particular weapon against its own people in situations short of armed conflict, the inhibitions against using it in armed conflict lose some of their power.

A more general problem also exists. Chemicals, like guns and machetes, may have dual uses (good and bad), and some chemicals, benign in themselves, may be precursors to weapons of mass destruction. Thus, the 1993 Convention, like treaties dealing with nuclear and bacteriological weapons (and narcotic drugs, for that matter), must strike a complex balance between licit and illicit uses.

The Convention is enforced through self-reporting, by routine inspections, and in requests for clarification that parties may make to question other parties' compliance. Each party can also request an on-site "challenge inspection" of any facility maintained by another party "for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of [the] Convention." OPCW has limited resources but infinite potential for strong enforcement and as a model to be applied to other weapons.

Developments

In spite of their clear illegality under the laws of armed conflict, the use of biological and chemical weapons is not among the war crimes within the jurisdiction of the new International Criminal Court (ICC), formed by the Rome Statute of 1998. Their use, along with that of nuclear weapons, was included in early drafts of this instrument. When it became apparent that states which were nuclear powers would not accept the reference to nuclear weapons, some developing countries insisted that less technologically sophisticated weapons of mass destruction should not be included either. Nonetheless, the absence of these weapons from the ICC's jurisdiction does not affect their illegality under general international law.

At a historic meeting at the level of heads of state and government on January 31, 1992, the Security Council asserted that the "proliferation of nuclear, chemical and biological weapons constitutes a threat to international peace and security." When the Council reexamined the subject in late 2003, it was amid fears that nonstate actors as well as outlaw regimes were seeking to acquire, traffic in, or use weapons of mass destruction. As President Bush told the General Assembly in September 2003: "The deadly combination of outlaw regimes and terror networks and weapons of mass murder is a peril that cannot be ignored or wished away." He also noted the United States had worked with Russia and other former Soviet states to dismantle

and destroy or secure weapons and dangerous materials left over from another era. (The nuclear weapons abandoned in Belarus, Kazakhstan, and Ukraine were of particular concern.) He added that eleven nations were cooperating in a "proliferation security initiative," aimed at interdicting lethal materials in transit.

A significant feature of this new landscape is the recognition of weapons of mass destruction not only as an arms control problem, but also as a matter of international criminal law that merits the same kind of legal analysis as efforts to address terror and narcotics. Accordingly, there have been proposals for the Security Council, as well as the General Assembly, to call on states to adopt and enforce laws that would prohibit the involvement of nonstate actors with such weapons or delivery systems for them.

SEE ALSO Gas; Iraq; Nuclear Weapons; War Crimes

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Roger S. Clark

West Papua, Indonesia (Irian Jaya)

New Guinea, the largest tropical island in the world, is divided roughly in half. To the east is Papua New Guinea (PNG), independent since 1975. To the west is Papua (163,000 square miles), which comprises approximately one-fourth of the total area of the Indonesian archipelago. Papua is often called West Papua (WP) to distinguish it from PNG. The two halves of the island are divided along a 500-mile north–south colonial boundary that, in places, runs directly through the middle of villages. Until 1962, WP was a colonial possession of the Dutch.

In 1961 WP was on the verge of independence, although both Indonesia and the Netherlands made claims of sovereignty to the territory. Cold war tensions had been injected into the WP sovereignty dispute and, in addition, between the Dutch colonial power and the oil companies in WP; rivalry over WP's rich oil and gold deposits further added to the complexity of the situation. UN Secretary-General Dag Hammarskjold was preparing to reject both Indonesian and Dutch claims to sovereignty of Papua in favor of granting independence to the West Papuans themselves. However, Hammarskjold's plan ended abruptly with his death in a midnight plane crash near Ndola, Northern Rhodesia. All matters relating to WP, even under the auspices of the United Nations, subsequently became embroiled in the cold war.

From a Western perspective, the tragic disappearance of Michael Rockefeller in 1961 cast a further pall on the subject of Papuan self-determination. The Rockefeller family had been associated with Standard Oil for most of the previous century, and this company was conducting oil exploration in West Papua when Michael visited in 1961. As Michael and a Dutch anthropologist, Rene Wassing, were crossing the fifteen-mile wide mouth of the Eilanden River on the southern coastline, their boat overturned. It drifted out to sea, the two men clinging to its sides.

The following day, when the boat was twenty miles from shore (according to Wassing, who was interviewed by the author), Michael Rockefeller attempted to swim ashore. "We could see no land anywhere," explained Wassing, who was later rescued. The world media attributed the disappearance of Michael Rockefeller to cannibalism, an intangible influence on the UN reversal of support for Papuan self-determination.

In August 1962, the UN reached the New York Agreement, which abrogated Dutch sovereignty in favor of Indonesian control until 1969. According to

the agreement, the Papuan people would then be permitted to decide for themselves whether or not they wanted to remain under Indonesian rule. The quest to control Irian Jaya (as WP was called when it was no longer Netherlands New Guinea) was in the hands of Major-General (later president) Suharto in the early 1960s. This same army under his command was credited by the American Central Intelligence Agency (CIA) with perpetrating one of the worst massacres of the twentieth century in Java and Bali during the years 1965 and 1966.

The task of "ascertaining the freely expressed will of the population" (in the words of the agreement) should not have been done under Indonesian oversight, yet it was, and all Papuan aspirations of independence met with Indonesian rejection. Papuans, who had voted under Dutch rule, were not allowed to do so freely under Indonesia's control. Only a small portion of the population was permitted to vote, and then only under extreme duress.

In the years leading up to the UN-mandated Act of Free Choice in 1969, the Indonesian army engaged in widespread killing to quell Papuan resistance. In the latter half of the 1960s, thousands of Papuans were massacred, such as in the Kebar Valley and the Paniai uprising, showing that Indonesia would stop at nothing to retain the territory. Papuan resistance only intensified, however. Remnants of the 3,000-strong Papuan Battalion, which had been formed by the Dutch, became guerrilla units that were collectively known as the Organisasi Papua Merdeka (Free Papua Movement; OPM). The OPM became the bane of the Indonesian occupation army, attracting a cross-section of the Papuan population. By 1967, the OPM was powerful enough to take over the former Dutch capital, Manokwari. They held it for several days, until the city was bombed and strafed, then retaken by Indonesian paratroopers.

For the historically momentous vote in 1969, the army carefully chose "representatives" who would conform to Indonesian directives. Many who wanted a pro-Papua outcome were massacred. Whole villages—men, women, and children alike—were forced to dig their own burial pits before being killed by the Indonesian army. The 100 or so villagers living in Iapo, on the shore of Lake Sentani, were but one example of this village-wide approach to killing. The smoke from their burning bodies served to warn thirty other nearby villages how the army dealt with independence sympathizers. Similar crimes against humanity were perpetrated in many areas of West Papua before the UN-mandated Act of Free Choice. By a show of 1,025 hands (983 males, 42 females) the "vote" was considered unanimous: all favored Indonesian rule. In Jayapura, the new capital, the army used tanks and machine-guns to clear the streets of 5,000 Papuans who protested the injustice. None of the handful of UN observers present raised an objection to the gross infringements of human rights that the Indonesian army committed in order to secure an outcome favorable to Indonesia. Officially, the UN "took note" of the outcome, tacitly acknowledging the vote. Anything less would have been tantamount to criticism of President Suharto's "New Order" and its anti-communist credentials which, in the height of the cold war era, were considered overwhelmingly important to Western interests.

Papua became a "military operations area" during Suharto's presidency, and was placed under the control of Indonesian security forces. In addition, the vast territory, with some of the richest gold deposits and the purest oil in the world, was transformed into a multi-billion dollar source of revenue for U.S. mining and oil interests.

The Indonesian Army, too, had business interests that extended throughout Indonesia as a corollary of the territorial command structure, reaching from Jakarta to remote villages in WP. Thus, the ousting of Suharto from government in 1998 made no difference locally, for the army remained in place. According to the WP-based human rights group, Elsham, when the Indonesian economy suffered a downturn in the late 1990s, the army intensified its exploitation of WP, particularly through illegal logging schemes. In addition to the army, Indonesian security forces in WP included also police, air force and navy personnel. Among these, a special unit of the police known as mobile brigade (BriMob) is noted for being particularly ready to resort to brutality. The most notorious, however, has been the army special unit known as Kopassus (the Special Forces Command), which also operates as an intelligence service.

In 1977, when Indonesian armed forces moved into the highlands, the most densely populated area of WP, many villages in the mountain valleys were strafed and bombed by Vietnam surplus OV-10 "Bronco" aircraft. According to W. H. Vriend of the Government Hospital, author of the 2003 book *Smoky Fires*, there were American advisers for the Indonesian pilots, deployed on the tarmac at the main airport in the Papuan highlands at Wamena. An estimated 70 percent of the Tagi people of the Western Dani valley were killed in such raids. Papuans themselves say seventeen thousand people died. Kopassus officers directly from Jakarta selected many Papuan leaders and articulate individuals for slaughter. Extrajudicial killings have occurred throughout the decades since WP fell under Indonesian rule.

In 1997, along the southern foothills of the central range, Major-General Prabowo Subianto (Suharto's son-in-law and head of Kopassus) was responsible for bombing and strafing of villages, and causing widespread starvation by laying waste to all gardens and farm-animals.

In the early twenty-first century, the population of PNG was estimated at 5.5 million inhabitants. By contrast, the indigenous population of WP is only 1.8 million, with an additional 1.7 million "transmigrants" mainly from the Indonesian islands of Java and Sulawesi. Had the indigenous population of WP grown at the same rate as PNG, it should have achieved a total of approximately 3.4 million. The explanation for the Papuan population deficit can be found in the policies pursued by the Indonesian army and police stationed in Papua. The deliberacy of their violence, and the intent underlying their actions, predicates the accusation of genocide.

The indigenous peoples of WP have more recently faced a new threat to their survival, according to medical workers in three regions of the territory who allege that the Indonesian army is deliberately using Javanese prostitutes known to be infected with HIV-AIDS. One of these medical officers produced a detailed report, listing not only the names of sixteen prostitutes brought from Surabaya to Papua, but also the names of those who had become infected from those sixteen, and those who had died.

Today, WP has the highest incidence of HIV-AIDS in Indonesia, more than twice that of PNG. Poisoning of water and food supplies by army personnel has also been alleged, such as in the February 2004 case reported in the *Courier-Mail* in which seventeen Papuans died in Ilaga Hospital.

Far from arriving in WP to liberate the indigenous peoples from Dutch colonial rule, the Indonesian military since the 1960s has simply replaced the Dutch as colonial overlords with a prison-guard mentality. To the occupying forces, Papuan ethnicity has been treated as the equivalent of a crime. The activities of the Indonesian army in this once-ignored half-island is steadily attracting more Western attention, yet the Kopassus strategy of dealing with Papuan aspirations for independence remains what it has always been: to eliminate it at the source.

SEE ALSO Indonesia

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Greg Poulgrain

Whitaker, Benjamin

[SEPTEMBER 15, 1934–]
Advocate for minority rights

Benjamin Whitaker's career has been completely devoted to justice, in particular justice for those in greatest need. He has worked tirelessly for the protection of minorities and recognized the importance of this to the prevention of genocide.

Born in London, Whitaker studied modern history and law at Oxford. He practiced as a barrister from 1959 through 1967. In 1966 he was elected to Parliament, representing Hampstead in London, and was immediately given a role with the Ministry of Housing and Local Government, becoming Junior Minister for Overseas Development in 1969. He left Parliament in 1970.

In 1971 Whitaker became Executive Director of the Minority Rights Group (MRG), a nongovernmental organization (NGO) founded in the late 1960s by a group of academics, lawyers, and journalists. MRG focused on the need to protect the rights of persons belonging to minorities and the collective rights of minorities. It specialized in producing expert reports on minorities or minority issues, to use as a basis for lobbying, often at an international level. MRG's reports were highly regarded throughout the human rights community. Their level of credibility was a tribute to Whitaker's leadership, not least because MRG had a small budget and depended on his ability to identify experts and persuade them to donate their writing.

Under Whitaker's guidance, MRG produced several reports on genocide, most notably those authored by René Lemarchand on Burundi and by Leo Kuper on the international prevention of genocide. MRG attended the annual sessions of the United Nations (UN) Commission on Human Rights and its Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights). The early 1970s were difficult days for those trying to draw UN attention to human rights violations; Whitaker would later

regale students with stories of how NGOs, prohibited from mentioning an offending state's name in a UN forum, would refer to "a long slender State on the other side of the Andes from Argentina." Whitaker had the wisdom to enlist Kuper as a member of MRG's delegation on such occasions, thus informing Kuper's understanding of the international community's approach to the prevention of genocide as well as MRG's advocacy.

In 1975 Whitaker became a member of a UN body of independent experts, the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. From 1976 through 1978 he chaired its working group on slavery, and in 1982 produced its report on contemporary slavery. Following this, Whitaker was assigned the role of special rapporteur on genocide for the Sub-Commission, for which he produced a report in 1985. The Whitaker Report, as it came to be known, assessed the failings of the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, and drew on contemporary thinking to come up with recommendations. It is important to note that, when embarking on this work in 1984, Whitaker circulated a questionnaire on genocide to UN members, organizations, and agencies; regional bodies; academics; and NGOs. Thus, a wide range of responses informed his conclusions.

The Whitaker Report called for the establishment of an international criminal court and a system of universal jurisdiction, what was called, "a double system of safeguard," to ensure the punishment of genocide. Whitaker did not, however, view punishment as the first priority in the fight to eradicate genocide, asserting that those who were likely to commit genocide were not easily deterred by the threat of retribution. Rather, he called for a number of preventive measures at the international level designed to reflect stages in the evolution of genocide; anticipate its occurrence; provide early warning of its onset; and determine action to be taken at the outset of or during genocide to stop it. Whitaker recognized that the prevention of genocide required first a database of continuously updated information, to enable the identification of patterns of developing genocides. Armed with such a resource, a permanent body of coordination linked with UN agencies and the International Committee of the Red Cross (ICRC) could, argued Whitaker, help to save thousands of lives.

Whitaker envisaged that such a body would be able to draw on a broad range of responses to the early warning of genocide. Allegations would be investigated. UN organs, related organizations, member states, interregional organizations, and the media could be engaged. When appropriate, local leaders could be asked to intercede. To defuse tension, UN or ICRC conciliators or mediators could be brought in. A sanctions regime employing such measures as economic boycotts and exclusion from certain international activities could also be introduced.

Whitaker additionally recommended that an impartial and respected UN body be created to deal exclusively with genocide. He argued that ideally a body monitoring adherence to the 1948 UN Genocide Convention should be created, possibly under the "competent organs" article, Article VIII, of the Convention. Modeled on the UN Committee against Torture, such a committee would review allegations of genocide, interview the state concerned, and undertake its own investigations. In addition to reporting annually to the UN General Assembly, the proposed Committee on Genocide would be empowered to bring urgent situations to the immediate attention of the UN Secretary General. This would have the advantages of removing the determination of genocide from the political arena through the use of independent experts and ensuring a timely response at the appropriate level by avoiding the sometimes lengthy cycle of the UN human rights system.

Whitaker recognized that amending the UN Genocide Convention to create a treaty monitoring body might be a difficult process, and suggested that a UN Commission on Human Rights working group on genocide might provide an alternative. He concluded his report by stating, "the reforms recommended will, like most things worthwhile in human progress, not be easy. They would however be the best living memorial to all the past victims of genocide. To do nothing, by contrast, would be to invite responsibility for helping cause future victims" (p. 46). Whitaker departed from the MRG and UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities in 1988 and went on to work for the Gulbenkian Foundation. Fifteen years after he wrote his 1985 report, he chaired a session of the Raphael Lemkin Centenary Conference in London, where scholars discussed the new International Criminal Court.

SEE ALSO Genocide; United Nations Sub-Commission on Human Rights

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Bernard F. Hamilton

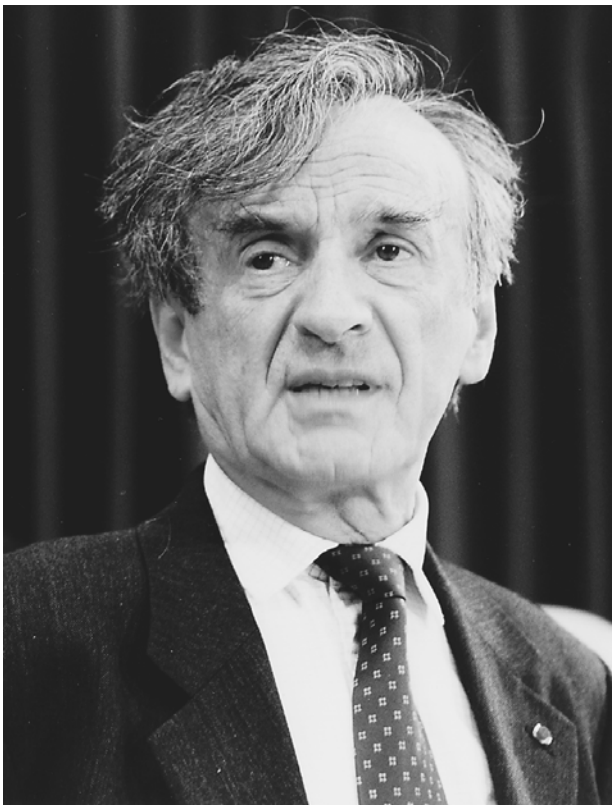
Wiesel, Elie

[SEPTEMBER 30, 1928–]
Romanian-born writer, novelist, Nobel Peace Prize Laureate 1986, spokesman for humanity, and Holocaust survivor.

Elie Wiesel was born on September 30, 1928, in Sighet, Romania. The town of his birth is located in the region of Northern Transylvania annexed by Hungary in September 1940. The Wiesel family remained relatively untouched by the violence of the Holocaust until the German invasion of March 1944. At that time, the methods that the Germans had developed over three years within Poland were imposed immediately in Hungary. Within weeks, Hungarian Jews were ghettoized, and between May 15 and July 8, 1944, 437,402 of them were sent on 147 trains, primarily to Auschwitz II-Birkenau, the death camp. Weisel was but fifteen years old when he deported to Auschwitz. It is through the lens of his religious worldview that Wiesel was later to write of his experience.

Wiesel arrived in Auschwitz with his parents and three sisters. He immediately faced the Nazi selection process: "men to the left, women to the right" is the way he described it. His mother and younger sister were sent to the gas chambers, and his older sisters were sent to work. He and his father, Shlomo Wiesel, were sent to Buna-Monowitz, the slave labor complex known as Auschwitz III. He remained there until the forcible evacuation of Auschwitz on January 18, 1945, after which he and his father set off on foot to Bergen-Belsen, on what became known as a death march. Wiesel and his father arrived in Bergen-Belsen, but within days of their arrival, Shlomo Wiesel died of exhaustion and despair. Wiesel was liberated from Bergen-Belsen on April 11, 1945, and was taken with a children's group to France where he began his recovery and resumed his education. He studied at the Sorbonne, where he worked on but never completed his Ph.D., and earned a meager living writing for Israeli newspapers. Wiesel came to the United States in 1956 as the United Nations correspondent for an Israeli newspaper, *Yediot Acharonot*. He became an American citizen in part because it was easier than dealing with the bureaucracy involved in renewing his French travel documents.

Weisel is the author of more than forty books. In his early books, Wiesel struggled to find meaning for his suffering, to endow his destiny and the history of the Jewish people with a transcendent purpose in the wake of what seemed to him to be the collapse of the religious covenantal framework. *Night* (1960), his first book to be published in English (translated from the French), is a memoir, although it is often described as a novel. It is the only book aside from a chapter in his autobiography, *All Rivers Run to the Sea* (1995), in which Wiesel directly deals with the Holocaust. Widely regarded as a classic in Holocaust literature, *Night* is the story of a young boy, reared in the ways of Torah and fascinated by the eternity of Israel. The protagonist is rudely shocked by history when he is transported from his hometown of Sighet to Auschwitz, from a world infused with God's presence to a world without God and humanity. An earlier version of the work, written in Yiddish and entitled *When the World Was Silent,* was first published in Argentina in 1956 after a decade of self-imposed silence. The later, French version of the book is shorter and couched in less overtly angry language, and featured an introduction by Wiesel's mentor, the French writer Francois Mauriac.



A survivor of three concentration camps who lost most of his family to the Holocaust, writer Elie Wiesel remains a powerful voice for the victims of war and injustice. [GETTY IMAGES]

Night forms one part of a trilogy. It was followed by the novel *Dawn* (1961), which tells the story of a

Holocaust survivor who is recruited to join a Jewish underground organization in pre-state Palestine. The protagonist of this novel is chosen to execute a British soldier in retaliation for the execution of one of his comrades. The final volume of the trilogy was originally published in English under the title *Accident* (1962; its title in French was *Le Jour*). This is the story of a Holocaust survivor who became a correspondent for an Israeli newspaper. The protagonist is struck by a car (the "accident" of the title) and hovers between life and death. His condition serves as the externalization of the survivor's inner struggle.

Only in Weisel's fourth book, *The Town Beyond the Wall* (1964), does the author succeed in the effort to endow suffering with meaning. The major character is a young Holocaust survivor who has made his way to Paris after the war. His mentor, the man who teaches him the meaning of survival, is not a Jew with memories of Sinai and Auschwitz. Rather, he is a Spaniard who learned his own lessons of death and love during the Spanish Civil War. From this man, Pedro, the young survivor learns two lessons that have shaped Wiesel's writings ever since. Pedro tells the young man:

> You frighten me. . . . You want to eliminate suffering by pushing it to its extreme: to madness. To say "I suffer therefore I am" is to become the enemy of man. What you must say is "I suffer therefore you are." Camus wrote that to protest against a universe of unhappiness you had to create happiness. That's an arrow pointing the way: it leads to another human being. And not via absurdity.

In other words, Pedro teaches the protagonist that the only way to redeem suffering and endow it with meaning is to treat its memory as a source of healing. In his public career and in all the rest of his writings, Wiesel has remained faithful to this insight.

With Martin Buber and Abraham Joshua Herschel, Wiesel came to represent Jewish history and values to Jews and non-Jews outside of Israel. He is particularly revered throughout the American Jewish community, having achieved iconic status. Non-Jews also perceive Wiesel as the non-Israeli embodiment of the Jewish people for this generation, and because he is not an Israeli, Wiesel is untainted by some of the negative aspects of Israel's late twentieth and early twenty-first century policies.

Wiesel neither directs any organization nor heads any movement, he has no institutional base. Unlike Jacob Neusner or the late Gershom Scholem, Wiesel has not defined a field of scholarship. Although employed by a university—Wiesel is the Andrew Mellon University professor of the Humanities at Boston University—he has not built a power base within academia. Widely regarded as a spokesperson for Israel, he deliberately stands apart from partisan Israeli politics. In Israel, for a time, he was regarded by many as *yored,* one who has left Israel and abandoned the quest for a national Jewish renaissance in the ancient homeland. The one institutional base he did enjoy—as chairman of the United States Holocaust Memorial Council—was rather problematic, and Wiesel was uncomfortable with his institutional role. He served in this capacity for eight years, but resigned on the eve of his departure for Oslo to receive the Nobel Peace Prize in December 1986. (The museum's architectural design and the creation of the exhibition's storyline were created after his resignation.) Wiesel is perhaps the only Jewish leader who speaks without the power of office or vast wealth to command the attention and respect of his audience. Seemingly aloof from politics, he stands above the controversies that consume most others within the American Jewish leadership.

Although Wiesel has influenced both Jewish and Christian theologians, he is not a religious figure in any ordinary sense. Rabbis lead their congregations; they speak from their pulpits; they are ordained by tradition. Hasidic masters have a court and a community, disciples and students, followers and supporters. They counsel their community and have authority over their followers. Theologians propose new religious interpretations and gain influence by virtue of their teachings. Wiesel has been called a non-Orthodox *rebbe,* the leader of a diverse group of admirers and followers, yet he does not exercise his authority in any direct way. Wiesel's teachings are open to diverse interpretations depending on the background of the critic. Like a Hasidic master, Wiesel has more admirers and followers than peers or friends.

What Wiesel offers is entry into the experience of the Holocaust and the shadows that remain in its aftermath. The sacred mystery of our time may be the face not of God, but of the anti-God: the evil side of humanity. Through Wiesel's work and persona, the non-survivor is offered a glimpse of what was but is no longer, of unspeakable horror and of the painful but productive process of regeneration after destruction. The non-survivor is offered only a glimpse, for as Wiesel has said: "only those who were there will ever know and those who were there can never tell."

Wiesel always writes as a Jew, but he does not speak only of Jews. He raises his voice on behalf of all who are in pain, all who are in need of refuge. He was a visible and influential spokesman for Soviet Jewry, taking trips to the Soviet Union during the 1960s and telling of his encounters with Soviet Jews in *The Jews*

of Silence (1966). He is also an ardent supporter of Israel and refuses to criticize Israel outside of Israel. His attitude toward Israel is primarily one of gratitude for its creation, and in this he has much in common with many other Holocaust survivors. He worked against apartheid in South Africa, and continues to take up the cause of black South Africans and starving Ethiopians, as he did in earlier years for Biafrans. He has asked for refuge for Central Americans and for Iranian Bahais in much the same way as he pleaded for Soviet Jews. He traveled to Thailand to plead for the Cambodian victims of genocide and to Argentina to act of behalf of disappeared persons. Wiesel considers all these events a shadow of the Holocaust, a reflection of an evil unleashed across the planet—one whose mysterious implications are not yet known.

An example of Wiesel's style in influencing others can be seen in his encounter with president Ronald Reagan over the President's proposed 1985 trip to Bitburg to lay a wreathe at the graves of Waffen SS soldiers. Even within the American Jewish community, many were reluctant to confront the President, who had thus far been so supportive of Israel, but Wiesel provoked a confrontation with Reagan, and did so courteously, deliberately, and insistently. Just days before the president's scheduled trip to Germany, Wiesel attended a White House ceremony to receive the U.S. Congressional Gold Medal. While there, he took the opportunity to speak his mind, and said, "I belong to an ancient people that speaks truth to power." Speaking directly to president Reagan he said: "that place is not your place, Mr. President. Your place is with the victims of the SS."

Charles Silberman, a distinguished commentator on American Jewish history, regards this moment as a high point in the assertion of Jewish dignity and Jewish acceptance within America, ranking it with the nomination of senator Joseph I. Lieberman, an observant Jew, as the Democratic candidate for Vice President in 2000. A man of peace, Wiesel nonetheless supported president George W. Bush's invasion of Iraq in 2003. He explained that he opposed all war and the killing it entails, but believed that some evils must be confronted.

Teaching has always been central to Wiesel's very sense of self. He first taught as a Distinguished Professor of Judaic Studies at the City College of New York (1972–1976). Since 1976, he has been the Andrew W. Mellon Professor in the Humanities at Boston University, where he also holds the title of University Professor. He is a member of the faculty in the Department of Religion as well as that of the Department of Philosophy. He was the first Henry Luce Visiting Scholar in Humanities and Social Thought at Yale University, a position he held from 1982 to 1983.

Wiesel has received numerous awards. In addition to the Nobel Prize for Peace, which he received in 1986, he was also awarded the Presidential Medal of Freedom, the U.S. Congressional Gold Medal, and the Medal of Liberty. In addition, he was granted the rank of Grand-Croix in the French Legion of Honor. He is married to Marion Wiesel, who often serves as his translator, and they have one son, Elisha.

SEE ALSO Auschwitz; Holocaust; Memoirs of Survivors; Psychology of Survivors

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Michael Berenbaum

Wiesenthal, Simon

[DECEMBER 31, 1908–]
Polish humanitarian

Born in 1908, in Buczacz, Galicia (in the Polish Ukraine), Simon Wiesenthal was raised in a typical *shtetl* (small Jewish town) environment. The family moved to Lvov, Vienna, and finally back to Buczacz.

Simon Wiesenthal, Nazi hunter, ninety years old at the time of this 1999 photo. In April 2003 Wiesenthal announced his retirement, saying that he had found all the mass murderers he had been looking for. According to Wiesenthal, the only Austrian war criminal still alive is Alois Brunner, Adolf Eichmann's right-hand man, believed to be hiding in Syria.[AP/WORLD WIDE PHOTOS]

Wiesenthal continued his education in Prague, where he was trained as an architect. Leaving school in 1932, Wiesenthal returned to Lvov, where he married Cyla Muller in 1936 and, due to anti-Semitism, only received the formal degree of architectural engineer in 1939. In the wake of the nonaggression pact between the Nazis and the communists in 1939, the Russians took over Lvov, and Wiesenthal was no longer allowed to practice his profession.

On June 28, 1941, the Nazis occupied Lvov, and Wiesenthal and his family were swept up in the Nazi occupation. Wiesenthal went through a series of concentration camps, including Gross-Rosen, Janowska, Buchenwald, and finally Mauthausen, in Austria, from which the U.S. Army liberated him on May 5, 1945. Shortly thereafter he was reunited with his wife, who was the only other member of their extended families to survive, and in 1946 their only child, a daughter, was born.

Humanitarian

Wiesenthal began his postwar career by aiding the U.S. war crimes investigators in the immediate aftermath of liberation. In May 1945 he submitted his first extensive list of Nazis perpetrators to the U.S. authorities, and joined their team as an investigator and translator. The onset of the cold war between the Western countries and the Soviet Union caused the United States and the other Western Allies to turn away from the pursuit and judgment of Nazis, by either ignoring them or using them as either scientific or intelligence assets. (This was true of the Soviet Union and other Communist bloc countries as well.) By 1947 the U.S. Army had begun to abandon the effort, but using files that had been collected by the army, Wiesenthal opened the first Jewish Historical Documentation Center in Linz. He maintained this center until 1954, when he closed it down due to the lack of interest and support, sending his files to Yad Vashem, Israel's center for Holocaust study and commemoration. For the next few years Wiesenthal worked as a journalist and with refugee agencies.

The trial of Adolf Eichmann in Israel in 1961 brought both Wiesenthal and the pursuit of Nazis back into the limelight. While many people have claimed full credit for the capture, Wiesenthal's contribution of persistent tracking and important information greatly helped the Israeli operation. The question of credit for the capture has remained one of the major controversies associated with Wiesenthal throughout his career, with Mossad chief Isser Harel claiming sole responsibility and denying Wiesenthal any credit for the capture. Despite Harel's position, historians believe that Wiesenthal did contribute to the effort of tracking and capturing Eichmann, particularly by keeping the effort going until the Israelis became involved.

As a result of this renewed interest, Wiesenthal decided to move to Vienna and to reopen his Documentation Center there. Continuing to work independently, he became famous as the world's leading Nazi-hunter. Over the next decades he investigated and helped bring to justice over one thousand Nazi war criminals. Some of the more prominent cases included Franz Stangl, the commandant of Sobibor and Treblinka, Franz Murer, commandant of the Vilna ghetto, Karl Silberbauer, the policeman who arrested Anne Frank, Hermine Braunsteiner Ryan, the former Majdanek guard who was located in the Unites States, thus publicizing the presence of Nazi war criminals in the United States and Eduard Roschmann, second in command of the Riga ghetto.

From the early stages of his postwar career, Wiesenthal spoke up for other groups, not only Jews. In the 1950s he began to speak about the fate of the

Roma and Sinti under the Nazis, and has continued to draw attention to their persecution in Europe. He also spoke out on behalf of other threatened groups such as the Cambodians under Pol Pot and the Kurds. He championed the Soviet dissident Andrei Sakharov, and helped draw the world's attention to the fate of Raoul Wallenberg, the Swedish diplomat who saved Jews during the Holocaust and vanished after being arrested by the Soviets in 1945.

Prolific Author

Wiesenthal has been a prolific author over the years. Among his most significant works are *The Murderers Among Us* (1967), which interweaves chapters describing Wiesenthal's life and beliefs with those describing his pursuit of specific Nazis; *The Sunflower* (1970, 1998), which is a symposium on forgiveness with responses from major thinkers; *Every Day Remembrance Day* (1987), a calendar of anti-Semitism throughout Jewish history; and a last volume of memoirs, *Justice Not Vengeance* (1989). His other books include *Sails of Hope,* which deals with the theory of Christopher Columbus' supposed Jewish ancestry, as well as other works related to the Holocaust. In 1989 *The Murders Among Us* was made into a major television film starring Ben Kingsley. Johanna Heer and Werner Schmiedel's acclaimed documentary about Wiesenthal, *The Art of Remembrance,* appeared in 1997. Wiesenthal has been the subject of many books, particularly the biography by Hella Pick, *Simon Wiesenthal: A Life in Search of Justice* (1996) and Alan Levy's *The Wiesenthal File* (1993).

Controversy

Wiesenthal's career has been marked by some significant controversies. From 1970 to 1990 there was an ongoing bitter feud with Austrian Chancellor Bruno Kreisky. The feud was connected to Austrian politics, Israel, and Jewish identity. Kreisky, who was an assimilated Jew, accused Wiesenthal of surviving the war by collaborating with the Nazis. After a series of lawsuits, Wiesenthal finally won a judgment of slander against Kreisky, who died shortly after. This controversy was later dwarfed by the Waldheim affair. In 1986 the World Jewish Congress (WJC) launched a public relations campaign aimed at convincing Austrians (and the world) that former United Nations Secretary General Kurt Waldheim was a Nazi war-criminal and unfit to be elected as president of Austria. Wiesenthal reacted cautiously and, while agreeing that Waldheim had lied and covered up his wartime activities, refused to label him a war criminal without specific proof that would hold up in a court of law. The WJC reacted angrily, and viciously attacked Wiesenthal, who refused to back down. Ultimately Waldheim was elected, Wiesenthal called for his resignation, the United States placed Waldheim on its "watch list" (preventing him from entering the country), and the bitter feelings between Wiesenthal and the WJC lingered.

The Simon Wiesenthal Center

In 1977 the Simon Wiesenthal Center in Los Angeles was founded by Rabbi Marvin Hier to continue Wiesenthal's work. The Center has offices in New York, Miami, Toronto, Jerusalem, Paris, and Buenos Aires. The innovative Museum of Tolerance was opened in Los Angeles in 1993, the New York Tolerance Center in 2004, and the Center for Human Dignity is planned by the Wiesenthal Center for Jerusalem. The Center's agenda mirrors that of Wiesenthal, being involved in campaigns against Nazi war criminals, current anti-Semitic and other extremist activities, particularly on the Internet, and human rights issues in general. Its film division has produced a number of documentaries, including two Academy Award–winning films, (*Genocide* in 1981 and *The Long Way Home* in 1997), and its publications include *Genocide: Critical Issues of the Holocaust* (1983), *The Simon Wiesenthal Center Annual* (1984–1990), and *Dismantling the Big Lie: The Protocols of the Elders of Zion.* While the Center bears Wiesenthal's name and has acted in association with Wiesenthal, both Wiesenthal and the Center maintain the right to act independently of each other.

Wiesenthal's Legacy

Over the course of his long career Wiesenthal has received many honors, including the U.S. Congressional Gold Medal (1980) and Presidential Medal of Freedom (2000), French Legion of Honor (1986), Great Medal of Merit (Germany, 1985), Erasmus Prize (Amsterdam, 1992), and he was named an honorary citizen of Vienna in 1995. In 2004 Wiesenthal was awarded an honorary knighthood (KBE) by Queen Elizabeth of England.

Wiesenthal's accomplishments go beyond the honors he has accumulated. They include being the inspiration of the Simon Wiesenthal Center, which in 2004 had close to a half-million members worldwide, and is one of the leading Jewish human rights organizations in the world. For the first two decades after the Holocaust, his was essentially the only voice that kept the memory of that period alive for the public, particularly in Europe, and especially in the countries where National Socialism and the Holocaust originated. For the survivors and for many Jews who were born after the war he became the symbol of a new Jewish resolve to no longer be passive, thus overcoming the guilt associated with the claim that Jews were led "like sheep to the slaughter." His resolve to avoid revenge and to

focus on bringing the Nazis to justice served as an affirmation of the legal process and earned him international respect. Wiesenthal's persistent efforts, against determined opposition, eventually helped lead to the creation of Nazi hunting units in various countries including the United States, and also helped to normalize the concept of governmental action against war criminals. War crimes tribunals, such as those dealing with the genocides of Bosnia and Rwanda, might not have occurred had Wiesenthal not kept the pursuit of Nazi war criminals on the world's agenda for so long. By fighting to keep the memories of the victims alive and to bring justice to their killers, however delayed, he managed to help change the world's reactions to genocide and war crimes.

SEE ALSO Holocaust; Prosecution; Psychology of Victims

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Mark Weitzman

Women, Violence against

The term *violence against women* refers to gender-based aggression, which disproportionately victimizes women and girls. Sexual assault, battering by intimates, sexual abuse of children, sex trafficking, sexual harassment, forced pregnancy, and often prostitution and pornography are considered included, as are dowry burnings, honor killings, female infanticide, and female genital mutilation. When a woman or girl is violated or killed because she is female—due, for instance, to misogyny or sexual stereotypes or gendered roles of masculinity or femininity—she is subjected to violence against women. Such attacks often occur on the basis of sex combined with race, ethnicity, religion, nationality, and age, exacerbated by poverty and economic dependence. Likened to a war on women, violence against women, pervasive if largely invisible outside recognized wars, is surrounded by victim blaming, shaming, denial, and a culture of inevitability. It often explodes during armed conflict and genocide.

Most acts of violence against women are formally illegal but largely ignored by local, national, and international legal systems. Human rights instruments and peremptory norms binding on states guarantee equal protection of the law and prohibit discrimination on the basis of sex. To explicitly combat violence against women and ineffective law enforcement against it, the Organization of American States (OAS) promulgated the Convention on the Prevention, Punishment, and Eradication of Violence Against Women in 1994. The United Nations committees that interpret the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR) have determined that officially ignoring violence against women violates these conventions. The Beijing Platform for Action calls on states to take strong measures against these acts. Although some action has been taken regionally in Europe and Latin America against official violence against women in the form of rape in custody, little has been done anywhere to stop the widespread pattern of violence against women that is pervasive and officially condoned.

International humanitarian law and the laws of war have long prohibited rape and enforced prostitution in both domestic and international armed conflicts, yet those provisions too have seldom been enforced. Women targeted for genocide were violated in sex-specific ways during the Holocaust, yet the Nuremberg Tribunal did not recognize these atrocities as such. Genocide was defined in the Genocide Convention (1949) that emerged from that experience, specifying abuses inflicted with intent to destroy peoples as such; sexual violence was not specifically listed. Concepts of crimes against humanity emerging from this era also did not include widespread and systematic assaults on the basis of sex, nor did they focus on atrocities committed on the basis of sex combined with race, ethnicity, nationality, or religion. Most violence against women, in war as well as peace, has thus been committed with effective impunity.

In the last decade of the twentieth century, this pattern began to change in the international system. Beginning in 1991, Croatian and Bosnian Muslim women survivors spoke out against the mass rapes systematically inflicted on them as a weapon of the genocidal onslaughts directed by Serbian forces against their communities. By the turn of the century, they had civilly sued Radovan Karadzic, leader of the Bosnian Serbs, for genocidal rape and won under the Alien Tort Claims Act (ACTA) in the United States. Their case established sexual acts of violence against women as legally genocidal under international law for the first time. Also dur-

ing this period the International Tribunal for Former Yugoslavia (ICTY) indicted perpetrators for rape and other sexual atrocities as war crimes and as crimes against humanity, specifically as slavery. The tribunal eventurally indicted Slobodan Milosevic, the former president of Serbia, for genocide. The International Tribunal for Rwanda (ICTR) made greater strides, convicting Hutu leaders of rape and other sexual atrocities against Tutsi women as genocide in its breakthrough *Akayesu* opinion. As a crime against humanity, rape was there defined internationally for the first time, as "a physical invasion of a sexual nature, committed on a person under conditions which are coercive."

The International Criminal Court (ICC) built on these advances. Under its Rome Statute (1998), the definition of genocide remained the same, permitting interpretation of killing, serious bodily or mental harm, destructive conditions of life, and measures to prevent births to encompass gender-based violence when committed for genocidal purposes. The ICC definition of crimes against humanity expressly included "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity," when committed as part of a widespread or systematic attack knowingly directed against a civilian population. Gender-based persecution through such acts was also recognized as a crime against humanity. This implementation of international law, emancipated from hostilities recognized as armed conflict, together with doctrines of universal jurisdiction and other devices available in some national courts, offers hope that the legal impunity that has long marked violence against women may be coming to an end.

SEE ALSO Female Infantacide and Fetal Murder; Rape; Reproduction

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Catharine A. MacKinnon

World War I Peace Treaties

After World War I, the Allied and Associated powers concluded a series of peace treaties with the so-called Central powers: Germany (at Versailles, June 28, 1919), Austria/SaintGermain (September 10, 1919), Bulgaria (Neuilly, November 27, 1919), Hungary (Trianon, June 4, 1920), and Turkey, (Sèvres, August 10, 1920). Turkey fought successfully against the implementation of the August 10 treaty, and a new peace agreement was negotiated and signed at Lausanne, July 24, 1923. The United States Senate refused to ratify the treaties, however. Instead, the U.S. government concluded separate peace treaties with the former Central Powers.

None of the peace treaties concluded after World War I contained dispositions concerning the punishment of genocide. Within the context of the overall fighting, there had been many armed conflicts, which led to radical population reductions and even to the total disappearance of some races and nations, but at that time international law did not recognize specific rules on their prohibition and punishment. On the other hand, there were dispositions in the treaties connected with violations of the laws and customs of war.

Article 227 of the 1919 Treaty of Versailles merits special attention, because it called upon the Allied and Associated powers to publicly arraign the defeated German emperor, William II of Hohenzollern, on the charge of having committed a supreme offense against international morality and the sanctity of treaties. It further called for the constitution of a special tribunal to try the accused, and assured the former emperor the guarantees essential to the right of defense. The tribunal was composed of five judges, one each to be appointed by the United States, Great Britain, France, Italy, and Japan.

The former emperor, however, had taken refuge in the Netherlands, whose government refused his extradition, arguing that the crimes alleged in the arraign-

ment—supreme offenses against international morality and the sanctity of treaties—had no counterpart in the articles of the Dutch Penal Code. William II never appeared before an international tribunal, and no judgment was ever rendered on him.

Article 228 of the Treaty of Versailles contained the following disposition:

> The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war. Such persons shall, if found guilty, be sentenced to punishments laid down by law. This provision will apply notwithstanding any proceedings or prosecution before a tribunal in Germany or in territory of her allies.

Articles 229 and 230 of the treaty concerned the composition of the tribunals, the accused's right of defense and right to counsel, and the obligation of the German government to cooperate in furnishing evidence of any crimes alleged and brought before tribunals.

The Allied powers suspected that more than 900 German soldiers had violated the laws and customs of war. Among the suspects were some of the top generals in the German High Command. From this great number, however, only twelve individuals stood accused before the Tribunal of Leipzig. Of these, only six were found guilty. They received prison sentences not to exceed four years.

There were identical dispositions in the corresponding articles of the peace treaties concluded with other defeated Central Powers, (Articles 173 to 175 of the treaty of St. Germain, Articles 118 to 120 of the Neuilly treaty, Articles 157 to 159 of the Trianon treaty, and Articles 228 to 230 of the treaty of Sèvres). In the turmoil of the postwar period, however, these provisions were not applied. None of the treaties included rules that might be brought to bear against citizens of a victorious state who might be accused of violating the laws and customs of war.

SEE ALSO Impunity; Minorities

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G. G. Herczegh

Wounded Knee

The Wounded Knee massacre took place December 29, 1890, on the Pine Ridge Indian Reservation in South Dakota. The massacre was precipitated when the Seventh Cavalry of the U.S. Army tried to disarm a group of about 500 Lakota Sioux under the leadership of Chief Big Foot. During the contentious process of disarming, a shot was fired. After this, the army began a merciless slaughter. Within hours, the Seventh Cavalry killed between 270 and 300 of Big Foot's people. Of these, 170 to 200 were women and children. The army killed a few men who were fighting back, but the large majority of Lakotas were destroyed while trying to flee or hide. In a few instances, soldiers shot Lakotas at point blank range, three or more miles from the place the firing began.

The chain of events that led to Wounded Knee began six weeks earlier, when the United States government decided to use massive military force to suppress the Ghost Dance on Lakota reservations. The Ghost Dance originated in the teachings of Paiute prophet Wovoka, living on the Walker River Indian Reservation in Nevada. In 1889, Wovoka began to forecast the coming of a new world in which non-Indians would be destroyed or removed, game restored, and tribal ancestors returned to life. Portions of several tribes in the western United States adopted Wovoka's teachings, including several Lakota communities.

Although many scholars have argued that the Lakotas fundamentally altered Wovoka's originally "peaceful" teaching into one of hostility toward European Americans, thus justifying military action, recent scholarship has called this view into question. It is doubtful that the Lakotas changed Wovoka's teachings. Rather, the government's decision to suppress the Ghost Dance among the Lakotas, but not among other tribes, resulted from long-standing American perceptions of the Lakota Sioux as particularly treacherous, as well as army officers' perceptions that the situation on the Lakota reservations afforded an opportunity to demonstrate the continued importance of the army's mission in the West.

The army's invasion of Lakota country, the single largest military operation since the Civil War, was designed to overawe the Lakota ghost dancers into giving up the dance. At first, this strategy had some success. In late November and early December several groups of ghost dancers surrendered. On December 15, however, military officials began to lose control of the situation when reservation Indian police killed Sitting Bull at his home on the Standing Rock Reservation. Fearing for their lives, most of Sitting Bull's people fled south,

The United States Seventh Cavalry massacred over 300 Lakota (Sioux) men, women, and children at their encampment beside Wounded Knee Creek in South Dakota, on December 29, 1890. Here, Miniconjou Sioux chief Big Foot lies dead in the snow. He was among the first to die that morning. [NATIONAL ARCHIVES AND RECORDS ADMINISTRATION]

with some joining Big Foot's village on the Cheyenne River. Army officers responded to these events by adopting a punitive attitude toward Big Foot and the ghost dancers among his people. Big Foot was characterized as "defiant and hostile" and the army positioned troops near his village to secure his arrest.

For their part, Big Foot and the other leaders of his community were deeply fearful of the army's intentions. Having received an invitation from Lakota leaders at Pine Ridge to help with their ongoing diplomatic efforts to secure a peaceful conclusion to the army's invasion of their country, Big Foot decided on December 24 to leave Cheyenne River and travel through the rough country of the Badlands to Pine Ridge. Big Foot's evasion of military surveillance increased army officers' frustration. More than ever they desired to punish Big Foot and his people. Hence, officers in charge of the campaign issued orders to all units to try to find Big Foot, and should they succeed, to disarm him, adding: "If he fights, destroy him." On December 28, the Seventh Cavalry intercepted Big Foot and his people about twenty-five miles from Pine Ridge and escorted them to nearby Wounded Knee Creek. The next morning the Seventh Cavalry began to carry out its orders.

Much of the analysis of Wounded Knee has focused on who fired the first shot. One theory is that army officers planned in advance to open fire, perhaps to avenge the Seventh Cavalry's defeat under George Armstrong Custer at the Little Bighorn fourteen years before. Another theory is that the first shot was fired when a single Indian refused to give up his gun and it discharged accidentally when soldiers tried to take it from him. A third theory, advanced by the army after the massacre, is that a few Lakotas, acting in concert, opened fire.

Wounded Knee qualifies as an instance of genocide most obviously under the first of these theories, as it holds that the destruction of Big Foot's people was intentional. In all likelihood, however, army officers probably did not plan the massacre and instead intended to use the threat of force to secure a bloodless disarmament of Big Foot's people. Nonetheless, even under the second (very likely) theory or the third (very doubtful) theory, the events after the first shot reveal

widespread genocidal impulses. Although army officers testified before a court of inquiry that they and their men took great pains to prevent the killing of women and children, their testimony collapses under the weight of the sheer number of casualties and the circumstances of their deaths.

Regardless of who fired the first shot, the killing fields of Wounded Knee must be placed within a long tradition of racist Indian-hating in American culture, reflected in widely held axioms like "nits breed lice" and "the only good Indian is a dead Indian," and manifested in numerous instances in which the army, volunteers, and civilians engaged in acts of indiscriminate slaughter with the intent to kill as many Indians as possible. Neither the army's campaign to suppress the Lakota Ghost Dance nor nineteenth-century U.S. Indian policy explicitly called for the extermination of all Indians. Yet, both were premised on the view that Indian opposition to U.S. authority was illegitimate and deserving of punishment, and that it was therefore legitimate to use the threat of extermination to secure policy objectives. In many instances, as at Wounded Knee, the threat of genocide became reality.

SEE ALSO Indigenous Peoples; Massacres; Native Americans; Racism

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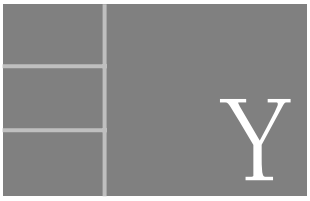
Jeffrey Ostler



Yugoslavia

Between 1991 and 1999, the Socialist Federative Republic of Yugoslavia (population: approximately 23 million) disintegrated amid four successive wars. Although the violent end of federal Yugoslavia was not determined by its bloody origins, those origins should not be omitted from an account of its denouement, in part because they were deliberately evoked to mobilize support for war in 1991 and 1992.

World War II: 1941–1945

After the kingdom of Yugoslavia capitulated to Germany in April 1941, Hitler divided the country among the Axis states. Germany annexed most of Slovenia, occupied Serbia, and administrated eastern Vojvodina. Italy annexed or occupied much of the Croatian coastland, southern Slovenia, western Macedonia and Kosovo, and tried in vain to control Montenegro by means of an autonomous administration. Hungary annexed the remainder of the province of Vojvodina and eastern Slovenia. Bulgaria took Macedonia and a sliver of southeastern Serbia.

The occupiers established puppet regimes. Croatia, Bosnia and Herzegovina were put in the charge of a Croatian nationalist group, the fanatical Ustashas, whose leaders had spent the 1930s as Mussolini's clients and sometimes his prisoners. The *poglavnik* (equivalent to *führer*) of the self-styled Independent State of Croatia (Nezavisna Drzava Hrvatska, NDH) was Ante Pavelic. Its leaders were obsessed with eliminating the Serb Orthodox population, which was seen as the historic obstacle to Croatian sovereignty.

The NDH's population of 6.3 million included only 3.4 million Croats. The remainder were mostly Serb (1.9 million), Muslim (700,000), German (150,000) and Jewish (37,000). In line with Axis policy, the Ustashas deported and killed Jews and Roma. The Serb population was the strategic target, however, owing to its size and to Ustasha ideology. At least 20,000 Serbs were killed in pogroms during summer 1941. By 1945, in line with the *Ustasha* intention to eradicate the Serb Orthodox population by mass conversion, expulsion, and murder, enough death and destruction had been achieved to make the NDH the bloodiest regime in Europe after Germany itself.

In Serbia, the Nazis formed a "government of national salvation" under Milan Nedic, who saw himself as caretaking until the royalist government could return from exile in London. Pavelic's equivalent in Belgrade was Dimitrije Ljotic, who received limited German support for his Serbian fascist movement. Even without an ideology of genocide, Nazi mechanisms functioned efficiently and the situation for Jews and Roma was no better than in Croatia. Serbia was proclaimed *Judenfrei* (Free of Jews) in early 1942.

Some army officers took to the hills and formed a royalist resistance movement, the Chetniks, loyal to the royalist government but also to a Serbian nationalist program. Savage Nazi reprisals in Serbia in 1941 soon quieted this movement's anti-German actions, but it continued to commit atrocities against Croats and Muslims in the NDH. Proportionately, Muslim losses in the war were heavier than Serb or Croat losses.

Croatian and Serbian nationalist crimes strengthened the resistance movement launched in summer 1941 by the Communist Party of Yugoslavia under a shadowy figure called Josip Broz, later known as Tito, who was supported by the USSR. The engorged but Axis-occupied Croatian state became the principal battleground between the partisans and their pro-fascist or anti-communist opponents, with each side's armed forces numbering around 150,000 by 1943.

At least a million Yugoslavs (6% of the pre-war population) were killed between 1941 and 1945, mostly at their compatriots' hands. The killing continued after the war, as Tito's victorious forces took revenge on their real and perceived enemies. British forces in Austria turned back tens of thousands of fleeing Yugoslavs. Estimates range from 30,000 to 55,000 killed between spring and autumn 1945.

Native German and Hungarian communities, seen as complicit with wartime occupation, were brutally treated; tantamount in some cases to ethnic cleansing. The *Volksdeutsch* settlements of Vojvodina and Slavonia largely disappeared. Perhaps 100,000 people—half the ethnic German population in Yugoslavia—fled in 1945, and many who remained were compelled to do forced labor, murdered, or later ransomed by West Germany. Some 20,000 Hungarians of Vojvodina were killed in reprisals. Albanian rebellions in Kosovo were suppressed, with prisoners sent on death marches towards the coast. An estimated 170,000 ethnic Italians fled to Italy in the late 1940s and 1950s. (All of these figures are highly approximate.)

The partisans were not always ruthless to their wartime opponents. By contrast with Germany, however, the postwar order in Yugoslavia did not allow an impartial examination of the war years. Grief was made more bitter by the anger and vengefulness of those whose struggles and sufferings were officially distorted or denied. Tito's regime created an official celebratory myth about the "People's Liberation War," denying partisan atrocities and negotiations with Germans and exaggerating their role in defeating the Axis. While this helped to unify the traumatized nationalities in the wake of fascism's defeat, it could not silence the truths and counter-myths handed down within families throughout Yugoslavia and nursed among Serb and Croat émigrés. In particular, many Croats came to resent what they saw as excessive attention to the Ustasha regime and a corresponding exculpation of Serbian nationalist crimes. By the time Titoist orthodoxy relaxed and the archives yielded their secrets, in the 1980s—confirming that the partisans' black-and-white, epic version had concealed an unsurprising pattern of shifting allegiances and power—plays in which Tito's forces eventually bested their enemies—it was too late for reconciliation.

The Wars of Yugoslav Succession (1991–1999)

The wars of the 1990s—from Slovenia, to Croatia, then Bosnia and Herzegovina, and finally Kosovo—were the result of four factors:

- the weakness of Yugoslavia's institutions of central government
- the rise of aggressive nationalism in Serbia
- the collapse of one-party communist systems in Europe around 1990—including in Yugoslavia
- the Yugoslav People's Army's embrace of Serbian nationalism.

After Tito's death in 1980, Yugoslavia's federal system proved incapable of providing effective governance. Once each decade, Tito had rebalanced the system, effectively decentralizing power until Yugoslav unity rested on three pillars: Tito's own prestige; the coherence of the League of Communists of Yugoslavia (LCY), as the communist party was called; and the Yugoslav People's Army (*Jugoslovenska narodna armija*, JNA). The first and second of these decayed over the 1980s; the third endured in deepening isolation from democratic change.

Political and economic competencies devolved to the six republics and two autonomous provinces of Kosovo and Vojvodina. The federation became, in a vivid phrase coined by Croatian economist Branko Horvat, an alliance of regional oligarchies. The resultant instability encouraged restiveness among the republics and revived long-standing mutual grievances. In Serbia, one politician turned this situation to his advantage. Slobodan Milosevic (b. 1941) rose in the 1980s to head the Serbian League of Communists. Milosevic played upon the Serbs' bitterness over their status in Yugoslavia.

These feelings centered on the southern province of Kosovo, site of the mythologized 1389 battle against the Ottoman empire, and traditionally celebrated as the cradle of Serbian culture. With more than 20 percent of Serbia's population, Kosovo in the 1980s was more than 80 percent ethnic Albanian. Since the late 1960s, Albanians had ceased to be a second-class nationality in Kosovo. This evolution, formalized by Kosovo's federal status in the 1974 constitution, was felt as unacceptable by many Serbs. In 1986 Serbia's Academy of Sciences and Arts purported to speak for the nation when it alleged—with inflammatory intent—that Serbs in Kosovo were subject to "physical, political, legal, and cultural genocide."

Milosevic was the first senior politician to acknowledge Serbian anger over Kosovo as valid. With

the help of media manipulation, staged rallies, and covert agitation, he seized the leadership of the Serbian communists in late 1987, then used the same techniques to abolish the autonomy of Kosovo and Vojvodina. When he succeeded in changing the leadership in Montenegro (population 0.58 million), Milosevic controlled half the federal units.

Although public opinion was orchestrated, these early successes were enabled by an extraordinary groundswell of support. Journalists, intellectuals, and artists echoed the simple message that Serbia and the Serbs—some 36 percent of Yugoslavia's population—must be "united" at any cost. Even those who disliked Milosevic's methods believed that his "antibureaucratic revolution" was necessary. Dissenters were few and, thanks to the machinery of party-state power, easily marginalized.

Milosevic's wider ambition was to intimidate the other republics into letting Yugoslavia be re-centralized under Serbian hegemony. The international community, eager to see Yugoslavia restabilized, was vaguely sympathetic. But Serbia's strongman had not foreseen the collapse of European communism after November 1989. This reduced the strategic significance Yugoslavia had enjoyed during the cold war, poised between the Western and Eastern blocs. It also encouraged nascent pro-democratic groups in Yugoslavia, especially in the western republics of Slovenia and Croatia, where they found common cause with communists who were worried by Serbian revanchism.

Serbia's vaunting ambition had emboldened other republics. The last congress of the LCY, in January 1990, was suspended when the Slovenian delegation walked out after their reform proposals were jeeringly rejected. Slovenia and Croatia scheduled multiparty elections for the spring. Far from backing down at this reversal, Milosevic escalated his threats against other republics. If the political structures were too weak and the JNA was still too indecisive to give him the leverage he needed, he would use demography instead—the 25 percent of Yugoslavia's Serbs who lived outside Serbia.

Slovenia and Croatia

In the late 1980s, Slovenia's challenge to the federal system was as profound as Serbia's, but opposite in method and intention. With under two million inhabitants, abutting Italy and Austria, by 1990 Slovenia was "the most successful and modern economy in Central and Eastern Europe." Some two-fifths of export trade was with western Europe.

Milosevic's recentralizing drive spurred Slovenian nationalism. This took political form, in terms of resistance to the Serbian bloc in federal structures, and theoretical and cultural forms, in the unprecedented irreverence toward Titoist myths. With newly elected leaders, Slovenia declared sovereignty in July 1990. In late December, the result of a referendum allowed the leadership to announce that independence would be declared the following June. If Serbia supplied the main leverage to destroy Yugoslavia, the timetable was Slovenia's.

Determined not to be left behind, Croatia (population: 4.78 million) committed itself to secede alongside Slovenia, although Croatia's position vis-à-vis Serbia was incomparably worse. Milosevic was willing to let Slovenia go, but not Croatia. After Croatia's first multiparty elections in spring 1990, the Serbian media had conducted a frenzied campaign to instil fear and hatred of Croatian intentions. Cynically exploiting fears of an Ustasha revival, this campaign targeted Croatia's 580,000 Serbs, especially the compact Serb communities in the central highlands. Agents were sent to stir up discontent. Open rebellion started in autumn, with armed roadblocks around the town of Knin. The Yugoslav army and Serbian ministry of interior supplied the weapons.

Agitation was made easier by the nationalism of Franjo Tudjman (1922–1999). His election platform included two crucial claims: Croatia must have "self-determination in its natural and historic borders," and the NDH (1941–1945) "was not only a formation in the service of the [Nazi German-Fascist Italian] occupier, but also the expression of the historic aspirations of the Croatian people." The former claim disclosed Tudjman's covetous interest in neighbouring Bosnia and Herzegovina, while the latter—playing into the hands of Serbian propaganda—signaled a readiness to rehabilitate aspects of the Ustashas' record.

So pressing was the threat posed by Serbia and its local proxy forces in Knin that most Croatians—like most Serbians, though arguably with better reason—wanted a strong leader, whatever the price. In Tudjman's case, the price was an authoritarian kleptocracy and, less predictably, a habit of conspiring with his Serbian counterpart. Far from sharing his supporters' revulsion at Milosevic, Tudjman saw the other man as his natural partner for achieving a historic concordat that would settle the Serbs' and Croats' differences once and for all. In his vision, this required splitting Bosnia and Herzegovina, which he saw as an artificial construct, much of which belonged by historical right to Croatia, and whose majority Muslim inhabitants were descended from apostate Catholics, that is, Croats.

Tudjman sought opportunities to plot the dismemberment of Bosnia and Herzegovina with Milosevic, most notoriously at Karadjordjevo on March 25, 1991.

At that meeting, he hoped to exploit the other man's vulnerability after the JNA chiefs of staff—aligning themselves ever more closely with Milosevic—had failed to panic the federal presidency into declaring a state of emergency. This was a critical misreading of the situation. Tudjman thought that a chastened Milosevic would cooperate over Bosnia and Herzegovina, whereas his recent setback actually hardened Milosevic's—and the JNA's—resolve to stop Croatia from escaping intact. On March 16, Milosevic met Serbia's district leaders. Proclaiming his readiness to "defend the interests of our republic and also the interests of the Serb people beyond Serbia," he told his audience that "borders, as you know, are always dictated by the strong and never by the weak" (Sell, 2002, p. 137).

Tudjman, however, trusted Milosevic crony Borisav Jovic's private assurances that Milosevic was uninterested in Croatia's Serbs or their ultimate fate. By this time, the Croatian Serb rebels, backed by the JNA, had proclaimed their own state—the Republic of Serb Krajina (RSK)—and controlled key transport routes. Typically, Croatia held its referendum only a month before the date set for secession. When 93 percent of an 84 percent turn-out supported "sovereignty and independence," confrontation became unavoidable.

Independence and War

Slovenia prepared its 20,000-strong armed forces in high secrecy, readying itself to take over border crossings and resist army intervention. Slovenia's showdown with the JNA began on June 25, the day it declared independence. Local and international observers were surprised at the skill and determination of the Territorial Defence forces. JNA confidence—based on poor intelligence and anti-Slovenian prejudice—that the Slovenes would back down after a show of force was quickly dispelled. After ten days, the Slovenian side had suffered 13 dead and 112 wounded, compared with 39 dead and 139 wounded on the JNA side.

The JNA chiefs of staff—after long careers in a bubble of privilege and unaccountability—were angered by their humiliation. Under terms brokered by the European Community, some 22,000 JNA personnel were withdrawn, mostly to bases in Croatia and Bosnia and Herzegovina. The chiefs of staff now shed the residual Yugoslavist loyalty which had deterred them from overthrowing the federal organs in March, and threw in their lot with Serbian nationalism.

The war in Croatia was less clear-cut and vastly more destructive of life and property. After incidents against and involving police forces in spring and early summer, the rebel forces, along with JNA regulars and Serbian paramilitaries, began to target large numbers of civilian Croats in and around the territory claimed by the self-styled RSK, killing many and driving away survivors. By November they controlled almost a third of the country. The worst fighting in this undeclared war was in the east, where Croat forces, unaided by forces from the Croatian capital of Zagreb, valiantly defended Vukovar until the city was rubble. After Serbian forces captured the city, more than 200 Croats were removed from the hospital and shot. This was the first indisputable war crime. By December, half a million people had been displaced in Croatia or fled as refugees. Damage was estimated at some $18.7 billion.

The United Nations Protection Force (UNPROFOR)

The United Nations Security Council's first action in the war was to impose an arms embargo on all parties in September 1991. The fighting continued regardless. The attacks on Vukovar and Dubrovnik showed that real war could not be averted. After twelve cease-fires in Croatia collapsed, UN envoy Cyrus Vance succeeded in making the thirteenth stick: Milosevic compelled the leaders of the RSK to accept. The January 2, 1992, agreement (called the Vance Plan) provided for 10,000 (later 14,000) UN peacekeepers to stabilize the disputed territory while a political settlement was worked out.

Over the next several years, UNPROFOR failed to demilitarize the rebel areas or to create conditions for the return of refugees. Indeed, refugee numbers swelled as Serbs in government-controlled areas were attacked in retaliation for the crimes of the rebels. According to human rights activists, 11,000 Serb-owned homes were destroyed outside rebel areas during the year after the January 1992 cease-fire. Non-Serbs in RSK territory were killed and expelled under the eyes of UN peacekeepers. Illogically, the UN protected Serbs in Serb-controlled territory while it did nothing for those who remained in government-controlled territory, who were at much greater risk.

The so-called Republic of Serb Krajina was now a twilight land ruled by a paramilitary mafia, sustained by plunder, contraband and humanitarian aid. The mafiosi never believed that the Croatians could retake the territory. Their total intransigence played into Tudjman's hands: he appeared reasonable by comparison. As time passed, his barely concealed ambition of recovering the territory minus its Serb population appeared almost pragmatic.

Writing in a special edition of *Globus* news magazine (Zagreb, December 11, 1999) shortly after Tudjman's death, his former chef de cabinet, Hrvoje Sarinic, recalled the eve of Operation Storm in August 1995,

when Croatia recaptured most of the Serb rebel-held territory: "All attempts at a peaceful solution (which, to tell the truth, we didn't even want) had failed. The military-police forces got the order to establish the constitutional and legal system." This attitude was obvious at the time, though not publicly acknowledged by the United Nations.

Despite its failures, the UN mission served Croatia's longer-term interests, stabilizing the country while it built up its forces. By late 1994, the Western powers were impatient with the stalemate. The turning point was a U.S.–Croatian memorandum on defense cooperation, signed in November 1994. This led to training and planning assistance which was put to use the following summer.

Bosnia and Herzegovina

Bosnia and Herzegovina (4.12 million) was the only Yugoslav republic without a titular nation, hence the only one that could not become a nation-state. Serb and Croat nationalists traditionally claimed part or all of Bosnia and Herzegovina, as well as authority over the Muslim plurality (44% in 1991).

The first multiparty election in Bosnia and Herzegovina was effectively a national plebiscite, with results reflecting the region's ethnic balance (Serbs were 31% and Croats were 17% of the population). The main Muslim political party was led by Alija Izetbegović (1925–2003), a peaceable if erratic Islamic dissident who had been jailed in the 1980s by the republic's repressive communist structures. He tried to form a unity government with the main Serb and Croat parties. While the Croats were tactically cooperative, the Serbs—led by Radovan Karadzic, a colorful psychiatrist and poet—categorically resisted efforts to strengthen Bosnia and Herzegovina's sovereignty.

In spring and summer 1991, Serb-majority regions in the north and east formed "autonomous regions," which formed the territorial basis for a breakaway Serb entity. JNA garrisons supplied arms to nascent Serb forces and later encircled major cities with heavy weapons. Izetbegović could either capitulate to Serb pressure, tying Bosnia and Herzegovina unconditionally to Serbia and its satellite, Montenegro; or he could follow the path taken successfully by Slovenia and bloodily by Croatia. The first option was unacceptable to most Muslims and all Croats; the second was intolerable to the Serbs.

In mid-October 1991, the Serb delegates boycotted the Bosnia and Herzegovina parliament's vote on sovereignty. Before exiting the chamber to set up their own "Serb Assembly" (which at once appealed to the JNA for protection), Karadzic issued a warning. His words, and Izetbegović's response, are quoted in the book, *Unfinished Peace*: "Do not think that you will not lead Bosnia into hell, and do not think that you will not perhaps lead the Muslim people into annihilation, because the Muslims cannot defend themselves if there is war." Izetbegović replied: "His words and manner illustrate why others refuse to stay in Yugoslavia. Nobody else wants the kind of Yugoslavia that Mr. Karadzic wants anymore. Nobody except perhaps the Serbs" (Tindemans et al., 1996, p. 34).

Speculating that even war would be better than a future as Milosevic's vassals, the Muslim and Croat leaders sought international recognition for Bosnia and Herzegovina in December 1991. Such recognition had been preempted by a Bosnian Serb "plebiscite" on remaining in Yugoslavia in November. The European Community required a referendum. Held in early March, it was duly boycotted en masse by the Serbs, whose leaders had preemptively proclaimed a "Serb Republic of Bosnia and Herzegovina" in January 1992. The result was treated as valid ground for granting international recognition, but, incredibly, the Bosnia and Herzegovina government's requests for practical defensive aid, or merely for UN peacekeepers, were turned down. The local leaders' irresponsibility was abetted by the irresponsibility shown by the outside powers.

The JNA had prepared for Bosnia and Herzegovina's independence since December 1991 by transferring Bosnian Serb troops into Bosnia and Herzegovina. When international recognition came, on April 6–7, 1992, Bosnia and Herzegovina had only a fractured police force, a nascent, Muslim-led Patriotic League, and a Croat militia to defend it. This lack of readiness was due partly to the difficulty of acquiring weapons. Unlike Slovenia and Croatia, Bosnia and Herzegovina's borders all lay within Yugoslavia. Lack of readiness can also, in part, be attributed to Izetbegović's refusal to accept that the JNA would target Muslims for their faith or national identity.

In May 1992, the JNA ostensibly withdrew some 14,000 JNA forces from Bosnia and Herzegovina, leaving behind some 75,000 who were allegedly Bosnians by origin. This remaining force, along with artillery, tanks, and fighter planes, became the Army of the Serb Republic, which operated in key respects as an extension of the JNA. When the Serb faction occupied a town, Muslim and Croat community leaders and intellectuals were shot or abducted. Thousands of Muslims and Croats were herded into unused industrial facilities, where they were starved, tortured, and even killed. By late summer, the Serb forces controlled 70 percent of Bosnia and Herzegovina, and more than a million people had been displaced from their homes. The rump

Bosnia and Herzegovina government quickly settled on a strategy of endurance, publicizing Serb and later Croat atrocities while clamoring for full-scale international intervention. The rag-tag forces enlisted by the government held some 10 percent of the country in the center and east. Croat forces controlled the remainder. Sarajevo's 400,000 inhabitants were helpless under bombardment.

Croat strategy was divided. Many Croat nationalists were convinced that compact Croat-majority areas in the southwest and northeast of the republic, as well as mixed areas in central Bosnia, should secede and join Croatia proper. A separate Bosnian Croat entity called Herzeg-Bosna was declared unilaterally, with Zagreb's support, in July 1992. On the other hand, an equal or greater number of Croats, living in mixed communities, regarded Bosnia and Herzegovina as their homeland, to be preserved intact.

Tudjman shared the nationalist view. He sent the Croatian Army over the border to fight the Serbs, but then switched in 1993 to attacking their nominal ally, the Army of Bosnia and Herzegovina, with its predominantly Muslim troops. The alliance collapsed in spring 1993 as the Croats, encouraged by international proposals for apportioning territory among the nationalities, made a bid to control their majority areas and parts of central Bosnia. They established concentration camps for Muslims. But early success turned sour when the Bosnia and Herzegovina Army fought back well, and also committed crimes against Croat civilians. The Western mediators' only significant peacemaking success came in early 1994, when they persuaded the Bosnian Croat forces to stop their war. The separatist ambitions of the Bosnian Croats went unchanged, however, and Western hopes that the reconstituted alliance would be able to reverse Serb gains were in vain.

Peace Plans

The first and best peace plan was presented by European mediator Lord Carrington in October 1991. This would have framed new relations between sovereign and independent Republics, with special status for minority areas. When, alone among the republic leaders, Milosevic rejected Carrington's plan with impunity, the chance of a unified solution was lost. For the next three-and-a-half years, the international community drifted.

Western leaders seemed unable to judge the significance of a regional conflict in southern Europe that threatened no vital interest except fundamental principles of international law, human rights, and acceptable interstate conduct. Having recognized the independence of Bosnia and Herzegovina without then letting its government defend itself, these leaders declared that these fundamental principles must be upheld. Envoys were tasked to design settlements that would reverse land grabs and vast refugee movements without any credible external coercion. The Vance-Owen Plan (January 1993) envisaged ten cantons, nominally mixed but each dominated by one nationality, with a weak central government. It was followed by the Owen-Stoltenberg plan (July 1993), which awarded 53 percent of Bosnia and Herzegovina as contiguous territory to the Serbs. The Contact Group plan (July 1994) proposed to split the country between the Serbs (49%) and the Muslim-Croat Federation (51%), which U.S. diplomats brokered in February and March 1994. This was the ratio confirmed at Dayton.

Milosevic's attitude to these plans was pragmatic. He supported them all, but kept his options open by letting men, materiel, and fuel flow from Serbia to the Bosnia Serbs. By late 1994, about half of the territory of Bosnia and Herzegovina was covered by air-to-ground missile systems, which had been imported from Serbia to deter NATO from overflying Bosnia and Herzegovina. No nationalist by conviction, and eager for economic sanctions (which had been imposed in 1992) to be lifted, he felt little loyalty to Serb rebel leaders—his partners in the "joint criminal enterprise." He was ready to bargain away their territory on terms which would not weaken him in Serbia, where his position was less secure than it appeared from outside. At home he faced runaway inflation (running at about 1% *hourly* by late 1993) and staples such as flour and oil were rationed.

By late November 1991, Milosevic wanted a truce in Croatia, which he eventually imposed on a reluctant Serb rebel leadership. A year later, Bosnian Serb conquests became a liability. Politically, however, he needed to make a show of being forced to renounce the concept of a "Greater Serbia," that most Serbian voters embraced, but with which he had only flirted. Intoxicated by their devastating early success, however, the rebel leaders refused realistic compromises. Impunity fed their hubris. Not until 1995 were the Western powers ready to use force on a wide enough scale to reassure Milosevic that he could abandon the rebels (in Croatia) or compel them to compromise (in Bosnia and Herzegovina) without opening himself to weighty charges of betrayal.

The moral nadir of international policy-making in Bosnia and Herzegovina was to be found, however, not so much in these failed plans as in Resolution 836 of the UN Security Council (June 1993). This resolution stated that six places unconquered by Serb forces were to be "safe areas. . .free from armed attacks and from

any other hostile act." While seemingly promising to protect civilians in those areas, Britain and France ensured that this resolution only committed the UN to deter attacks on civilians. If deterrence failed, UN troops would use force, but only in self-defense. This diplomatic sleight helped to enable the mass slaughter at Srebrenica two years later.

UN Secretary-General Kofi Annan has since accepted that "the United Nations hierarchy" made "errors of judgment . . . rooted in a philosophy of impartiality and non-violence wholly unsuited to the conflict in Bosnia." In his *Report of the Secretary General Pursuant to General Assembly Resolution 53/35 (1998): The Fall of Srebrenica*, he wrote, "The provision of humanitarian aid" was not "a sufficient response to ethnic cleansing and to an attempted genocide." For, "a Member State of the United Nations, left largely defenseless as a result of an arms embargo imposed upon it *by the United Nations*, was being dismembered by forces committed to its destruction. This was not a problem with a humanitarian solution". Yet, whatever the mission leaders' failings, many staff did excellent practical work, delivering aid that sustained minority pockets in hostile areas.

Endgame

By spring 1995, UNPROFOR had suffered almost 200 casualties. Frustration over these losses, and over the general stalemate led Western governments to allow the new UN commander in Bosnia and Herzegovia, Lt. Gen. (now Sir) Rupert Smith (U.K.), leading 31,000 peacekeeping troops, to be more assertive. When Smith ordered air strikes against unmanned military targets, following the sort of violation of safe areas that had rarely been punished before, the Bosnian Serb military chief, General Ratko Mladic, took more than 300 UN hostages, humiliated French troops in Sarajevo, and tried to capture the eastern "safe area" of Gorazde.

Although no hostages were harmed, Smith argued that UNPROFOR must reduce its vulnerability to allow the mandated use of force against the Serb side. Extra French and British troops were sent to Sarajevo as a rapid reaction force, capable of swift military response. Western commitment to the Muslim safe areas again wavered, but before any decision to extract UN troops from those enclaves could be taken, Mladic took the initiative. Having failed to take Gorazde, his men attacked two other safe areas in eastern Bosnia: Srebrenica and Zepa. As they closed in upon Srebrenica, Smith's civilian and military superiors in UNPROFOR refused to allow air-strikes. Dutch peacekeepers in the enclave yielded quietly to Mladic on July 11. Over 7,000 Muslim men and boys were separated from their families and executed.

This atrocity, the worst crime in Europe since 1945, sparked serious Western efforts to end the war. Smith was given authority to order air strikes in the event of further violations of safe areas. The principle of "proportionality" (counterstrikes calibrated to equal, but not exceed, the damage done by the attack that triggered them) was dropped. Thus, when mortar bombs hit a crowded Sarajevo marketplace on August 28, NATO launched a comprehensive air assault on Bosnian Serb arsenals and communications.

In early August, government forces—enhanced by U.S. technical support—recaptured most of the rebel territory in Croatia, leading to the immediate exodus of up to 150,000 Serbs and the murder over succeeding weeks of hundreds more, mostly elderly civilians who had stayed on in the recaptured areas. In 1991 there were 580,000 Serbs in Croatia. A decade later, the census found 201,600. Although the population has undoubtedly grown since then, the Serb community has probably lost a quarter of a million members as the price of pointless rebellion.

The success of Operation Storm opened the way for Croatian troops to push into Bosnia and Herzegovina from the west, justified by Mladic's effort to conquer the safe area of Bihac, while the Bosnia and Herzegovina Army made gains in central Bosnia. As Serb-held territory fell from 70 to around 50 percent of Bosnia and Herzegovina, U.S. envoy Richard Holbrooke gained broad acceptance of the principles for a settlement negotiated at an air force base in Dayton, Ohio. The "General Framework Agreement for Peace in Bosnia and Herzegovina" (known as the Dayton Accords) divided the country into two distinct "entities," the Serb Republic and the (Muslim-Croat) Federation. The weak "common institutions" (parliament, presidency and constitutional court) had power over foreign policy and trade, customs and monetary policy, inter-entity law, transport, and communications. Everything else—military, police, taxation, justice, education—was controlled by the entities, or by the ten sub-units known as "cantons" within the Federation. Ultimate authority was vested in a Peace Implementation Council, represented in Bosnia and Herzegovina by an international viceroy, the High Representative, and backed up by a NATO-led, multinational Implementation Force. At the outset, this force numbered 60,000 troops; by late 2003 its troop strength had been reduced to 7,000.

Dayton was a skillfully managed exercise in underachievement. Nominally civic but substantially ethnic, the Accords delivered an armed truce that has only slowly moved toward a self-sustaining peace and not yet toward a viable state. The international political and military resources mobilized in 1995 should have

yielded a better solution for the peoples of the region. Misunderstanding Milosevic as a blood-and-soil nationalist, the international mediators conceded too much, recognizing the Republika Srpska, an entity forged by ethnic cleansing, and failing to impose a workable governance system.

When they realized what the Dayton Accords meant in practice, the Bosnian Serb leaders switched from being their harshest critics into their stoutest defenders. In effect, The power of the U.S. had been used to obtain a partitionist solution of the sort that Britain and France, with their "realist" (i.e., pro-Serb) policies, had pursued since 1993.

Toward War in Kosovo

After Milosevic's 1989 putsch, Kosovo's Albanians stuck to nonviolent strategies, ignoring Serbian political structures and developing a "parallel system" of basic education and healthcare. By 1996, this system was dilapidated. In the wake of Dayton, nobody believed any longer that nonviolence would win international backing against Serbia. Guerrilla bands calling themselves the Kosovo Liberation Army (KLA) wanted confrontation with the Serbian police, which readily obliged. Fighting escalated in 1998; by August, some 200,000 Kosovars had fled into the hills and another 100,000 had left the province.

Threatened with NATO bombardment, Milosevic accepted an unarmed observer mission and a negotiating process. Predictably, this attempt to avert the worst met with failure. Milosevic had nowhere to fall back to from Kosovo, while the KLA was fighting for Kosovo's independence. With both sides playing for the highest stakes, the conflict duly resumed.

In Kosovo, as in Croatia and Bosnia and Herzegovina, international policy was atrocity-driven. The galvanizing role played earlier by the destruction of Vukovar and the slaughter at Srebrenica was now performed by the murder of 45 Albanians at Racak in January 1999. Milosevic and the Albanian leaders were given an ultimatum: accept an international settlement granting Kosovo the widest measure of autonomy, or face punishment by NATO missiles. The Albanians eventually saw their own interest and signed, isolating Milosevic. For him, defiance held more appeal than capitulation.

NATO leaders found themselves bombing Serbian military targets and civic infrastructure. Serbia responded by killing an estimated 11,000 Albanians and driving almost one million out of the province. This ethnic cleansing fortified the Western leaders' resolve to persevere. After 78 days, Milosevic agreed to pull out of Kosovo. A UN administration was established to oversee reconstruction and nurture self-government, with 42,000 NATO troops providing security.

No sooner had NATO occupied Kosovo and refugees flooded back than a reverse ethnic cleansing commenced. At least half the remaining Serb minority population was terrorized into fleeing northwards into Serbia. Despite its overwhelming troop strength, NATO was unwilling or unable to stop this exodus and, as had happened in Bosnia and Herzegovina, some observers accused the U.S. of prioritizing the protection of its troops over the responsibility to protect civilians. Kosovo's suspended sovereignty gave Albanian extremists a political excuse to cleanse the Serbs from the territory. The wave of violence in March 2004, causing 19 deaths, was a grim reminder that Kosovo could not be stabilized without resolving its final political status.

Having played his last nationalist card, Milosevic could no longer rule by dividing his opponents. Yet he was equally unable to normalize his state without destroying his own party-state powerbase. He lasted until October 2000, eleven years longer than the Berlin Wall—a unique achievement among Europe's communist leaders.

The wars of Yugoslav sucession were fought for power over people and territory. National identities were used as labels for political constituencies. The escalatory logic of the terminal crisis consisted in the readiness of leaders on all sides to discover and pursue maximal goals, in essence daring their opponents to trump them. In this process, fathered by Milosevic and facilitated by Tudjman, legitimacy was pitted against coercive resources in a complex pattern, until trumping meant nothing short of war.

SEE ALSO Bosnia and Herzegovina; Croatia, Independent State of; Ethnic Cleansing; Humanitarian Intervention; Incitement; International Criminal Tribunal for the Former Yugoslavia; Izetbegović, Alija; Karadzic, Radovan; Kosovo; Massacres; Milosevic, Slobodan; Mladic, Ratko; Peacekeeping; Propaganda; Safe Zones; Tudjman, Franjo

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Mark Thompson

Yuki of Northern California

In the first half of the nineteenth century, the Yuki flourished in the rugged Coast Range Mountains of Mendocino County, Northern California. They lived along the middle fork of the Eel River in settlements of approximately 150 people and subsisted by hunting deer, fishing salmon, and gathering acorns and other wild plants. Their population was extremely dense and may have numbered more than 10,000 Indians. The Yuki enjoyed a rich annual round of religious celebrations, social dances, trade expeditions and war raids. Although they were regarded as a fierce and warlike group by their neighbors, their weapons were bows and arrows and mortality in any battle was very low. Life was eventful and satisfying.

The Yukis earliest encounter with whites may have occurred in 1833, when a Hudson's Bay Company fur trading party led by Michael Laframboise passed peacefully through the mountain valley that forms the heart of Yuki territory. They remained only a few days before departing, leaving just memories and a few trade beads. Not until 1854 did whites again venture into the valley, when an American exploration party consisting of the brothers Pierce and Frank Asbill, with their friend Jim Nephus, discovered this isolated, lush, almost perfectly round valley. While riding through the valley on horseback, they encountered a great congregation of Yuki and, in the confusion that followed, the whites killed a number of Indians and escaped unharmed. The following year, this party returned to spend the summer in the beautiful valley, hunting deer and tanning skins. During their stay, the whites befriended young Yuki, but when they departed at the end of the summer, they kidnapped thirty-five girls and young women to sell as wives to Mexican vaqueros in the Sacramento Valley.

Other explorers soon followed the Asbill party and word spread in Northern California of the remote mountain valley named "Round Valley" by Europeans. Settlers were attracted to the area for its cattle ranching potential, whereas the U.S. government identified it as a desirable place to gather Indians from a number of Northern California tribes displaced by settlers, gold miners, and ranchers. The government declared the entire valley an Indian Reservation in June, 1856, but this proclamation came too late as settlers were already entrenched. They continued to arrive and stake large land claims in the southern half of the valley, leaving the government only the northern end for the reservation.

Simmon P. Storms, Indian agent for Round Valley Reservation, erected reservation buildings, surrounding them with a stockade; he also relocated here a group of Maidu from the Sacramento Valley. A farm was begun, but few Yuki were attracted to farming; most continued to pursue their traditional hunting and gathering existence in the valley and surrounding mountains. Some Yuki tried to drive out the reservation personnel shortly after their arrival by killing stock animals and threatening the personnel with bows and arrows. In response, Storms claimed that reservation staff "were forced to kill many of. . .[the Indians]. . . , which stopped their proceedings" (Miller, 1979, p. 49). When settlers tried to prohibit the Yuki from their traditional hunting and gathering activities in the valley, the Indians killed a few cattle, horses, and pigs for food.

The settlers were quick to retaliate and formed expeditions to punish the Yuki. These expeditions were best described in the testimony of a responsible settler under oath to a California State Investigating Committee in 1860:

> . . . in one thousand eight hundred and fifty six the first expedition by the whites against the Indians was made, and [the expeditions] have continued ever since; these expeditions were formed by gathering together a few white men whenever the Indians committed depredations on their stock; there were so many of these expeditions that I cannot recollect the number; the result was that we would kill, on an average, fifty or sixty Indians on a trip, and take some prisoners, which we always took to the reserve; frequently we would have to turn out two or three times a week (Miller, 1979, p. 49).

This statement, substantiated by other settlers, implies that at least five thousand Yuki were murdered in and around Round Valley each year, although presumably the numbers decreased as the Yuki population declined.

Hostilities between the Indians and the settlers were not entirely one-sided, but the Yuki killed did not kill any white men until 1857, when, in desperation, they killed two whites, one of whose "favorite amusement[s] is said to have been shooting at the Indians at long range, and he usually brought down his game" (Miller, 1979, p. 50). Citing this killing as an example of the constant danger they were exposed to, the settlers sent word to California Indian Superintendent Thomas J. Henley for troops to protect them. The troops marched through the mountains in the summer of 1858 and caused over two thousand Indians to descend on the reservation for their own protection. When the troops departed, so did the Indians.

The settlers continued to send raiding parties to pursue and kill Yuki and other Natives living in the nearby mountains. The U.S. Department of the Interior dispatched Special Agent J. Ross Browne in 1858 to investigate the Indian Wars in and around Round Valley. Browne reported at the end of September that the situation was a "war of extermination" being waged against the Indians (Miller, 1979, p. 55). Even settlers who were missing no stock launched parties to go into the mountains and hunt Indians; some settlers boldly invaded Round Valley Reservation in broad daylight shooting adult Indians and kidnapping younger ones to sell into virtual slavery outside the valley. Such massacres continued with shocking intensity and frequency so U.S. troops were again transported to Round Valley in January, 1859, with instructions to protect the Indians and whites from each other and generally to maintain the peace. When it became apparent that Lieutenant Edward Dillon, the officer in charge, intended to be fair to both Indians and whites alike, the settlers concluded that the soldiers would not punish the Indians so they continued their own murderous raids. At the same time, they began petitioning California Governor John B. Weller to commission a company of volunteers to hunt down the Yuki more effectively. The settlers did not bother to wait for the commission, but raised a complement of volunteers who selected Walter S. Jarboe as their leader. His company of Eel River Rangers commenced their raids in July, murdering indiscriminately all Indians they could find, regardless of age or sex. This intense pace of raids and killings went on for six months until Jarboe's commission expired in January, 1860. In subsequent testimony one volunteer in Jarboe's unit claimed that "Captain Jarboe told me his company had killed more Indians than any other expedition . . . ever . . . ordered out in this State" (Miller 1979, p. 72).

After Jarboe's company was decommissioned, the settlers continued for several years to raid Yuki and other Indian camps in the area. But by 1860, there were only three hundred Yuki on Round Valley reservation, with perhaps another few hundred in the surrounding mountains. Through an extremely intense campaign of genocide, the flourishing Aboriginal Yuki population had been drastically reduced by more than ten thousand Indians in only five years. The effects on neighboring mountain tribes were equally devastating.

What became of the survivors on Round Valley Reservation? Under the tutelage of Indian agents and missionaries, they became victims of cultural genocide as they were encouraged to exchange their Indian languages, worldview, knowledge, and cultural values for the English language and European values and culture. As tribal elders died, the rich Yuki culture and language disappeared with them. By 1900 there were only about one hundred Yuki. In 2003, fewer than one hundred mixed-blood individuals claim Yuki ancestry.

SEE ALSO Developmental Genocide; Indigenous Peoples; Native Americans

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Virginia P. Miller

Zulu Empire

From the 1810s until its destruction by the British in 1879, the Zulu kingdom was the largest in southeastern Africa, occupying most of what is today KwaZulu-Natal province, in South Africa. The Zulu kingdom was rather small and insignificant until King Shaka (ruled c. 1816–1828) conquered many neighboring polities. Shaka is a highly ambiguous figure in popular memory today. For Zulu ethnic nationalists in South Africa, and for many Pan-Africanists throughout the world, he serves as a symbol of African achievement and anticolonial resistance. For many whites, in contrast, Shaka became a symbol of African barbarism. However, the debates about Shaka do not necessarily follow racial lines: some whites have seen Shaka as a rather heroic figure, while many black South Africans have seen Shaka as an oppressor who indiscriminately slaughtered not only his opponents, but also innocent noncombatants, including women and children.

Already in the 1820s, when Europeans began expanding into the lands of the Zulus and their immediate neighbors, a territory that the Europeans called Natal, Europeans used Shaka's alleged atrocities to justify their own activities. As elsewhere in the colonized world, Europeans portrayed themselves as saving native peoples from the often deadly upheavals fomented by the natives' own leaders. In the Zulu case, however, this rhetoric ultimately became a highly detailed and well-developed complex of stories and historical arguments, all centered around Shaka and the chain of events that he allegedly set in motion, which became known as the *mfecane*.

According to European accounts of the mfecane, Shaka revolutionized African society, politics, and especially warfare. In this version of the events, the entire Zulu kingdom became a permanent standing army, highly centralized, disciplined, and aggressive. Not only did Shaka and his armies attack their immediate neighbors, they also chased refugees for hundreds, even thousands, of miles, sending them as far away as the Great Lakes region of East Africa. In the process, Shaka's forces supposedly killed more than a million Africans, a figure which received the sanction of authority when it was cited by Hannah Arendt in *The Origins of Totalitarianism* (1951). At the same time, most of South Africa was cleared of its inhabitants, becoming "empty land" conveniently awaiting colonization by Boer trekkers and British settlers. During the twentieth century, apartheid ideologues claimed that the thirteen percent of South Africa's land set aside for blacks as "homelands" or "Bantustans" coincided with the small pockets in which the refugees from Shaka's mfecane huddled.

Since the 1960s, research by numerous historians has demonstrated that much of the mfecane was actually a myth created by South African whites. Indeed, the term *mfecane* itself, though seemingly of African origin, was actually coined by whites. The Shakan military system had been developed by numerous people for generations preceding Shaka, and it was not unique to the Zulu kingdom. Shaka's rule did not even effectively extend throughout the whole of present-day KwaZulu-Natal province, let alone the vast territories beyond. Refugees from the Shakan wars did indeed ultimately migrate as far as East Africa, but over decades and of

their own accord: The Zulu army was barely able to act just beyond the borders of the Zulu kingdom; it had neither the ability nor the desire to "chase" refugees farther than that.

Those who died during the Shakan wars probably numbered only in the tens of thousands, as the KwaZulu-Natal region itself had only a few hundred thousand inhabitants at the beginning of Shaka's reign. Blacks were largely confined to what became the homelands, not by Shaka's wars, but by decades of land expropriation by white settlers. One historian, Julian Cobbing, has even gone so far as to argue that white slave raiders of the 1810s and 1820s invented the idea of the mfecane as an alibi to cover up their own attacks on Africans. This last argument has received a lot of attention, but has not held up in the face of further research. Nevertheless, the other criticisms of the mfecane, by Cobbing and others, have become accepted by most specialists in the subject.

The debate surrounding Shaka's reign has often had as much to do with the nature of the evidence as with the actual historical events. For example, two of the richest sources on the Shakan era are the diaries of the English adventurers Nathaniel Isaacs and Henry Francis Fynn. Both observers were clearly biased against Shaka, and both accounts were written well after the fact. There is even a letter in which Isaacs urges Fynn to sensationalize his account in order to attract more readers. In the 1920s, the missionary A. T. Bryant published a compendious history of the Zulu kingdom based on oral traditions he had collected, but Bryant never makes it clear what comes from the oral traditions and what stems from his own admitted efforts to "clothe the dry bones" of history.

The most exhaustive and well-documented collection of Zulu oral tradition is that produced by James Stuart, a British colonial official in Natal during the late nineteenth and early twentieth centuries. Though Stuart was also arguably biased against the Zulus in some ways, he seems to have been rather meticulous and even-handed in his recording of the evidence that Africans gave to him. Certainly, although the testimony collected by Stuart contains much that is critical of Shaka and other Zulu kings, there is also much that is positive, and there is no shortage of criticism of European rule. More recently, the Zulu-speaking poet Mazisi Kunene has published a novel-length praise poem on Shaka's life based upon oral traditions, but another black South African, Mbongeni Malaba, has taken Kunene to task for glossing over the negative aspects of Shaka's rule. Black South Africans have never been unanimous in their opinions on Shaka.

Although the numbers and geographical extent of the killings during Shaka's reign have been exaggerated by many white commentators, there is little doubt that Shaka (and his successor, Dingane, who ruled during the period from 1828 to 1840) did order the extermination of large numbers of people, including innocent civilians. Some of this killing was ordered out of personal vindictiveness, but even that done "for reasons of state" could still be considered genocide. Like other perpetrators of genocide, both Shaka and Dingane targeted whole categories of people for elimination, including at various times all the subjects of the Ndwandwe, Mthethwa, Langeni, Thembu, and Qwabe kingdoms. On the other hand, Shaka and Dingane did not always ruthlessly pursue such objectives to their logical conclusions, but rather relented and even incorporated some of their former enemies as full-fledged subjects of the Zulu kingdom. Over time, many of Shaka and Dingane's victims, or at least their descendants, not only forgave and forgot, but even came to identify themselves as Zulus.

SEE ALSO Apartheid; Shaka Zulu; South Africa

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Michael R. Mahoney

Zunghars

The Zunghar nation developed in the early seventeenth century from nomadic tribes of Western Mongols who had established a homeland beyond the Altai Mountains, astride the modern China-Kazakhstan border. By 1700, the Zunghars had created an empire that included the oasis towns of Eastern Turkestan, and were sufficiently strong to pose a threat to both their Russian and Chinese neighbors. Following several conflicts with the nomads, the Chinese emperor, Qianlong, grasped an opportunity to conquer Zungharia in 1755. He easily succeeded but, after Chinese forces withdrew, the Zunghars rose in revolt, prompting the Qing ruler to seek a final solution to his Zunghar problem. Acting at the behest of the emperor, Chinese armies intentionally exterminated at least 180,000 people during the ensu-

ing campaign, representing some 30 percent of the Zunghar population. An outbreak of smallpox ravaged the remainder, leaving less than one-third of the Zunghars alive to face either slavery or exile. Having assailed the populace, the Chinese emperor subsequently arranged the eradication of the Zunghar culture. In intentionally destroying part of a national group in these ways, Qianlong was committing genocide, as defined by Article II of the current United Nations Genocide Convention.

The Qing descended from Manchuria during the seventeenth century and established control over the core China by 1681. Although they incorporated cooperative foreigners into their system, the Qing dealt with their more unruly neighbors through a combination of diplomacy, tribute, and force, often setting one group against another. The principal aim of their efforts was to ensure that barbarians never presented a united front against the new dynasty. The Qing established control over Outer Mongolia in 1691 and invaded Tibet in 1720. By the mid-eighteenth century, they ruled over a massively expanded Chinese territory. Meanwhile, a new nation was developing farther west, beyond the Altai Mountains and the ever-expanding reach of Beijing.

In the early seventeenth century, the Choros, Dorbet, and Khoits, tribes of the Western Mongols (also referred to as Oirats), settled in the region of the Irtysh River, near the modern border between China and Kazakhstan, and united to form the embryonic Zunghar nation. From their capital at Kubakserai, on the banks of the Imil River, they developed agriculture and crafts, which brought an air of diversity and sedentary culture to their nomad society. The Zunghars embraced Buddhism, along with the majority of Mongols, established temples and monasteries in their lands, and maintained a body of literature in a modified Mongolian script that suited their phonetic system.

The power and influence of the Zunghars increased throughout the seventeenth century. Under the capable leadership of Galdan Boshughtu (r. 1671–1697), their homeland stretched from Lake Balkhash to the Altai and their empire incorporated the conquered oasis towns of Hami, Turfan, and Kashgar, in East Turkestan. They repeatedly attacked Russian settlements in Siberia and even invaded Outer Mongolia in 1688, forcing its populace to seek Qing protection. After Russia and China, each influenced by the perceived threat of the nomads, settled their differences in the Treaty of Nerchinsk in 1689, the Zunghars became "the last real Inner Asian threat to [the] Qing" (Rossabi, 1975, p. 141). Over the coming decades, they repeatedly clashed with Chinese armies. Galdan Boshughtu fought the Qing in Mongolia during the 1690s and further battles occurred in 1720, when the Chinese ousted Zunghar invaders from Tibet, and in 1731, when the Zunghars again marched on Mongolia. Even though the Zunghars agreed a temporary accord with the Qing in 1739, trade disputes continued to plague relations between the two powers.

The death of Galdan Tsering, in 1745, marked the beginning of the end of the Zunghars, then civil war, tore their nation apart. After losing the power struggle to a rival, Amursana fled to the open arms of the Chinese emperor in 1754. Qianlong (r. 1736–1795) immediately discerned an opportunity to conquer the Zunghars and secure his frontiers from what he perceived as a continuing threat. He formed an alliance with Amursana and dispatched an army of at least fifty thousand troops to Zungharia in the spring of 1755. The soldiers spread propaganda leaflets as they advanced, promising rewards and protection in return for Zunghar compliance. Disunited and weakened by years of civil war and confronted by such a large Chinese force, the Zunghars were unable to mount any effective opposition and their leaders fled. Those who remained readily capitulated and, in the summer of 1755, the Qing army withdrew.

Amursana expected to govern all of Zungharia, but was sadly disappointed. Instead, Qianlong sought to divide and rule, so he split the land into four territories, only one of which was reserved for Amursana. Angry and bitter, Amursana instigated an armed revolt and attacked a Chinese border force. When news reached Beijing, the emperor flew into a rage and immediately began to reassemble his army. In 1756, a Qing force, comprising more than 400,000 mostly Manchu and Mongolian troops, flooded into Zungharia. Amursana had already fled westwards. Encountering no organized resistance, the army "set about the universal destruction of the Oirat population" (Zlatkin, 1983, pp. 450–451).

Qianlong repeatedly called for the extermination of the Zunghars, but was inconsistent when speaking of who should be spared. He ordered, "Show no mercy at all to these rebels. Only the old and weak should be saved" (Qianlong, quoted in Perdue, 2003a, p. 50). In another edict, however, he commanded the massacre of all the followers of any rebel leader who refused to prostrate himself before the Chinese and beg the right to surrender. Later, he demanded the destruction of all able Zunghar males and reserved female survivors as slaves for his troops. Following the repeated issue of such callous yet inconsistent edicts, confusion reigned. Nevertheless, as the emperor continued to reward commanders who carried out massacres and to punish

those who captured only territory, it became prudent to err on the side of slaughter: Russian officials in Siberia reported that "Manchu troops massacred men, women, and children, sparing no one" (Perdue, 2003a, p. 52).

Between the summer of 1756 and January 1757, the Khalkha Mongols of Outer Mongolia rose in rebellion against the Qing. In spite of the temporary distraction, which forced Qianlong to withdraw his Mongol troops from Zungharia, the remaining soldiers continued to massacre the Zunghar population. During this period, Amursana returned to his homeland and attempted to organize resistance against the Chinese. However, he was unable to raise more than 10,000 troops and, despite bravely engaging his enemy, was forced to flee in the summer of 1757. Qianlong spared 50,000 soldiers to send in hot pursuit of Amursana, betraying a personal loathing of the Zunghar leader. Nevertheless, the fugitive escaped to Russia, where he died of smallpox in September that same year.

Scholars differ in their opinions as to Qing policy after the flight of Amursana. Fred Bergholz, whose work is based mostly on Russian secondary sources, argues that, until 1759, "Qianlong's armies carried out the killing of every Oirat they could find" (Bergholz, 1993, p. 402). In contrast, Peter C. Perdue, who bases his findings largely on Chinese primary sources, contends that Qing policy became more lenient as the immediate perceived threat had disappeared, and the emperor wished to avoid driving the few remaining Zunghars southward to join an imminent rebellion in Turkestan. Nevertheless, he notes that, in the fall of 1757, Qianlong criticized two of his leading generals as they "shrank back from wholesale slaughter, despite continual prodding" (Perdue, 2003a, p. 53). The overall result of Qing policy, however, was the intentional extermination of a substantial part of the Zunghar population.

The estimated total Zunghar population was 600,000. Of these, Owen Lattimore estimates that 50 percent were exterminated, 20 percent died of smallpox, and 30 percent survived in exile or slavery. Peter C. Perdue, however, suggests that 30 percent were exterminated, 40 percent died of smallpox, and 30 percent survived in exile or slavery. Both Lattimore and Perdue base their estimates on Chinese sources. Ilya Zlatkin, who bases his work mostly on Russian sources, suggests that only 7 percent survived, but makes no distinction between exterminations and smallpox-related deaths.

The academics, Frank Chalk and Kurt Jonassohn, have identified strong, centralized authority and dehumanization as two preconditions that facilitate the majority of genocidal actions. In eighteenth-century China, the emperor wielded absolute power under a heavenly mandate and ruled through his generals and elite Confucian officials, who implemented his designs. As unruly neighbors, the Zunghars were considered barbarians. Moreover, the inscription on a 1758 victory tablet, describing the Zunghars as evil and fierce demons who "made men their food" (Krueger, 1972, p. 68), suggests an attempt by Chinese authorities to place the nomads far outside the bounds of human obligation.

For over half a century, the Zunghars had repeatedly clashed with the Chinese, who perceived the nomads as a constant threat to their frontiers and, when Amursana personally betrayed Qianlong, he embarrassed and infuriated the emperor, who sought a terrible revenge. The Qing had not previously employed massacre in managing nomad relations but, as Qianlong noted, "It was only because they repeatedly submitted and then rebelled that we had to wipe them out" (Ch'ien-lung, quoted in Perdue, 2003a, p. 53). The Son of Heaven needed to send a powerful message throughout his empire to terrorize anyone who might dare question his imperial authority. Such motives translated into intent as the emperor issued a series of edicts that explicitly called for the extermination of at least part of the Zunghar nation, and encouraged the slaughter by rewarding those of his commanders who complied, while punishing those who did not. In the face of overwhelming odds, the Zunghars, weakened and disunited by years of civil war, were effectively defenseless. During the campaign, their ability to resist declined still further when a smallpox epidemic claimed between 20 and 40 percent of their original population.

Not content with destroying the populace, the Chinese emperor subsequently arranged the eradication of the Zunghar culture. Qianlong confiscated the Mongol genealogies, which no longer survive, and commissioned Chinese archivists and historians to record a one-sided history of his actions. Most Zunghar documents were burned during the campaign of extermination. The Qing destroyed the equipment and herds of the Zunghars, erased their settlements, and repopulated Zungharia with nomads from Manchuria and Mongolia. Qianlong's actions were so successful that the Zunghar nation and culture effectively disappeared.

SEE ALSO China

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Richard Pilkington

glossary

Ad Hoc Tribunal: a court created to deal with specific disputes, generally by an international body like the United Nations Security Council; such a court has a geographical, subject-matter, and temporal limits on its jurisdiction.

Anschluss: annexation of Austria by Germany on March 13, 1938.

Anthrax: virus that produces black postules, vomiting, fever, and finally suffocation in two to four days. It can lie dormant for decades and has been used as a biological weapon for the mass destruction of individuals. Anthrax infection can occur in three forms: cutaneous (skin), inhalation, and gastrointestinal. *B. anthracis* spores can live in the soil for many years, and humans can become infected with anthrax by handling products from infected animals or by inhaling anthrax spores from contaminated animal products. Anthrax can also be spread by eating undercooked meat from infected animals.

Assimilation: systematic process of one group taking on the customs, language, or religion of another group. The process often deprives a group of its own language, customs, and tradition based on the presumed inferiority or lack of utility of its culture.

Asylum: refuge and protection in another state that an individual can receive. Under current international refugee law, asylum is based on a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a social group.

Blood Diamonds: diamonds from areas controlled by forces or groups opposed to legitimate government. The diamonds are often mined by children, who are frequently killed or mutilated by the forces based on suspicion of theft, lack of productivity, or sport. Rebel forces use the diamonds to finance arms purchases and other illegal activities. Once the diamonds are brought to market, their origin is difficult to trace and once polished, they can no longer be identified.

Blood Libel: widespread belief in parts of Europe that Jews killed Christian children and used their blood for Passover meals.

Capital Punishment: penalty involving loss of life, by shooting, hanging, lethal injection of other means; still imposed in some countries for serious crimes.

Cold War: state of political tension and military competition that stopped short of actual war between communist countries and western democracies. It began shortly after World War II in 1948 and continued until the fall of communism about forty years later.

Collectivization: the act or process of collective control, especially over the production and distribution of property. It was practiced during the Stalin years and in many communist countries. Where it was practiced it was forcibly imposed and the attendant protests were often accompanied by loss of life, torture, imprisonment, and starvation.

Cutaneous: Most (about 95%) anthrax infections occur when the bacterium enters a cut or abrasion on the skin, such as when handling contaminated wool, hides, leather or hair products (especially goat

hair) of infected animals. Skin infection begins as a raised itchy bump that resembles an insect bite but within one to two days develops into a vesicle and then a painless ulcer, usually one to three cm in diameter, with a characteristic black necrotic (dying) area in the center. Lymph glands in the adjacent area may swell. About 20 percent of untreated cases of cutaneous anthrax will result in death. Deaths are rare with appropriate antimicrobial therapy.

Dehumanization: "killing" the humanity of another. It is the process of depriving others of human qualities, personality, or spirit.

Democide: the systematic killing of the members of a country's general population, or the murder of any person or people by a government. It includes genocide, politicide, and mass murder.

Denazification: the efforts of Allied powers after World War II to eliminate the influence of Nazism, and to remove Nazis from public life in Germany.

Desaparecidos: Spanish word for "the disappeared." They are people who have been taken into custody by state agents and whose whereabouts, custody and fate are either hidden or denied by the state. Most are eventually murdered by the state.

Detention: the practice of detaining individuals or groups of individuals for the purpose of trial. However individuals are often detained without charge or trial and for long periods of time. Sometimes this results in death, torture, or the disappearance of detained persons.

Displaced Person: persons or groups of persons who have been forced to flee or leave their places of habitual residence as a result of, or in order to avoid, the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters and who have not crossed an internationally recognized State border.

Ecocide: massive and organized degradation of the environment in armed conflict.

Ex Post Facto: the retroactive application of a law.

Extermination: a category of crime against humanity involving killing on a large scale.

Extrajudicial Execution: a killing on political or other grounds that is not the consequence of a fair trial, held in accordance with recognized international standards.

Grave Breaches: war crime term established by the 1949 Geneva Conventions. It includes such acts as willful killing, torture or inhuman treatment, willfully causing great suffering, extensive destruction and appropriation of property that is not justified by military necessity, unlawful deportation, and taking of hostages.

Indemnification: compensation for damage, loss, or injury suffered.

Inhalation: initial symptoms may resemble a common cold. After several days, the symptoms may progress to severe breathing problems and shock. Inhalation anthrax is usually fatal.

Intestinal: the intestinal disease form of anthrax may follow the consumption of contaminated meat and is characterized by an acute inflammation of the intestinal tract. Initial signs of nausea, loss of appetite, vomiting, and fever are followed by abdominal pain, vomiting of blood, and severe diarrhea. Intestinal anthrax results in death in 25 to 60 percent of cases.

Junta: paramilitary group that seeks governmental or state control through threat or use of armed force.

Just War (*jus ad bellum*): aside from the rhetorical use of such an expression to characterize any war for the side offering a justification, there is a technical use applicable in addition to war justified on the basis of self-defense (just cause). Just war offers a doctrine in which the use of force is justified to punish wrongs and protect the innocent in order to uphold standards of civilized conduct.

Lustration: ritual purification. It was the policy in Eastern and Central European countries of banning individuals who served in former regimes from important governmental posts of the current government. While it was used to insure the success of democratic reforms, it also raised questions of international standards of procedural fairness as individuals were often dismissed solely based on party affiliation or political association.

Mercenary: soldier who fights for a country other than his or her own country, and for remuneration rather than out of loyalty and patriotism.

Miscegenation: the marriage or cohabitation between a white person and a member of another race or racially distinct group.

Paramilitary: armed group not formally part of a state's military, but often informally affiliated with it.

Partisans: irregular troops that are engaged in guerrilla warfare and are often behind enemy lines. During World War II this term was applied to resistance fighters in Nazi-occupied countries.

Politicide: the murder of any person or people by a government because of their politics or for political purposes.

Punitive Damages: damages paid by one state to another state to punish the former state for its actions.

Purge: mass expulsion of political opponents from a political or social movement or political party. Such expulsions sometimes involve the extrajudicial killing of opponents.

Ratification: an official confirmation and acceptance of a previous act, often referred to in international treaties as the means by which the text negotiated by diplomatics is subsequently approved by the various states and becomes legally binding, making the act valid from the moment it was done.

Resettlement: applies to the relocation of a population. Used negatively, the term refers to the policy of forcible removal of people from their homes and relocating them in another area for developmental or political reasons. Used in a positive sense, resettlement also refers to the relocation of refugees from their region of origin to countries that accept them as immigrants.

Scapegoating: process of one group finding another group blameworthy for the troubles the former group is experiencing. The process excuses the former group of self-blame, allowing it to feel better about itself. The Jews were seen as scapegoats by Nazi Germany shortly before and during the Holocaust.

Status Quo ante: the situation in effect (status quo) before a significant event.

filmography

Film is the twenty-first century's lingua franca as visual images of daily events are seen around the globe. The power of film to enlighten and inform the public of genocide and crimes against humanity necessitates its inclusion as a research source. The films selected in this filmography were done so on the basis of availability and recognition by the film and human rights communities. The list includes fictional stories based on real events as well as documentaries and television series.

Marlene Shelton

[AFGHANISTAN]

Kandahar [2001]
d. Mohsen Makhmalbaf
This film—part documentary, part fiction—follows a woman's journey as she searches for her sister in war-torn Afghanistan.

Return to Kandahar [2003]
d. Paul Jay and Nelofer Pazira
The star of the film, *Kandahar,* returns to Afghanistan to find her childhood friend, the inspiration for the original film.

[ALGERIA]

Chronicle of the Years of Embers [1975]
d. Mohamed Lakhdar-Hamina
This film deals with Algeria's struggle for independence from France's colonial rule. This story follows the journey of a peasant from his impoverished village to his involvement with the Algerian resistance prior to the Algerian war for independence.

1975 Winner of the Palm D'Or (Cannes)

Battle of Algiers [1966, 2004 (RE-RELEASE)]
d. Gillo Pontecorvo
This internationally acclaimed film was banned by the French government for its realistic portrayal of the vicious battle for independence fought by the Algerian resistance fighters in the 1950s. This film is considered a classic for its documentary style of storytelling. It contains a prescient scene of Algerian women planting a bomb in a popular cafe.

1966 Winner of the Golden Lion (Berlin)

1968 Academy Award Nominee: Best Director and Screenplay

[AMAZON REGION]

At the Edge of Conquest: The Journey of Chief Wai Wai [1993]
d. Geoffrey O'Connor
This film follows the leader of the Waiapi Indians of the Amazon region and their extraordinary leader, Chief Wai Wai, as he journeys from isolation to Brazil's capital to fight for his people.

1993 Academy Award Nominee

Amazon Journal [1996]
d. Geoffrey O'Connor
This film chronicles events in the Amazon region beginning with the assassination of Chico Mendes in 1988 through 1995 and the impact of the encroaching modern world on the indigenous people of the region.

[ANCIENT WORLD]

The Trojan Women [1971]
d. Michael Cacoyannis
This film, based on the play by Euripides, has an all-star cast led by Katherine Hepburn, Vanessa Redgrave, and

Irene Pappas. Euripides story of the fall of Troy and the fate of the women as the Greek army approaches.

1971 Best Actress Award, National Board of Review (Irene Pappas)

[ANTI-SEMITISM]

Gentlemen's Agreement **[1947]**

d. Elia Kazan

This film is about a reporter (Gregory Peck) who pretends to be Jewish in order to write a story about anti-Semitism in 1940s New York. This film was controversial and thought provoking for its time.

1948 Academy Award Winner: Best Film, Best Director, Best Supporting Actress (Celeste Holm)

The Garden of the Finzi-Continis **[1971]**

d. Vittorio de Sica

This beautiful film is set in Italy in 1938. In the town of Ferrara, the Finzi-Contini's are a wealthy Jewish family (Dominique Sanda) living in luxury and seclusion from the gathering clouds of war outside the walls of their estate. Their fate is inevitable as Mussolini's racial laws goose-steps in line with Hitler's.

1971 Academy Award Winner: Best Foreign Language Film

Cabaret **[1972]**

d. Bob Fosse

Life is a cabaret old chum, until the Nazi's come to town. 1930s Berlin at its most decadent with showgirls and naughty banter and a showgirl (Liza Minnelli) who lives life large and uncensored.

1973 Academy Awards Winner: Best Director, Best Actress (Liza Minnelli), Best Supporting Actor (Joel Grey), Best Art Direction, Best Cinematography, Best Film Editing, Best Music Score, Best Sound

Liberty Heights **[1999]**

d. Barry Levinson

This coming of age film is about fathers and sons (Adrien Brody), and life in 1954 Baltimore when Jews were not allowed to cross the tracks or swim in the pool.

[APARTHEID-NELSON MANDELA]

Cry Freedom **[1987]**

d. Sir Richard Attenborough

This is the true story of South African journalist Donald Woods and his friendship with black activist Steve Biko (Denzel Washington). The film covers Woods attempts to get answers to the suspicious death of Biko while in custody and his fleeing the country as a result of his investigation.

1987 Academy Award Nominees: Best Supporting Actor (Denzel Washington), Best Music and Best Song

Cry, the Beloved Country **[1995]**

d. Darrell Roodt

This film is about apartheid in South Africa through the experiences of an African Cleric, (James Earl Jones) and a wealthy, white landowner, (Richard Harris) in the 1940s.

Mandela and de Klerk **[1997]**

d. Joseph Sargent

This made-for-television movie is Nelson Mandela's (Sidney Poitier) story of his crusade against the repressive apartheid government of F.W. de Klerk (Michael Caine).

[ARGENTINA]

The Official Story **[1985]**

d. Luis Puenzo

This is a fictional account of events during Argentina's Dirty War. High school history teacher Alicia Marnet de Ibanez (Norma Aleandro) lives a comfortable life in Buenos Aires with her husband, Roberto, a lawyer, and their five-year-old adopted daughter. This tranquil life is forever changed when Alicia discovers the truth about her daughter's adoption.

1986 Academy Award Winner: Best Foreign Language Film

La Amiga **[1988]**

d. Jeanine Meerapfel

This film is the story of two girls growing up during the time of Argentina's Dirty War and the struggles to remain friends as their lives change and go in different directions (Liv Ullmann). The film focuses on the organization of Madres de Plaza de Mayo (Mothers of the Mayo Plaza in Argentina) who marched and demanded the return of their children.

1990 Berlin Film Festival: Peace Film Award—Honorable Mention (Jeanine Meerapfel)

1988 San Sebastian Film Festival: Best Actress Awards (Liv Ullmann and Cipe Lincovsky)

For These Eyes **[1998]**

d. Gonzalo Arijon and Virginia Martinez

This film is the story of a young girl named Daniela who thought she was the daughter of an agent of the SIDE, the Argentinean Secret Service but she was in fact, Mariana Zaffaronni, the daughter of two Uruguayan activists who disappeared during Argentina's Dirty War from 1976 to 1983. This story follows her grandmother's 16-year search and the legal and emotional outcome of finding her.

[ARMENIANS IN OTTOMAN TURKEY]

Ararat **[2002]**

d. Atom Egoyan

This film travels between 1915 Turkey and present-day Canada and tells the story of an Armenian-Canadian family and how they come to terms with the history of the 1.5 million Armenians killed during World War I. This film has been criticized by the Turkish government as one-sided and propaganda.

Germany and the Secret Genocide **[2003]**
d. Michael Hagopian
This film uses archival footage to document the involvement of Germany in the first genocide of the twentieth century when 1.5 million Armenians were killed by the Ottoman government.

[AUSCHWITZ]

Night and Fog **[1955]**
d. Alain Resnais
This documentary was filmed in postwar Auschwitz and is stark in its image of what took place during the Nazi regime.

Playing for Time **[1980]**
d. Daniel Mann and Joseph Sargent
This made-for-television film is adapted from Fania Fenelon's autobiography by Arthur Miller. It tells the story of a group of female prisoners (Vanessa Redgrave, Jane Alexander) at Auschwitz whose lives are spared when they perform music for their captors.

1981 Emmy Award Winner: Outstanding Drama Special, Lead Actress (Vanessa Redgrave), Supporting Actress (Jane Alexander), Outstanding Writing (Arthur Miller). Peabody Award

Sophie's Choice **[1982]**
d. Alan J. Pakula
Polish beauty Sophie (Meryl Streep) falls in love with Nathan (Kevin Kline) in postwar America but is haunted by the memories of a decision she made during internment in Auschwitz.

1983 Academy Award Winner: Best Actress, Meryl Streep

[AUSTRALIA]

Rabbit-Proof Fence **[2002]**
d. Phillip Noyce
This film set in 1931 is the true story of aborigine Molly Craig who leads her younger sister and cousin over 1,500 miles of the Australian outback to return them safely to their homes after being taken by white settles to become domestic staff. This story deals with the Stolen Generations, a program to civilize the aboriginal population.

2003 Australian Film Institute Winner: Best Film

[BABI YAR]

Holocaust, Part 2: The Road to Babi Yar **[1978]**
d. Marvin Chomsky
Holocaust is a four-part miniseries that aired in 1978. This miniseries follows the fate of two families—the Weiss family, who are Jewish, and Erik Dorf's (Michael Moriarty), who joins the Nazi party. Part two is set in 1941 and the massacre of Jews at Babi Yar is depicted.

1979 Emmy Award Winner: Best Drama Series, Best Directing (Marvin Chomsky), Best Costumes, Best Film Editing, Outstanding Lead Actor in a Limited Series (Michael Moriarty), Outstanding Lead Actress in a Limited Series (Meryl Streep)

[KLAUS BARBIE]

Hotel Terminus **[1988]**
d. Marcel Ophuls
This documentary details the life and times of Klaus Barbie, the Butcher of Lyon, who was Gestapo chief during the Nazi occupation of France.

1989 Academy Award Winner, Best Documentary Film

[BOSNIA and HERZEGOVIA]

Welcome to Sarajevo **[1997]**
d. Michael Winterbottom
The Bosnian war in Sarajevo is backdrop to a British journalist's attempt to save an orphaned girl from the brutality of war.

Shot through the Heart **[1998]**
d. David Attwood
Two best friends (Linus Roache and Vincent Perez) end up on opposite sides of the war in Sarajevo with tragic consequences.

1999 Peabody Award

Srebrenica: A Cry From the Grave **[1999]**
d. Leslie Woodhead
This documentary narrated by Bill Moyers tells the story of the massacre in July 1995 of over 7,000 Muslims in Srebrenica, Bosnia, a city that was supposed to be a safe-zone protected by the UN and NATO.

Harrison's Flowers **[2000]**
d. Elie Chouraqui
The wife (Andie MacDowell) of a Newsweek reporter missing in 1991 war-torn Yugoslavia risks her life to find him aided by a fellow journalist (Adrien Brody).

[BURMA/MYANMAR]

Inside Burma: Land of Fear **[1996]**
d. David Munro
Investigative reporter and award-winning filmmaker John Pilger exposes the brutality and repression inside Burma.

Bullfrog Films

[CAMBODIA]

The Killing Fields **[1984]**
d. Roland Joffe
This film is based on the true story of the friendship between Sydney Schanberg (Sam Waterson), a reporter for the New York Times and Dith Pran (Dr. Haing S. Ngor), a translator and assistant. When Pot Pol conducts his cleaning campaign of Year Zero, Dith Pran's family with Schanberg's help escape to the United States and he remains behind to help cover the story.

1985 Academy Awards: Best Supporting Actor (Dr. Haing S. Ngor), Best Cinematography (Chris Menges), and Best Film Editing (Jim Clark)

Samsara **[1989]**

d. Ellen Bruno

Documentary on the devastation of the war in Cambodia and the tragic impact it has had on the country.

Sundance Film Festival: Special Jury Award

[CANADA]

Kanehsatake **[1994]**

d. Alanis Obomsawin

This documentary film by Native American Alanis Obomsawin covers the armed confrontation between the Native American Mohawks and the Canadian government forces during a 1990 standoff in Kanehsatake, a village in the Mohawk nation.

Produced by The National Film Board of Canada

Best Documentary Film, American Indian Film Festival

A Fight Against Time: The Lubicon Cree Land Rights **[1995]**

d. Ed Bianchi

A documentary focusing on the case made by the five hundred Lubicon Lake Cree Indians that logging, gas, and oil companies are profiting from their lands while they become increasingly impoverished.

No Turning Back: The Royal Commission on Aboriginal Peoples **[1996]**

d. Greg Coyes

A documentary film on the Royal Canadian Commission that traveled and interviewed more than a thousand aboriginal representatives on their history with the Canadian government.

[CATHOLIC CHURCH]

Amen **[2002]**

d. Constantin Costa-Gavras

This film focuses on two characters, one an SS officer (Ullrich Tukar) and the other a Jesuit priest (Mathieu Kassovitz), and makes a case that the Catholic Church collaborated with the Nazis during the war.

[CHECHENS]

Immortal Fortress: A Look Inside Chechnya's Warrior Culture **[1999]**

d. Dodge Billingsley

Dodge Billingsley's film leads him through down dark alleys and secret meetings to film the Chechen perspective on its fight for independence from Russia.

[CHEYENNE]

Little Big Man **[1970]**

d. Arthur Penn

This film is the story of Jack Crabb looking back on his life from old age and recalling his life spent with the Cheyenne Indians.

New York Film Critics Award for Best Supporting Actor (Chief Dan George)

[CHILDREN]

Forbidden Games **[1952]**

d. Rene Clement

This film set in 1940 follows five-year-old Paulette as she witnesses the death of her parents and takes refuge with a family in the countryside. There, she and the farmer's son take part in ritual burials in a cemetery they create for themselves.

1952 Academy Award for Best Foreign Language Film

Children of War **[2000]**

d. Alan and Susan Raymond

This documentary chronicles the effects of war and terrorism on children in four parts of the globe: Bosnia, Israel, Rwanda, and Northern Ireland.

2000 Emmy Award: Outstanding Non-fiction Special

[CHILE]

Missing **[1982]**

d. Constantin Costa-Gavras

This film is based on the actual experiences of Ed Horman (Jack Lemmon) and his search for his son, missing in Chile during the Pinochet coup.

1983 Academy Award: Best Screenplay Based on Material from Another Medium

Chile: Hasta Cuando? **[1987]**

d. David Bradbury

The director and film crew captured on film the arrests and murders taking place during the military dictatorship of General Augusto Pinochet.

1987 Academy Award Nominee

Inside Pinochet's Prison **[1999]**

This documentary was secretly filmed by East German journalists and filmed in the concentration camps of the Pinochet regime.

Journeyman Pictures

Chile: A History in Exile **[1999]**

This documentary records the journey of Cecilia Aranada as she returns to Chile after escaping the bloody Pinochet regime. Cecilia interviews Chileans who lost family members or survived torture at the hands of the military.

[CHINA]

To Live **[1994]**
d. Yimou Zhang
This story of a married couple (Li Gong and You Ge) struggling to survive and not lose hope through the dramatic changes occurring in communist China.

1994 Winner of Cannes Grand Jury Prize for director Yimou Zhang

Xiu Xiu, The Sent Down Girl **[1998]**
d. Joan Chen
A young teenage girl, Xiu Xiu, is sent to a remote area of China to do manual labor.

1999 National Board of Review Freedom of Expression Award for Joan Chen

Morning Sun **[2003]**
d. Carma Hinton, Richard Gordon, Geremie R. Barme
This two-hour documentary focuses on events during the Cultural Revolution using newsreels combined with first-hand accounts of members of a then high school generation reflecting back on those disturbing times.

[COLLABORATION-RESISTANCE]

Pimpernel Smith **[1941]**
d. Leslie Howard
The Scarlet Pimpernel theme is revisited once again by Leslie Howard. This time he plays Professor Horatio Smith who takes his students on an archaeological dig in 1939 Germany where his students discover their professor is smuggling enemies of Hitler out of the country. This film angered the Germans for its less-than-flattering depiction of them.

Casablanca **[1942]**
d. Michael Curtiz
Rick Blaine (Humphrey Bogart), an American nightclub owner in Casablanca during World War II, has his life turned upside down when Ilsa Lund Laszlo (Ingrid Bergman) walks into his.

1942 Academy Award Winner: Best Picture, Best Director (Michael Curtiz), Best Screenplay (Julius and Philip Epstein, Howard Koch)

The Sorrow and the Pity **[1969]**
d. Marcel Ophuls
This documentary investigates France's Vichy government's collaboration with the Nazis during the occupation.

1972 National Board of Review: Best Foreign Language Film

Julia **[1977]**
d. Fred Zinnemann
This film, based on Lillian Hellmann's (portrayed by Jane Fonda) novel *Pentimento,* tells of her relationship with a childhood friend, Julia (Vanessa Redgrave), and the devotion she has to her. Their friendship is put to a test when Julia asks Lillian to smuggle money from Paris into Berlin.

1978 Academy Award Winner for Best Supporting Actors (Jason Robards and Vanessa Redgrave), Best Screenplay Based on other Material

The Last Metro **[1980]**
d. Francois Truffaut
In occupied Paris in 1942, a theater director's wife (Catherine Deneuve), valiantly struggles to manage the Montmartre Theatre, while her husband, a German Jew, is in hiding.

1981 Winner of 10 Cesar awards

Terrorists in Retirement **[1985]**
d. Mosco Boucault
This documentary film narrated by Simone Signoret was initially banned by French television. In interviews with the terrorists, the truth is revealed that they were Jewish communists who were resistance fighters during the Nazi occupation of Paris. The film reveals their arrest and torture at the hands of the French police.

Au Revoir Les Enfants **[1987]**
d. Louis Malle
This film is based on events in the life of director Louis Malle while he was at a boarding school during World War II. In this story two boys become friends at a Catholic boarding school, one is French and the other is being hidden by the friars because he is Jewish.

1987 Winner of the Golden Lion, Venice Film Festival

Europa Europa **[1990]**
d. Agnieszka Holland
A Jewish boy separated from his family in Germany reinvents himself as a German orphan and joins the Hitler Youth. Based on a true story.

1992 Winner of the Golden Globe for Best Foreign Film

Sisters in Resistance **[2000]**
d. Maia Wechsler
This story about four French women who showed amazing resilience and courage during the Nazi occupation by participating in the French resistance. They were arrested by the Gestapo and imprisoned at Ravensbruck concentration camp. They survived to tell their stories in this documentary.

Unlikely Heroes **[2003]**
d. Richard Trank
This documentary narrated by Sir Ben Kingsley tells the stories of seven previously unknown Jewish heroes whose courageous acts saved thousands of lives from the Nazis.

[COMICS]

The Great Dictator **[1940]**
d. Charlie Chaplin
Charlie Chaplin plays two roles—that of the dictator of Tomania, named Adenoid Hynkel, and a Jewish barber—in his satire on Nazi Germany.

To Be Or Not To Be [1942]

d. Ernst Lubitsch

In Poland during the occupation, two actors (Carole Lombard and Jack Benny) engage in their form of resistance.

The Shop on Main Street (Obchod Na Korze) [1965]

d. Jan Kadar, Elmar Klos

Set in Slovakia during World War II, a small notions shop run by a Jewish woman, Mrs. Lautman, is given to a good-for-nothing young man named Tono. Mrs. Lautman (Ida Kaminska) is old, deaf, and oblivious to her situation and thinks the young man is looking for a job and hires him. As Tono becomes aware of the fate of Jews, he drunkenly makes an effort to save Mrs. Lautman.

1965 Academy Award for Best Foreign Language Film

To Be Or Not To Be [REMAKE (1983)]

d. Alan Johnson

This time it is Mel Brooks and Anne Bancroft as the actors fighting the Nazis in occupied Poland.

[DEATH CAMPS]

Camps of Death [1983]

This film is a collection of actual footage shot by the Allied forces of the death camps of World War II.

[DEATH MARCH]

Colors of Courage: Sons of New Mexico, Prisoners of Japan [2002]

Produced by Tony Martinez and Scott Henry

This film tells the story of the veterans of the New Mexico's 200th and 515 Coast Artilleries who endured the infamous Death March. A Japanese guard, Yukio Yamabe, who took part in the march is interviewed.

Available through Albuquerque's PBS affiliate, KNME-TV Channel 5

A New Mexico Story: From the Bataan Death March to the Atomic Bomb [2003]

d. Aaron Wilson

This documentary gives the oral histories of the men of the New Mexico National Guard who withstood starvation and brutal treatment by their Japanese captors.

McGaffey Films

[DENIAL]

The Man in the Glass Booth [1975]

d. Arthur Hiller

Arthur Goldman (Maximilian Schell) lives a good life in Manhattan, but all changes when Israeli agents hurry him out of the country to stand trial a Nazi war criminal.

The Music Box [1990]

d. Constantin Costas-Gravras

Jessica Lange portrays a Chicago lawyer who defends her father against charges that he was a SS officer for the Nazis. As witnesses come forward she faces a personal crisis as her certainty in his innocence begins to wane.

Death and the Maiden [1994]

d. Roman Polanski

A woman (Sigourney Weaver) is convinced that the man (Sir Ben Kingsley) her husband has brought home is responsible for the rape and kidnapping she endured by the government.

[DEMJANJUK TRIAL]

The State of Israel v. John Ivan Demjanjuk [1988]

This documentary is about the Cleveland auto mechanic, who was accused of being Ivan the Terrible and supervised the gas chambers of Treblinka.

Ergo Media

[DIARIES]

The Diary of Anne Frank [1959]

d. George Stevens

A young Jewish girl (Millie Perkins) hides in an attic with her family and their friend's from the Nazis in occupied Amsterdam.

1959 Academy Award Winner: Best Supporting Actor (Shelley Winters) and Best Set Design

[DISAPPEARANCES]

Fire in the Andes [1985]

d. Ilan Ziv

This documentary investigates the disappearance of thousands of Peruvians targeted as members of the Shining Path by the Peruvian Armed Forces.

First Run/Icarus Films

[HOLOCAUST DRAMAS]

This Land is Mine [1943]

d. Jean Renoir

A schoolteacher (Charles Laughton) in German occupied France is drawn into the resistance.

The Pawnbroker [1964]

d. Sidney Lumet

Rod Steiger plays a holocaust survivor who is shut down emotionally in a self-made prison (he is literally behind bars) in his New York pawnshop.

Ship of Fools [1965]

d. Stanley Kramer

A ship traveling to Europe from Mexico in the 1930s provides an opportunity to look at a cross section of society. Starring Vivian Leigh and Oskar Werner.

1965 Academy Award Winner: Best Art Direction and Best Cinematography

***The Damned* [1969]**
d. Luchino Visconti
This film tells the story of a wealthy Junker family and their demise under the Third Reich.

***The Night Porter* [1974]**
d. Liliana Cavani
A concentration camp survivor (Charlotte Rampling) and her tormentor, now the night porter in a hotel in Vienna, engage in a twisted relationship. This was a controversial film for its time.

***Jakob, der Lugner (Jacob the Liar)* [1975]**
d. Frank Beyer
This East German film is the original about a Jewish man who invents stories heard on his secret radio to bring hope to the Ghetto.

***Voyage of the Damned* [1976]**
d. Stuart Rosenberg
A ship leaves Hamburg, Germany, with 937 German Jews (Faye Dunaway, Oskar Werner) on board seeking refuge in 1939 Havana, Cuba.

***The Boys From Brazil* [1978]**
d. Franklin J. Schaffner
Gregory Peck plays Josef Mengele in this tale of a Nazi hunter in South America who uncovers a plot to restore the Third Reich.

***Holocaust* [1978]**
d. Marvin J. Chomsky
A miniseries detailing the plight of a Jewish family in Nazi Germany contrasted with the rise of a German soldier. Stars Michael Moriarty, Meryl Streep, and Ian Holm.

***The Tin Drum* [1979]**
d. Volker Schlonodorff
Young Oskar Matzerath (David Bennet) in 1930 Danzig cannot abide the society he is in and so at age three decides not to grow up.

1979 Academy Award: Best Foreign Language Film

***Das Boot est Voll (The Boat Is Full)* [1981]**
d. Markus Imhoof
German and Austrian refuges arrive in Switzerland and discover even though the Swiss are not involved in the war they do not want any refuges.

***Escape from Sobibor* [1987]**
d. Jack Gold
This miniseries recreates the escape of Jewish inmates from the Sobibor death camp in Eastern Poland. Stars Rutger Hauer and Alan Arkin.

1988 Golden Globe: Best Mini-series

***War and Rememberance* [1988]**
d. Dan Curtis
This 12-part miniseries is based on the Herman Waulk novel. This series covers the events during World War II and the toll it takes on the Henry family. Robert Mitchum stars.

***The Nasty Girl* [1990]**
d. Michael Verhoeven
A young girl begins to question her town's Nazi past and finds herself shunned by her community.

1992 BAFTA: Best Foreign Language Film

***Alfa's Wonder* [1993]**
d. Luke Matin
This story of a French family's struggles during the Holocaust focuses on the youngest daughter's (Natalie Portman) curiosity about the events occurring around her.

1993 Winner of Grand Jury Prize at Cannes

***Schindler's List* [1993]**
d. Steven Spielberg
Oskar Schindler (Liam Neeson) uses Jews from the concentration camps to run his factory in Poland. He becomes increasingly aware of the horrors inflicted upon them by the Nazi commandant Amon Goeth, (Ralph Fiennes) and with the help of his Jewish bookkeeper (Ben Kingsley) devises a plan to save as many Jews as he can.

1993 Academy Awards: Best Picture, Best Director, Best Editing, Best Art Direction, Best Cinematography, Best Music Score, Best Screenplay Based on Other Material

***Shine* [1996]**
d. Scott Hicks
The life of Australian pianist David Helfgott (Geoffrey Rush), a child prodigy who is driven to the edge by his father, a survivor of the Holocaust.

1996 Academy Award: Best Actor (Geoffrey Rush)

***Bent* [1997]**
d. Sean Mathias
Max (Clive Owen) is gay and sent to Dachau where he denies his homosexuality and is given a yellow star for Jews. His friend Horst wears the pink star (for gay) and this story tells of their struggle for survival. Based on the stage play of the same name. Mick Jagger and Sir Ian McKellen co-star.

***Life Is Beautiful* [1997]**
d. Roberto Benigni
A Jewish man brings his love for life and his sense of humor to a Nazi death camp in order to help his young son survive.

1999 Academy Awards: Best Foreign Language Film, Best Actor, (Roberto Benigni), Best Music Score

***Left Luggage* [1998]**
d. Jeroen Krabbe
A Jewish girl becomes the nanny of a young mentally disabled Jewish boy and becomes very close to him. Stars Isabella Rossellini, Maximilian Schell, and Topol.

Aimee and Jaguar **[1999]**
d. Max Farberbock
A Jewish woman (Jaguar) using a false identity falls in love with the wife of a German soldier (Aimee).

Sunshine **[1999]**
d. Istvan Szabo
This film follows a Jewish family in Hungary through three generations from humble beginnings to wealth and prosperity and loss again. Stars Ralph Fiennes.

Conspiracy **[2001]**
d. Frank Pierson
The Wannsee Conference where the Final Solution of the Nazi's Holocaust plan is discussed is told through this film starring Stanley Tucci, Kenneth Branagh, and Colin Firth.

Nowhere in Africa **[2001]**
d. Caroline Link
A German Jewish family moves to Kenya just before the start of World War II to run a farm. The change is difficult to adjust to but events in Germany make it impossible to return.

2002 Academy Award for Best Foreign Language Film

The Pianist **[2002]**
d. Roman Polanski
The true story of Polish Jewish pianist, Wladyslaw Szpilman (Adrien Brody), and his struggle to survive after escaping from the Warsaw ghetto during World War II.

2003 Academy Awards: Best Director (Roman Polanski), Best Screenplay Based on Other Material, Best Actor (Adrien Brody)

[EAST TIMOR]

Death of a Nation: The Timor Conspiracy **[1994]**
d. John Pilger
This documentary film covers the genocide in East Timor by the Indonesian army using Western arms.

[EICHMANN TRIAL]

The Trial of Adolf Eichmann **[1997]**
This documentary uses actual trial footage as well as the recollections of key witnesses.

[EL SALVADOR]

El Salvador: Another Vietnam **[1981]**
d. Glen Siber and Tete Vasconcellos
A documentary that focuses on the civil war in El Salvador.

El Salvador: The Seeds of Liberty **[1981]**
d. Glen Siber and Tete Vasconcellos
This film focuses on the four U.S. churchwomen who were raped and murdered by the Slavadoran National Guard in 1980.

First Run/Icarus Films

[ERITEA]

The Forbidden Land **[1990]**
d. Daniele Lacourse and Yvan Patry
The human cost of the war for independence is the focus of this film.

Eritea: Hope in the Horn of Africa **[1993]**
By Grassroots International
The dawn of a new nation after a long fought war for independence.

First Run/Icarus Films

[ETHNIC CLEANSING]

Genocide **[1981]**
d. Arnold Schwartzman
Film documentary about the Holocaust. Narrated by Elizabeth Taylor and Orson Welles.

1982 Academy Award: Best Documentary

The Genocide Factor **[2000]**
d. Robert J. Emery
This documentary covers four periods from the Biblical to the Holocaust through the more recent twentieth century killing fields of Cambodia and East Timor.

[ETHNOCIDE/ CULTURAL GENOCIDE]

The Searchers **[1956]**
d. John Ford
John Wayne searches for five years for his niece (Natalie Wood), who kidnapped and raised by Comanche Indians.

Five Centuries Later **[1992]**
d. German Gutierrez
This documentary features Rigoberta Menchu, the 1992 Nobel Peace Prize winner, and focuses on the status of Central American aboriginal cultures five hundred years after the arrival of Europeans.

First Run/Icarus Films

[FEMALE INFANTICIDE]

Gift of a Girl: Female Infanticide **[1997]**
d. Jo Smith and Mayyassa Al-Malazi
This film examines the practice of female infanticide in southern India.

Matrubhoomi **[2003]**
d. Manish Jha
First time writer-director Manish Jha presents a story of an India without enough women due to female infanticide. The result is a rich landlord is forced to buy a young woman from her father for his five sons with tragic consequences.

[FILM AS PROPAGANDA]

Triumph of the Will **[1934]**
d. Leni Riefenstahl
This Nazi propaganda film focuses on the 1934 Nazi Party Congress in Nuremberg for which a well rehearsed, perfectly executed rally and parade was staged. This is considered to be one of the most accomplished propaganda films ever made.

The Eternal Jew **[1940]**
d. Fritz Hippler
Another of the Third Reich's propaganda films, this one is done in documentary style, giving it a look of authenticity that describes Jews worldwide in terms of an infestation of rats.

The Ducktators **[1942]**
d. Norm McCabe
Mel Blanc provides the voices of Hitler Duck, Hirohito Duck, and Mussolini Duck all trying to take over the barnyard. The Allies are portrayed as the Dove of Peace.

[EUGENICS]

Ninteen Eighty-Four **[1984]**
d. Michael Radford
George Orwell's classic story of a totalitarian society where a man (John Hurt) rewrites history for a living then does the unthinkable and falls in love.

[GUATEMALA]

Under the Gun: Democracy in Guatemala **[1987]**
d. Pat Goudvis and Robert Richter
A inside look at life in Guatemala where military and civilians fight for control and human rights issues remain.

First Run/Icarus films

The Man We Called Juan Carlos **[2001]**
d. Heather MacAndrew and David Springbett
This film tells the story of Wenceslao Armira, a man called Juan Carlos, whose two children were murdered by death squads.

Bullfrog Films

[HIROSHIMA]

No More Hiroshima **[1984]**
d. Martin Duckworth
A documentary of the hibakusha's (survivors) of Hiroshima.

[IRAQ]

Paying the Price: Killing the Children of Iraq **[2000]**
d. John Pilger
This film reveals the devastation that the sanctions on Iraq have had on its children.

[IRAN]

The Tree That Remembers **[2002]**
d. Masoud Raouf
A young Iranian student hangs himself from a tree outside a town in Ontario, Canada. This film investigates what his life and those who feel betrayed by the 1979 Iranian revolution.

Bullfrog Films

[KOSOVO]

Kosovo: Rebuilding the Dream **[2003]**
This documentary looks at efforts to rebuild Kosovo under the protection of the UN Interim Administration Mission.

First Run/Icarus Films

[KURDS]

In the Name of Honour **[2000]**
d. Alex Gabbay
This documentary looks at the oppression of the minority Kurds in northern Iraq and how violence is being directed more at women.

Bullfrog Films

[NUREMBERG TRIALS]

Judgment at Nuremberg **[1961]**
d. Stanley Kramer
The trial of the Nazi war criminals by a U.S. court in 1948 Germany.

1961 Academy Awards: Best Screenplay and Best Supporting Actor (Maximilian Schell)

[P.O.W. CAMPS]

Stalag 17 **[1953]**
d. Billy Wilder
A film about Allied prisoners in a German POW camp, starring William Holden as the cocky American outwitting the Germans.

The Bridge on the River Kwai **[1957]**
d. David Lean
British soldiers are forced into labor to build a bridge for their Japanese captors that the Allied forces plan to blow up.

1957 Academy Awards: Best Picture, Best Director, Best Screenplay Based on other Material, Best Editing and Cinematography, Best Music Score and Best Actor, (Alec Guinness)

The Great Escape **[1963]**
d. John Sturges
The Allied soldiers in a German POW camp make a daring escape. An all-star cast lead by Steve McQueen.

[ROMANIA]

Diamonds in the Dark **[1999]**
d. Olivia Carrescia
Life before and after the Ceausescus regime as told by ten Romanian women.

[ROMANIS]

A Cry for Roma **[2003]**
d. Gillian Darling Kovanic
A stark look at the continued persecution of Europe's most reviled minority, the Romani's.

[RWANDA]

Rwandan Nightmare **[1994]**
d. Simon Gallimore
A documentary that probes the slaughter of over a million Rwandans.

Chronicle of a Genocide Foretold **[1996]**
d. Daniele Lacourse and Yvan Patry
The massacre of 800,000 Tutsi men, women, and children are the focus of this film.

[STALIN]

The War Symphonies **[1997]**
d. Larry Weinstein
This film focuses on Stalin's bloody purges and Shostakovich's musical response.

[WAR CRIMES]

The Deer Hunter **[1978]**
d. Michael Cimino
Harrowing film of the horrors of war during the Vietnam era. This story follows three friends from a small mining town in Pennsylvania and the impact their tour of duty has on them. Robert de Niro and Christopher Walken star.

1978 Academy Award Winner: Best Picture, Best Sound, Best Director, Best Editing and Best Supporting Actor (Christopher Walken).

Apocalypse Now **[1979]**
d. Francis Ford Coppola
This film based on Joseph Conrad's *Heart of Darkness,* focuses on a mission assigned to Captain Willard (Martin Sheen) to kill a renegade Green Beret (Marlon Brando).

1997 Academy Award winner: Best Sound, Best Cinematography

Platoon **[1986]**
d. Oliver Stone
The story of a young recruit (Charlie Sheen) in Vietnam and the horrors of war he experiences.

1986 Academy Award winner: Best Picture, Best Director, Best Editing, Best Sound

Full Metal Jacket **[1987]**
d. Stanley Kubrick
A group of soldiers in Vietnam become dehumanized by their experiences of war.

Kim's Story: The Road From Vietnam **[1996]**
d. Shelley Saywell
This film is the story of the little girl, Kim Phuc, whose photo of her running naked down the street burned from napalm fueled the antiwar movement and what became of her.

The Quiet American **[2002]**
d. Phillip Noyce
This film takes place in Vietnam before the war when U.S. interests and a British reporter collide over the love of a woman.

primary sources

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Charter of the International Military Tribunal

SOURCE The Avalon Project at Yale Law School website. Available from http://www.yale.edu/lawweb/avalon/avalon.htm.

INTRODUCTION The Charter of the International Military Tribunal was adopted by the London Conference, held from June until early August 1945. Only four countries, the United States, the United Kingdom, France, and the Soviet Union, participated in the conference, although the Charter was subsequently ratified by several other countries. It was the first international criminal tribunal, and the Charter itself included many innovations, including controversial new definitions of war crimes, crimes against peace and crimes against humanity. The concept of crimes against humanity, first elaborated in the Nuremberg Charter, was meant to address atrocities committed by the Nazis against their own civilian populations, and more specifically the attempt to exterminate the Jews. The participants at the London Conference were nervous about establishing a precedent by which gross violations of human rights could be prosecuted under international law, and they consequently limited the concept of crimes against humanity to acts committed in the context of an illegal international war. It was largely in reaction to this that other states, in 1946, proposed a definition of genocide that recognized it could be committed in peacetime as well as during armed conflict.

I. Constitution of the International Military Tribunal

Article 1

In pursuance of the Agreement signed on the 8th day of August 1945 by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Union of Soviet Socialist Republics, there shall be established an International Military Tribunal (hereinafter called "the Tribunal") for the just and prompt trial and punishment of the major war criminals of the European Axis.

Article 2

The Tribunal shall consist of four members, each with an alternate. One member and one alternate shall be appointed by each of the Signatories. The alternates shall, so far as they are able, be present at all sessions of the Tribunal. In case of illness of any member of the Tribunal or his incapacity for some other reason to fulfill his functions, his alternate shall take his place.

Article 3

Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their Counsel. Each Signatory may replace its members of the Tribunal or his alternate for reasons of health or for other good reasons, except that no replacement may take place during a Trial, other than by an alternate.

Article 4

(a) The presence of all four members of the Tribunal or the alternate for any absent member shall be necessary to constitute the quorum.

(b) The members of the Tribunal shall, before any trial begins, agree among themselves upon the selection from their number of a President, and the President shall hold office during the trial, or as may otherwise be agreed by a vote of not less than three members. The principle of rotation of presidency for successive trials is agreed. If, however, a session of the Tribunal takes place on the territory of one of the four Signatories, the representative of that Signatory on the Tribunal shall preside.

(c) Save as aforesaid the Tribunal shall take decisions by a majority vote and in case the votes are evenly divided, the vote of the President shall be decisive: provided always that convictions and sentences shall only be imposed by affirmative votes of at least three members of the Tribunal.

Article 5

In case of need and depending on the number of the matters to be tried, other Tribunals may be set up; and the establishment, functions, and procedure of each Tribunal shall be identical, and shall be governed by this Charter.

II. Jurisdiction and General Principles

Article 6

The Tribunal established by the Agreement referred to m Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.

Article 7

The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8

The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

Article 9

At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

After the receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard.

Article 10

In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individual to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organization is considered proved and shall not be questioned.

Article 11

Any person convicted by the Tribunal may be charged before a national, military or occupation court, referred to in Article 10 of this Charter, with a crime other than of membership in a criminal group or organization and such court may, after convicting him, impose upon him punishment independent of and additional to the punishment imposed by the Tribunal for participation in the criminal activities of such group or organization.

Article 12

The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has not been

found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.

Article 13

The Tribunal shall draw up rules for its procedure. These rules shall not be inconsistent with the provisions of this Charter.

III. Committee for the Investigation and Prosecution of Major War Criminals.

Article 14

Each Signatory shall appoint a Chief Prosecutor for the investigation of the charges against and the prosecution of major war criminals.

The Chief Prosecutors shall act as a committee for the following purposes:

(a) to agree upon a plan of the individual work of each of the Chief Prosecutors and his staff,

(b) to settle the final designation of major war criminals to be tried by the Tribunal,

(c) to approve the Indictment and the documents to be submitted therewith,

(d) to lodge the Indictment and the accompany documents with the Tribunal,

(e) to draw up and recommend to the Tribunal for its approval draft rules of procedure, contemplated by Article 13 of this Charter. The Tribunal shall have the power to accept, with or without amendments, or to reject, the rules so recommended.

The Committee shall act in all the above matters by a majority vote and shall appoint a Chairman as may be convenient and in accordance with the principle of rotation: provided that if there is an equal division of vote concerning the designation of a Defendant to be tried by the Tribunal, or the crimes with which he shall be charged, that proposal will be adopted which was made by the party which proposed that the particular Defendant be tried, or the particular charges be preferred against him.

Article 15

The Chief Prosecutors shall individually, and acting in collaboration with one another, also undertake the following duties:

(a) investigation, collection and production before or at the Trial of all necessary evidence,

(b) the preparation of the Indictment for approval by the Committee in accordance with paragraph (c) of Article 14 hereof,

(c) the preliminary examination of all necessary witnesses and of all Defendants,

(d) to act as prosecutor at the Trial,

(e) to appoint representatives to carry out such duties as may be assigned them,

(f) to undertake such other matters as may appear necessary to them for the purposes of the preparation for and conduct of the Trial.

It is understood that no witness or Defendant detained by the Signatory shall be taken out of the possession of that Signatory without its assent.

IV. FAIR TRIAL FOR DEFENDANTS

Article 16

In order to ensure fair trial for the Defendants, the following procedure shall be followed:

(a) The Indictment shall include full particulars specifying in detail the charges against the Defendants. A copy of the Indictment and of all the documents lodged with the Indictment, translated into a language which he understands, shall be furnished to the Defendant at reasonable time before the Trial.

(b) During any preliminary examination or trial of a Defendant he will have the right to give any explanation relevant to the charges made against him.

(c) A preliminary examination of a Defendant and his Trial shall be conducted in, or translated into, a language which the Defendant understands.

(d) A Defendant shall have the right to conduct his own defense before the Tribunal or to have the assistance of Counsel.

(e) A Defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defense, and to cross-examine any witness called by the Prosecution.

V. POWERS OF THE TRIBUNAL AND CONDUCT OF THE TRIAL

Article 17

The Tribunal shall have the power

(a) to summon witnesses to the Trial and to require their attendance and testimony and to put questions to them

(b) to interrogate any Defendant,

(c) to require the production of documents and other evidentiary material,

(d) to administer oaths to witnesses,

(e) to appoint officers for the carrying out of any task designated by the Tribunal including the power to have evidence taken on commission.

Article 18

The Tribunal shall

(a) confine the Trial strictly to an expeditious hearing of the cases raised by the charges,

(b) take strict measures to prevent any action which will cause reasonable delay, and rule out irrelevant issues and statements of any kind whatsoever,

(c) deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any Defendant or his Counsel from some or all further proceedings, but without prejudice to the determination of the charges.

Article 19

The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and nontechnical procedure, and shall admit any evidence which it deems to be of probative value.

Article 20

The Tribunal may require to be informed of the nature of any evidence before it is entered so that it may rule upon the relevance thereof.

Article 21

The Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof. It shall also take judicial notice of official governmental documents and reports of the United Nations, including the acts and documents of the committees set up in the various allied countries for the investigation of war crimes, and of records and findings of military or other Tribunals of any of the United Nations.

Article 22

The permanent seat of the Tribunal shall be in Berlin. The first meetings of the members of the Tribunal and of the Chief Prosecutors shall be held at Berlin in a place to be designated by the Control Council for Germany. The first trial shall be held at Nuremberg, and any subsequent trials shall be held at such places as the Tribunal may decide.

Article 23

One or more of the Chief Prosecutors may take part in the prosecution at each Trial. The function of any Chief Prosecutor may be discharged by him personally, or by any person or persons authorized by him. The function of Counsel for a Defendant may be discharged at the Defendant's request by any Counsel professionally qualified to conduct cases before the Courts of his own country, or by any other person who may be specially authorized thereto by the Tribunal.

Article 24

The proceedings at the Trial shall take the following course:

(a) The Indictment shall be read in court.

(b) The Tribunal shall ask each Defendant whether he pleads "guilty" or "not guilty."

(c) The prosecution shall make an opening statement.

(d) The Tribunal shall ask the prosecution and the defense what evidence (if any) they wish to submit to the Tribunal, and the Tribunal shall rule upon the admissibility of any such evidence.

(e) The witnesses for the Prosecution shall be examined and after that the witnesses for the Defense. Thereafter such rebutting evidence as may be held by the Tribunal to be admissible shall be called by either the Prosecution or the Defense.

(f) The Tribunal may put any question to any witness and to any defendant, at any time.

(g) The Prosecution and the Defense shall interrogate and may crossexamine any witnesses and any Defendant who gives testimony.

(h) The Defense shall address the court.

(i) The Prosecution shall address the court.

(j) Each Defendant may make a statement to the Tribunal.

(k) The Tribunal shall deliver judgment and pronounce sentence.

Article 25

All official documents shall be produced, and all court proceedings conducted, in English, French and Russian, and in the language of the Defendant. So much of the record and of the proceedings may also be translated into the language of any country in which the Tribunal is sitting, as the Tribunal is sitting, as the Tribunal considers desirable in the interests of the justice and public opinion.

VI. JUDGMENT AND SENTENCE

Article 26

The judgment of the Tribunal as to the guilt or the innocence of any Defendant shall give the reasons on which it is based, and shall be final and not subject to review.

Article 27

The Tribunal shall have the right to impose upon a Defendant, on conviction, death or such other punishment as shall be determined by it to be just.

Article 28

In addition to any punishment imposed by it, the Tribunal shall have the right to deprive the convicted person of any stolen property and order its delivery to the Control Council for Germany.

Article 29

In case of guilt, sentences shall be carried out in accordance with the orders of the Control Council for Germany, which may at any time reduce or otherwise alter the sentences, but may not increase the severity thereof. If the Control Council for Germany, after any Defendant has been convicted and sentenced, discovers fresh evidence which, in its opinion, would found a fresh charge against him, the Council shall report accordingly to the Committee established under Article 14 hereof, for such action as they may consider proper, having regard to the interests of justice.

VII. EXPENSES

Article 30

The expenses of the Tribunal and of the Trials, shall be charged by the Signatories against the funds allotted for maintenance of the Control Council of Germany.

Circular Letter from the Orgburo TsK RK(b) Concerning Relations with the Cossacks

INTRODUCTION During World War II Stalin ordered the deportation of a large part of this population which was incorporated in Russia since 1654, accusing the Cossacks to sympathize with Germany.

24 January 1919
Circular. Secret.

The latest events on different fronts in the Cossack regions — our advance into the interior of the Cossack settlements and the disintegration among the Cossack hosts — compels us to give instructions to party workers about the character of their work during the reestablishment and strengthening of Soviet power in the said regions. It is necessary to recognize, based on the experience of the civil war with the Cossacks, that the most merciless struggle with all the upper layers of the Cossacks through their extermination to a man is the only correct policy. No compromises or half-heartedness whatsoever are acceptable.

Therefore it is necessary:

1. To carry out mass terror against wealthy Cossacks, exterminating them to a man; to carry out merciless mass terror in relations to all Cossacks have taken part in any way directly or indirectly in the struggle with the Soviet power. Against the middle Cossacks it is necessary to take all those measures which give a guarantee against any attempt on their part [to join] a new attack on Soviet power.

2. To confiscate grain and force [them] to gather all surpluses in designated points; this applies both to grain and all other agricultural products.

3. To take all measures assisting the resettlement of newly arrived poor, organizing this settlement where possible.

4. To equalize newly arrive Inogorodnie with the Cossacks in land and in all other relations.

5. To carry out complete disarmament, shooting those who after the time of handing over are found to have arms.

6. To give arms only to reliable elements from the Inogorodnie.

7. Armed detachments are to be stationed in Cossack stanitsas henceforward until the establishment of complete order.

8. To order all commissars appointed to this or that Cossack settlement to show maximum firmness and to carry out the present orders unswervingly.

TsK imposes the obligation on Narkomzem to work out quickly practical measures concerning the mass resettlement of poor on Cossack land to be carried out through the corresponding soviet institutions.

Central Committee RKP RGASPI f.17, op.4. d. 7, l.5.

Control Council Law No. 10

SOURCE The Avalon Project at Yale Law School. Available from http://www.yale.edu/lawweb/avalon/avalon.htm

INTRODUCTION After the victory over the Nazis, a government of occupation was established under what was known as the Control Council. Although the International Military Tribunal at Nuremberg was responsible for prosecuting the major Nazi war criminals, the Control Council issued Law No. 10 to provide a legal framework for the trials of 'lesser' Nazis. Many prosecutions were subsequently carried out, the most well-known being a series of specialized trials organized by the United States. These were held in the same courthouse at Nuremberg where the trial of the major criminals had taken place. Collective trials were held of Nazi judges and prosecutors, businessmen, military commanders, civilian administrators, and leaders of the SS. Control Council Law No. 10 is broadly similar to the Charter of the Nuremberg Tribunal.

PUNISHMENT OF PERSONS GUILTY OF WAR CRIMES, CRIMES AGAINST PEACE AND AGAINST HUMANITY

In order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, the Control Council enacts as follows:

Article I

The Moscow Declaration of 30 October 1943 "Concerning Responsibility of Hitlerites for Committed Atrocities" and the London Agreement of 8 August 1945 "Concerning Prosecution and Punishment of Major War Criminals of European Axis" are made integral parts of this Law. Adherence to the provisions of the London Agreement by any of the United Nations, as provided for in Article V of that Agreement, shall not entitle such Nation to participate or interfere in the operation of this Law within the Control Council area of authority in Germany.

Article II

1. Each of the following acts is recognized as a crime:

(a) Crimes against Peace. Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) War Crimes. Atrocities or offenses against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

(c) Crimes against Humanity. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal.

2. Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime or (f) with reference to paragraph 1 (a) if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, cobelligerents or satellites or held high position in the financial, industrial or economic life of any such country.

3. Any persons found guilty of any of the crimes above mentioned may upon conviction be punished as shall be determined by the tribunal to be just. Such punishment may consist of one or more of the following:

(a) Death.

(b) Imprisonment for life or a term of years, with or without hard labor.

(c) Fine, and imprisonment with or without hard labour, in lieu thereof.

(d) Forfeiture of property.

(e) Restitution of property wrongfully acquired.

(f) Deprivation of some or all civil rights.

Any property declared to be forfeited or the restitution of which is ordered by the Tribunal shall be delivered to the Control Council for Germany, which shall decide on its disposal.

4. (a) The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment. (b) The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation.

5. In any trial or prosecution for a crime herein referred to, the accused shall not be entitled to the benefits of any statute of limitation in respect to the period from 30 January 1933 to 1 July 1945, nor shall any immunity, pardon or amnesty granted under the Nazi regime be admitted as a bar to trial or punishment.

Article III

1. Each occupying authority, within its Zone of Occupation,

(a) shall have the right to cause persons within such Zone suspected of having committed a crime, including those charged with crime by one of the United Nations, to be arrested and shall take under control the property, real and personal, owned or controlled by the said persons, pending decisions as to its eventual disposition.

(b) shall report to the Legal Directorate the name of all suspected criminals, the reasons for and the places of their detention, if they are detained, and the names and location of witnesses.

(c) shall take appropriate measures to see that witnesses and evidence will be available when required.

(d) shall have the right to cause all persons so arrested and charged, and not delivered to another authority as herein provided, or released, to be brought to trial before an appropriate tribunal. Such tribunal may, in the case of crimes committed by persons of German citizenship or nationality against other persons of German citizenship or nationality, or stateless persons, be a German Court, if authorized by the occupying authorities.

2. The tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedure thereof shall be determined or designated by each Zone Commander for his respective Zone. Nothing herein is intended to, or shall impair or limit the Jurisdiction or power of any court or tribunal now or hereafter established in any Zone by the Commander thereof, or of the International Military Tribunal established by the London Agreement of 8 August 1945.

3. Persons wanted for trial by an International Military Tribunal will not be tried without the consent of the Committee of Chief Prosecutors. Each Zone Commander will deliver such persons who are within his Zone to that committee upon request and will make witnesses and evidence available to it.

4. Persons known to be wanted for trial in another Zone or outside Germany will not be tried prior to decision under Article IV unless the fact of their apprehension has been reported in accordance with Section 1 (b) of this Article, three months have elapsed thereafter, and no request for delivery of the type contemplated by Article IV has been received by the Zone Commander concerned.

5. The execution of death sentences may be deferred by not to exceed one month after the sentence has become final when the Zone Commander concerned has reason to believe that the testimony of those under sentence would be of value in the investigation and trial of crimes within or without his zone.

6. Each Zone Commander will cause such effect to be given to the judgments Of courts of competent jurisdiction, with respect to the property taken under his control pursuant thereto, as he may deem proper in the interest of Justice.

Article IV

1. When any person in a Zone in Germany is alleged to have committed a crime, as defined in Article II, in a country other than Germany or in another Zone, the government of that nation or the Commander of the latter Zone, as the case may be, may request the Commander of the Zone which the person is located for his arrest and delivery for trial to the country or Zone in which the crime was committed. Such request for delivery shall be granted by the Commander receiving it unless he believes such person is wanted for trial or as a witness by an International Military Tribunal, or in Germany, or in a nation other than the one making the request, or the Commander is not satisfied that delivery should be made, in any of which cases he shall have the right to forward the said request to the Legal Directorate of the Allied Control Authority. A similar procedure shall apply to witnesses, material exhibits and other forms of evidence.

2. The Legal Directorate shall consider all requests referred to it, and shall determine the same in accordance with the following principles, its determination to be communicated to the Zone Commander.

(a) A person wanted for trial or as a witness by an International Military Tribunal shall not be delivered for trial or required to give evidence outside Germany, as the case may be, except upon approval by the Committee of Chief Prosecutors acting under the London Agreement of 8 August 1945.

(b) A person wanted for trial by several authorities (other than an International Military Tribunal) shall be disposed of in accordance with the following priorities:

(1) If wanted for trial in the Zone in which he is, he should not be delivered unless arrangements are made for his return after trial elsewhere;

(2) If wanted for trial in a Zone other than that in which he is, he should be delivered to that Zone in preference to delivery outside Germany unless arrangements are made for his return to that Zone after trial elsewhere;

(3) If wanted for trial outside Germany by two or more of the United Nations, of one of which he is a citizen, that one should have priority;

(4) If wanted for trial outside Germany by several countries, not all of which are United Nations, United Nations should have priority;

(5) If wanted for trial outside Germany by two or more of the United Nations, then, subject to Article IV 2 (b) (3) above, that which has the most serious charges against him, which are moreover supported by evidence, should have priority.

Article V

The delivery, under Article IV of this law, of persons for trial shall be mades on demands of the Governments or Zone Commanders in such a manner that the delivery of criminals to one jurisdiction will not become the means of defeating or unnecessarily delaying the carrying out of justice in another place. If within six months the delivered person has not been convicted by the Court of the Zone or country to which he has been delivered, then such person shall be returned upon demand of the Commander of the Zone where the person was located prior to delivery.

Done at Berlin, 20 December 1945.
(Signed) Joseph T. McNarney
JOSEPH T. MCNARNEY
General, U. S. Armyt

(Signed) Bernard B. Montgomery
BERNARD B. MONTGOMERY Field Marshall

(Signed) Louis Koeltz, General d'Corps de Armee for PIEIRR KOENIG
General d'Armee

(Signed) Georgi Zhukov GEORGI ZHUKOV
Marshall of the Soviet Union

General Lothar Von Trotha Extermination Order against the Herero

SOURCE Gewalt, Jan-Bart, trans. (1999). *Herero Heroes.* Oxford, U.K.: James Currey. See pages 172–173. Also available from Namibian National Archives Windhoek, ZBU (Zentralbureau) D.1.a Band 3–4, leaf 165.

INTRODUCTION The order given by General Lothar von Trotha is one of the first documented instances of a policy of genocide. The order was ruthlessly carried out and resulted in the extermination of nearly 90 percent of the Herero. The descendants of the the survivors are seeking reparations for the genocide.

October 2, 1904

I the great General of the German troops send this letter to the Herero people.

The Herero are no longer German subjects. They have murdered and stolen, they have cut off the ears, noses and other body parts of wounded soldiers, now out of captain will receive 1000 Mark, whoever delivers Samuel will receive 5000 Mark. The Herero people must however leave the land. If the populace does not do this I will force them with the *Groot Rohr* [cannon]. Within the German borders every Herero, with or without a gun, with or without cattle, will be shot. I will no longer accept women and children, I will drive them back to their people or I will let them be shot at.

These are my words to the Herero people.

The great General of the mighty German Kaiser.

January 11, 1994, Cable of General Dallaire to UN Headquarters

SOURCE Available from http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/rw011194.pdf.

INTRODUCTION On January 10, 1994, General Romeo Dallaire, the Force Commander for UNAMIR in Rwanda, received the most important information from the Chief Trainer of the Interahamwe, the militia of the MRND party, indicating a plot to subvert the peace agreement, slaughter Tutsis at the rate of 1,000 Tutsis every 20 minutes, and kill ten Belgian soldiers to induce the Belgian government to withdraw its peacekeeping contingent. He also informed UNAMIR of four large stocks weapons. In addition, he said that there was a spy on the UN Secretary-General's Special Representative's (Jacques Roger Booh-Booh) staff. In return for revealing the locations of the arms caches, the informer requested that he and his family be provided with asylum in the West. When General Dallaire informed New York headquarters (see the cable below) of his plans to go after the arms caches, the plan was immediately vetoed. Further, Dallaire was instructed to inform President Habyarimana immediately about the information. In investigations afterwards, and in spite of plenty of information that the cable was seen as a crucial item, Riza and Annan first claimed not to have any recollection of the cable, and later said that they received so much information that they did not realize its significance. However, they never ordered any further investigation. The suppression of the cable and follow-up action was the most blatant example of a missed early warning opportunity so necessary to the prevention and mitigation of genocide.

Date: 11 January 1994

To: Baril/DPKO/UNATIONS NEW YORK

From: Dallaire/UNAMIR/KIGALI

Subject: Request for protection for informant

Attn: MGen Baril Room No.2052

Force commander put in contact with informant by very very important government politician. Informant is a top level trainer in the cadre of Interhamwe-armed militia of MRND.

He informed us he was in charge of last Saturday's demonstrations which aims were to target deputies of opposition parties coming to ceremonies and Belgian soldiers. They hoped to provoke the RPF BN to engage (being fired upon) the demonstrators and provoke a civil war. Deputies were to be assassinated upon entry or exit from Parliament. Belgian troops were to be provoked and if Belgians soldiers resorted to force a number of them were to be killed and thus guarantee Belgian withdrawal from Rwanda.

Informant confirmed 48 RGF CDO and a few members of the Gendarmerie participated in demonstrations in plain clothes. Also at least one minister of the MRND and the Sous-Prefect of Kigali were in the demonstration. RGF and Interhamwe provided radio communications.

Informant is a former security member of the president. He also stated he is paid RF150,000 per month by the MRND party to train Interhamwe. Direct link is to Chief of Staff RGF and president of the MRND for financial and material support.

Interhamwe has trained 1700 men in RGF military camps outside the capital. The 1700 are scattered in groups of 40 throughout Kigali. Since UNAMIR deployed he has trained 300 personnel in three week training sessions at RGF camps. Training focus was discipline, weapons, explosives, close combat and tactics.

Principal aim of Interhamwe in the past was to protect Kigali from RPF. Since unamir mandate he has been ordered to register all Tutsi in Kigali. He suspects it is for their extermination. Example he gave was that in 20 minutes his personnel could kill up to 1000 Tutsis.

Informant states he disagrees with anti-Tutsi extermination. He supports opposition to RPF, but cannot support killing of innocent persons. He also stated that he believes the president does not have full control over all elements of his old party/faction.

Informant is prepared to provide location of major weapons cache with at least 135 weapons. He already has distributed 110 weapons including 35 with ammunition and can give us details of their location. Type of weapons are G3 and AK47 provided by RGF. He was ready to go to the arms cache tonight—if we gave him the following guarantee. He requests that he and his family (his wife and four children) be placed under our protection.

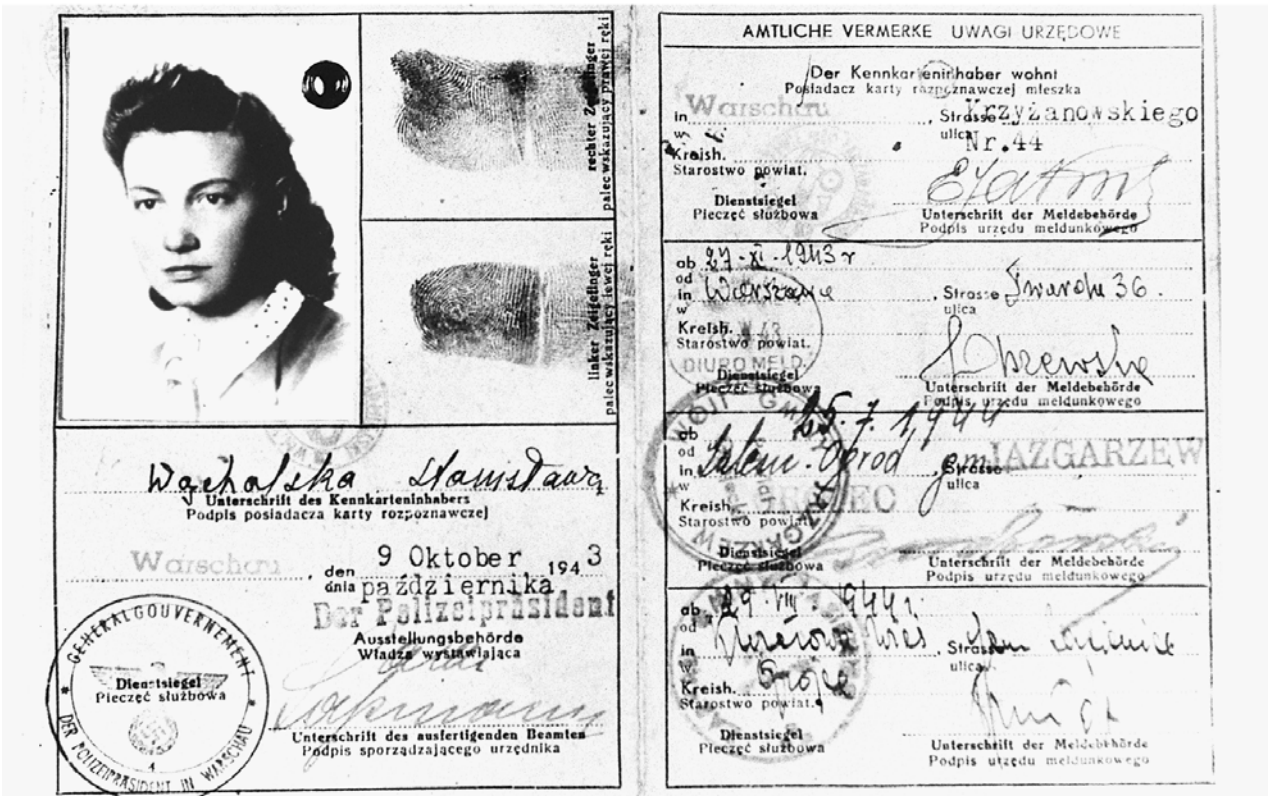
It is our intention to take action within the next 36 hours with a possible H-Hr of Wednesday at dawn (local). Informant states that hostilities may commence again if political deadlock ends. Violence could take place day of the ceremonies or the day after. Therefore, Wednesday will give greatest chance of success and also be most timely to provide significant input to ongoing political negotiations.

It is recommended the informant be granted protection and evacuated out of Rwanda. This HQ does not have previous UN experience in such matters and urgently requests guidance. No contact has as yet been made to any embassy in order to inquire if they are prepared to protect him for a period of time by granting diplomatic immunity in their embassy in Kigali before moving him and his family out of the country.

Force Commander will be meeting with the very very important political person tomorrow morning in order to ensure that this individual is conscious of all parameters of his involvement. Force Commander does have certain reservations on the suddenness of the change of heart of the informant to come clean with this information. Recce of armed cache and detailed planning of raid to go on late tomorrow. Possibility of a trap not fully excluded, as this may be a set-up against the very very important political person. Force Commander to inform SRSG first thing in morning to ensure his support.

Nazi-Era Identity Cards

INTRODUCTION The Nazi regime introduced laws and regulations designed to classify all persons by race, making it easier to target Jews and other disfavored minorities. The ultimate result was genocide. The identity documents here distinguish between "Aryan" and "Jew."



The identity card required by the Nazis soon singled out all Jews living in Germany and other countries invaded by the Third Reich. (top). False identification card issued in name of Stanislawa Wachalska, that was used by Feigele Peltel (now Vladka Meed) while serving as a courier for the Jewish underground in Warsaw (bottom). [USHMM]

Order by the Commander of the Military Division of the Mississippi, January 15, 1865

INTRODUCTION General Sherman issued the following order to General Rufus Saxton to divide land confiscated from rebellious landowners in Southern States into forty-acre tracts and distribute them to slaves freed under President Abraham Lincoln's Emancipation Proclamation. The government was to loan out mules to help work the land. The order and land titles were rescinded by President Andrew Johnson after the assassination of President Lincoln, despite the fact that some 40,000 free men had been provided with homes under the Order's provisions. Many of those who had received land were later forcibly removed. General Sherman's Order and its implementation remain in discussion as one basis of claims for slave reparations.

THE FIELD, SAVANNAH, GA., January 16th, 1865.

SPECIAL FIELD ORDERS, No. 15.

I. The islands from Charleston, south, the abandoned rice fields along the rivers for thirty miles back from the sea, and the country bordering the St. Johns river, Florida, are reserved and set apart for the settlement of the negroes now made free by the acts of war and the proclamation of the President of the United States.

II. At Beaufort, Hilton Head, Savannah, Fernandina, St. Augustine and Jacksonville, the blacks may remain in their chosen or accustomed vocations-but on the islands, and in the settlements hereafter to be established, no white person whatever, unless military officers and soldiers detailed for duty, will be permitted to reside; and the sole and exclusive management of affairs will be left to the freed people themselves, subject only to the United States military authority and the acts of Congress. By the laws of war, and orders of the President of the United States, the negro is free and must be dealt with as such. He cannot be subjected to conscription or forced military service, save by the written orders of the highest military authority of the Department, under such regulations as the President or Congress may prescribe. Domestic servants, blacksmiths, carpenters and other mechanics, will be free to select their own work and residence, but the young and able-bodied negroes must be encouraged to enlist as soldiers in the service of the United States, to contribute their share towards maintaining their own freedom, and securing their rights as citizens of the United States.

Negroes so enlisted will be organized into companies, battalions and regiments, under the orders of the United States military authorities, and will be paid, fed and clothed according to law. The bounties paid on enlistment may, with the consent of the recruit, go to assist his family and settlement in procuring agricultural implements, seed, tools, boots, clothing, and other articles necessary for their livelihood.

III. Whenever three respectable negroes, heads of families, shall desire to settle on land, and shall have selected for that purpose an island or a locality clearly defined, within the limits above designated, the Inspector of Settlements and Plantations will himself, or by such subordinate officer as he may appoint, give them a license to settle such island or district, and afford them such assistance as he can to enable them to establish a peaceable agricultural settlement. The three parties named will subdivide the land, under the supervision of the Inspector, among themselves and such others as may choose to settle near them, so that each family shall have a plot of not more than (40) forty acres of tillable ground, and when it borders on some water channel, with not more than 800 feet water front, in the possession of which land the military authorities will afford them protection, until such time as they can protect themselves, or until Congress shall regulate their title. The Quartermaster may, on the requisition of the Inspector of Settlements and Plantations, place at the disposal of the Inspector, one or more of the captured steamers, to ply between the settlements and one or more of the commercial points heretofore named in orders, to afford the settlers the opportunity to supply their necessary wants, and to sell the products of their land and labor.

IV. Whenever a negro has enlisted in the military service of the United States, he may locate his family in any one of the settlements at pleasure, and acquire a homestead, and all other rights and privileges of a settler, as though present in person. In like manner, negroes may settle their families and engage on board the gunboats, or in fishing, or in the navigation of the inland waters, without losing any claim to land or other advantages derived from this system. But no one, unless an actual settler as above defined, or unless absent on Government service, will be entitled to claim any right to land or property in any settlement by virtue of these orders.

V. In order to carry out this system of settlement, a general officer will be detailed as Inspector of Settlements and Plantations, whose duty it shall be to visit the settlements, to regulate their police and general management, and who will furnish personally to each head of a family, subject to the approval of the President of the United States, a possessory title in writing, giving as near as possible the description of boundaries;

and who shall adjust all claims or conflicts that may arise under the same, subject to the like approval, treating such titles altogether as possessory. The same general officer will also be charged with the enlistment and organization of the negro recruits, and protecting their interests while absent from their settlements; and will be governed by the rules and regulations prescribed by the War Department for such purposes.

VI. Brigadier General R. SAXTON is hereby appointed Inspector of Settlements and Plantations, and will at once enter on the performance of his duties. No change is intended or desired in the settlement now on Beaufort [Port Royal] Island, nor will any rights to property heretofore acquired be affected thereby.

BY ORDER OF MAJOR GENERAL W. T. SHERMAN:

Special Field Orders, No. 15, Headquarters Military Division of the Mississippi, 16 Jan. 1865, Orders & Circulars, ser. 44, Adjutant General's Office, Record Group 94, National Archives.

Principles of International Law Recognized in the Charter of the Nuremberg Tribunal

INTRODUCTION The Nuremberg Principles were adopted by the International Law Commission, acting under instructions from the United Nations General Assembly. They confirm a number of important principles, including the prohibition of the defense of superior orders, the denial of immunity for heads of state, and the liability of accomplices. In the *Eichmann* trial, the Israeli Supreme Court said that the Nuremberg Principles have become part of the law of nations and must be regarded as having been rooted in it also in the past.

Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal

Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

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 III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his 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 V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

(a) Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory; murder or ill treatment of prisoners of war, of persons on the Seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

* Text adopted by the Commission at its second session, in 1950, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the principles, appears in Yearbook of the International Law Commission, 1950, vol. II.

Resolution of the Council of People's Commissars of the Ukrainaian Soviet Socialist Republic and the Central Committee of the Communist Party (Bolshevik) of Ukraine on Blacklisting Villages That Mailiciously Sabotage the Collection of Grain

Addendum to the minutes of Politburo [meeting] No. 93.

In view of the shameful collapse of grain collection in the more remote regions of Ukraine, the Council of People's Commissars and the Central Committee call upon the oblast executive committees and the oblast [party] committees as well as the raion executive committees and the raion [party] committees: to break up the sabotage of grain collection, which has been organized by kulak and counterrevolutionary elements; to liquidate the resistance of some of the rural communists, who in fact have become the leaders of the sabotage; to eliminate the passivity and complacency toward the saboteurs, incompatible with being a party member; and to ensure, with maximum speed, full and absolute compliance with the plan for grain collection.

The Council of People's Commissars and the Central Committee resolve:

To place the following villages on the black list for overt disruption of the grain collection plan and for malicious sabotage, organized by kulak and counterrevolutionary elements:

1. village of Verbka in Pavlograd raion, Dnepropetrovsk oblast.

5. village of Sviatotroitskoe in Troitsk raion, Odessa oblast.

6. village of Peski in Bashtan raion, Odessa oblast.

The following measures should be undertaken with respect to these villages:

1. Immediate cessation of delivery of goods, complete suspension of cooperative and state trade in the villages, and removal of all available goods from cooperative and state stores.

2. Full prohibition of collective farm trade for both collective farms and collective farmers, and for private farmers.

3. Cessation of any sort of credit and demand for early repayment of credit and other financial obligations.

4. Investigation and purge of all sorts of foreign and hostile elements from cooperative and state institutions, to be carried out by organs of the Workers and Peasants Inspectorate.

5. Investigation and purge of collective farms in these villages, with removal of counterrevolutionary elements and organizers of grain collection disruption.

The Council of People's Commissars and the Central Committee call upon all collective and private farmers who are honest and dedicated to Soviet rule to organize all their efforts for a merciless struggle against kulaks and their accomplices in order to: defeat in their villages the kulak sabotage of grain collection; fulfill honestly and conscientiously their grain collection obligations to the Soviet authorities; and strengthen collective farms.

CHAIRMAN OF THE COUNCIL OF PEOPLE'S COMMISSARS OF THE UKRAINIAN SOVIET SOCIALIST REPUBLIC – V. CHUBAR'.
SECRETARY OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY (BOLSHEVIK) OF UKRAINE – S. KOSIOR.

6 December 1932.

UN General Assembly Resolution on Genocide

SOURCE Available from http://www.un.org/documents/ga/res/1/ares1.htm.

INTRODUCTION General Assembly Resolution 96(I) elevated the term *genocide*, first proposed by Raphael Lemkin in a scholarly work published two years earlier, to an internationally recognized crime. Resolution 96(I) mandated the United Nations to prepare a convention on the subject, and this process was completed two years later, in December 1948. The Resolution was initially proposed by Cuba, India, and Panama, who expressed their frustration with the definition of crimes against humanity used at Nuremberg. They argued that such serious atrocities should be punishable in peacetime as well as during war. Moreover, they urged the principle of universal jurisdiction over genocide, allowing its prosecution even by states with no direct link to the crime through either territory or nationality. The Resolution eliminated the troubling limitation to armed conflict that had been applied at Nuremberg, but failed to endorse the principle of universal jurisdiction. For reasons that remain obscure, the definition of genocide included political groups, but this was subsequently removed in the 1948 Convention.

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of man-

kind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United nations.

Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

The punishment of the crime of genocide is a matter of international concern.

The General Assembly, therefore,

Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices — whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds — are punishable;

Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime;

Recommends that international co-operation be organized between States with a view to facilitating the speedy prevention and punishment of the crime of genocide, and, to this end,

Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide to be submitted to the next regular session of the General Assembly.

Fifty-fifth plenary meeting,

11 December 1946.

Whitaker Report on Genocide, 1985

SOURCE Prevent Genocide International. Available from http://www.preventgenocide.org/prevent/UNdocs/whitaker/.

INTRODUCTION There have been two major United Nation documents on genocide, the Ruhashyankiko report of 1978 and the Whitaker report of 1985. Both are major studies of genocide from the standpoint of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (presently the Sub-Commission on Promotion and Protection of Human Rights), with the second report intended as a corrective to the former. Due to political pressure, the Ruhashyankiko report had been forced to delete any mention of the Armenian genocide. The Whitaker report, in contrast, concluded that the Armenian massacres had constituted genocide. The official cites for the reports are: Nicodeme Ruhashyankiko, "Report to the UN Sub-Commission on Prevention of Discrimination and Protection of National Minorities: Study of the Question of the Prevention and Punishment of the Crime of Genocide" (E/CN.4/Sub. 2/416, 4 July 1978), 186 pages; Ben Whitaker, "Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide" (E/CN.4/Sub. 2/416/1985/6, 2 July 1985), 62 pages.

The Report on genocide prepared by Ben Whitaker in 1985, for what is now called the United Nations Sub-Commission on the Promotion and Protection of Human Rights is one of the major contributions to the evolving law in this area. The Sub-Commission is an expert body which operates very much as a 'think tank' for the Commission on Human Rights. In the early 1970s, it mandated Nicodeme Ruhashyankiko to prepare a study on genocide that was to focus on the application and interpretation of the 1948 Convention. Ruhashyankiko's final report, presented in 1979, was very controversial because he had buckled to Turkish pressure and removed all references to the genocide of the Armenians. Subsequently, the Sub-Commission appointed Whitaker to prepare a revised and updated version, that rectified the omission of the Armenian genocide and also made many other innovative proposals. Whitaker's suggestion that the reference in the definition of genocide to destruction of a group 'in whole or in part' might refer not only to a numerically substantial proportion of the group, but also to a 'significant' part of the group, such as its intellectual, political or religious and cultural leadership, has been endorsed in subsequent judicial decisions.

PART I: HISTORICAL SURVEY

A. The crime of genocide and the purpose of this study

14. Genocide is the ultimate crime and the gravest violation of human rights it is possible to commit. Consequently, it is difficult to conceive of a heavier responsibility for the international community and the Human Rights bodies of the United Nations than to undertake any effective steps possible to prevent and punish genocide in order to deter its recurrence.

15. It has rightly been said that those people who do not learn from history, are condemned to repeat it. This belief underpins much of the Human Rights work of the United Nations. In order to prescribe the optimal remedies to prevent future genocide, it can be of positive assistance to diagnose past cases in order to analyse their causation together with such lessons as the international community may learn from the history of these events.

16. Genocide is a constant threat to peace, and it is essential to exercise the greatest responsibility when discussing a subject so emotive. It is certainly not the intention of this Study in anyway to comment on poli-

tics or to awaken bitterness or feelings of revenge. The purpose and hope of this Study is exactly the opposite: to deter future violence by strengthening collective international responsibility and remedies. It would undermine this purpose, besides violating historical truth as well as the integrity of United Nations Studies, were anybody guilty of genocide to believe that international concern might be averted or historical records changed because of political or other pressure. If such an attempt were to succeed, that would serve to encourage those in the future who may be contemplating similar crimes. Equally, it is necessary to warn that nothing in these historical events should be used to provide an excuse for further violence or vendettas: this Study is a warning directed against violence. Its object is to deter terrorism or killing of whatever scale, and to encourage understanding and reconciliation. The scrutiny of world opinion and an honest recognition of the truth about painful past events have been the starting point for a foundation of reconciliation, with, for example, post-war Germany, which will help to make the future more secure for humanity.

B. The concept of genocide

17. Amongst all human rights, the primacy of the right to life is unanimously agreed to be pre-eminent and essential: it is the sine qua non, for all other human rights (apart from that to one's posthumous reputation) depend for their potential existence on the preservation of human life. Every right can also only survive as a consequence of the exercise of responsibilities. The right of a person or people not to be killed or avoidably left to die depends upon the reciprocal duty of other people to render protection and help to avert this. The concept of this moral responsibility and interdependence in human society has in recent times received increasing international recognition and affirmation. In cases of famine in other countries, for example, the States parties to the International Covenant on Economic, Social and Cultural Rights in "recognizing the fundamental right of everyone to be free from hunger" have assumed responsibility to take "individually and through international co-operation" the measures required "to ensure an equitable distribution of world food supplies in relation to need".(1) The core of the right not to [Page 6] starve to death is a corollary of the right not to be killed, concerning which the duty of safeguarding life is recognized to extend not just to the individual's or group's own Government but to the international community as well.

18. More serious problems arise when the body responsible for threatening and causing death is — or is in complicity with — a State itself.(2) The potential victims in such cases need to turn individually and collectively for protection not to, but from, their own Government. Groups subject to extermination have a right to receive something more helpful than tears and condolences from the rest of the world. Action under the Charter of the United Nations is indeed specifically authorized by the Convention on the Prevention and Protection of the Crime of Genocide, and might as appropriate be directed for example to the introduction of United Nations trusteeship. States have an obligation, besides not to commit genocide, in addition to prevent and punish violations of the crime by others; and in cases of failure in this respect too, the 1948 Convention recognizes that intervention may be justified to prevent or suppress such acts and to punish those responsible "whether they are constitutionally responsible rulers, public officials or private individuals".

19. The Convention on Genocide was unanimously adopted by the United Nations General Assembly on 9 December 1948, and therefore preceded albeit by one day the Universal Declaration of Human Rights itself. While the word "genocide" is a comparatively recent neologism for an old crime,(3) the Convention's preamble notes 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".

20. Throughout recorded human history, war has been the predominant cause or pretext for massacres of national, ethnic, racial or religious groups. War in ancient and classical eras frequently aimed to exterminate if not enslave other peoples. Religious intolerance could also be a predisposing factor: in [Page 7] religious wars of the Middle Ages as well as in places in the Old Testament, some genocide was sanctioned by Holy Writ. The twentieth century equally has seen examples of "total wars" involving the destruction of civilian populations and which the development of nuclear weapons makes an almost inevitable matrix for future major conflicts. In the nuclear era, indeed the logical conclusion of this may be "omnicide".

21. Genocide, particularly of indigenous peoples, has also often occurred as a consequence of colonialism, with racism and ethnic prejudice commonly being predisposing factors. In some cases occupying forces maintained their authority by the terror of a perpetual threat of massacre.(5) Examples could occur either at home or overseas: the English for example massacred native populations in Ireland, Scotland and Wales in order to deter resistance and to "clear" land for seizure, and the British also almost wholly exterminated the indigenous people when colonizing Tasmania as late as the start of the nineteenth century. Africa, Australasia and the Americas witnessed numerous other examples.

The effect of genocide can be achieved in different ways: today, insensitive economic exploitation can threaten the extinction of some surviving indigenous peoples.

22. But genocide, far from being only a matter of historical study, is an aberration which also is a modern danger to civilization. No stronger evidence that the problem of genocide has — far from receding — grown in contemporary relevance is required than the fact that the gravest documented example of this crime is among the most recent, and furthermore occurred in the so-called developed world. Successive advances in killing-power underline that the need for international action against genocide is now more urgent than ever. It has been estimated that the Nazi holocaust in Europe slaughtered some 6 million Jews, 5 million Protestants, 3 million Catholics and half a million Gypsies. This was the product not of international warfare, but a calculated State political policy of mass murder that has been termed "a structural and systematic destruction of innocent people by a State bureaucratic apparatus".(6) The Nazi intention to destroy particular human nations, races, religions, sexual groups, classes and political opponents as a premeditated plan was manifested before the Second World War. The war later offered the Nazi German leaders an opportunity to extend this policy from their own country to the peoples of occupied Poland, parts of the Soviet Union and elsewhere, with an intention of Germanizing their territories. The "final solution" included (as evidenced at the Nuremberg trial), "delayed-action genocide" aimed at destroying groups' biological future through sterilization, castration, abortion, and the forcible transfer of their [Page 8] children.(7) The term genocide, with also its concept as an international crime, was first used officially at the subsequent International Tribunal at Nuremberg. The indictment of 8 October 1945 of the major German war criminals charged that the defendant had: "conducted deliberate" (8)

The concluding speech by the British Prosecutor stated that: "Genocide was not restricted to extermination of the" (9)

23. The present two German Governments have been unflinching in their acknowledgment and condemnation of these guilty events, in their efforts to guard against any repetition of them or of Nazism. The Government of the Federal Republic of Germany had stated that official action will be taken, without the need for complaint from any member of the public, to prosecute people who seek to deny the truth about the Nazi crimes. President von Weizsacker in a forthright recent speech to the Bundestag made clear his belief that his countrymen must have known during the war of the fate of the Jews: "The genocide of the Jews is without example in history . . . at the end of the war, the whole unspeakable truth of the holocaust emerged. Too many said they knew nothing, or had only an inkling of it. There is no guilt or innocence of a whole people because guilt, like innocence, is not collective but individual. All those who lived through that time with full awareness should ask themselves today, quietly, about their involvement."(10)

24. Toynbee stated that the distinguishing characteristics of the twentieth century in evolving the development of genocide "are that it is committed in cold blood by the deliberate fiat of holders of despotic political power, and that the perpetrators of genocide employ all the resources of present-day technology and organization to make their planned massacres systematic and complete". (11) The Nazi aberration has unfortunately not been the only case of genocide in the twentieth century. Among other examples which can be cited as qualifying are the German massacre of Hereros in 1904, (12) the Ottoman massacre of Armenians in 1915–1916, (13) the Ukrainian pogrom of Jews in 1919, (14) the Tutsi massacre of Hutu in Burundi in 1965 and 1972, (15) the Paraguayan massacre of Ache Indians prior to 1974, (16) the Khmer Rouge massacre in Kampuchea between 1975 and 1978, (17) and the contemporary Iranian killings of Baha'is. (18) Apartheid is considered separately in paragraphs 43–46 below. A number of other cases may be suggested. It could seem pedantic to argue that some terrible mass-killings are legalistically not genocide, but on the other hand it could be counter-productive to devalue genocide through over-diluting its definition.

PART III: FUTURE PROGRESS: POSSIBLE WAYS FORWARD

D. Conclusions

91. The reforms recommended will, like most things worthwhile in human progress, not be easy. They would however be the best living memorial to all the past victims of genocide. To do nothing, by contrast, would be to invite responsibility for helping cause future victims.

PART IV: LIST OF RECOMMENDATIONS

92. The principal recommendations of the present Special Rapporteur are contained in paragraphs 50, 55, 57, 41, 55, 54, 64, 70, 79, 80, 81, 82, 83–84, 85, 86–8), 90 and 91 supra.

international texts

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

SOURCE The Avalon Project at Yale Law School. Available from http://www.yale.edu/lawweb/avalon/avalon.htm

INTRODUCTION This treaty was adopted by the UN General Assembly on December 10, 1974 and is designed to prevent and punish torture when committed with the involvement of public officials, whether directly acting or acquiescing or condoning the acts when committed by private parties. The Convention adds to international law by defining precisely the act of torture and setting forth the obligations of states parties to combat it. The Convention declares expressly that there are "no exceptional circumstances whatsoever" that would justify torture and that no orders from superior officers may provide a justification. The Convention also sets forth a set of measures and institutions at the international level to supervise compliance by states with the legal obligations contained in the agreement.

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)),

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

Part I

Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim os a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures aa may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committee in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

Part II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this

Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that

(a) Six members shall constitute a quorum; (b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The State Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement of the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.

2. The Secretary-General shall transmit the reports to all States Parties.

[3. Each report shall be considered by the Committee which may make such comments or suggestions on the report as it considers appropriate, and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1.]

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2,

the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the cooperation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article 3 that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report.

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already trans-

mitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party to the Convention which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communication submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communication from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit parties thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 23

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on missions for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

Part III

Article 25

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective. Nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this Convention or acceded to it, or the following particulars:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27, and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

On February 4, 1985, the Convention was opened for signature at United Nations Headquarters in New York. At that time, representatives of the following countries signed it: Afghanistan, Argentina, Belgium,

Bolivia, Costa Rica, Denmark, Dominican Republic, Finland, France, Greece, Iceland, Italy, Netherlands, Norway, Portugal, Senegal, Spain, Sweden, Switzerland and Uruguay. Subsequently, signatures were received from Venezuela on February 15, from Luxembourg and Panama on February 22, from Austria on March 14, and from the United Kingdom on March 15, 1985.

Convention on the Prevention and Punishment of the Crime of Genocide; December 9, 1948

SOURCE The Avalon Project at Yale Law School. Available from http://www.yale.edu/lawweb/avalon/avalon.htm

INTRODUCTION The Genocide Convention was adopted by the General Assembly of the United Nations on 9 December 1948, only hours before it passed the Universal Declaration of Human Rights. Its preparation had been mandated by the General Assembly in Resolution 96(I), which was adopted two years earlier. Although there were several stages in its preparation, most of the detailed work, and the final decisions, was carried out by the Sixth Committee of the General Assembly in late 1948. After its adoption, the Convention soon obtained the requisite twenty ratifications for its entry into force, which occurred in early 1951. The definition of genocide in article II is a narrow one, and for this reason it has frequently been criticized. Nevertheless, both international bodies and national lawmakers have been loathe to tamper with it. Article II is repeated verbatim in many treaties, as well as in the criminal codes of many countries.

Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.

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 cooperation is required;

Hereby agree as hereinafter provided.

Art. 1.

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.

Art. 2.

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.

Art. 3.

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.

Art. 4.

Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Art. 5.

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 3.

Art. 6.

Persons charged with genocide or any of the other acts enumerated in Article 3 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.

Art. 7.

Genocide and the other acts enumerated in Article 3 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.

Art. 8.

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 3.

Art. 9.

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 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Art. 10.

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948. Art. 11.

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Art. 12.

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Art. 13.

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a process-verbal and transmit a copy of it to each Member of the United Nations and to each of the non-member States contemplated in Article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Art. 14.

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Art. 15.

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Art. 16.

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Art. 17.

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in Article 11 of the following:

(a) Signatures, ratifications and accessions received in accordance with Article 11; (b) Notifications received in accordance with Article 12; (c) The date upon which the present Convention comes into force in accordance with Article 13; (d) Denunciations received in accordance with Article 14; (e) The abrogation of the Convention in accordance with Article 15; (f) Notifications received in accordance with Article 16.

Art. 18.

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the non-member States contemplated in Article 11.

Art. 19.

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Geneva Convention IV: Civilian Persons in Time of War (August 12, 1949)

SOURCE The Avalon Project at Yale Law School. Available from http://www.yale.edu/lawweb/avalon/avalon.htm

INTRODUCTION The four Geneva Conventions were adopted on August 12, 1949. For many years, they have enjoyed near-universal ratification, and they are often spoken of as a codification of customary international law. The other three conventions deal with different categories of war victims, namely the wounded on land (I), the wounded at sea (II) and prisoners of war (III). The first Convention was inspired by a Swiss businessman, Henry Dunant, in the mid-nineteenth century. The fundamental principle underlying Convention IV is that when a territory is occupied during an international armed conflict, civilians are to be protected from abuse and persecution. The Convention provides only limited coverage to noninternational armed conflicts, or civil wars, although this shortcoming was partially rectified in a protocol to the Convention adopted in 1977.

CONVENTION (IV) RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR

Signed at Geneva, 12 August 1949

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The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from 21 April to 12 August 1949, for the purpose of establishing a Convention for the Protection of Civilians in Time of War, have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1. The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Art. 2. In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Art. 4. Persons protected by the Convention are those who, at a given moment and in any manner what-

soever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall not be considered as protected persons within the meaning of the present Convention.

Art. 5 Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Art. 6. The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention. Art. 7. In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, not restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Art. 8. Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Art. 9. The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers. The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention.

They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Art. 10. The provisions of the present Convention constitute no obstacle to the humanitarian activities

which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

Art. 11. The High Contracting Parties may at any time agree to entrust to an international organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

The provisions of this Article shall extend and be adapted to cases of nationals of a neutral State who are in occupied territory or who find themselves in the territory of a belligerent State in which the State of which they are nationals has not normal diplomatic representation.

Art. 12. In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for protected persons, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

PART II

GENERAL PROTECTION OF POPULATIONS AGAINST CERTAIN CONSEQUENCES OF WAR

Art. 13. The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

Art. 14. In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

Art. 15. Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction: (a) wounded and

sick combatants or non-combatants; (b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone.

Art. 16. The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

Art. 17. The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

Art. 18. Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict. States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, but only if so authorized by the State.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

Art. 19. The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded. The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

Art. 20. Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected. In occupied territory and in zones of military operations, the above personnel shall be recognizable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949.

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armlet, as provided in and under the conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are employed.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

Art. 21. Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Article 18, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949.

Art. 22. Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes

specifically agreed upon between all the Parties to the conflict concerned.

They may be marked with the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949.

Unless agreed otherwise, flights over enemy or enemy occupied territory are prohibited.

Such aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

Art. 23. Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing: (a) that the consignments may be diverted from their destination, (b) that the control may not be effective, or (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods. The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

Art. 24. The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

Art. 25. All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay.

If, as a result of circumstances, it becomes difficult or impossible to exchange family correspondence by the ordinary post, the Parties to the conflict concerned shall apply to a neutral intermediary, such as the Central Agency provided for in Article 140, and shall decide in consultation with it how to ensure the fulfilment of their obligations under the best possible conditions, in particular with the cooperation of the National Red Cross (Red Crescent, Red Lion and Sun) Societies.

If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing twenty-five freely chosen words, and to the limitation of the number of these forms dispatched to one each month.

Art. 26. Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.

PART III

STATUS AND TREATMENT OF PROTECTED PERSONS

SECTION I

Provisions Common to the Territories of the Parties to the Conflict and to Occupied Territories Art. 27. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Art. 28. The presence of a protected person may not be used to render certain points or areas immune from military operations.

Art. 29. The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

Art. 30. Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations. Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate, as much as possible, visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.

Art. 31. No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Art. 32. The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Art. 33. No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

Art. 34. The taking of hostages is prohibited.

SECTION II

Aliens in the Territory of a Party to the Conflict Art. 35. All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

If any such person is refused permission to leave the territory, he shall be entitled to have refusal reconsidered, as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.

Art. 36. Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. All costs in connection therewith, from the point of exit in the territory of the Detaining Power, shall be borne by the country of destination, or, in the case of accommodation in a neutral country, by the Power whose nationals are benefited. The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

Art. 37. Protected persons who are confined pending proceedings or subject to a sentence involving loss of liberty, shall during their confinement be humanely treated.

As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles.

Art. 38. With the exception of special measures authorized by the present Convention, in particularly by Article 27 and 41 thereof, the situation of protected persons shall continue to be regulated, in principle, by

the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them: (1) they shall be enabled to receive the individual or collective relief that may be sent to them. (2) they shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned. (3) they shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith. (4) if they reside in an area particularly exposed to the dangers of war, they shall be authorized to move from that area to the same extent as the nationals of the State concerned. (5) children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned.

Art. 39. Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the Power in whose territory they are.

Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents.

Protected persons may in any case receive allowances from their home country, the Protecting Power, or the relief societies referred to in Article 30. Art. 40. Protected persons may be compelled to work only to the same extent as nationals of the Party to the conflict in whose territory they are.

If protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations.

In the cases mentioned in the two preceding paragraphs, protected persons compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases.

If the above provisions are infringed, protected persons shall be allowed to exercise their right of complaint in accordance with Article 30.

Art. 41. Should the Power, in whose hands protected persons may be, consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of Articles 42 and 43.

In applying the provisions of Article 39, second paragraph, to the cases of persons required to leave their usual places of residence by virtue of a decision placing them in assigned residence, by virtue of a decision placing them in assigned residence, elsewhere, the Detaining Power shall be guided as closely as possible by the standards of welfare set forth in Part III, Section IV of this Convention.

Art. 42. The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.

If any person, acting through the representatives of the Protecting Power, voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be.

Art. 43. Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit.

Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

Art. 44. In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government.

Art. 45. Protected persons shall not be transferred to a Power which is not a party to the Convention.

This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.

Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law.

Art. 46. In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities.

Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities.

SECTION III

Occupied Territories Art. 47. Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

Art. 48. Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 35, and decisions thereon shall be taken in accordance with the procedure which the Occupying Power shall establish in accordance with the said Article.

Art. 49. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Art. 50. The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

Art. 51. The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character.

Art. 52. No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power in order to request the said Power's intervention.

All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.

Art. 53. Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Art. 54. The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.

This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts.

Art. 55. To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

Art. 56. To the fullest extent of the means available to it, the public Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties. If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall, if necessary, grant them the recognition provided for in Article 18. In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21.

In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take

into consideration the moral and ethical susceptibilities of the population of the occupied territory.

Art. 57. The Occupying Power may requisition civilian hospitals of hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.

Art. 58. The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.

The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.

Art. 59. If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.

Art. 60. Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.

Art. 61. The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the cooperation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.

Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments.

All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.

Art. 62. Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.

Art. 63. Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

(a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions; (b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.

Art. 64. The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.

Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws. The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to

maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them. Art. 65. The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.

Art. 66. In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64 the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.

Art. 67. The courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact the accused is not a national of the Occupying Power.

Art. 68. Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced on a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced on a protected person who was under eighteen years of age at the time of the offence.

Art. 69. In all cases the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment of awarded.

Art. 70. Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.

Art. 71. No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power three weeks before the date of the first hearing. Unless, at the opening of the trial, evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars: (a) description of the accused; (b) place of residence or detention; (c) specifi-

cation of the charge or charges (with mention of the penal provisions under which it is brought); (d) designation of the court which will hear the case; (e) place and date of the first hearing.

Art. 72. Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have at any time the right to object to the interpreter and to ask for his replacement.

Art. 73. A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

Art. 74. Representatives of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgement involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the Protecting Power. The notification shall contain a reference to the notification made under Article 71 and, in the case of sentences of imprisonment, the name of the place where the sentence is to be served. A record of judgements other than those referred to above shall be kept by the court and shall be open to inspection by representatives of the Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty, or imprisonment of two years or more, shall not run until notification of judgement has been received by the Protecting Power.

Art. 75. In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of a least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

Art. 76. Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country. They shall receive the medical attention required by their state of health. They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors. Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

Art. 77. Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.

Art. 78. If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accor-

dance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention.

SECTION IV

Regulations for the Treatment of Internees

CHAPTER I

General Provisions Art. 79. The Parties to the conflict shall not intern protected persons, except in accordance with the provisions of Articles 41, 42, 43, 68 and 78.

Art. 80. Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status.

Art. 81. Parties to the conflict who intern protected persons shall be bound to provide free of charge for their maintenance, and to grant them also the medical attention required by their state of health.

No deduction from the allowances, salaries or credits due to the internees shall be made for the repayment of these costs.

The Detaining Power shall provide for the support of those dependent on the internees, if such dependents are without adequate means of support or are unable to earn a living.

Art. 82. The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health or for the purposes of enforcement of the provisions of Chapter IX of the present Section. Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

CHAPTER II

Places of Internment Art. 83. The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.

Whenever military considerations permit, internment camps shall be indicated by the letters IC, placed so as to be clearly visible in the daytime from the air. The Powers concerned may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such.

Art. 84. Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason.

Art. 85. The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas or in districts, the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily interned, is an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene, and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleep-

ing quarters and sanitary conveniences for the use of such women internees shall be obligatory. Art. 86. The Detaining Power shall place at the disposal of interned persons, of whatever denomination, premises suitable for the holding of their religious services.

Art. 87. Canteens shall be installed in every place of internment, except where other suitable facilities are available. Their purpose shall be to enable internees to make purchases, at prices not higher than local market prices, of foodstuffs and articles of everyday use, including soap and tobacco, such as would increase their personal well-being and comfort.

Profits made by canteens shall be credited to a welfare fund to be set up for each place of internment, and administered for the benefit of the internees attached to such place of internment. The Internee Committee provided for in Article 102 shall have the right to check the management of the canteen and of the said fund.

When a place of internment is closed down, the balance of the welfare fund shall be transferred to the welfare fund of a place of internment for internees of the same nationality, or, if such a place does not exist, to a central welfare fund which shall be administered for the benefit of all internees remaining in the custody of the Detaining Power. In case of a general release, the said profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Art. 88. In all places of internment exposed to air raids and other hazards of war, shelters adequate in number and structure to ensure the necessary protection shall be installed. In case of alarms, the measures internees shall be free to enter such shelters as quickly as possible, excepting those who remain for the protection of their quarters against the aforesaid hazards. Any protective measures taken in favour of the population shall also apply to them. All due precautions must be taken in places of internment against the danger of fire.

CHAPTER III

Food and Clothing Art. 89. Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted.

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs.

Art. 90. When taken into custody, internees shall be given all facilities to provide themselves with the necessary clothing, footwear and change of underwear, and later on, to procure further supplies if required. Should any internees not have sufficient clothing, account being taken of the climate, and be unable to procure any, it shall be provided free of charge to them by the Detaining Power.

The clothing supplied by the Detaining Power to internees and the outward markings placed on their own clothes shall not be ignominious nor expose them to ridicule.

Workers shall receive suitable working outfits, including protective clothing, whenever the nature of their work so requires.

CHAPTER IV

Hygiene and Medical Attention Art. 91. Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases.

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population. Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 140.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee.

Art. 92. Medical inspections of internees shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nu-

trition and cleanliness of internees, and to detect contagious diseases, especially tuberculosis, malaria, and venereal diseases. Such inspections shall include, in particular, the checking of weight of each internee and, at least once a year, radioscopic examination.

CHAPTER V

Religious, Intellectual and Physical Activities Art. 93. Internees shall enjoy complete latitude in the exercise of their religious duties, including attendance at the services of their faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities.

Ministers of religion who are interned shall be allowed to minister freely to the members of their community. For this purpose the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same language and belonging to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorized to visit any internees who are in hospital. Ministers of religion shall be at liberty to correspond on matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organizations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 107. It shall, however, be subject to the provisions of Article 112.

When internees do not have at their disposal the assistance of ministers of their faith, or should these latter be too few in number, the local religious authorities of the same faith may appoint, in agreement with the Detaining Power, a minister of the internees' faith or, if such a course is feasible from a denominational point of view, a minister of similar religion or a qualified layman. The latter shall enjoy the facilities granted to the ministry he has assumed. Persons so appointed shall comply with all regulations laid down by the Detaining Power in the interests of discipline and security.

Art. 94. The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises. All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people.

Art. 95. The Detaining Power shall not employ internees as workers, unless they so desire. Employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Articles 40 or 51 of the present Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited.

After a working period of six weeks, internees shall be free to give up work at any moment, subject to eight days' notice.

These provisions constitute no obstacle to the right of the Detaining Power to employ interned doctors, dentists and other medical personnel in their professional capacity on behalf of their fellow internees, or to employ internees for administrative and maintenance work in places of internment and to detail such persons for work in the kitchens or for other domestic tasks, or to require such persons to undertake duties connected with the protection of internees against aerial bombardment or other war risks. No internee may, however, be required to perform tasks for which he is, in the opinion of a medical officer, physically unsuited.

The Detaining Power shall take entire responsibility for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and diseases. The standards prescribed for the said working conditions and for compensation shall be in accordance with the national laws and regulations, and with the existing practice; they shall in no case be inferior to those obtaining for work of the same nature in the same district. Wages for work done shall be determined on an equitable basis by special agreements between the internees, the Detaining Power, and, if the case arises, employers other than the Detaining Power to provide for free maintenance of internees and for the medical attention which their state of health may require. Internees permanently detailed for categories of work mentioned in the third paragraph of this Article, shall be paid fair wages by the Detaining Power. The working conditions and the scale of compensation for occupational accidents and diseases to internees, thus detailed, shall not be inferior to those applicable to work of the same nature in the same district.

Art. 96. All labour detachments shall remain part of and dependent upon a place of internment. The competent authorities of the Detaining Power and the

commandant of a place of internment shall be responsible for the observance in a labour detachment of the provisions of the present Convention. The commandant shall keep an up-to-date list of the labour detachments subordinate to him and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross and of other humanitarian organizations who may visit the places of internment.

CHAPTER VI

Personal Property and Financial Resources Art. 97. Internees shall be permitted to retain articles of personal use. Monies, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure. Detailed receipts shall be given therefore.

The amounts shall be paid into the account of every internee as provided for in Article 98. Such amounts may not be converted into any other currency unless legislation in force in the territory in which the owner is interned so requires or the internee gives his consent.

Articles which have above all a personal or sentimental value may not be taken away.

A woman internee shall not be searched except by a woman.

On release or repatriation, internees shall be given all articles, monies or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounts kept in accordance with Article 98, with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt.

Family or identity documents in the possession of internees may not be taken away without a receipt being given. At no time shall internees be left without identity documents. If they have none, they shall be issued with special documents drawn up by the detaining authorities, which will serve as their identity papers until the end of their internment.

Internees may keep on their persons a certain amount of money, in cash or in the shape of purchase coupons, to enable them to make purchases.

Art. 98. All internees shall receive regular allowances, sufficient to enable them to purchase goods and articles, such as tobacco, toilet requisites, etc. Such allowances may take the form of credits or purchase coupons.

Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or their families, as well as the income on their property in accordance with the law of the Detaining Power. The amount of allowances granted by the Power to which they owe allegiance shall be the same for each category of internees (infirm, sick, pregnant women, etc.) but may not be allocated by that Power or distributed by the Detaining Power on the basis of discriminations between internees which are prohibited by Article 27 of the present Convention.

The Detaining Power shall open a regular account for every internee, to which shall be credited the allowances named in the present Article, the wages earned and the remittances received, together with such sums taken from him as may be available under the legislation in force in the territory in which he is interned. Internees shall be granted all facilities consistent with the legislation in force in such territory to make remittances to their families and to other dependants. They may draw from their accounts the amounts necessary for their personal expenses, within the limits fixed by the Detaining Power. They shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts. A statement of accounts shall be furnished to the Protecting Power, on request, and shall accompany the internee in case of transfer.

CHAPTER VII

Administration and Discipline Art. 99. Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil administration of the Detaining Power. The officer in charge of the place of internment must have in his possession a copy of the present Convention in the official language, or one of the official languages, of his country and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually must, likewise, be given in a language which they understand.

Art. 100. The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulations imposing on internees any physical exertion dangerous to their health or involving physical or moral victimization. Identification by tattooing or imprinting signs or markings on the body, is prohibited.

In particular, prolonged standing and roll-calls, punishment drill, military drill and manoeuvres, or the reduction of food rations, are prohibited. Art. 101. Internees shall have the right to present to the authorities in whose power they are, any petition with regard to the conditions of internment to which they are subjected.

They shall also have the right to apply without restriction through the Internee Committee or, if they consider it necessary, direct to the representatives of the Protecting Power, in order to indicate to them any points on which they may have complaints to make with regard to the conditions of internment.

Such petitions and complaints shall be transmitted forthwith and without alteration, and even if the latter are recognized to be unfounded, they may not occasion any punishment.

Periodic reports on the situation in places of internment and as to the needs of the internees may be sent by the Internee Committees to the representatives of the Protecting Powers.

Art. 102. In every place of internment, the internees shall freely elect by secret ballot every six months, the members of a Committee empowered to represent them before the Detaining and the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. The members of the Committee shall be eligible for re-election.

Internees so elected shall enter upon their duties after their election has been approved by the detaining authorities. The reasons for any refusals or dismissals shall be communicated to the Protecting Powers concerned.

Art. 103. The Internee Committees shall further the physical, spiritual and intellectual well-being of the internees.

In case the internees decide, in particular, to organize a system of mutual assistance amongst themselves, this organization would be within the competence of the Committees in addition to the special duties entrusted to them under other provisions of the present Convention.

Art. 104. Members of Internee Committees shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

Members of Internee Committees may appoint from amongst the internees such assistants as they may require. All material facilities shall be granted to them, particularly a certain freedom of movement necessary for the accomplishment of their duties (visits to labour detachments, receipt of supplies, etc.).

All facilities shall likewise be accorded to members of Internee Committees for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, and with the organizations which give assistance to internees. Committee members in labour detachments shall enjoy similar facilities for communication with their Internee Committee in the principal place of internment. Such communications shall not be limited, nor considered as forming a part of the quota mentioned in Article 107.

Members of Internee Committees who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

CHAPTER VIII

Relations with the Exterior Art. 105. Immediately upon interning protected persons, the Detaining Powers shall inform them, the Power to which they owe allegiance and their Protecting Power of the measures taken for executing the provisions of the present Chapter. The Detaining Powers shall likewise inform the Parties concerned of any subsequent modifications of such measures.

Art. 106. As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to another place of internment or to a hospital, every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 140, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way.

Art. 107. Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than two letters and four cards monthly; these shall be drawn up so as to conform as closely as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed

to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable dispatch; they may not be delayed or retained for disciplinary reasons.

Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the currency at their disposal. They shall likewise benefit by this provision in cases which are recognized to be urgent.

As a rule, internees' mail shall be written in their own language. The Parties to the conflict may authorize correspondence in other languages.

Art. 108. Internees shall be allowed to receive, by post or by any other means, individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational or recreational character which may meet their needs. Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross, or to any other organization giving assistance to the internees and responsible for the forwarding of such shipments.

The conditions for the sending of individual parcels and collective shipments shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the internees of relief supplies. Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels.

Art. 109. In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of Internee Committees to take possession of collective relief shipments intended for internees, to undertake their distribution and to dispose of them in the interests of the recipients. Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organization giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Art. 110. An relief shipments for internees shall be exempt from import, customs and other dues.

All matter sent by mail, including relief parcels sent by parcel post and remittances of money, addressed from other countries to internees or dispatched by them through the post office, either direct or through the Information Bureaux provided for in Article 136 and the Central Information Agency provided for in Article 140, shall be exempt from all postal dues both in the countries of origin and destination and in intermediate countries. To this effect, in particular, the exemption provided by the Universal Postal Convention of 1947 and by the agreements of the Universal Postal Union in favour of civilians of enemy nationality detained in camps or civilian prisons, shall be extended to the other interned persons protected by the present Convention. The countries not signatory to the abovementioned agreements shall be bound to grant freedom from charges in the same circumstances.

The cost of transporting relief shipments which are intended for internees and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its control. Other Powers which are Parties to the present Convention shall bear the cost of transport in their respective territories.

Costs connected with the transport of such shipments, which are not covered by the above paragraphs, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the charges for telegrams sent by internees, or addressed to them.

Art. 111. Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of the mail and relief shipments provided for in Articles 106, 107, 108 and 113, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (rail, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport, and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey: (a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 140 and the National Bureaux referred to in Article 136; (b) correspondence and reports relating to internees which

the Protecting Powers, the International Committee of the Red Cross or any other organization assisting the internees exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

The costs occasioned by the use of such means of transport shall be borne, in proportion to the importance of the shipments, by the Parties to the conflict whose nationals are benefited thereby.

Art. 112. The censoring of correspondence addressed to internees or dispatched by them shall be done as quickly as possible.

The examination of consignments intended for internees shall not be carried out under conditions that will expose the goods contained in them to deterioration. It shall be done in the presence of the addressee, or of a fellow-internee duly delegated by him. The delivery to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by the Parties to the conflict either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Art. 113. The Detaining Powers shall provide all reasonable execution facilities for the transmission, through the Protecting Power or the Central Agency provided for in Article 140, or as otherwise required, of wills, powers of attorney, letters of authority, or any other documents intended for internees or dispatched by them.

In all cases the Detaining Powers shall facilitate the execution and authentication in due legal form of such documents on behalf of internees, in particular by allowing them to consult a lawyer.

Art. 114. The Detaining Power shall afford internees all facilities to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable. For this purpose, the said Power may give them permission to leave the place of internment in urgent cases and if circumstances allow.

Art. 115. In all cases where an internee is a party to proceedings in any court, the Detaining Power shall, if he so requests, cause the court to be informed of his detention and shall, within legal limits, ensure that all necessary steps are taken to prevent him from being in any way prejudiced, by reason of his internment, as regards the preparation and conduct of his case or as regards the execution of any judgment of the court.

Art. 116. Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.

As far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives.

CHAPTER IX

Penal and Disciplinary Sanctions Art. 117. Subject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment.

If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only. No internee may be punished more than once for the same act, or on the same count.

Art. 118. The courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power. They shall be free to reduce the penalty prescribed for the offence with which the internee is charged and shall not be obliged, to this end, to apply the minimum sentence prescribed.

Imprisonment in premises without daylight, and, in general, all forms of cruelty without exception are forbidden.

Internees who have served disciplinary or judicial sentences shall not be treated differently from other internees.

The duration of preventive detention undergone by an internee shall be deducted from any disciplinary or judicial penalty involving confinement to which he may be sentenced.

Internee Committees shall be informed of all judicial proceedings instituted against internees whom they represent, and of their result.

Art. 119. The disciplinary punishments applicable to internees shall be the following: (1) a fine which shall not exceed 50 per cent of the wages which the internee would otherwise receive under the provisions of Article 95 during a period of not more than thirty days. (2) discontinuance of privileges granted over and above the treatment provided for by the present Convention (3) fatigue duties, not exceeding two hours daily, in connection with the maintenance of the place of internment. (4) confinement.

In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health.

The duration of any single punishment shall in no case exceed a maximum of thirty consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not.

Art. 120. Internees who are recaptured after having escaped or when attempting to escape, shall be liable only to disciplinary punishment in respect of this act, even if it is a repeated offence.

Article 118, paragraph 3, notwithstanding, internees punished as a result of escape or attempt to escape, may be subjected to special surveillance, on condition that such surveillance does not affect the state of their health, that it is exercised in a place of internment and that it does not entail the abolition of any of the safeguards granted by the present Convention.

Internees who aid and abet an escape or attempt to escape, shall be liable on this count to disciplinary punishment only.

Art. 121. Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance in cases where an internee is prosecuted for offences committed during his escape.

The Parties to the conflict shall ensure that the competent authorities exercise leniency in deciding whether punishment inflicted for an offence shall be of a disciplinary or judicial nature, especially in respect of acts committed in connection with an escape, whether successful or not.

Art. 122. Acts which constitute offences against discipline shall be investigated immediately. This rule shall be applied, in particular, in cases of escape or attempt to escape. Recaptured internees shall be handed over to the competent authorities as soon as possible.

In cases of offences against discipline, confinement awaiting trial shall be reduced to an absolute minimum for all internees, and shall not exceed fourteen days. Its duration shall in any case be deducted from any sentence of confinement.

The provisions of Articles 124 and 125 shall apply to internees who are in confinement awaiting trial for offences against discipline.

Art. 123. Without prejudice to the competence of courts and higher authorities, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced in the presence of the accused and of a member of the Internee Committee.

The period elapsing between the time of award of a disciplinary punishment and its execution shall not exceed one month.

When an internee is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

A record of disciplinary punishments shall be maintained by the commandant of the place of internment and shall be open to inspection by representatives of the Protecting Power.

Art. 124. Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

The premises in which disciplinary punishments are undergone shall conform to sanitary requirements: they shall in particular be provided with adequate bedding. Internees undergoing punishment shall be enabled to keep themselves in a state of cleanliness.

Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.

Art. 125. Internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of their punishment; such consignments shall meanwhile be entrusted to the Internee Committee, who will hand over to the infirmary the perishable goods contained in the parcels.

No internee given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 107 and 143 of the present Convention.

Art. 126. The provisions of Articles 71 to 76 inclusive shall apply, by analogy, to proceedings against internees who are in the national territory of the Detaining Power.

CHAPTER X

Transfers of Internees Art. 127. The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station. If, as an exceptional measure, such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands.

If the combat zone draws close to a place of internment, the internees in the said place shall not be transferred unless their removal can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

When making decisions regarding the transfer of internees, the Detaining Power shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes.

Art. 128. In the event of transfer, internees shall be officially advised of their departure and of their new postal address. Such notification shall be given in time for them to pack their luggage and inform their next of kin. They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited if the conditions of transfer so require, but in no case to less than twenty-five kilograms per internee.

Mail and parcels addressed to their former place of internment shall be forwarded to them without delay.

The commandant of the place of internment shall take, in agreement with the Internee Committee, any measures needed to ensure the transport of the internees' community property and of the luggage the internees are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph.

CHAPTER XI

Deaths Art. 129. The wills of internees shall be received for safe-keeping by the responsible authorities; and if the event of the death of an internee his will shall be transmitted without delay to a person whom he has previously designated.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall be transmitted without delay to the Protecting Power as well as to the Central Agency referred to in Article 140.

Art. 130. The detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized. Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe-keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom deceased internees depended, through the Information Bureaux provided for in Article 136. Such lists shall include all particulars necessary for the identification of the deceased internees, as well as the exact location of their graves.

Art. 131. Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting Power. If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible.

CHAPTER XII

Release, Repatriation and Accommodation in Neutral Countries Art. 132. Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.

Art. 133. Internment shall cease as soon as possible after the close of hostilities.

Internees in the territory of a Party to the conflict against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.

By agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees.

Art. 134. The High Contracting Parties shall endeavour, upon the Repatriation close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their residence repatriation.

Art. 135. The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return to his country on his own responsibility or in obedience to the Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory. The Detaining Power need not pay the cost of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 45, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

SECTION V

Information Bureaux and Central Agency Art. 136. Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons who are in its power.

Each of the Parties to the conflict shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any protected persons who are kept in custody for more than two weeks, who are subjected to assigned residence or who are interned. It shall, furthermore, require its various departments concerned with such matters to provide the aforesaid Bureau promptly with information concerning all changes pertaining to these protected persons, as, for example, transfers, releases, repatriations, escapes, admittances to hospitals, births and deaths.

Art. 137. Each national Bureau shall immediately forward information concerning protected persons by the most rapid means to the Powers in whose territory they resided, through the intermediary of the Protecting Powers and likewise through the Central Agency provided for in Article 140. The Bureaux shall also reply to all enquiries which may be received regarding protected persons.

Information Bureaux shall transmit information concerning a protected person unless its transmission might be detrimental to the person concerned or to his or her relatives. Even in such a case, the information may not be withheld from the Central Agency which, upon being notified of the circumstances, will take the necessary precautions indicated in Article 140.

All communications in writing made by any Bureau shall be authenticated by a signature or a seal.

Art. 138. The information received by the national Bureau and transmitted by it shall be of such a charac-

ter as to make it possible to identify the protected person exactly and to advise his next of kin quickly. The information in respect of each person shall include at least his surname, first names, place and date of birth, nationality last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him and the name and address of the person to be informed.

Likewise, information regarding the state of health of internees who are seriously ill or seriously wounded shall be supplied regularly and if possible every week.

Art. 139. Each national Information Bureau shall, furthermore, be responsible for collecting all personal valuables left by protected persons mentioned in Article 136, in particular those who have been repatriated or released, or who have escaped or died; it shall forward the said valuables to those concerned, either direct, or, if necessary, through the Central Agency. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full identity particulars of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Detailed records shall be maintained of the receipt and dispatch of all such valuables.

Art. 140. A Central Information Agency for protected persons, in particular for internees, shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency, which may be the same as that provided for in Article 123 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

The function of the Agency shall be to collect all information of the type set forth in Article 136 which it may obtain through official or private channels and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned, except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their relatives. It shall receive from the Parties to the conflict all reasonable facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross and of the relief Societies described in Article 142.

Art. 141. The national Information Bureaux and the Central Information Agency shall enjoy free postage for all mail, likewise the exemptions provided for in Article 110, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

PART IV

EXECUTION OF THE CONVENTION

SECTION I

General Provisions Art. 142. Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, for distributing relief supplies and material from any source, intended for educational, recreational or religious purposes, or for assisting them in organizing their leisure time within the places of internment. Such societies or organizations may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all protected persons. The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

Art. 143. Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

Art. 144. The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.

Art. 145. The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Art. 146. The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. Art. 147. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Art. 148. No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Art. 149. At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

SECTION II

Final Provisions

Art. 150. The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Art. 151. The present Convention, which bears the date of this day, is open to signature until 12 February 1950, in the name of the Powers represented at the Conference which opened at Geneva on 21 April 1949.

Art. 152. The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art. 153. The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Art. 154. In the relations between the Powers who are bound by the Hague Conventions respecting the Laws and Customs of War on Land, whether that of 29 July 1899, or that of 18 October 1907, and who are parties to the present Convention, this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of The Hague.

Art. 155. From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Art. 156. Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received. The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art. 157. The situations provided for in Articles 2 and 3 shall effective immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Art. 158. Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties. The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release, repatriation and re-establishment of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

Art. 159. The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention. In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

ANNEX I

Draft Agreement Relating to Hospital and Safety Zones and Localities

Art. 1. Hospital and safety zones shall be strictly reserved for the persons mentioned in Article 23 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, and in Article 14 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and for the personnel entrusted with the organization and administration of these zones and localities, and with the care of the persons therein assembled.

Nevertheless, persons whose permanent residence is within such zones shall have the right to stay there.

Art. 2. No persons residing, in whatever capacity, in a hospital and safety zone shall perform any work, either within or without the zone, directly connected with military operations or the production of war material.

Art. 3. The Power establishing a hospital and safety zone shall take all necessary measures to prohibit access to all persons who have no right of residence or entry therein.

Art. 4. Hospital and safety zones shall fulfil the following conditions: (a) they shall comprise only a small part of the territory governed by the Power which has established them (b) they shall be thinly populated in relation to the possibilities of accommodation (c) they shall be far removed and free from all military objectives, or large industrial or administrative establishments (d) they shall not be situated in areas which, according to every probability, may become important for the conduct of the war.

Art. 5. Hospital and safety zones shall be subject to the following obligations:

(a) the lines of communication and means of transport which they possess shall not be used for the transport of military personnel or material, even in transit

(b) they shall in no case be defended by military means.

Art. 6. Hospital and safety zones shall be marked by means of oblique red bands on a white ground, placed on the buildings and outer precincts.

Zones reserved exclusively for the wounded and sick may be marked by means of the Red Cross (Red Crescent, Red Lion and Sun) emblem on a white ground.

They may be similarly marked at night by means of appropriate illumination.

Art. 7. The Powers shall communicate to all the High Contracting Parties in peacetime or on the outbreak of hostilities, a list of the hospital and safety zones in the territories governed by them. They shall also give notice of any new zones set up during hostilities.

As soon as the adverse party has received the above-mentioned notification, the zone shall be regularly established.

If, however, the adverse party considers that the conditions of the present agreement have not been fulfilled, it may refuse to recognize the zone by giving immediate notice thereof to the Party responsible for the said zone, or may make its recognition of such zone dependent upon the institution of the control provided for in Article 8.

Art. 8. Any Power having recognized one or several hospital and safety zones instituted by the adverse Party shall be entitled to demand control by one or more Special Commissions, for the purpose of ascertaining if the zones fulfil the conditions and obligations stipulated in the present agreement.

For this purpose, members of the Special Commissions shall at all times have free access to the various zones and may even reside there permanently. They shall be given all facilities for their duties of inspection.

Art. 9. Should the Special Commissions note any facts which they consider contrary to the stipulations of the present agreement, they shall at once draw the attention of the Power governing the said zone to these facts, and shall fix a time limit of five days within which the matter should be rectified. They shall duly notify the Power which has recognized the zone.

If, when the time limit has expired, the Power governing the zone has not complied with the warning, the adverse Party may declare that it is no longer bound by the present agreement in respect of the said zone.

Art. 10. Any Power setting up one or more hospital and safety zones, and the adverse Parties to whom their existence has been notified, shall nominate or have nominated by the Protecting Powers or by other neutral Powers, persons eligible to be members of the Special Commissions mentioned in Articles 8 and 9.

Art. 11. In no circumstances may hospital and safety zones be the object of attack. They shall be protected and respected at all times by the Parties to the conflict.

Art. 12. In the case of occupation of a territory, the hospital and safety zones therein shall continue to be respected and utilized as such.

Their purpose may, however, be modified by the Occupying Power, on condition that all measures are taken to ensure the safety of the persons accommodated.

Art. 13. The present agreement shall also apply to localities which the Powers may utilize for the same purposes as hospital and safety zones.

ANNEX II

Draft Regulations concerning Collective Relief

Article 1. The Internee Committees shall be allowed to distribute collective relief shipments for which they are responsible to all internees who are dependent for administration on the said Committee's place of internment, including those internees who are in hospitals, or in prison or other penitentiary establishments.

Art. 2. The distribution of collective relief shipments shall be effected in accordance with the instructions of the donors and with a plan drawn up by the Internee Committees. The issue of medical stores shall, however, be made for preference in agreement with the senior medical officers, and the latter may, in hospitals and infirmaries, waive the said instructions, if the needs of their patients so demand. Within the limits thus defined, the distribution shall always be carried out equitably.

Art. 3. Members of Internee Committees shall be allowed to go to the railway stations or other points of arrival of relief supplies near their places of internment so as to enable them to verify the quantity as well as the quality of the goods received and to make out detailed reports thereon for the donors.

Art. 4. Internee Committees shall be given the facilities necessary for verifying whether the distribution of collective relief in all subdivisions and annexes of their places of internment has been carried out in accordance with their instructions.

Art. 5. Internee Committees shall be allowed to complete, and to cause to be completed by members of the Internee Committees in labour detachments or by the senior medical officers of infirmaries and hospitals, forms or questionnaires intended for the donors, relating to collective relief supplies (distribution, requirements, quantities, etc.). Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay.

Art. 6. In order to secure the regular distribution of collective relief supplies to the internees in their place of internment, and to meet any needs that may arise through the arrival of fresh parties of internees, the Internee Committees shall be allowed to create and maintain sufficient reserve stocks of collective relief. For this purpose, they shall have suitable warehouses at their disposal; each warehouse shall be provided with two locks, the Internee Committee holding the keys of one lock, and the commandant of the place of internment the keys of the other.

Art. 7. The High Contracting Parties, and the Detaining Powers in particular, shall, so far as is in any way possible and subject to the regulations governing the food supply of the population, authorize purchases of goods to be made in their territories for the distribution of collective relief to the internees. They shall likewise facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

Art. 8. The foregoing provisions shall not constitute an obstacle to the right of internees to receive collective relief before their arrival in a place of internment or in the course of their transfer, nor to the possibility of representatives of the Protecting Power, or of the International Committee of the Red Cross or any other humanitarian organization giving assistance to internees and responsible for forwarding such supplies, ensuring the distribution thereof to the recipients by any other means they may deem suitable.

Genocide Convention Implementation Act of 1987

INTRODUCTION Although the United States participated very actively in the preparation of the 1948 Genocide Convention, and signed the Convention at the time of its adoption, ratification by Congress would take four decades. The indefatigable proponent of ratification was Senator William Proxmire, who took the floor virtually every day for many years in his call for ratification. When the enabling legislation was finally adopted, in 1987, it was called the Proxmire Act in his honor. The legislation provides for the prosecution of genocide within United States law, and sets out the applicable penalties. It also provides detailed definitions of many of the terms that are used in the Convention.

United States Code

TITLE 18 — CRIMES AND CRIMINAL PROCEDURE

PART I — CRIMES

CHAPTER 50A — GENOCIDE

U.S. Code as of: 01/22/02
Section 1091. Genocide

(a) Basic Offense. Whoever, whether in time of peace or in time of war, in a circumstance described in subsection (d) and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such

(1) kills members of that group;

(2) causes serious bodily injury to members of that group;

(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

(5) imposes measures intended to prevent births within the group; or

(6) transfers by force children of the group to another group;

or attempts to do so, shall be punished as provided in subsection

(b) Punishment for Basic Offense. The punishment for an offense under subsection (a) is

(1) in the case of an offense under subsection

(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c) Incitement Offense. Whoever in a circumstance described in subsection (d) directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.

(d) Required Circumstance for Offenses. The circumstance referred to in subsections (a) and (c) is that

(1) the offense is committed within the United States; or

(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(e) Nonapplicability of Certain Limitations. Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or information instituted, at any time without limitation.

International Convention on the Suppression and Punishment of the Crime of Apartheid (July 18, 1976)

SOURCE The Avalon Project at Yale Law School. Available from http://www.yale.edu/lawweb/avalon/avalon.htm

INTRODUCTION The Apartheid Convention was adopted by the United Nations General Assembly in 1973, but with a large number of abstentions by Western countries and negative votes from Portugal, South Africa, the United Kingdom, and the United States. Apartheid is described, in article I, as a crime against humanity, a determination later confirmed in the 1998 Rome Statute of the International Criminal Court.

The States Parties to the present Convention, Recalling the provisions of the Charter of the United Nations, in which all Members pledged themselves to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering the Universal Declaration of Human Rights, which states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour or national origin,

Considering the Declaration on the Granting of Independence to Colonial Countries and Peoples, in which the General Assembly stated that the process of liberation is irresistible and irreversible and that, in the interests of human dignity, progress and justice, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Observing that, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, States particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction, Observing that, in the Convention on the Prevention and Punishment of the Crime of Genocide, certain acts which may also be qualified as acts of apartheid constitute a crime under international law,

Observing that, in the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, "inhuman acts resulting from the policy of apartheid" are qualified as crimes against humanity, Observing that the General Assembly of the United Nations has adopted a number of resolutions in which the policies and practices of apartheid are condemned as a crime against humanity,

Observing that the Security Council has emphasized that apartheid and its continued intensification and expansion seriously disturb and threaten international peace and security, Convinced that an International Convention on the Suppression and Punishment of the Crime of Apartheid would make it possible to take more effective measures at the international and national levels with a view to the suppression and punishment of the crime of apartheid,

Have agreed as follows:

Article I

1. The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security.

2. The States Parties to the present Convention declare criminal those organizations, institutions and individuals committing the crime of apartheid.

Article II

For the purpose of the present Convention, the term "the crime of apartheid", which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups;

(b) Deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group or groups from

participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

(d) Any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

(e) Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour;

(f) Persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

Article III

International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:

(a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;

(b) Directly abet, encourage or co-operate in the commission of the crime of apartheid.

Article IV

The States Parties to the present Convention undertake:

(a) To adopt any legislative or other measures necessary to suppress as well as to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations and to punish persons guilty of that crime;

(b) To adopt legislative, judicial and administrative measures to prosecute, bring to trial and punish in accordance with their jurisdiction persons responsible for, or accused of, the acts defined in article II of the present Convention, whether or not such persons reside in the territory of the State in which the acts are committed or are nationals of that State or of some other State or are stateless persons.

Article V

Persons charged with the acts enumerated in article II of the present Convention may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused or by an international penal tribunal having jurisdiction with respect to those States Parties which shall have accepted its jurisdiction.

Article VI

The States Parties to the present Convention undertake to accept and carry out in accordance with the Charter of the United Nations the decisions taken by the Security Council aimed at the prevention, suppression and punishment of the crime of apartheid, and to co-operate in the implementation of decisions adopted by other competent organs of the United Nations with a view to achieving the purposes of the Convention.

Article VII

1. The States Parties to the present Convention undertake to submit periodic reports to the group established under article IX on the legislative, judicial, administrative or other measures that they have adopted and that give effect to the provisions of the Convention.

2. Copies of the reports shall be transmitted through the Secretary-General of the United Nations to the Special Committee on Apartheid.

Article VIII

Any State Party to the present Convention may call upon any competent organ of the United Nations to take such action under the Charter of the United Nations as it considers appropriate for the prevention and suppression of the crime of apartheid.

Article IX

1. The Chairman of the Commission on Human Rights shall appoint a group consisting of three members of the Commission on Human Rights, who are also representatives of States Parties to the present Convention, to consider reports submitted by States Parties in accordance with article VII.

2. If, among the members of the Commission on Human Rights, there are no representatives of States Parties to the present Convention or if there are fewer than three such representatives, the Secretary-General

of the United Nations shall, after consulting all States Parties to the Convention, designate a representative of the State Party or representatives of the States Parties which are not members of the Commission on Human Rights to take part in the work of the group established in accordance with paragraph 1 of this article, until such time as representatives of the States Parties to the Convention are elected to the Commission on Human Rights.

3. The group may meet for a period of not more than five days, either before the opening or after the closing of the session of the Commission on Human Rights, to consider the reports submitted in accordance with article VII.

Article X

1. The States Parties to the present Convention empower the Commission on Human Rights:

(a) To request United Nations organs, when transmitting copies of petitions under article 15 of the International Convention on the Elimination of All Forms of Racial Discrimination, to draw its attention to complaints concerning acts which are enumerated in article II of the present Convention;

(b) To prepare, on the basis of reports from competent organs of the United Nations and periodic reports from States Parties to the present Convention, a list of individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crimes enumerated in article II of the Convention, as well as those against whom legal proceedings have been undertaken by States Parties to the Convention;

(c) To request information from the competent United Nations organs concerning measures taken by the authorities responsible for the administration of Trust and Non-Self-Governing Territories, and all other Territories to which General Assembly resolution 1514 (XV) of 14 December 1960 applies, with regard to such individuals alleged to be responsible for crimes under article II of the Convention who are believed to be under their territorial and administrative jurisdiction.

2. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV), the provisions of the present Convention shall in no way limit the right of petition granted to those peoples by other international instruments or by the United Nations and its specialized agencies.

Article XI

1. Acts enumerated in article II of the present Convention shall not be considered political crimes for the purpose of extradition.

2. The States Parties to the present Convention undertake in such cases to grant extradition in accordance with their legislation and with the treaties in force.

Article XII

Disputes between States Parties arising out of the interpretation, application or implementation of the present Convention which have not been settled by negotiation shall, at the request of the States parties to the dispute, be brought before the International Court of Justice, save where the parties to the dispute have agreed on some other form of settlement.

Article XIII

The present Convention is open for signature by all States. Any State which does not sign the Convention before its entry into force may accede to it.

Article XIV

1. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article XV

1. The present Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article XVI

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article XVII

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such request.

Article XVIII

The Secretary-General of the United Nations shall inform all States of the following particulars:

(a) Signatures, ratifications and accessions under articles XIII and XIV;

(b) The date of entry into force of the present Convention under article XV;

(c) Denunciations under article XVI;

(d) Notifications under article XVII.

Article XIX

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Convention to all States.

Rome Statute of the International Criminal Court

SOURCE Available from http://www.un.org/law.

INTRODUCTION The Rome Statute of the International Criminal Court was adopted on July 17, 1998, and entered into force on July 1, 2002, following the sixtieth ratification. The Statute creates the first permanent international criminal tribunal with jurisdiction over genocide and crimes against humanity. There had been proposals for an international court since the mid-nineteenth century, and some successful efforts to establish such a body, but on an *ad hoc* basis. The Nuremberg court, used to judge the Nazi leaders, is the first such example. Parties to the Rome Statute agree to subject their territory, and their citizens, to the jurisdiction of the International Court. If the courts of these countries fail to render justice themselves, the International Court is entitled to intervene and prosecute the crimes itself. The Rome Statute also imposes various obligations upon States in terms of the apprehension of suspects and the gathering of evidence.

PART 1. ESTABLISHMENT OF THE COURT

Article 1

The Court An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2

Relationship of the Court with the United Nations The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3

Seat of the Court 1. The seat of the Court shall be established at The Hague in the Netherlands ("the host State").

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4

Legal status and powers of the Court 1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.

PART 2. JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW

Article 5

Crimes within the jurisdiction of the Court 1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

(a) The crime of genocide;

(b) Crimes against humanity;

(c) War crimes;

(d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime

and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide For the purpose of this Statute, "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 7

Crimes against humanity 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts

of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

Article 8

War crimes 1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Willful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Willfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

(v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

(vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

(vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;

(viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;

(xii) Declaring that no quarter will be given;

(xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;

(xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(xv) Compelling the nationals of the hostile party to take part in the operations of war directed

against their own country, even if they were in the belligerent's service before the commencement of the war;

(xvi) Pillaging a town or place, even when taken by assault;

(xvii) Employing poison or poisoned weapons;

(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;

(xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

(xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;

(xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions;

(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;

(iii) Taking of hostages;

(iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

(v) Pillaging a town or place, even when taken by assault;

(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article

7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(ix) Killing or wounding treacherously a combatant adversary;

(x) Declaring that no quarter will be given;

(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;

(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or reestablish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 9

Elements of Crimes 1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

(a) Any State Party;

(b) The judges acting by an absolute majority;

(c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11

Jurisdiction ratione temporis 1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.

2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12

Preconditions to the exercise of jurisdiction 1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Article 13

Exercise of jurisdiction The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred

to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14

Referral of a situation by a State Party 1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.

2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 15

Prosecutor 1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

3. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence.

4. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

5. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation.

6. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence.

Article 16

Deferral of investigation or prosecution No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

Article 17

Issues of admissibility 1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

(a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

(b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;

(c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

Article 18

Preliminary rulings regarding admissibility 1. When a situation has been referred to the Court pursuant to article 13 (a) and the Prosecutor has determined that there would be a reasonable basis to commence an investigation, or the Prosecutor initiates an investigation pursuant to articles 13 (c) and 15, the Prosecutor shall notify all States Parties and those States which, taking into account the information available, would normally exercise jurisdiction over the crimes concerned. The Prosecutor may notify such States on a confidential basis and, where the Prosecutor believes it necessary to protect persons, prevent destruction of evidence or prevent the absconding of persons, may limit the scope of the information provided to States.

2. Within one month of receipt of that notification, a State may inform the Court that it is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States. At the request of that State, the Prosecutor shall defer to the State's investigation of those persons unless the Pre-Trial Chamber, on the application of the Prosecutor, decides to authorize the investigation.

3. The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation.

4. The State concerned or the Prosecutor may appeal to the Appeals Chamber against a ruling of the Pre-Trial Chamber, in accordance with article 82. The appeal may be heard on an expedited basis.

5. When the Prosecutor has deferred an investigation in accordance with paragraph 2, the Prosecutor may request that the State concerned periodically inform the Prosecutor of the progress of its investigations and any subsequent prosecutions. States Parties shall respond to such requests without undue delay.

6. Pending a ruling by the Pre-Trial Chamber, or at any time when the Prosecutor has deferred an investigation under this article, the Prosecutor may, on an exceptional basis, seek authority from the Pre-Trial Chamber to pursue necessary investigative steps for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available.

7. A State which has challenged a ruling of the Pre-Trial Chamber under this article may challenge the admissibility of a case under article 19 on the grounds of additional significant facts or significant change of circumstances.

Article 19

Challenges to the jurisdiction of the Court or the admissibility of a case 1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

(a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;

(b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or

(c) A State from which acceptance of jurisdiction is required under article 12.

3. The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

4. The admissibility of a case or the jurisdiction of the Court may be challenged only once by any person or State referred to in paragraph 2. The challenge shall take place prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or at a time later than the commencement of the trial. Challenges to the admissibility of a case, at the commencement of a trial, or subsequently with the leave of the Court, may be based only on article 17, paragraph 1 (c).

5. A State referred to in paragraph 2 (b) and (c) shall make a challenge at the earliest opportunity.

6. Prior to the confirmation of the charges, challenges to the admissibility of a case or challenges to the

jurisdiction of the Court shall be referred to the Pre-Trial Chamber. After confirmation of the charges, they shall be referred to the Trial Chamber. Decisions with respect to jurisdiction or admissibility may be appealed to the Appeals Chamber in accordance with article 82.

7. If a challenge is made by a State referred to in paragraph 2 (b) or (c), the Prosecutor shall suspend the investigation until such time as the Court makes a determination in accordance with article 17.

8. Pending a ruling by the Court, the Prosecutor may seek authority from the Court:

(a) To pursue necessary investigative steps of the kind referred to in article 18, paragraph 6;

(b) To take a statement or testimony from a witness or complete the collection and examination of evidence which had begun prior to the making of the challenge; and

(c) In cooperation with the relevant States, to prevent the absconding of persons in respect of whom the Prosecutor has already requested a warrant of arrest under article 58.

9. The making of a challenge shall not affect the validity of any act performed by the Prosecutor or any order or warrant issued by the Court prior to the making of the challenge.

10. If the Court has decided that a case is inadmissible under article 17, the Prosecutor may submit a request for a review of the decision when he or she is fully satisfied that new facts have arisen which negate the basis on which the case had previously been found inadmissible under article 17.

11. If the Prosecutor, having regard to the matters referred to in article 17, defers an investigation, the Prosecutor may request that the relevant State make available to the Prosecutor information on the proceedings. That information shall, at the request of the State concerned, be confidential. If the Prosecutor thereafter decides to proceed with an investigation, he or she shall notify the State to which deferral of the proceedings has taken place.

Article 20

Ne bis in idem 1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.

2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.

3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:

(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Article 21

Applicable law 1. The Court shall apply:

(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

PART 3. GENERAL PRINCIPLES OF CRIMINAL LAW

Article 22

Nullum crimen sine lege 1. A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court.

2. The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

3. This article shall not affect the characterization of any conduct as criminal under international law independently of this Statute.

Article 23

Nulla poena sine lege A person convicted by the Court may be punished only in accordance with this Statute.

Article 24

Non-retroactivity ratione personae 1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.

2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.

Article 25

Individual criminal responsibility 1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

Exclusion of jurisdiction over persons under eighteen The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27

Irrelevance of official capacity 1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

Responsibility of commanders and other superiors In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29

Non-applicability of statute of limitations The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30

Mental element 1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

2. For the purposes of this article, a person has intent where:

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.

Article 31

Grounds for excluding criminal responsibility 1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

(a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;

(b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;

(c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:

(i) Made by other persons; or

(ii) Constituted by other circumstances beyond that person's control.

2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.

3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32

Mistake of fact or mistake of law 1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.

2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33

Superior orders and prescription of law 1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

Security Council Resolution 808

SOURCE UN Documentation Center. Available from http://www.un.org/documents.

INTRODUCTION Unlike most international courts, the ICTY and ICTR were not established by treaty. Instead, they exist as a consequence of decisions taken by the UN Security Council under the authority granted it by the UN Charter to maintain or restore international peace and security. The resolutions thus fall under UN Charter Chapter VII which makes them legally binding on UN member states; the statutes were similarly approved by the UN Security Council under its Chapter VII authority.

Adopted by the Security Council at its 3175th meeting, on 22 February 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Recalling paragraph 10 of its resolution 764 (1992) of 13 July 1992, in which it reaffirmed that all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches,

Recalling also its resolution 771 (1992) of 13 August 1992, in which, *inter alia,* it demanded that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law,

Recalling further its resolution 780 (1992) of 6 October 1992, in which it requested the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse the information submitted pursuant to resolutions 771 (1992) and 780 (1992), together with such further information as the Commission of Experts may obtain, with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia,

Having considered the interim report of the Commission of Experts established by resolution 780 (1992) (S/25274), in which the Commission observed that a decision to establish an ad hoc international tribunal in relation to events in the territory of the former Yugoslavia would be consistent with the direction of its work,

Expressing once again its grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia, including reports of mass killings and the continuance of the practice of "ethnic cleansing",

Determining that this situation constitutes a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment of an international tribunal would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),

Noting also with grave concern the "report of the European Community investigative mission into the

treatment of Muslim women in the former Yugoslavia" (S/25240, annex I),

Noting further the report of the committee of jurists submitted by France (S/25266), the report of the commission of jurists submitted by Italy (S/25300), and the report transmitted by the Permanent Representative of Sweden on behalf of the Chairman-in-Office of the Conference on Security and Cooperation in Europe (CSCE) (S/25307),

1.*Decides* that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991;

2. *Requests* the Secretary-General to submit for consideration by the Council at the earliest possible date, and if possible no later than 60 days after the adoption of the present resolution, a report on all aspects of this matter, including specific proposals and where appropriate options for the effective and expeditious implementation of the decision contained in paragraph 1 above, taking into account suggestions put forward in this regard by Member States;

3. *Decides* to remain actively seized of the matter.

Security Council Resolution 827

SOURCE UN Documentation Center. Available from http://www.un.org/documents.

Adopted by the Security Council at its 3217th meeting, on 25 May 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Having considered the report of the Secretary-General (S/25704 and Add..1) pursuant to paragraph 2 of resolution 808 (1993),

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Noting in this regard the recommendation by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for the establishment of such a tribunal (S/25221),

Reaffirming in this regard its decision in resolution 808 (1993) that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991,

Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report (S/25274),

Acting under Chapter VII of the Charter of the United Nations,

1. *Approves,* the report of the Secretary-General;

2. *Decides* hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;

3. *Requests* the Secretary-General to submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal;

4. *Decides* that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall

take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute;

5. *Urges* States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

6. *Decides* that the determination of the seat of the International Tribunal is subject to the conclusion of appropriate arrangements between the United Nations and the Netherlands acceptable to the Council, and that the International Tribunal may sit elsewhere when it considers it necessary for the efficient exercise of its functions;

7. *Decides* also that the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law;

8. *Requests* the Secretary-General to implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council;

9. *Decides* to remain actively seized of the matter.

Security Council Resolution 955

SOURCE UN Documentation Center. Available from http://www.un.org/documents.

Adopted by the Security Council at its 3453rd meeting, on 8 November 1994

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda,

Having considered the reports of the Secretary-General pursuant to paragraph 3 of resolution 935 (1994) of 1 July 1994 (S/1994/879 and S/1994/906), and having taken note of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II),

Expressing appreciation for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of international humanitarian law in Rwanda transmitted by the Secretary-General's letter of 1 October 1994 (S/1994/1125),

Expressing once again its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Stressing also the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects,

Considering that the Commission of Experts established pursuant to resolution 935 (1994) should continue on an urgent basis the collection of information relating to evidence of grave violations of international humanitarian law committed in the territory of Rwanda and should submit its final report to the Secretary-General by 30 November 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

2. *Decides* that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by

a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

3. *Considers* that the Government of Rwanda should be notified prior to the taking of decisions under articles 26 and 27 of the Statute;

4. *Urges* States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

5. *Requests* the Secretary-General to implement this resolution urgently and in particular to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the International Tribunal at the earliest time and to report periodically to the Council;

6. *Decides* that the seat of the International Tribunal shall be determined by the Council having regard to considerations of justice and fairness as well as administrative efficiency, including access to witnesses, and economy, and subject to the conclusion of appropriate arrangements between the United Nations and the State of the seat, acceptable to the Council, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions; and decides that an office will be established and proceedings will be conducted in Rwanda, where feasible and appropriate, subject to the conclusion of similar appropriate arrangements;

7. *Decides* to consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary;

8. *Decides* to remain actively seized of the matter.

Annex
Statute of the International Tribunal for Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1
Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

Article 2
Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. 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.

3. 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 3
Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation;

(e) Imprisonment;

(f) Torture;

(g) Rape;

(h) Persecutions on political, racial and religious grounds;

(i) Other inhumane acts.

Article 4
Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Pillage;

(g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

(h) Threats to commit any of the foregoing acts.

Article 5
Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7
Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8
Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9
Non bis in idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international

humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10
Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

(a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(b) The Prosecutor; and

(c) A Registry.

Article 11
Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

Article 12
Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13
Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

Article 14
Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15
The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such

staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16
The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17
Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18
Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19
Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conduct-

ed in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20
Rights of the accused

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21
Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22
Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23
Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24
Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

(a) An error on a question of law invalidating the decision; or

(b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25
Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26
Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27
Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 28
Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

(a) The identification and location of persons;

(b) The taking of testimony and the production of evidence;

(c) The service of documents;

(d) The arrest or detention of persons;

(e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29
The status, privileges and immunities of the International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30
Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

Article 31
Working languages

The working languages of the International Tribunal shall be English and French.

Article 32
Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; September 7, 1956

SOURCE The Avalon Project at Yale Law School. Available from http://www.yale.edu/lawweb/avalon/avalon.htm

INTRODUCTION The Supplementary Convention on the Abolition of Slavery was adopted in 1956 and entered into force the next year. It defines "institutions and practices similar to

slavery," requiring State to take steps towards their progressive abolition of abandonment. States are also required to create criminal offenses for transporting slaves, marking or mutilating persons with a view to their subjugation, and enslavement itself.

PREAMBLE

The States Parties to the present Convention

Considering that freedom is the birthright of every human being; Mindful that the peoples of the United Nations reaffirmed in the Charter their faith in the dignity and worth of the human person;

Considering that the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations as a common standard of achievement for all peoples and all nations, states that no one shall be held in slavery or servitude and that slavery and the slave trade shall be prohibited in all their forms;

Recognizing that, since the conclusion of the Slavery Convention signed at Geneva on 25 September 1926, which was designed to secure the abolition of slavery and of the slave trade, further progress has been made towards this end;

Having regard to the Forced Labour Convention of 1930 and to subsequent action by the International Labour Organisation in regard to forced or compulsory labour;

Being aware, however, that slavery, the slave trade and institutions and practices similar to slavery have not yet been eliminated in all parts of the world;

Having decided, therefore, that the Convention of 1926, which remains operative, should now be augmented by the conclusion of a supplementary convention designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery;

Have agreed as follows:

SECTION I — INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

Article 1

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Article 2

With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

SECTION II — THE SLAVE TRADE

Article 3

1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

2. (a) The States Parties shall take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose.

(b) The States Parties shall take all effective measures to ensure that their ports, airfields and coasts are not used for the conveyance of slaves.

3. The States Parties to this Convention shall exchange information in order to ensure the practical coordination of the measures taken by them in combating the slave trade and shall inform each other of every case of the slave trade, and of every attempt to commit this criminal offence, which comes to their notice.

Article 4

Any slave who takes refuge on board any vessel of a State Party to this Convention shall ipso facto be free.

SECTION III — SLAVERY AND INSTITUTIONS AND PRACTICES SIMILAR TO SLAVERY

Article 5

In a country where the abolition or abandonment of slavery, or of the institutions or practices mentioned in article I of this Convention, is not yet complete, the act of mutilating, branding or otherwise marking a slave or a person of servile status in order to indicate his status, or as a punishment, or for any other reason, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

Article 6

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

2. Subject to the provisions of the introductory paragraph of article 1 of this Convention, the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to bring accessory thereto, and to being a party to a conspiracy to accomplish any such acts.

SECTION IV — DEFINITIONS

Article 7

For the purposes of the present Convention:

(a) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status;

(b) "A person of servile status" means a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention;

(c) "Slave trade" means and includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale of exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.

SECTION V — CO-OPERATION BETWEEN STATES PARTIES AND COMMUNICATION OF INFORMATION

Article 8

1. The States Parties to this Convention undertake to co-operate with each other and with the United Nations to give effect to the foregoing provisions.

2. The Parties undertake to communicate to the Secretary-General of the United Nations copies of any laws, regulations and administrative measures enacted or put into effect to implement the provisions of this Convention.

3. The Secretary-General shall communicate the information received under paragraph 2 of this article to the other Parties and to the Economic and Social Council as part of the documentation for any discussion which the Council might undertake with a view to making further recommendations for the abolition of slavery, the slave trade or the institutions and practices which are the subject of this Convention.

SECTION VI — FINAL CLAUSES

Article 9

No reservations may be made to this Convention.

Article 10

Any dispute between States Parties to this Convention relating to its interpretation or application, which is not settled by negotiation, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute, unless the parties concerned agree on another mode of settlement.

Article 11

1. This Convention shall be open until 1 July 1957 for signature by any State Member of the United Nations or of a specialized agency. It shall be subject to ratification by the signatory States, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations, who shall inform each signatory and acceding State.

2. After 1 July 1957 this Convention shall be open for accession by any State Member of the United Nations or of a specialized agency, or by any other State to which an invitation to accede has been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations, who shall inform each signatory and acceding State.

Article 12

1. This Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any State Party is responsible; the Party concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.

2. In any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Party or of the non-metropolitan territory, the Party concerned shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by the metropolitan State, and when such consent has been obtained the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve month period mentioned in the preceding paragraph, the States Parties concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

Article 13

1. This Convention shall enter into force on the date on which two States have become Parties thereto.

2. It shall thereafter enter into force with respect to each State and territory on the date of deposit of the instrument of ratification or accession of that State or notification of application to that territory.

Article 14

1. The application of this Convention shall be divided into successive periods of three years, of which the first shall begin on the date of entry into force of the Convention in accordance with paragraph I of article 13.

2. Any State Party may denounce this Convention by a notice addressed by that State to the Secretary-General not less than six months before the expiration of the current three-year period. The Secretary-General shall notify all other Parties of each such notice and the date of the receipt thereof.

3. Denunciations shall take effect at the expiration of the current three-year period.

4. In cases where, in accordance with the provisions of article 12, this Convention has become applicable to a non-metropolitan territory of a Party, that Party may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Parties of such notice and the date of the receipt thereof.

Article 15

This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations Secretariat. The Secretary-General shall prepare a certified copy thereof for communication to States Parties to this Convention, as well as to all other States Members of the United Nations and of the specialized agencies. IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention on the date appearing opposite their respective signatures.

DONE at the European Office of the United Nations at Geneva, this seventh day of September one thousand nine hundred and fifty-six.

Universal Declaration of Human Rights

SOURCE The Avalon Project at Yale Law School. Available from http://www.yale.edu/lawweb/avalon/avalon.htm

INTRODUCTION Adopted by the General Assembly of the United Nations on December 10, 1948, the Universal Declaration of Human Rights his described in its preamble as constituting a "common standard of achievement," Those who prepared it relied upon a study of national constitutions in an attempt to distill a common denominator of human rights that would be of universal application. The U.S. representative to the UN Commission on Human Rights, Eleanor Roosevelt, presided over the process, but she was assisted by personalities from Europe, Africa, Asia, Latin America, and the Arab world. The Declaration's significance has been reaffirmed subsequently in various treaties and declarations, and it retains its universal significance. Some experts describe the Declaration as a codification of customary international law, while others have argued that it is an authoritative interpretation of the more laconic human rights clauses found in the Charter of the United Nations.

Preamble

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

WHEREAS it is essential to promote the development of friendly relations between nations,

WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

WHEREAS Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore,

The General Assembly

proclaims

This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as a marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of the government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms and others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

judicial decisions

Amistad

SOURCE The Avalon Project at Yale Law School. Available from http://www.yale.edu/lawweb/avalon/avalon.htm

INTRODUCTION In 1839 Africans from Sierra Leone were abducted by Portuguese slave traders and taken to Havana, where they were put on a Cuban ship, the *Amistad*. The Africans seized the ship, and attempted to return to Africa, when they were seized by a U.S. naval vessel. Litigation relating to the ship and ownership of the Africans proceeded in a Federal District Court in Connecticut, and subsequently before the Supreme Court. The Africans were defended by President John Quincy Adams, who successfully argued they should be freed. The Court said they had been kidnapped illegally, and had never been slaves. Justice Story had written earlier that ". . . it was the ultimate right of all human beings in extreme cases to resist oppression, and to apply force against ruinous injustice," although the somewhat narrower reasoning of the judgment recognized the Africans right to resist unlawful slavery.

U.S. Supreme Court
THE AMISTAD, 40 U.S. 518 (1841)
40 U.S. 518 (Pet.)
The AMISTAD.
UNITED STATES, Appellants,
v.
The LIBELLANTS AND CLAIMANTS of the SCHOONER AMISTAD, her tackle, apparel and furniture, together with her cargo, and the AFRICANS mentioned and described in the several libels and claims, Appellees.
January Term, 1841

In 1839, Africans from Sierra Leone were abducted by Portuguese slave traders and taken to Havana, where they were put on a Cuban ship, the *Amistad*. The Africans seized the ship, and attempted to return to Africa, when they were seized by a United States naval vessel. Litigation relating to the ship and ownership of the Africans proceeded in a Federal District Court in Connecticut, and subsequently before the Supreme Court. The Africans were defended by former President John Quincy Adams, who successfully argued they should be freed. The Court said they had been kidnapped illegally, and had never been slaves. Justice Story had written earlier that '...it was the ultimate right of all human beings in extreme cases to resist oppression, and to apply force against ruinous injustice', although the somewhat narrower reasoning of the judgment recognized the Africans right to resist "unlawful" slavery.

[40 U.S. 518, 521] APPEAL from the Circuit Court of Connecticut. On the 23d day of January 1840, Thomas R. Gedney and Richard W. Meade, officers of the United States surveying brig Washington, on behalf of themselves and the officers and crew of the brig Washington, and of others interested and entitled, filed a libel in the district court of the United States for the district of Connecticut, stating, that off Culloden Point, near Montauk Point, they took possession of a vessel which proved to be a Spanish schooner, called the Amistad, of Havana, in the Island of Cuba, of about 120 tons burden; and the said libellants found said schooner was manned by forty-five negroes, some of whom had landed near the said point for water, [40 U.S. 518, 522] and there were also on board, two Spanish gentlemen, who represented themselves to be, and as the libellants verily believed, were, part owners of the cargo, and of the negroes on board, who were slaves belonging to said Spanish gentlemen; that the schooner Amistad sailed, on the 28th day of June, A. D. 1839, from the port of Havana, bound to a port in the province of Principe, both in the island of Cuba, under the command of Raymon Ferrer, as master thereof; that the schooner had on board and was laden with a large and valuable cargo, and provisions, to the amount, in all, of $40,000, and also money to the sum and amount of about $250; and also fifty-four slaves, to wit, fifty-one male slaves, and three young female slaves, who were worth $25,000; and while on the voyage from Havana to Principe, the slaves rose upon the master and crew of the schooner, and killed and murdered the master and one of the crew, and two more of the crew escaped and got away from the schooner; that the two Spaniards on board, to wit, Pedro Montez and Jose Ruiz, remained alive on board the schooner, after the murder of the master, and after the negroes had taken possession of the vessel and cargo; that their lives were spared, to assist in the sailing of the vessel; and it was directed by the negroes, that the schooner should be navigated for the coast of Africa; and Pedro Montez and Jose Ruiz did, accordingly, steer as thus directed and compelled by the negroes, at the peril of their lives, in the daytime, and in the night, altered their course and steered for the American shore; but after two months on the ocean, they succeeded in coming round Montauk Point, when they were discovered and boarded by the libellants, and the two Spanish gentlemen begged for and claimed the aid and protection of the libellants. That the schooner was accordingly taken possession of, and re-captured from the hands and possession of the negroes who had taken the same: that the schooner was brought into the port of New London, where she now was; and the schooner would, with great difficulty, exposure and danger, have been taken by the libellants, but for the surprise upon the blacks who had possession thereof, a part of whom were on shore; and but for the aid and assistance and services of the libellants, the vessel and cargo would have been wholly lost to the respective owners thereof. That the cargo [40 U.S. 518, 523] belonged to divers Spanish merchants and others, resident in the island of Cuba, and to Pedro Montez and Jose Ruiz, the latter owning most of the slaves. The libellants stated, that having saved the schooner Amistad and cargo, and the slaves, with considerable danger, they prayed that process should be issued against the same, and that the usual proceedings might be had by the court, by which a reasonable salvage should be decreed out of the property so saved.

Afterwards, Henry Green and Pelatiah Fordham and others, filed a petition and answer to the libel, claiming salvage out of the property proceeded against by Thomas R. Gedney and others, and stating, that before the Amistad was seen or boarded by the officers and crew of the Washington, they had secured a portion of the negroes who had come on shore, and had thus aided in saving the vessel and cargo.

On the 29th of August 1839, Jose Ruiz and Pedro Montez, of Cuba, filed claims to all the negroes on board of the Amistad, except Antonio, as their slaves. A part of the merchandize on board the vessel was also claimed by them. They alleged, that the negroes had risen on the master of the schooner, and had murdered him; and that afterwards, they, Ruiz and Montez, had brought her into the United States. They claimed, that the negroes and merchandize ought to be restored to them, under the treaty with Spain; and denied salvage to Lieutenant Gedney, and to all other persons claiming salvage. Afterwards, Ruiz and Montez each filed in the district court, a separate libel, stating more at large the circumstances of the voyage of the Amistad, the murder

of the master by the negroes, and that the negroes afterwards compelled them to steer the vessel towards Africa, but that they contrived to bring her to the coast of the United States, where she was captured by the United States brig Washington: Ruiz, in his libel, stated the negroes belonging to him to have been forty-nine in number, 'named and known at Havana, as follows: Antonio, Simon, Jose, Pedro, Martin, Manuel, Andreo, Edwards, Celedonia, Burtolono, Ramia, Augustin, Evaristo, Casamero, Merchoi, Gabriel, Santorin, Escolastico, Rascual, Estanislao, Desidero, Nicholas, Estevan, Thomas, Cosme, Luis, Bartolo, Julian, Federico, Salustiano, [40 U.S. 518, 524] Ladislao, Celestino, Epifanio, Eduardo, Benancico, Felepe, Francisco, Hipoleto, Berreto, Isidoro, Vecente, Deconisco, Apolonio, Esequies, Leon, Julio, Hipoleto and Zenon; of whom several have died.' Their present names, Ruiz stated, he had been informed, were, 'Cinque, Burnah 1st, Carpree, Dammah, Fourrie 1st, Shumah, Conomah, Choolay, Burnah 2d, Baah, Cabbah, Poomah, Kimbo, Peea, Bang-ye-ah, Saah, Carlee, Parale, Morrah, Yahome, Narquor, Quarto, Sesse, Con, Fourrie 2d, Kennah, Lammane, Fajanah, Faah, Yahboy, Faquannah, Berrie, Fawnu, Chockammaw and Gabbow.' The libel of Pedro Montez stated, that the names of three negroes on board the Amistad, belonging to him, were Francisco, Juan and Josepha; the Spanish name of the fourth was not mentioned; and the four were now called Teme, Mahgra, Kene and Carria. All these were stated to be slaves, and the property of the claimants, purchased by them at Havana, where slavery was tolerated and allowed by law; and they and the merchandize on board the vessel, the claimants alleged, by the laws and usages of nations, and of the United States of America, and according to the treaties between Spain and the United States, ought to be restored to the claimants, without diminution, and entire.

The vessel, negroes and merchandize were taken into his possession, by the marshal of the district of Connecticut, under process issued by order of the court. 1

On the 19th of September 1837, William S. Holabird, Esq., attorney of the United States for the district, filed a suggestion in the district court, stating, that since the libel aforesaid of Thomas R. Gedney, Esq., was filed in this court, viz: within the present month of September, in the year of our Lord 1839, the duly accredited minister to the United States of her Catholic Majesty, the Queen of Spain, had officially presented to the proper department of the United States government, a claim, which was then pending, upon the United States, setting forth, that 'the vessel aforesaid, called the Amistad, and her cargo aforesaid, together with certain slaves on board the said vessel, all being the same as described in the libel aforesaid, are the property of Spanish subjects, and that the said vessel, cargo and slaves, while so being the property of the said Spanish subjects, arrived [40 U.S. 518, 525] within the jurisdictional limits of the United States, and were taken possession of by the said public armed brig of the United States, under such circumstances as make it the duty of the United States to cause the same vessel, cargo and slaves, being the property of said Spanish subjects, to be restored to the true proprietors and owners of the same, without further hindrance or detention, as required by the treaty now subsisting between the United States and Spain.' The attorney of the United States, in behalf of the United States, prayed the court, on its being made legally to appear that the claim of the Spanish minister was well founded, and was conformable to the treaty, that the court make such order for the disposal of the said vessel, cargo and slaves as might best enable the United States in all respect to comply with their treaty stipulations, and preserve the public faith inviolate. But if it should be made to appear, that the persons described as slaves, were negroes and persons of color, who had been transported from Africa, in violation of the laws of the United States, and brought within the United States, contrary to the same laws, the attorney, in behalf of the United States, claimed, that in such case, the court would make such further order in the premises, as would enable the United States, if deemed expedient, to remove such persons to the coast of Africa, to be delivered there to such agent or agents as might be authorized to receive and provide for them, pursuant to the laws of the United States, in such case provided, or to make such other order as to the court might seem fit, right and proper in the premises.

On the same day, September 19th, 1839, the negroes, by their counsel, filed an answer to the libel of Lieutenant Gedney and others, claiming salvage, and to the claim of Ruiz and Montez, claiming them as slaves, as also to the intervention of the United States, on the application of the minister of Spain; in which they said, that they were natives of Africa, and were born free, and ever since had been, and still of right were and ought to be, free and not slaves; that they were never domiciled in the island of Cuba, or in the dominions of the Queen of Spain, nor subject to the laws thereof. That on or about the 15th day of April 1839, they were, in the land of their nativeity, unlawfully kidnapped, and forcibly and wrongfully, by certain persons to them unknown, [40 U.S. 518, 526] who were there unlawfully and piratically engaged in the slave-trade between the coast of Africa and the island of Cuba, contrary to the will of these respondents, unlawfully, and under circumstances of great cruelty, transported to the island

of Cuba, for the unlawful purpose of being sold as slaves, and were there illegally landed for that purpose. That Jose Ruiz, one of the libellants, well knowing all the premises, and confederating with the persons by whom the respondents were unlawfully taken and holden as slaves, and intending to deprive the respondents severally of their liberty, made a pretended purchase of the respondents, except the said Carria, Teme, Kene and Mahgra; and that Pedro Montez, also well knowing all the premises, and confederating with the said persons, for the purpose aforesaid, made a pretended purchase of the said Carria, Teme, Kene and Mahgra; that the pretended purchases were made from persons who had no right whatever to the respondents, or any of them, and that the same were null and void, and conferred no right or title on Ruiz or Montez, or right of control over the respondents, or either of them. That on or about the 28th day of June 1839, Ruiz and Montez, confederating with each other, and with and Ramon Ferrer, now deceased, master of the schooner Amistad, and others of the crew thereof, caused respondents, severally, without law or right, under color of certain false and fraudulent papers by them procured and fraudulently used for that purpose, to be placed by force on board the schooner, to be transported, with said Ruiz and Montez, to some place unknown to the respondents, and there enslaved for life. That the respondents, being treated on board said vessel, by said Ruiz and Montez and their confederates, with great cruelty and oppression, and being of right free, as aforesaid, were incited by the love of liberty natural to all men, and by the desire of returning to their families and kindred, to take possession of said vessel, while navigating the high seas, as they had a right to do, with the intent to return therein to their native country, or to seek an asylum in some free state, where slavery did not exist, in order that they might enjoy their liberty under the protection of its government; that the schooner, about the 26th of August 1839, arrived, in the possession of the respondents, at Culloden Point, near Montauk, and was there anchored near the shore of Long Island, within [40 U.S. 518, 527] hailing distance thereof, and within the waters and territory of the state of New York; that the respondents, Cinque, Carlee, Dammah, Baah, Monat, Nahguis, Quato, Con, Fajanah, Berrie, Gabbo, Fouleaa, Kimbo, Faquannah, Cononia, otherwise called Ndzarbla, Yaboi, Burnah 1st, Shuma, Fawne, Peale, Ba and Sheele, while said schooner lay at anchor as aforesaid, went on shore, within the state of New York to procure provisions and other necessaries, and while there, in a state where slavery is unlawful and does not exist, under the protection of the government and laws of said state, by which they were all free, whether on board of said schooner or no shore, the respondents were severally seized, as well those who were on shore as aforesaid, as those who were on board of and in possession of said schooner, by Lieutenant Gedney, his officers and crew, of the United States brig Washington, without any lawful warrant or authority whatever, at the instance of Ruiz and Montez, with the intent to keep and secure them as slaves to Ruiz and Montez, respectively, and to obtain an award of salvage therefore from this honorable court, as for a meritorious act. That for that purpose, the respondents were, by Lieutenant Gedney, his officers and crew, brought to the port of New London; and while there, and afterwards, under the subsequent proceedings in this honorable court, taken into the custody of the marshal of said district of Connecticut, and confined and held in the jails in the cities of New Haven and Hartford, respectively, as aforesaid. Wherefore, the respondents prayed, that they might be set free, as they or right were and ought to be, and that they be released from the custody of the marshal, under the process of this honorable court, under which, or under color of which, they were holden as aforesaid.

Jose Antonio Tellincas, and Aspe and Laca, subjects of Spain, and merchants of Cuba, presented claims for certain merchandize which was on board the Amistad, when taken possession of by Lieutenant Gedney; denying all claims to salvage, and asking that the property should be restored to them.

On the 23d day of January, the district judge made a decree, having taken into his consideration all the libels, claims and the suggestion of the district-attorney of the United States, and the claim preferred by him that the negroes should be delivered to [40 U.S. 518, 528] the Spanish authorities, the negroes to be sent by them to Cuba, or that the negroes should be placed under the authority of the President of the United States, to be transported to Africa. The decree rejected the claim of Green and others to salvage, with costs. The claim of Lieutenant Gedney and others to salvage on the alleged slaves, was dismissed. The libels and claims of Ruiz and Montez, being included under the claim of the minister of Spain, were ordered to be dismissed, with costs taxed against Ruiz and Montez respectively. 'That that part of the claim of the minister of Spain which demands the surrender of Cinques and others, who are specifically named in the answer filed as aforesaid, be dismissed, without cost.' That the claim of the vice-consul of Spain, demanding the surrender to the Spanish government of Antonio, a slave owned by the heirs of Captain Ferrer, should be sustained; and ordered that Antonio should be delivered to the government of Spain, or its agent, without costs. The claims of Tellincas, and Aspe and Laca, for the restora-

tion of the goods specified by them, being part of the cargo of the Amistad, was sustained, and that the same goods be restored to them, deducting one-third of the gross appraised value of them, which was allowed as salvage to the officers and crew of the Washington. A like salvage of one-third of the gross value of the Amistad, and the other merchandize on board of her, was also adjudged to the salvors. The costs were to be deducted from the other two-thirds.

'And whereas, the duly-accredited minister of Spain, resident in the United States, hath, in behalf of the government of Spain, for the owners of said schooner, and the residue of said goods, claimed that the same be restored to that government, for the said owners, they being Spanish subjects, under the provisions of the treaty subsisting between the United States and Spain: And whereas, it hath been made to appear to this court, that the said schooner is lawfully owned by the subjects of Spain, as also the residue of said goods, not specifically claimed: And whereas, the aforesaid Don Pedro Montez and Jose Ruiz have in person ceased to prosecute their claim as specified in their respective libels, and their said claims fall within the demand [40 U.S. 518, 529] and claim of the Spanish minister, made as aforesaid, And whereas, the seizure of the said schooner and goods by the said Thomas R. Gedney and others, was made on the high seas, in a perilous condition, and they were first brought into the port of New London, within the district of Connecticut, and libeled for salvage.' The decree then proceeded to adjudge to Lieutenant Gedney and others, as salvage, one-third of the gross proceeds of the vessel and cargo, according to an appraisement which had been made thereof; and, if not paid, directed the property to be sold, and that proportion of the gross proceeds of the sale to be paid over to the captors, the residue, after payment of all costs, to be paid to the respective owners of the same.

Upon the answers of the negroes, and the representations of the district-attorney of the United States, and of Montez and Ruiz, the decree proceeded: 'This court having fully heard the parties appearing, with their proofs, do find, that the respondents, severally answering as aforesaid, are each of them natives of Africa, and were born free, and ever since have been, and still of right are free, and not slaves, as is in said several libels claims or representations alleged or surmised; that they were never domiciled in the Island of Cuba, or the dominions of the Queen of Spain, or subject to the laws thereof; that they were severally kidnapped in their native country, and were, in violation of their own rights, and of the laws of Spain, prohibiting the African slave-trade, imported into the island of Cuba, about the 12th June 1839, and were there unlawfully held and transferred to the said Ruiz and Montez, respectively; that said respondents were, within fifteen days after their arrival at Havana, aforesaid, by said Ruiz and Montez, put on board said schooner Amistad, to be transported to some port in said island of Cuba, and there unlawfully held as slaves; that the respondents, or some of them, influenced by the desire of recovering their liberty, and of returning to their families and kindred in their native country, took possession of said schooner Amistad, killed the captain and cook, and severely wounded said Montez, while on her voyage from Havana, as aforesaid, and that the respondents arrived, in possession of said schooner, at Culloden Point, near Montauk, and there anchored [40 U.S. 518, 530] said schooner on the high seas, at the distance of half a mile from the shore of Long Island, and were there, while a part of the respondents were, as is alleged in their said answer, on shore, in quest of water and other necessaries, and about to sail in said schooner for the coast of Africa, seized by said Lieutenant Gedney, and his officers and crew, and brought into the port of New London, in this district. And this court both further find, that it hath ever been the intention of the said Montez and Ruiz, since the said Africans were put on board the said schooner, to hold the said Africans as slaves; that at the time when the said Cinque and others, here making answer, were imported from Africa, into the dominions of Spain, there was a law of Spain prohibiting such importations, declaring the persons so imported to be free; that said law was in force when the claimants took the possession of the said Africans and put them on board said schooner, and the same has ever since been in force.' The decree of the district court recited the decree of the government of Spain, of December 1817, prohibiting the slave-trade, and declaring all negroes brought into the dominions of Spain by slave-traders to be free; and enjoining the execution of the decree on all the officers of Spain in the dominions of Spain. The decree of the district court proceeded: 'And this court doth further find, that when the said Africans were shipped on board the said schooner, by the said Montez and Ruiz, the same were shipped under the passports signed by the governor-general of the Island of Cuba, in the following words, viz: Description. Size. Age. Color. Hair. Forehead. Eyebrows. Eyes. Nose. Mouth. Beard. Peculiar signs. Havana, June 22d, 1839.

I grant permission to carry three black ladinos, named Juana, Francisco, and Josefa, property of Dr. Pedro Montez, to Puerto Principe, by sea. They must present themselves to the respective territorial judge with this permit.

Duty, 2 reals. ESPLETA. (Indorsed)-Commander of Matria.

Let pass, in the schooner Amistad, to Guanaja, Ferrer, master. Havana, June 27th, 1839. MART. & CO. [40 U.S. 518, 531] Description. Size. Age. Color. Hair. Forehead. Eyebrows. Eyes. Nose. Mouth. Beard. Peculiar signs. Havana, June 26th, 1839.

I grant permission to carry forty-nine black ladinos, named Antonio, Simon, Lucas, Jose, Pedro, Martin, Manuel, Andrios, Edwardo, Celedernnio, Bartolo, Raman, Augustin, Evaristo, Casimero, Meratio, Gabriel, Santome, Ecclesiastico, Pasenal, Stanislao, Desiderio, Nicolas, Estevan, Tomas, Cosme, Luis, Bartolo, Julian, Federico, Saturdino, Ladislas, Celestino, Epifano, Fronerie, Venaniro, Feligre, Francisco, Hypolito, Benito, Isdoro, Vicente, Dioniceo, Apolino, Eseuie l, Leon, Julio, Hipolito y Raman, property of Dr. Jose Ruiz, to Puerto Principe; by sea. They must present themselves with this permit to the respective territorial judge.'

ESPLETA. Duty, 2 reals.

(Indorsed) Commander of Matria.

Let pass, in the schooner Amistad, to Guanaja, Ferrer, master. Havana, June 27th, 1839. MART. & CO.

Which said passports do not truly describe the said persons shipped under the same. Whereupon, the said claim of the minister of Spain, as set forth in the two libels filed in the name of the United States, by the said district-attorney, for and in behalf of the government of Spain and her subjects, so far as the same relate to the said Africans named in said claim, be dismissed. And upon the libel filed by said district-attorney, in behalf of the United States, claiming the said Africans libeled as aforesaid, and now in the custody of the marshal of the district of Connecticut, under and by virtue of process issued from this court, that they may be delivered to the president of the United States to be transported to Africa: It is decreed, that the said Africans now in the custody of said marshal, and libeled and claimed as aforesaid (excepting Antonio Ferrer), be delivered to the president of the United States, by the marshal of the district of Connecticut, to be by him transported to Africa, in pursuance of [40 U.S. 518, 532] the law of congress, passed March 3d, 1819, entitled "an act in addition to the acts prohibiting the slave-trade."

After the decree was pronounced, the United States, 'claiming in pursuance of a demand made upon them by the duly-accredited minister of her Catholic Majesty, the Queen of Spain, to the United States, moved an appeal from the whole and every part of the said decree, except the part of the same in relation to the slave Antonio, to the circuit court' of Connecticut. Antonio Tellincas, and Aspe and Laca, claimants, &c., also appealed from the decree to the circuit court, except for so much of the decree as sustained their claims to the goods, &c. The Africans, by their African names, moved in the circuit court, in April 1840, that so much of the appeal of the district-attorney of the United States, from so much of the decree of the district court as related to them severally, might be dismissed; 'because they say, that the United States do not claim, nor have they ever claimed, any interest in the appellees, respectively, or either of them, and have no right, either by the law of nations, or by the constitution or laws of the United States, to appear in the courts of the United States, to institute or prosecute claims to property, in behalf of the subjects of the Queen of Spain, under the circumstances appearing on the record in this case; much less to enforce the claims of the subject of a foreign government, to the persons of the said appellees, respectively, as the slaves of the said foreign subjects, under the circumstances aforesaid.' The circuit court refused the motion.

The circuit court affirmed the decree of the district court, pro form a, except so far as respected the claims of Tellincas, and Aspe and Laca.

After this decree of the circuit court, the United States, claiming in pursuance of a demand made upon them by the duly-accredited minister of her Catholic Majesty, the Queen of Spain, to the United States, moved an appeal from the whole and every part of the decree of the court, affirming the decree of the district court, to the supreme court of the United States, to be holden at the city of Washington, on the second Monday of January, A. D. 1841; and it was allowed. [40 U.S. 518, 533] The court, as far as respected the decree of the district court allowing salvage on the goods on board the Amistad, continued the case, to await the decision of the supreme court, on that part of the decree appealed from.

The circuit court, in the decree, proceeded to say, that 'they had inspected certain depositions and papers remaining as of record in said circuit court, and to be used as evidence, before the supreme court of the United States, on the trial of said appeal.' Among the depositions, were the following: 'I, Richard Robert Madden, a British subject, having resided for the last three years and upwards, at Havana, where I have held official situations under the British government, depose and say, that I have held the office of superintendent of liberated Africans, during that term, and still hold it; and have held for the term of one year, the office there, of British commissioner, in the mixed court of justice. The duties of my office and of my avocation, have led me to become well acquainted with Africans recently imported from Africa. I have seen and had in my charge many

hundreds of them. I have also seen the Africans in the custody of the marshal of the district of Connecticut, except the small children. I have examined them and observed their language, appearance and manners; and I have no doubt of their having been, very recently, brought from Africa. To one of them, I spoke, and repeated a Mohammedan form of prayer, in the Arabic language; the man immediately recognised the language, and repeated a few words of it, after me, and appeared to understand it, particularly the words 'Allah akbar,' or God is great. The man who was beside this negro, I also addressed in Arabic, saying, 'salaam alikoem,' or peace be to you; he immediately, in the customary oriental salutations, replied, 'alikoem salaam,' or peace be on you. From my knowledge of oriental habits, and of the appearance of the newly-imported slaves in Cuba, I have no doubt of those negroes of the Amistad being bon a fide Bozal negroes, quite newly imported from Africa. I have a full knowledge of the subject of slavery-slave-trade in Cuba; and I know that no law exists, or has existed, since the year 1820, that sanctions the introduction of negroes into the island of Cuba, from Africa, for the purpose of making slaves, or being held in slavery; and that [40 U.S. 518, 534] all such Bozal negroes, as those recently imported are called, are legally free; and no law, common or statute, exists there, by which they can be held in slavery. Such Africans, long settled in Cuba, and acclimated, are called ladinos, and must have been introduced before 1820, and are so called, in contradistinction to the term creole, which is applied to the negroes born in the island. I have seen, and now have before me, a document, dated 26th June 1839, purporting to be signed by Ezpeleta, who is captain-general of the island, to identify which, I have put my name to the left-hand corner of the document, in presence of the counsel of the Africans; this document, or 'traspasso,' purporting to be a permit granted to Don I. Ruiz, to export from Havana to Puerto Principe, forty-nine negroes, designated by Spanish names, and called therein ladinos, a term totally inapplicable to newly-imported Africans. I have seen, and now have before me, another document, dated 22d June 1839, and signed in the same manner, granted to Don Pedro Montez, for the removal of three negro children from Havana to Puerto Principe, also designated by Spanish names, and likewise called 'ladinos,' and wholly inapplicable to young African children, who could not have been acclimated, and long settled in the island; which document, I have identified in the same manner as the former. To have obtained these documents from the governor, for bon a fide Bozal negroes, and have described them in the application for it, as ladinos, was evidently a fraud; but nothing more than such an application and the payment of the necessary fees would be required to procure it, as there is never any inquiry or inspection of the negroes, on the part of the governor, or his officer, nor is there any oath required from the applicant. I further state that the above documents are manifestly inapplicable to the Africans of the Amistad I have seen here and in New Haven; but such documents are commonly obtained by similar applications at the Havana, and by these means, the negroes recently and illegally introduced, are thus removed to the different ports of the island, and the danger obviated of their falling in with English cruisers, and then they are illegally carried into slavery. One of the largest dealers and importers of the island of Cuba, in African slaves, is the notorious house of Martines & Co., of Havana; and for years past, as at present, they have [40 U.S. 518, 535] been deeply engaged in this traffic; and the Bozal Africans, imported by these and all other slave-traders, when brought to the Havana, are immediately taken to the barracoons, or slave-marts; five of which are situated in the immediate vicinity of the governor's county house, about one mile and a half from the walls of Havana; and from these barracoons, they are taken and removed to the different parts of the island, when sold; and having examined the endorsements on the back of the traspasso, or permits for the removal of the said negroes of the Amistad, the signature to that endorsement appears to be that of Martines & Co.; and the document purports to be a permit or pass for the removal of the said negroes. The handwriting of Martines & Co., I am not acquainted with. These barracoons, outside the city walls, are fitted up exclusively for the reception and sale of Bozal negroes; one of these barracoons or slave-marts, called la miserecordia, or 'mercy,' kept by a man, named Riera, I visited the 24th September last, in company with a person well acquainted with this establishment; and the factor or major domo of the master, in the absence of the latter, said to me, that the negroes of the Amistad had been purchased there; that he knew them well; that they had been bought by a man from Puerto Principe, and had been embarked for that place; and speaking of the said negroes, he said, 'che lastima,' or what pity it is, which rather surprised me; the man further explained himself, and said, his regret was for the loss of so many valuable Bozals, in the event of their being emancipated in the United States. One of the houses most openly engaged, and notoriously implicated in the slave-trade transactions, is that of Martines & Co.; and their practice is, to remove their newly-arrived negroes from the slave ships to these barracoons, where they commonly remain two or three weeks, before sold, as these negroes of the Amistad, illegally introduced by Martines & Co., were, in the present instance, as is generally reported and believed in the Havana. Of the Africans which I

have seen and examined, from the necessity which my office imposes on me at the Havana, of assisting at the registry of the newly-imported Bozals, emancipated by the mixed court, I can speak with tolerable certainty of the ages of these people, with the exception of the children, whom [40 U.S. 518, 536] have not seen. Sa, about 17; Ba, 21; Luckawa, 19; Tussi, 30; Beli, 18; Shuma, 26; Nama, 20; Tenquis, 21; the others, I had not time to take a note of their ages. With respect to the mixed commission, its jurisdiction extends only to cases of captured negroes brought in by British or Spanish cruisers; and notwithstanding the illegalities of the traffic in slaves, from twenty to twenty-five thousand slaves have been introduced into the island, during the last three years; and such is the state of society, and of the administration of the laws there, that hopeless slavery is the inevitable result of their removal into the interior.'

On his cross-examination, the witness stated, that he was not acquainted with the dialects of the African tribes, but was slightly acquainted with the Arabic language. Lawful slaves of the island are not offered for sale generally, nor often placed in the barracoons, or man-marts. The practice in Havana is to use the barracoons 'for Bozal negroes only.' Barracoons are used for negroes recently imported, and for their reception and sale. The native language of the Africans is not often continued for a long time, on certain plantations. 'It has been to me a matter of astonishment, at the shortness of time in which the language of the negroes is disused, and the Spanish language adopted and acquired. I speak this, from a very intimate knowledge of the condition of the negroes in Cuba, from frequent visits to plantations, and journeys in the interior; and on this subject, I think I can say, my knowledge is as full as any person's can be.' 'There are five or six barracoons within pistol-shot of the country residence of the captain-general of Cuba. On every other part of the coast where the slave-trade is carried on, a barracoon or barracoons must likewise exist. They are a part of the things necessary to the slave-trade, and are for its use only, for instance, near Matanzas, there is a building or shed of this kind and used for this purpose. Any negroes landed in the island since 1820, and carried into slavery, have been illegally introduced; and the transfer of them under false names, such as calling Bozal, ladinos, is, necessarily, a fraud. Unfortunately, there is no interference on the part of the local authorities; they connive at it, and collude with the slave-traders; the governor alone, at the Havana, receiving a [40 U.S. 518, 537] bounty or impost on each negro thus illegally introduced, of $10 a head. As to the mixed commission, once the negroes clandestinely introduced are landed, they no longer have cognisance of the violation of the treaty; the governor has cognisance of this and every other bearing of the Spanish law, on Spanish soil. This head-money has not the sanction of any Spanish law for its imposition; and the proof of this is, it is called a voluntary contribution.'

Also, a statement, given by the district-attorney, W. S. Holabird, Esq., of what was made to him by A. G. Vega, Esq., Spanish consul, January 10th, 1840: 'That he is a Spanish subject; that he resided in the island of Cuba several years; that he knows the laws of that island on the subject of slavery; that there was no law that was considered in force in the island of Cuba, that prohibited the bringing in African slaves; that the court of mixed commissioners had no jurisdiction, except in cases of capture on the sea; that newly-imported African negroes were constantly brought to the island, and after landing, were bon a, fide transferred from one owner to another, without any interference by the local authorities or the mixed commission, and were held by the owners, and recognised as lawful property; that slavery was recognised in Cuba, by all the laws that were considered in force there; that the native language of the slaves was kept up on some plantations, for years. That the barracoons are public markets, where all descriptions of slaves are sold and bought; that the papers of the Amistad are genuine, and are in the usual form; that it was not necessary to practise any fraud, to obtain such papers from the proper officers of the government; that none of the papers of the Amistad are signed by Martines, spoken of by R. R. Madden in his deposition; that he (Martines) did not hold the office from whence that paper issued.'

Also, a deposition of James Ray, a mariner on board of the Washington, stating the circumstances of the taking possession of the Amistad, and the Africans, which supported the allegations in the several libels, in all essential circumstances. The documents exhibited as the passports of the Spanish authorities at Havana, and other papers relating to the Amistad, and her clearance from Havana, were also annexed to the decree of the circuit court, in the original Spanish.

Translations of all [40 U.S. 518, 538] of these which were deemed of importance in the cause, are given in the decree of the district court.

Sullivan Haley stated in his deposition, that he heard Ruiz say, that 'none of the negroes could speak Spanish; they are just from Africa.'

James Covey, a colored man, deposed, that 'he was born at Berong-Mendi country; left there seven and a half years ago; was a slave, and carried to Lumboko. All these Africans were from Africa. Never saw them until now. I could talk with them. They appeared glad, be-

cause they could speak the same language. I could understand all but two or three. They say, they from Lumboko; three moons. They all have Mendi names, and their names all mean something; Carle, means bone; Kimbo, means cricket. They speak of rivers which I know; said they sailed from Lumboko; two or three speak different language from the others; the Timone language. Say-ang-wa rivers spoken of; these run through the Vi country. I learned to speak English, at Sierre Leone. Was put on board a man-of-war, one year and a half. They all agree as to where they sailed form. I have no doubt they are Africans. I have been in this country six months; came in a British man-of-war; have been in this town (New Haven) four months, with Mr. Bishop; he calls on me for no money, and do not know who pays my board. I was stolen by a black man, who stole ten of us. One man carried us two months' walk. Have conversed with Sinqua; Barton has been in my town, Gorang. I was sailing for Havana, when the British man-of-war captured us.' The testimony of Cinque and the negroes of the Amistad, supported the statements in their answers.

The respondents also gave in evidence the 'treaty between Great Britain and Spain, for the abolition of the slave-trade, signed at Madrid, 23d September 1817.'

The case was argued, for the United States, by Gilpin, Attorney-General; and by Baldwin and Adams, for the appellees; Jones, on the part of Lieutenant Gedney and others, of the United States brig Washington, was not required by the court to argue the claims to salvage. [40 U.S. 518, 539] Gilpin, Attorney-General, for the United States, reviewed the evidence, as set out in the record, of all the facts connected with the case, from the first clearance of the schooner Amistad, at Havana, on the 18th May 1838, down to the 23d January 1840, when the final decree of the district court of the United States for the district of Connecticut, was rendered.

The attorney-general proceeded to remark, that on the 23d January 1840, the case stood thus: The vessel, cargo and negroes were in possession of the marshal, under process from the district court, to answer to five separate claims; those of Lieutenant Gedney, and Messrs. Green & Fordham for salvage; that of the United States, at the instance of the Spanish minister, for the vessel, cargo and negroes, to be restored to the Spanish owners, in which claim those of Messrs. Ruiz and Montez were merged; that of the Spanish vice-consul, for the slave Antonio, to be restored to the Spanish owner; and that of Messrs. Tellincas, and Aspe and Laca, for the restoration of a part of the cargo belonging to them. The decree of the district court found, that the vessel and the goods on board, were the property of the Spanish subjects, and that the passports under which the negroes were shipped at Havana, were signed by the governor-general of Cuba. It denied the claims of Lieutenant Gedney, and Messrs. Green and Fordham, to salvage on the slaves, but allowed the claims of the officers and crew of the Washington to salvage on the Amistad, and on the merchandize on board of that vessel. It also decreed, that the residue of the goods, and the vessel, should be delivered to the Spanish minister, to be restored to the Spanish owners; and that the slave Antonio should be delivered to the Spanish vice-consul, for the same purpose. As to the negroes, claimed by Ruiz and Montes, it dismissed the claims of those persons, on the ground, that they were included under that of the minister of Spain. The libel of the United States, claiming the delivery of the negroes to the Spanish minister, was dismissed, on the ground, that they were not slaves, but were kidnapped and imported into Cuba; and that at the time they were so imported, there was a law of Spain declaring persons so imported to be free. The alternative prayer of the United States, claiming the delivery of the negroes, to be transported to Africa, was granted.

As soon as this decree was made, an appeal was taken by the [40 U.S. 518, 540] United States to the circuit court, from the whole of it, except so far as it related to Antonio. At the succeeding term of the circuit court, the negroes moved that the appeal of the United States might be dismissed, on the ground, that they had no interest in the negroes; and also, on the ground, that they had no right to prosecute claims to property in behalf of subjects of the Queen of Spain. That motion, however, was refused by the circuit court, which proceeded to affirm the decree of the district court, on the libel of the United States.

It is from this decree of the circuit court, that the present appeal to the supreme court is prosecuted.

Was the decree of the circuit court correct? The state of the facts, as found by the decree, and not denied, was this: The vessel and the goods on board, were the property of Spanish subjects, in Havana, on the 27th June 1839. At that time, slavery was recognised and in existence in the Spanish dominions. The negroes in question are certified, at that time, in a document signed by the governor-general of Cuba, to be ladinos negroes — that is, slaves — the property of Spanish subjects. As such, permission is given by the governor-general, to their owners, to take them by sea, to Puerto Principe, in the same island. The vessel, with these slaves, thus certified, on board, in charge of their alleged owners, regularly cleared and sailed from Havana, the documentary evidence aforesaid, and the papers of the vessel being also on board. During this voyage, the negroes rose, killed the master, and took

possession of the vessel. On the 26th August, the vessel, cargo and negroes were rescued and taken on the high seas, by a public officer of the United States, and brought into a port of the United States, where they await the decision of the judicial tribunals.

In this position of things, the minister of Spain demands that the vessel, cargo and negroes be restored, pursuant to the 9th article of the treaty of 27th October 1795, which provides (1 Laws U. S. 268), that 'all ships and merchandize of what nature soever, which shall be rescued out of the hands of any pirates or robbers, on the high seas, shall be brought into some port of either state, and shall be delivered into the custody of the officers of that port, in order to be taken care of and restored entire to the true proprietor, as soon as due [40 U.S. 518, 541] and sufficient proof shall be made concerning the property thereof.' The only inquiries, then, that present themselves, are: 1. Has 'due and sufficient proof concerning the property thereof' been made? 2. If so, have the United States a right to interpose in the manner they have done, to obtain its restoration to the Spanish owners? If these inquiries result in the affirmative, then the decree of the circuit court was erroneous, and ought to be reversed.

I. It is submitted, that there has been due and sufficient proof concerning the property, to authorize its restoration. It is not denied, that, under the laws of Spain, negroes may be held as slaves, as completely as they are in any of the states of this Union; nor will it be denied, if duly proved to be such, they are subject to restoration, as much as other property, when coming under the provisions of this treaty. Now, these negroes are declared, by the certificates of the governor-general, to be slaves, and the property of the Spanish subjects therein named. That officer (1 White's New Rec. 369, 371; 8 Pet. 310) is the highest functionary of the government in Cuba; his public acts are the highest evidence of any facts stated by him, within the scope of his authority. It is within the scope of his authority, to declare what is property, and what are the rights of the subjects of Spain, within his jurisdiction, in regard to property.

Now, in the intercourse of nations, there is no rule better established than this, that full faith is to be given to such acts — to the authentic evidence of such acts. The question is not, whether the act is right or wrong; it is, whether the act has been done, and whether it is an act within the scope of the authority. We are to inquire only whether the power existed, and whether it was exercised, and how it was exercised; not whether it was rightly or wrongly exercised. The principle is universally admitted, that, wherever an authority is delegated to any public officer, to be exercised at his discretion, under his own judgment, and upon his own responsibility, the acts done in the appropriate exercise of that authority, are binding as to the subject-matter. Without such a rule, there could be no peace or comity among nations; all harmony, all mutual [40 U.S. 518, 542] respect, would be destroyed; the courts and tribunals of one country would become the judges of the local laws and property of others. Nor is it to be supposed, that so important a principle would not be recognised by courts of justice. They have held, that, whether the act of the foreign functionary be executive, legislative or judicial, it is, if exercised within its appropriate sphere, binding as to the subject-matter; and the authentic record of such act is full and complete evidence thereof. In the case of Marbury v. Madison, 1 Cranch 170, this court held, that a commission was conclusive evidence of an executive appointment; and that a party from whom it was withheld might obtain it through the process of a court, as being such evidence of his rights. In the case of Thompson v. Tolmie, 2 Pet. 167, this court sustained the binding and sufficient character of a decision, made by a competent tribunal, and not reversed, whether that decision was in itself right or wrong. In the case of the United States v. Arredondo, 6 Ibid. 719, the whole doctrine on this subject is most forcibly stated. Indeed, nothing can be clearer than the principles thus laid down; nor can they apply more directly to any case than the present. Here is the authentic certificate or record of the highest officer known to the Spanish law, declaring, in terms, that these negroes are the property of the several Spanish subjects. We have it countersigned by another of the principal officers. We have it executed and delivered, as the express evidence of property, to these persons. It is exactly the same as that deemed sufficient for the vessel and for the cargo. Would it not have been complete and positive evidence in the island of Cuba? If so, the principle laid down by this court makes it such here.

But this general principle is strengthened by the particular circumstances of the case. Where property on board of a vessel is brought into a foreign port, the documentary evidence, whether it be a judicial decree, or the ship's papers, accompanied by possession, is the best evidence of ownership, and that to which courts of justice invariably look. In the case of Bernadi v. Motteux, Doug. 575, Lord MANSFIELD laid down the rule, that a decree of a foreign court was conclusive as to the right of property under it. In that of The Virgilantia, 1 Rob. 3, 11, the necessity or propriety of producing the ship's papers, as the first [40 U.S. 518, 543] evidence of her character and property, and of ascertaining her national character from her passport, is expressly recognised. In that of The Cosmopolite, 3 Rob. 269, the

title of the claimant, who was a Dane, to the vessel, was a decree of a French court against an American vessel; the court refused to inquire into the circumstances of the condemnation, but held the decree sufficient evidence for them. In that of The Sarah, 3 Rob. 266, the captors of a prize applied to be allowed to give proof of the property being owned by persons other than those stated in the ship's documents, but it was refused. In that of The Henrick and Maria, 4 Rob. 43, the very question was made, whether the court would not look into the validity of a title, derived under a foreign court of admiralty, and it was refused.

These principles are fully sustained by our own courts. In the case of The Resolution, 2 Dall. 22-3, possession of property on board of a vessel is held to be presumptive evidence of ownership; and the ship's papers, bills of lading, and other documents, are pri a facie evidence of the facts they speak. It is in this evidence that vessels are generally acquitted or condemned. In that of The Ann Green, 1 Gallis. 281-84, it is laid down as the rule, that the first and proper evidence in prize cases is the ship's papers; and that only in cases of doubt, is further testimony to be received. The court there say, that as a general rule, they would pronounce for the inadmissibility of such further evidence. So, in that of The Diana, 2 Gallis. 97, the general rule laid down is, that no claim is to be admitted in opposition to the ship's papers; the exceptions stand upon very particular grounds. In that of Ohl v. Eagle Insurance Company, 4 Mason 172, parol evidence was held not to be admissible to contradict a ship's papers. In that of McGrath v. The Candelero, Bee 60, a decree of restitution in a foreign court of admiralty was held to be full evidence of the ownership, and such as was to be respected in all other countries. In that of Catlett v. Pacific Insurance Company, 1 Paine 612, the register was held to be conclusive evidence of the national character of the vessel; and a similar rule was held to exist in regard to a pass, in the case of Barker v. Phoenix Insurance Company, 8 Johns. 307.

Similar principles have been adopted in this court. [40 U.S. 518, 544] The decree of a foreign court of admiralty, on a question of blockade, was allowed in the case of Croudson v. Leonard, 4 Cranch 434, to be contradicted in the court below; but this court reversed that decision, and held it to be conclusive. In that of The Mary, 9 Cranch 142, this court sustained the proof of property founded on the register, against a decree of a foreign court of admiralty. In that of The Pizarro, 2 Wheat. 227, the court look to the documentary evidence, as that to be relied on to prove ownership; and although the papers were not strictly correct, they still relied on them, in preference to further extraneous proof. Add to all this, the 12th article of the treaty which Spain (1 Laws U. S. 270) which makes passports and certificates evidence of property; and the principle may be regarded as established beyond a question, that the regular documents are the best and primary evidence in regard to all property on board of vessels. This is, indeed, especially the case, when they are merely coasting vessels, or such as are brought in on account of distress, shipwreck or other accident. The injustice of requiring further evidence in such cases, is too apparent, to need any argument on the subject. Nor is it a less settled rule of international law, that when a vessel puts in by reason of distress or any similar cause, she is not to be judged by the municipal law. The unjust results to which a different rule would lead are most apparent. Could we tolerate it, that if one of our own coasters was obliged to put into Cuba, and had regular coasting papers, the courts of that country should look beyond them, as to proof of property?

If this point be established, is there any difference between property in slaves and other property? They existed as property, at the time of the treaty, in, perhaps, every nation of the globe; they still exist as property in Spain and the United States; they can be demanded as property, in the states of this Union to which they fly, and where by the laws they would not, if domiciliated, be property. If, then, they are property, the rules laid down in regard to property extend to them. If they are found on board of a vessel, the evidence of property should be that which is recognised as the best in other cases of property — the vessel's papers, accompanied by possession. In the cases of The Louis, [40 U.S. 518, 545] 2 Dods. 238, slaves are treated of, by Sir WILLIAM SCOTT, in express terms, as property, and he directed that those taken unlawfully from a foreigner should be restored. In the case of The Antelope, 10 Wheat. 119, the decision in the case of The Louis is recognised, and the same principle was fully and completely aced upon. It was there conceded (10 Wheat. 124), that possession on board of a vessel was evidence of property. In the case of Johnson v. Tompkins, 1 Bald. 577, it was held, that, even where it was a question of freedom or slavery, the same rules of evidence prevailed as in other cases relative to the right of property. In the case of Choat v. Wright, 2 Dev. 289, a sale of a slave, accompanied by delivery, is valid, though there be no bill of sale. And it is well settled, that a title to them is vested by the statute of limitations, as in other cases of property. 5 Cranch 358, 361; 11 Wheat. 361.

If, then, the same law exists in regard to property in slaves as in other things; and if documentary evidence, from the highest authority of the country where

the property belonged, accompanied with possession, is produced; it follows, that the title to the ownership of this property is as complete as is required by law.

But it is said, that this evidence is insufficient, because it is, in point of fact, fraudulent and untrue. The ground of this assertion is, that the slaves were not property in Cuba, at the date of the document signed by the governor-general; because they had been lately introduced into that island from Africa, and persons so introduced were free. To this it is answered, that if it were so, this court will not look beyond the authentic evidence under the official certificate of the governor-general; that, if it would, there is not such evidence as this court can regard to be sufficient to overthrow the positive statement of that document; and that, if the evidence were even deemed sufficient to show the recent introduction of the negroes, it does not establish that they were free at the date of the certificate.

1. This court will not look behind the certificate of the governor-general. It does not appear to be alleged, that it is fraudulent in itself. It is found by the district court to have been signed by him, and countersigned by the officer of the customs. [40 U.S. 518, 546] It was issued by them, in the appropriate exercise of their functions. It resembles an American register or coasting license. Now, all the authorities that have been cited show, that these documents are received as the highest species of evidence, and that, even if there is error in the proceedings on which they are founded. The correction must be made from the tribunal from which it emanates. Where should we stop, if we were to refuse to give faith to the documents of public officers? All national intercourse, all commerce, must be at an end. If there is error in issuing these papers, the matter must be sent to the tribunals of Spain for correction.

2. But if this court will look behind this paper, is the evidence sufficient to contradict it? The official declaration to be contradicted is certainly of a character not to be lightly set aside in the courts of a foreign country. The question is not, as to the impression we may derive from the evidence; but how far is it sufficient to justify us in declaring a fact, in direct contradiction to such an official declaration. It is not evidence that could be received, according to the established admiralty practice. Seamen (1 Pet. Adm. 211) on board of a vessel cannot be witnesses for one another, in matters where they have a common interest. Again, the principal part of this evidence is not taken under oath. That of Dr. Madden, which is mainly relied upon, is chiefly hearsay; and is contradicted, in some its most essential particulars, by that of other witnesses. Would this court be justified, on evidence such as this, in setting aside the admitted certificate of the governor-general? Would such evidence, on one of our own courts, be deemed adequate to set aside a judicial proceeding, or an act of a public functionary, done in the due exercise of his office? How, then, can it be adequate to such an end, before the tribunals of a foreign country, when they pass upon the internal municipal acts of another government; and when the endeavor is made to set them aside, in a mater relating to their own property and people?

3. But admit this evidence to be competent and sufficient; admit these negroes were brought into Cuba, a few weeks before the certificate was given; still, were they not slaves, under the Spanish laws? It is not denied, that negroes imported from [40 U.S. 518, 547] Africa into Cuba, might be slaves. If they are not, it is on account of some special law or decree. Has such a law been produced in the present case? The first document produced is the treaty with England, of 23d September 1817. But that has no such effect. It promises, indeed, that Spain will take into consideration the means of preventing the slave-trade, and it points out those means, so far as the trade on the coast of Africa is concerned. But it carefully limits the ascertainment of any infringement to two special tribunals, one at Sierra Leone, and the other at Havana. The next is the decree of December 1817, which authorizes negroes, brought in against the treaty, to 'be declared free.' The treaty of 28th June 1835, which is next adduced, is confined entirely to the slave-trade on the coast of Africa, or the voyage from there. Now, it is evident, that none of these documents show that these negroes were free in Cuba. They had not been 'declared free,' by any competent tribunal. Even had they been taken actually on board of a vessel engaged in the slave-trade, they must have been adjudicated upon at one of the two special courts, and nowhere else. Can this court, then, undertake to decide this question of property, when it has not even been decided by the Spanish courts; and make such decision, in the face of the certificate of the highest functionary of the island?

It is submitted, then, that if is this court does go behind the certificate of the governor-general, and look into the fact, whether or not these persons were slaves on the 18th June 1839, yet there is no sufficient evidence on which they could adjudge it to untrue. If this be so, the proof concerning the property is sufficient to bring the case within the intention and provisions of the treaty.

The next question is, did the United States legally intervene to obtain the decree of the court for the restoration of the property, in order that it might be delivered to the Spanish owners, according to the stipulations of the treaty?

They did! because the property of foreigners, thus brought under the cognisance of the courts, is, of right, deliverable to the public functionaries of the government to which such foreigners belong; because those functionaries have required the interposition of the United States on their behalf; and because the United States were authorized, [40 U.S. 518, 548] on that request, to interpose, pursuant to their treaty obligations. That the property of foreigners, under such circumstances, may be delivered to the public functionaries, is so clearly established, by the decisions of this court, that it is unnecessary to discuss the point. In the case (2 Mason 411-12, 463) of La Jeune Eugenie, there was a libel of the vessel, as in this case, and a claim interposed be the French consul, and also by the owners themselves. The court there directed the delivery of the property to the public functionary. In that of The Divina Pastora, 4 Wheat. 52, the Spanish consul interposed. In that of The Antelope, 10 Ibid. 68, there were claims interposed, very much as in this case, by the captain as captor, and by the vice-consuls of Spain and Portugal, for citizens of their respective countries; and by the United States. The court directed their delivery, partly to the consul of Spain, and partly to the United States. It is thus settled, that the public functionaries are entitled to intervene in such cases, on behalf of the citizens of their countries. In the present one, the Spanish minister did so intervene by applying to the United States to adopt, on his behalf, the necessary proceedings; and, upon his doing so, Ruiz and Montez withdrew their separate claims. The United States, on their part, acted as the treaty required. The executive is their agent, in all such transactions, and on him devolved the obligation to see this property restored entire, if due proof concerning it was made. The form of proceeding was already established by precedent and by law. The course adopted was exactly that pursued in the case of McFadden v. The Exchange, 7 Cranch 116, where a vessel was libeled in a port of the United States. Being a public vessel of a foreign sovereign, which the government was bound to protect, they intervened exactly in the same way. The libel was dismissed, and the vessel restored to the custody of the public officers of France.

It is, therefore, equally clear, that the United States, in this instance, has pursued the course required by the laws of nations; and if the court are satisfied, on the first point, that there is due proof concerning the property, then it ought to be delivered entire, so that it may be restored to the Spanish owners. If this be so, the court below has erred, because it has not decreed any part of [40 U.S. 518, 549] the property to be delivered entire, except the boy Antonio. From the vessel and cargo, it has deducted the salvage, diminishing them by that amount; and the negroes it has entirely refused to direct to be delivered.

Baldwin, for the defendants in error. — In preparing to address this honorable court, on the questions arising upon this record, in behalf of the humble Africans whom I represent — contending, as they are, for freedom and for life, with two powerful governments arrayed against them — it has been to me a source of high gratification, in this unequal contest, that those questions will be heard and decided by a tribunal, not only elevated far above the influence of executive power and popular prejudice, but, from its very constitution, exempt from liability to those imputations to which a court, less happily constituted, or composed only of members from one section of the Union, might, however unjustly, be exposed.

This case is not only one of deep interest in itself, as affecting the destiny of the unfortunate Africans whom I represent, but it involves considerations deeply affecting our national character in the eyes of the whole civilized world, as well as questions of power on the part of the government of the United States, which are regarded with anxiety and alarm by a large portion of our citizens. It presents, for the first time, the question, whether that government, which was established for the promotion of justice, which was founded on the great principles of the revolution, as proclaimed in the Declaration of Independence, can, consistently with the genius of our institutions, become a party to proceedings for the enslavement of human beings cast upon our shores, and found, in the condition of freemen, within the territorial limits of a free and sovereign state?

In the remarks I shall have occasion to make, it will be my design to appeal to no sectional prejudices, and to assume no positions in which I shall not hope to be sustained by intelligent minds from the south as well as from the north.

Although I am in favor of the broadest liberty of inquiry and discussion — happily secured by our constitution to every citizen, subject only to his individual responsibility to the laws for its abuse; I have ever been of the opinion, that the exercise of that liberty, by [40 U.S. 518, 550] citizens of one state, in regard to the institutions of another, should always be guided by discretion, and tempered with kindness. Mr. Baldwin here proceeded to state all the facts of the case, and the proceedings in the district and circuit courts, in support of the motion to dismiss the appeal. As no decision was given by the court on the motion, this part of the argument is, necessarily, omitted.

Mr. Baldwin continued, if the government of the United States could appear in any case as the represen-

tative of foreigners claiming property in the court of admiralty, it has no right to appear in their behalf, to aid them in the recovery of fugitive slaves, even when domiciled in the country from which they escaped; much less the recent victims of the African slave-trade, who have sought an asylum in one of the free states of the Union, without any wrongful act on our part, or for which, as in the case of the Antelope, we are in any way responsible. The recently-imported Africans of the Amistad, if they were ever slaves, which is denied, were in the actual condition of freedom, when they came within the jurisdictional limits of the state of New York. They came there, without any wrongful act on the part of any officer or citizen of the United States. They were in a state where, not only no law existed to make them slaves, but where, by an express statute, all persons, except fugitives, & c., from a sister state, are declared to be free. They were under the protection of the laws of a state, which, in the language of the supreme court, in the case of City of New York v. Miln, 11 Pet. 139, 'has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, when that jurisdiction is not surrendered or restrained by the constitution of the United States.'

The American people have never imposed it as a duty on the government of the United States, to become actors in an attempt to reduce to slavery, men found in a state of freedom, by giving extra-territorial force to a foreign slave law.

Such a duty would not only be repugnant to the feelings of a large portion of the citizens of the United States, but it would be wholly inconsistent with the fundamental principles of our government, and the purposes [40 U.S. 518, 551] for which it was established, as well as with its policy in prohibiting the slave-trade and giving freedom to its victims. The recovery of slaves for their owners, whether foreign or domestic, is a matter with which the executive of the United States has no concern. The constitution confers upon the government no power to establish or legalize the institution of slavery. It recognises it as existing, in regard to persons held to service by the laws of the states which tolerate it; and contains a compact between the states, obliging them to respect the rights acquired under the slave laws of other states, in the cases specified in the constitution. But it imposes no duty, and confers no power, on the government of the United States, to act in regard to it. So far as the compact extends, the courts of the United States, whether sitting in a free state or a slave state, will give effect to it. Beyond that, all persons within the limits of a state are entitled to the protection of its laws.

If these Africans have been taken from the possession of their Spanish claimants, and wrongfully brought into the United States by our citizens, a question would have been presented similar to that which existed in the case of The Antelope. But when men have come here voluntarily, without any wrong on the part of the government or citizens of the United States, in withdrawing them from the jurisdiction of the Spanish laws, why should this government be required to become active in their restoration? They appear here as freemen. They are in a state where they are presumed to be free. They stand before our courts on equal ground with their claimants; and when the courts, after an impartial hearing, with all parties in interest before them, have pronounced them free, it is neither the duty nor the right of the executive of the United States, to interfere with the decision.

The question of the surrender of fugitive slaves to a foreign claimant, if the right exists at all, is left to the comity of the states which tolerate slavery. The government of the United States has nothing to do with it. In the letter of instructions addressed by Mr. Adams, when secretary of state, to Messrs. Gallatin and Rush, dated November 2d, 1818, in relation to a proposed arrangement with Great Britain, for a more active cooperation in the suppression of the slave-trade, he assigns as a [40 U.S. 518, 552] reason for rejecting the proposition for a mixed commission, 'that the disposal of the negroes found on board the slave-trading vessels, which might be condemned by the sentence of the mixed courts, cannot be carried into effect by the United States.' 'The condition of the blacks being, in this Union, regulated by the municipal laws of the separate states, the government of the United States can neither guaranty their liberty in the states where they could only be received as slaves, nor control them in the states where they would be recognised as free.' Doc. 48, H. Rep. 2 sess. 16th Cong. p. 15.

It may comport with the interest or feelings of a slave state, to surrender a fugitive slave to a foreigner, or, at least, to expel him from their borders. But the people of New England, except so far as they are bound by the compact, would cherish and protect him. To the extent of the compact, we acknowledge our obligation, and have passed laws for its fulfillment. Beyond that, our citizens would be unwilling to go. A state has no power to surrender a fugitive criminal to a foreign government for punishment; because that is necessarily a matter of national concern. The fugitive is demanded for a national purpose. But the question of the surrender of fugitive slaves concerns individuals merely. They are demanded as property only, and for private purposes. It is therefore, a proper subject for the action of

the state, and not of the national authorities. The surrender of neither is demandable of right, unless stipulated by treaty. See, as to the surrender of fugitive criminals, 2 Brock. 493; 2 Summ. 482; 14 Pet. 540; Doc. 199, H. R. 26 Cong. p. 53-70; 10 Am. State Pap. 151-153, 433; 3 Hall's Law Jour. 135. An overture was once made by the government of the United States to negotiate a treaty with Great Britain, for the mutual surrender of fugitive slaves. But it was instantly repelled by the British government. It may well be doubted, whether such a stipulation is within the treaty making power under the constitution of the United States. 'The power to make treaties,' says Chief Justice TANEY, 14 Pet. 569, 'is given in general terms,' 'and consequently, it was designed to include all those subjects which, in the ordinary intercourse of nations, had usually been made subjects [40 U.S. 518, 553] of negotiation and treaty; and which are consistent with the nature of our institutions, and the distribution of powers between the general and state government.' See Holmes v. Jennison, 14 Pet. 569. But however this may be, the attempt to introduce it is evidence that, unless provided for by treaty, the obligation to surrender was not deemed to exist.

We deny that Ruiz and Montez, Spanish subjects, had a right to call on any officer or court of the United States to use the force of the government, or the process of the law, for the purpose of again enslaving those who have thus escaped from foreign slavery, and sought an asylum here. We deny that the seizure of these persons by Lieutenant Gedney for such a purpose was a legal or justifiable act. How would it be — independently of the treaty between the United States and Spain — upon the principles of our government, of the common law, or of the law of nations? If a foreign slave vessel, engaged in a traffic which by our laws is denounced as inhuman and piratical, should be captured by the slaves, while on her voyage from Africa to Cuba, and they should succeed in reaching our shores, have the constitution or laws of the United States imposed upon our judges, our naval officers, or our executive, the duty of seizing the unhappy fugitives and delivering them up to their oppressors? Did the people of the United States, whose government is based on the great principles of the revolution, proclaimed in the Declaration of Independence, confer upon the federal, executive or judicial tribunals, the power of making our nation accessories to such atrocious violations of human rights? Is there any principle of international law, or law of comity, which requires it? Are our courts bound, and if not, are they at liberty, to give effect here to the slave-trade laws of a foreign nation; to laws affecting strangers, never domiciled there, when, to give them such effect, would be to violate the natural rights of men?

These questions are answered in the negative by all the most approved writers on the laws of nations. 1 Burg. Confl. 741; Story, Confl. 92. By the law of France, the slaves of their colonies, immediately on their arrival in France, become free. In the case of [40 U.S. 518, 554] Forbes v. Cochrane, 2 Barn. & Cres. 463, this question is elaborately discussed and settled by the English court of king's bench. By the law of the state of New York, a foreign slave escaping into that state becomes free. And the courts of the United States, in acting upon the personal rights of men found within the jurisdiction of a free state, are bound to administer the laws as they would be administered by the state courts, in all cases in which the laws of the state do not conflict with the laws or obligations of the United States. The United States, as a nation, have prohibited the slave-trade, as inhuman and piratical, and they have no law authorizing the enslaving of its victimes. It is a maxim, to use the words of an eminent English judge, in the case of Forbes v. Cochrane, 2 Barn. & Cres. 448, 'that which is called comitas inter communitates, cannot prevail in any case, where it violates the law of our own country, the law of nature, or the law of God.' 9 Eng. C. L. 149. And that the laws of a nation, proprio vigore, have no force beyond its own territories, except so far as respects its own citizens, who owe it allegiance, is too familiarly settled, to need the citation of authorities. See The Apollon, 9 Wheat. 366; 2 Mason 151-8. The rules on this subject adopted in the English court of admiralty are the same which prevail in their courts of common law, though they have decided in the case of The Louis, 2 Dods. 238, as the supreme court did in the case of The Antelope, 10 Wheat. 66, that as the slave-trade was not, at that time, prohibited by the law of nations, if a foreign slaver was captured by an English ship, it was a wrongful act, which it would be the duty of the court of admiralty to repair, by restoring the possession. The principle of amoveas manus, adopted in these cases, has no application to the case of fugitives from slavery.

But it is claimed, that if these Africans, though 'recently imported into Cuba,' were, by the laws of Spain, the property of Ruiz and Montez, the government of the United States is bound by the treaty to restore them; and that, therefore, the intervention of the executive in these proceedings is proper for that purpose. It has already, it is believed, been shown, that even if the case were within the treaty, the intervention of the executive, as a party before the judicial tribunals, was unnecessary and improper, [40 U.S. 518, 555] since the treaty provides for its own execution by the courts, on the application of the parties in interest. And such a resort is expressly provided in the 20th article of the treaty of 1794 with Great Britain, and in the 26th article of the

treaty of 1801, with the French republic, both of which are in other respects similar to the 9th article of the Spanish treaty, on which the attorney-general has principally relied.

The 6th article of the Spanish treaty has received a judicial construction in the case of The Santissima Trinidad, 7 Wheat. 284, where it was decided, that the obligation assumed is simply that of protecting belligerent vessels from capture, within our jurisdiction. It can have no application, therefore, to a case like the present. The 9th article of that treaty provides, 'that all ships and merchandize, of what nature soever, which shall be rescued out of the hands of pirates or robbers, on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietors, as soon as due and sufficient proof shall be made concerning the property thereof.' To render this clause of the treaty applicable to the case under consideration, it must be assumed, that under the term 'merchandize' the contracting parties intended to include slaves; and that slaves, themselves the recent victims of piracy, who by a successful revolt, have achieved their deliverance from slavery, on the high seas, and have availed themselves of the means of escape of which they have thus acquired the possession, are to be deemed 'pirates and robbers,' 'from whose hands' such 'merchandize has been rescued.' It is believed, that such a construction of the words of the treaty is not in accordance with the rules of interpretation which ought to govern our courts; and that when there is no special reference to human beings, as property, who are not acknowledged as such by the law or comity of nations, generally, but only by the municipal laws of the particular nations which tolerate slavery, it cannot be presumed, that the contracting parties intended to include them under the general term 'merchandize.' As has already been remarked, it may well be doubted, [40 U.S. 518, 556] whether such a stipulation would be within the treaty-making power of the United States. It is to be remembered, that the government of the United States is based on the principles promulgated in the Declaration of Independence, by the congress of 1776; 'that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; and that to secure these rights, governments are instituted.'

The convention which formed the federal constitution, though they recognised slavery as existing in regard to persons held to labor by the laws of the states which tolerated it, were careful to exclude from that instrument every expression that might be construed into an admission that there could be property in men. It appears by the report of the proceedings of the convention (3 Madison Papers 1428), that the first clause of 9, art. 1, which provides for the imposition of a tax or duty on the importation of such persons as any of the states, then existing, might think proper to admit, &c., 'not exceeding ten dollars for each person,' was adopted in its present form, in consequence of the opposition by Roger Sherman and James Madison to the clause as it was originally reported, on the ground, 'that it admitted, that there could be property in men;' an idea which Mr. Madison said, 'he thought it wrong to admit in the constitution.' The words reported by the committee, and striken out on this objection, were: 'a tax or duty may be imposed on such migration or importation, at a rate not exceeding the average of the duties laid upon imports.' The constitution as it now stands will be searched in vain for an expression recognising human beings as merchandize, or legitimate subjects of commerce. In the case of New York v. Miln, 11 Pet. 104, 136, Judge BARBOUR, in giving the opinion of the court, expressly declares, in reference to the power 'to regulate commerce' conferred on congress by the constitution, that 'persons are not the subjects of commerce.' Judging from the public sentiment which prevailed at the time of the adoption of the constitution, it is probable, that the first act of the government, in the exercise of its power to regulate commerce, would have been to prohibit the slave-trade, if the had not been restrained, until 1808, from prohibiting the importation of such persons as any of the states, [40 U.S. 518, 557] then existing, should think proper to admit. But could congress have passed an act authorizing the importation of slaves as articles of commerce, into any state, in opposition to a law of the state, prohibiting their introduction? If they could, they may now force slavery into every state. For no state can prohibit the introduction of legitimate objects of foreign commerce, when authorized by congress. The United States must be regarded as comprehending free states as well as slave states; states which do not recognise slaves as property, as well as states which do so regard them. When all speak as a nation, general expressions ought to be construed to mean what all understand to be included in them; at all events, what may be included consistently with the law of nations.

The ninth article of the Spanish treaty was copied from the 16th article of the treaty with France, concluded in 1778, in the midst of the war of the revolution, in which the great principles of liberty proclaimed in the Declaration of Independence were vindicated by our fathers. By 'merchandize rescued from pirates,' the contracting parties must have had in view property, which it would be the duty of the public ships of the

United States to rescue from its unlawful possessors. Because, if it is taken from those who are rightfully in possession, the capture would be wrongful, and it would be our duty to restore it. But is it a duty which our naval officers owe to a nation tolerating the slave-trade, to subdue for their kidnappers the revolted victims of their cruelty? Could the people of the United States, consistently with their principles as a nation, have ever consented to a treaty stipulation which would impose such a duty on our naval officers? a duty which would drive every citizen of a free state from the service of his country? Has our government, which has been so cautious as not to oblige itself to surrender the most atrocious criminals, who have sought an asylum in the United States, bound itself, under the term 'merchandize,' to seize and surrender fugitive slaves? The subject of the delivery of fugitives was under consideration before and during the negotiation of the treaty of San Lorenzo; and was purposely omitted in the treaty: 10, Waite's State Papers, 151, 433. Our treaties with Tunis and Algiers contain similar expressions, in which both parties stipulate [40 U.S. 518, 558] for the protection of the property of the subjects of each, within the jurisdiction of the other. The Algerine regarded his Spanish captive as property; but was it ever supposed, that if an Algerine corsair should be seized by the captive slaves on board of her, it would be the duty of our naval officers, or our courts of admiralty, to re-capture and restore them? The phraseology of the entire article in the treaty, clearly shows that it was intended to apply only to inanimate things, or irrational animals; such as are universally regarded as property. It is 'merchandize rescued from the hands of pirates and robbers on the high seas' that is to be restored. There is no provision for the surrender of the pirates themselves. And the reason is, because the article has reference only to those who are 'hostes humani generis,' whom it is lawful for, and the duty of, all nations to capture and to punish. If these Africans were 'pirates' or sea robbers, whom our naval officers might lawfully seize, it would be our duty to detain them for punishment; and then what would become of the 'merchandize?'

But they were not pirates, nor in any sense hostes humani generis. Cinque, the master-spirit who guided them, had a single object in view. That object was — not piracy or robbery — but the deliverance of himself and his companions in suffering, from unlawful bondage. They owed no allegiance to Spain. They were on board of the Amistad, by constraint. Their object was to free themselves from the fetters that bound them, in order that they might return to their kindred and their home. In so doing, they were guilty of no crime, for which they could be held responsible as pirates. See Bee 273. Suppose, they had been impressed American seamen, who had regained their liberty in a similar manner, would they in that case have been deemed guilty of piracy and murder? Not! in the opinion of Chief Justice MARSHALL. In his celebrated speech in justification of the surrender by President Adams of Nash, under the British treaty, he says: 'Had Thomas Nash been an impressed American, the homicide on board the Hermione would most certainly not have been murder. The act of impressing a American is an act of lawless violence. The confinement on board a vessel is a continuation of that violence, and an additional outrage. Death [40 U.S. 518, 559] committed within the United States, in resisting such violence, would not have been murder.' Bee 290.

The United States, as a nation, is to be regarded as a free state. And all men being presumptively free, when 'merchandize' is spoken of in the treaty of a free state, it cannot be presumed, that human beings are intended to be included as such. Hence, whenever our government have intended to speak of negroes as property, in their treaties, they have been specifically mentioned, as in the treaties with Great Britain of 1783 and 1814. It was on the same principle, that Judge DRAYTON, of South Carolina, decided, in the case of Almeida, who had captured, during the last war, an English vessel with slaves, that the word 'property' in the prize act, did not include negroes, and that they must be regarded as prisoners of war, and not sold or distributed as merchandize. 5 Hall's Law Jour. 459. And it was for the same reason, that it was deemed necessary, in the constitution, to insert an express stipulation in regard to fugitives from service. The law of comity would have obliged each state to protect and restore property belonging to a citizen of another, without such stipulation; but it would not have required the restoration of fugitive slaves from a sister state, unless they had been expressly mentioned.

In the interpretation of treaties, we ought always to give such a construction to the words as is most consistent with the customary use of language; most suitable to the subject, and to the legitimate powers of the contracting parties; most conformable to the declared principles of the government; such a construction as will not lead to injustice to others, or in any way violate the laws of nature. These are, in substance, the rules of interpretation as given by Vattel, lib. 2, ch. 17. The construction claimed in behalf of the Spanish libellants, in the present case, is at war with them all.

It would be singular, indeed, if the tribunals of a government which has declared the slave-trade piracy, and has bound itself by a solemn treaty with Great Britain, in 1814, to make continued efforts 'to promote its entire abolition, as a traffic irreconcilable with the prin-

ciples of humanity and justice,' should construe the general expressions of a treaty which, since that period, [40 U.S. 518, 560] has been revised by the contracting parties, as obliging this nation to commit the injustice of treating as property, the recent victims of this horrid traffic; more especially, when it is borne in mind, that the government of Spain, anterior to the revision of the treaty in 1819, had formally notified our government, that Africans were no longer the legitimate objects of trade; with a declaration that 'His Majesty felt confident that a measure so completely in harmony with the sentiments of this government, and of all the inhabitants of this republic, could not fail to be equally agreeable to the president.' Doc. 48, 2 sess. 16 Cong. p. 8. Would the people of the United States, in 1819, have assented to such a treaty? Would it not have furnished just ground of complaint by Great Britain, as a violation of the 10th article of the treaty of Ghent?

But even if the treaty, in its terms, were such as to oblige us to violate towards strangers the immutable laws of justice, it would, according to Vattel, impose no obligation. Vattel, c. 1, 9; lib. 2, c. 12, 161; c. 17, 311. The law of nature and the law of nations bind us as effectually to render justice to the African, as the treaty can to the Spaniard. Before a foreign tribunal, the parties litigating the question of freedom or slavery, stand on equal ground. And in a case like this, where it is admitted, that the Africans were recently imported, and consequently, never domiciled in Cuba, and owe no allegiance to its laws, their rights are to be determined by that law which is of universal obligation — the law of nature. If, indeed, the vessel in which they sailed had been driven upon our coast by stress of weather, or other unavoidable cause, and they had arrived here, in the actual possession of their alleged owners, and had been slaves by the law of the country from which they sailed, and where they were domiciled, it would have been a very different question, whether the courts of the United States could interfere to liberate them, as was done at Bermuda by the colonial tribunal, in the case of The Enterprise. But in this case, there has been no possession of these Africans by their claimants, within our jurisdiction, of which they have been deprived, by the act of our government or its officers; and neither by the law of comity, nor by force of the treaty, are the [40 U.S. 518, 561] officers or courts of the United States required, or by the principles of our government permitted, to become actors in reducing them to slavery.

These preliminary questions have been made on account of the important principles involved in them, and not from any unwillingness to meet the question between the Africans and their claimants, upon the facts in evidence, and on those alone, to vindicate their claims to freedom. Suppose, then, the case to be properly here; and that Ruiz and Montez, unprejudiced by the decree of the court below, were at liberty to take issue with the Africans upon their answer, and to call upon this court to determine the question of liberty or property, how stands the case on the evidence before the court?

The Africans, when found by Lieutenant Gedney, were in a free state, where all men are presumed to be free, and were in the actual condition of freemen. The burden of proof, therefore, rests on those who assert them to be slaves. 10 Wheat. 66; 2 Mason 459. When they call on the courts of the United States to reduce to slavery men who are apparently free, they must show some law, having force in the place where they were taken, which makes them slaves, or that the claimants are entitled in our courts to have some foreign law, obligatory on the Africans as well as on the claimants, enforced in respect to them, and that by such foreign law they are slaves. It is not pretended, that there was any law existing in the place where they were found, which made them slaves, but it is claimed, that by the laws of Cuba, they were slaves to Ruiz and Montez; and that those laws are to be here enforced. But before the laws of Cuba, if any such there be, can be applied, to affect the personal status of individuals within a foreign jurisdiction, it is very clear, that it must be shown that they were domiciled in Cuba.

It is admitted and proved, in this case, that these negroes are natives of Africa, and recently imported into Cuba. Their domicile of origin is, consequently, the place of their birth, in Africa. And the presumption of law is, always, that the domicile of origin is retained, until the change is proved. 1 Burge's Conflict 34. [40 U.S. 518, 562] The burden of proving the change is cast on him who alleges it. 5 Ves. 787. The domicile of origin prevails, until the party has not only acquired another, but has manifested and carried into execution an intention of abandoning his former domicile, and acquiring another, as his sole domicile. As it is the will or intention of the party which alone determines what is the real place of domicile which he has chosen, it follows, that a former domicile is not abandoned, by residence in another, if that residence be not voluntarily chosen. Those who are in exile, or in prison, as they are never presumed to have abandoned all hope of return, retain their former domicile. 1 Burge 46. That these victims of fraud and piracy — husbands torn from their wives and families — children from their parents and kindred — neither intended to abandon the land of their nativity, nor had lost all hope of recovering it, sufficiently appears from the facts on this record. It can-

not, surely, be claimed, that a residence, under such circumstances, of these helpless beings, for ten days, in a slave barracoon, before hey were transferred to the Amistad, changed their native domicile for that of Cuba.

It is not only incumbent on the claimants to prove that the Africans are domiciled in Cuba, and subject to its laws, but they must show that some law existed there, by which 'recently imported Africans' can be lawfully held in slavery. Such a law is not to be presumed, but the contrary. Comity would seem to require of us to presume, that a traffic so abhorrent to the feelings of the whole civilized world, is not lawful in Cuba. These respondents having been born free, and having been recently imported into Cuba, have a right to be everywhere regarded as free, until some law obligatory on them is produced, authorizing their enslavement. Neither the law of nature, nor the law of nations, authorizes the slave-trade; although it was holden in the case of The Antelope, that the law of nations did not at that time actually prohibit it. If they are slaves, then, it must be by some positive law of Spain, existing at the time of their recent importation. No such law is exhibited. On the contrary, it is proved by the deposition of Dr. Madden, one of the British commissioners resident at Havana, that since the year 1820, there has been no such law in force there, either statute or common law. [40 U.S. 518, 563] But we do not rest the case here. We are willing to assume the burden of proof. On the 14th of May 1818, the Spanish government, by their minister, announced to the government of the United States, that the slave-trade was prohibited by Spain; and by express command of the king of Spain, Don Onis communicated to the president of the United States, the treaty with Great Britain of September 23d, 1817, by which the king of Spain, moved partly by motives of humanity, and partly in consideration of 400, 000l. sterling, paid to him by the British government, for the accomplishment of so desirable an object, engaged that the slave-trade should be abolished throughout the dominions of Spain, on the 30th May 1820. By the ordinance of the king of Spain, of December 1817, it is directed, that every African imported into any of the colonies of Spain, in violation of the treaty, shall be declared free in the first port at which he shall arrive. By the treaty between Great Britain and Spain, of the 28th of June 1835, which is declared to be made for the purpose of 'rendering the means taken for abolishing the inhuman traffic is slaves more effective,' and to be in the spirit of the treaty contracted between both powers on the 23d of September 1817, 'the slave-trade is again declared, on the part of Spain, to be henceforward totally and finally abolished, in all parts of the world.' And by the royal ordinance of November 2d, 1838, the governor and the naval officers having command on the coast of Cuba, are stimulated to greater vigilance to suppress it.

Such, then, being the laws in force in all the dominions of Spain, and such the conceded facts in regard to the nativity and recent importation of these Africans, upon what plausible ground can it be claimed by the government of the United States, that they were slaves in the island of Cuba, and are here to be treated as property, and not as human beings? The only evidence exhibited to prove them slaves, are the papers of the Amistad, giving to Jose Ruiz permission to transport forty-nine ladinos belonging to him, from Havana to Puerto Principe; and a like permit to Pedro Montez, to transport three ladinos. For one of the four Africans, claimed by Montez (the boy Ka-le), there is no permit at all.

It has been said in an official opinion by the late attorney-general [40 U.S. 518, 564] (Mr. Grundy), that 'as this vessel cleared out from one Spanish port to another Spanish port, with papers regularly authenticated by the proper officers at Havana, evidencing that these negroes were slaves, and that the destination of the vessel was to another Spanish port, the government of the United States would not be authorized to go into an investigation for the purpose of ascertaining whether the facts stated in those papers by the Spanish officers are true or not'—'that if it were to permit itself to go behind the papers of the schooner Amistad, it would place itself in the embarrassing condition of judging upon Spanish laws, their force, effect and application to the case under consideration.' In support of this opinion, a reference is made to the opinion of this court, in the case of Arredondo, 6 Pet. 729, where it is stated to be 'a universal principle, that where power or jurisdiction is delegated to any public officer or tribunal over a subject-matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject-matter; and individual rights will not be disturbed collaterally, for anything done in the exercise of that discretion within the authority conferred. The only questions which can arise between an individual claiming a right under the acts done, and the public, or any person denying its validity, are power in the officer, and fraud in the party.' The principle thus stated, was applicable to the case then before the court, which related to the validity of a grant made by a public officer; but it does not tend to support the position for which it is cited in the present case. For, in the first place, there was no jurisdiction over these newly-imported Africans, by the laws of Spain, to make them slaves, any more than if they had been white men. The ordinance of the king declared them free. Secondly,

there was no intentional exercise of jurisdiction over them for such a purpose, by the officer who granted the permits. And thirdly, the permits were fraudulently obtained, and fraudulently used, by the parties claiming to take benefit of them. For the purposes for which they are attempted to be applied, the permits are as inoperative as would be a grant from a public officer, fraudulently obtained, where the state had no title to the thing granted, and the officer no authority to issue the grant. See 6 Pet. 730; 5 Wheat. 303. [40 U.S. 518, 565] But it is said, we have no right to place ourselves in the position of judging upon the Spanish laws. How can our courts do otherwise, when Spanish subjects call upon them to enforce rights which, if they exist at all, must exist by force of Spanish laws? For what purpose did the government of Spain communicate to the government of the United States, the fact of the prohibition of the slave-trade, unless it was, that it might be known and acted upon by our courts? Suppose, the permits to Ruiz and Montez had been granted for the express purpose of consigning to perpetual slavery, these recent victims of this prohibited trade, could the government of Spain now ask the government or the courts of the United States, to give validity to the acts of a colonial officer, in direct violation of that prohibition; and thus make us aiders and abettors in what we know to be an atrocious wrong? It may be admitted, that even after such an annunciation, our cruisers could not lawfully seize a Spanish slaver, cleared out as such by the governor of Cuba; but if the Africans on board of her could effect their own deliverance, and reach our shores, has not the government of Spain authorized us to treat them with hospitality, as freemen? Could the Spanish minister, without offence, ask the government of the United States to seize these victims of fraud and felony, and treat them as property, because a colonial governor had thought proper to violate the ordinance of his king, in granting a permit to a slaver?

But in this case, we make no charge upon the governor of Cuba. A fraud upon him is proved to have been practised by Ruiz and Montez. He never undertook to assume jurisdiction over these Africans as slaves, or to decide any question in regard to them. He simply issued, on the application of Ruiz and Montez, passports for ladino slaves from Havana to Puerto Principe. When, under color of those passports, they fraudulently put on board the Amistad, Bozals, who by the laws of Spain could not be slaves, we surely manifest no disrespect to the acts of the governor, by giving efficacy to the laws of Spain, and denying to Ruiz and Montez the benefit of their fraud. The custom-house license, to which the name of Espeleta in print was appended, was not a document given or intended to be used as evidence of property between Ruiz and Montez, and the [40 U.S. 518, 566] Africans; any more than a permit from our custom-house would be to settle conflicting claims of ownership to the articles contained in the manifest. As between the government and the shippers, it would be evidence, if the negroes described in the passport were actually put on board, and were, in truth, the property of Ruiz and Montez, that they were legally shipped; that the custom-house forms had been complied with; and nothing more. But in view of facts as they appear, and are admitted in the present case, the passports seem to have been obtained by Ruiz and Montez, only as a part of the necessary machinery for the completion of a slave-voyage. The evidence tends strongly to prove, that Ruiz, at least, was concerned in the importation of these Africans, and that the reshipment of them, under color of passports obtained for ladinos, as the property of Ruiz and Montez, in connection with the false representation on the papers of the schooner, that they were 'passengers for the government,' was an artifice resorted to by these slave-traders, for the double purpose of evading the scrutiny of British cruisers, and legalizing the transfer of their victims to the place of their ultimate destination. It is a remarkable circumstance, that though more than a year has elapsed, since the decree of the district court denying the title of Ruis and Montez, and pronouncing the Africans free, not a particle of evidence has since been produced in support of their claims. And yet, strange as it may seem, during all this time, not only the sympathies of the Spanish minister, but the powerful aid of our own government have been enlisted in their behalf!

It was the purpose of the reporter to insert the able and interesting argument of Mr. Adams, for the African appellees; and the publication of the 'reports' has been postponed in the hope of obtaining it, prepared by himself. It has not been received. As many of the points presented by Mr. Adams, in the discussion of the cause, were not considered by the court essential to its decision: and were not taken notice of in the opinion of the court, delivered by Mr. Justice STORY, the necessary omission of the argument is submitted to with less regret. [40 U.S. 518, 567] Gilpin, Attorney-General in reply. — The judiciary act, which gives to this court its powers, so far as they depend on the legislature, directs that, on an appeal from the decree of an inferior court, this court shall render such judgment as the court below did, or should have rendered. It is to obtain from it such a decree in this case, that the United States present themselves here as appellants.

At the threshold of their application, the right so to present themselves is denied. They are to be turned away, as suitors having no claim to such interposition. The argument has gone a step farther; it seems now to

be contended, that their appearance in the court below, which was not then objected to, is to be regarded as destitute of right, equally with their present appearance here. They are not even mere interlopers, seeking justice without warrant; they are dictators, in the form of supplicants, and their suggestions to the court, and their application for its judgment, upon solemn and important questions of fact, are distorted by an ingenious logic, which it is difficult to follow. Applications, made without the slightest expression of a wish, except to obtain that judgment, and in a form which, it might be supposed, would secure admission into any court, are repudiated, under the harsh name of 'executive interference.' Yet in what single respect do the facts of this case sustain such allegations? How can it be justly said, that there has been any 'executive interference,' not resulting from the adoption of that course which public duty made incumbent; and conducted in the manner, and in that manner only, which was required by that sense of public duty, from which, no officer, possessing a due regard for the obligations of his trust, will ever shrink?

In what situation is the case, when it is first presented to the notice of the government of the United States? On nearly, if not exactly, the same day, that the secretary of state receives from the minister of Spain an official communication, dated at New York, and stating the facts connected with the schooner L'Amistad, then just brought within the territory of the United States; stating also, that the vessel is a Spanish vessel, laden with merchandize, and with sundry negro slaves on board, accompanied with all the documents required by the laws of Spain, for navigating a vessel, and for proving ownership of [40 U.S. 518, 568] property; and then making an application to the government of the United States to interpose, so that the property thus within our territory, might be restored to its owners pursuant to the treaty; and asserting also, that the negroes, who were guilty, as he contended, of a crime for which they ought to be punished, ought to be delivered up on that account, too, pursuant to the law of nations — on or about the same day, the letter of the district — attorney, which, though dated a day earlier, is written in Connecticut, also reaches the department of state, conveying the information that this same property and these same negroes are already within the custody and authority of the judicial tribunals of the United States, by virtue of process, civil and criminal, issued by a judge of the United States, after solemn and deliberate inquiry. The vessel, the cargo and the negroes, had been all taken possession of, by a warrant issued by the court, 'as property;' they were then, at that very time, in the custody, keeping and possession of the court, as property, without the slightest suggestion having been made by the executive branch of the government, or even a knowledge of the fact on its part; and when its interposition is formally solicited, its first information relative to the case received, it finds the subject of the demand already under the control of the judicial branch.

In this situation, the executive government, thus appealed to, and thus informed, looks to its treaty stipulations, the most solemn and binding compacts that nations know among each other, and the obligations of which can never be treated lightly, so long as good faith forms the first duty of every community. Those stipulations, entered into in 1795 (1 Laws U. S. 266), provide, in the first place (article 6), that each party to the treaty, the United States and Spain, shall 'endeavor, by all means in their power, to protect and defend and vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of the jurisdiction.' Again, in the eighth article, it is declared, that 'in case the subjects or inhabitants of either country shall, with their shipping, he forced, through stress of weather, or any other urgent necessity for seeking shelter, to enter any port of the other, they shall enjoy all favor, protection and help.' Again, in the ninth article, it is provided, that 'all ships and merchandize, of what nature soever, [40 U.S. 518, 569] which shall be rescued out of the hands of any pirates or robbers, on the high seas, shall be brought into some port of either state, and shall be delivered into the custody of the officers of that port, in order to be taken care of, and restored entire to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.' In the 16th article, it is further declared, that the liberty of navigation and commerce meant by the treaty, shall extend to all kinds of merchandize, excepting those only which are contraband, and they are expressly enumerated; and it the 22d article, the object of the treaty is declared to be 'the extension of mutual commerce.' When these stipulations were thus made, slaves were a notorious article of merchandize and traffic in each country; not only were they so in the United States, but there was a constitutional provision, prohibiting congress from interfering to prevent their importation, as such, from abroad. This treaty, with these provisions thus solemnly and carefully framed, was renewed in 1819; was declared to be still in existence and force. It is declared (7 Laws U. S. 624), that every one of the articles above quoted 'remains confirmed.' It stands exactly as it stood in 1795; and, in the year 1821, after both governments had abolished the slave-trade, the provisions adopted in 1795 are thus, as to 'every clause and article thereof,' so renewed, solemnly ratified and confirmed by the president and senate of the United States. No clause is introduced to vary the na-

ture or character of the merchandize; none to lessen or change the obligations, as would have been the case, had any such change been contemplated; but the two treaties, having the final date of 1821, bear the character of a single instrument.

Now, these are stipulations too clear to be misunderstood; too imperative to be wantonly neglected. Could we not ask of Spain the fulfillment of every one of them towards our own citizens? If so, were we not bound, at least, to see that, through some public functionary, or by some means in which nations fulfill mutual obligations, they were performed by us to the subjects of Spain, whenever the casus foederis should arise? Did it arise in this case? Here were, unquestionably, as the representative of Spain believed and stated, a vessel and effects [40 U.S. 518, 570] of subjects of that country, within our jurisdiction; here was a vessel and merchandize, rescued, as he alleged, from the hands of robbers, brought into one of our ports, and already in the custody of public officers. Did not a treaty stipulation require the United States to 'endeavor by all means in their power to protect and defend this property?' Did not a treaty stipulation require us to 'extend to them all favor, protection and help?' Did not a treaty stipulation bind us to 'restore, entire, the property, to the true proprietors, as soon as due and sufficient proof should be made concerning the same?' If not, then is there no force and meaning in language; and the words of solemn treaties are an idle breath, of which nations may be as regardless as of the passing wind.

The case then had arisen, where it was the duty of the United States, as parties to this treaty, to interfere and see that its stipulations were performed. How were they to interfere? Certainly, at the instance of the executive, through the medium of the judiciary, in whose custody and under whose control the property claimed already was. The questions incident to due and sufficient proof of property are clearly judicial questions; but when that property is already in the custody and under the jurisdiction of a court, they are so, from necessity, as it is desirable they always should be, from choice. This position, never denied, was eloquently urged by the counsel of these negroes, when they first addressed the executive on the subject (Cong. Doc. No. 185, p. 64), and to that view they added the request that he 'would submit the question for adjudication to the tribunals of the land.' He did so! He interposed, at the instance of the Spanish minister, to fulfill a treaty stipulation, by causing a suggestion to be filed in the court which had already taken cognisance of the subject-matter, and which had the property in its custody. That suggestion stated the allegation of the Spanish minister, that this was property which ought to be restored under the treaty; prayed in effect an inquiry of the court into that fact; and requested such a decree, after such inquiry, as might enable the United States, as a nation, to fulfill their treaty obligations to the Spanish nation. This has been called 'executive interference' and 'executive dictation.' To answer such a charge in [40 U.S. 518, 571] any other way than by appealing to the facts, would be to trespass on the patience of the court.

As if such charges were felt to be insufficient, an attempt is made, by argument, to prove that the government of the United States had no right thus to interpose — no right to make this suggestion to the district court. And why not?

It is said, because there is no law giving this power, and it cannot be implied; because in a question of private property, it must be left to the parties alone to prosecute their rights, and the parties in this case were already doing so for themselves; and because it was an interference and encroachment of the executive on the province of the court, not sanctioned by any precedent. These are the grounds that have been taken, and it might be sufficient to say, that although every one of them existed in as full force, when the case was tried in the district court, none of them were there taken; although every one of them was known, before the plea and answer of the respondents, they started none of these objections. After the decree and judgment of the court below, it is too late to start them. But there is nothing in them, whenever made.

I. The executive government was bound to take the proper steps for having the treaty executed, and these were the proper steps. A treaty is the supreme law; the executive duty is especially to take care that the laws be faithfully executed; no branch of this duty is more usual or apparent, than that which is executed in connection with the proceedings and decrees of courts. What special assignment, by act of congress, has been made of the executive duties, in the fulfillment of laws, through the decrees and judgments of the judiciary? Yet it is matter of daily occurrence. What gives the district-attorney a right to file his libel against a package of goods, which the law says shall be forfeited, on proof being made that they are falsely invoiced, any more than to file his libel against a vessel and her cargo, which a treaty (a still higher law) declares shall be restored, on proof concerning the property thereof? In the one case, it is the execution of a law, by an executive officer, through the medium or in connection with the courts; in the other case, it is the execution of a treaty in a similar manner. But in the latter, the duty is, if possible, more imperative, since the execution of treates, [40 U.S. 518, 572] being connected with public and foreign relations, is devolved upon the executive

branch. These principles are clearly stated by this court in the case of The Peggy, 1 Cranch 103; and more fully in that of Williams v. Suffolk Insurance Company, 13 Pet. 420.

As to its being a question of private property, which the parties might themselves prosecute, it is not perceived how this impairs the right, or even lessens the obligation, of the United States to interfere, to the extent and in the manner they did, especially, when solicited by the minister representing these parties; they appear on behalf, or at the instance, of a foreign sovereignty in alliance with them, which assumes itself the rights and interests of the parties; those parties withdraw, as this record expressly shows, when they so appear; no act of theirs occurs, after the interposition of the United States, at the instance of the Spanish minister, and it is expressly stated, that they so withdrew, because their claims were merged in that which was thus presented. This appearance of the United States is not, as has been argued, a substitution of themselves as parties in interest; it is a substitution, under a treaty obligation; a substitution assumed in their public character to perform a public duty, by means of which the further prosecution of the individuals is (as the treaty intended it should be) rendered unnecessary. Besides, what is there to show that all the parties having an interest in this property were before the court? It is nowhere so stated; and if they were not, the objections totally fail.

How this proceeding is an interference by the executive with the court; how it a n encroachment on the judicial department; how it is a dicatation to the court, or advice to it to do its duty, it is difficult to conceive; and therefore, difficult to reply to such constructions of an act, analogous to the conduct of every proceeding in a court, rendered necessary to, or imperative upon, the executive, in the execution of the laws. If this libel, so definite in what it alleges and what it asks, founded on the official request of a public functionary, and intended to obtain the execution of a definite treaty obligation, be an infringement of judicial authority, it will be scarcely possible for a district-attorney, hereafter, to file an information, or present an indictment. [40 U.S. 518, 573] Nor is it, as is alleged, without precedent.

In fact, every case of a libel filed by the United States, soliciting the examination and decree of a court in rem, is a precedent, so far as any principle is concerned. But the cases of The Exchange, The Cassius, and The Eugenia, are not to be distinguished on any ground. They were cases of property in court, under libels of private suitors; the United States interposed, under their obligations to foreign powers. That those obligations were general, not arising by special treaty provisions, makes the cases less strong. It is said, that the property in litigation in those cases, was to be delivered to the sovereign; is this property less in that position, when it is asked for by the representative of the sovereign? It is said, they were not delivered up as property; the Exchange and Cassius were so delivered, as public property of 'the Emperor Napoleon,' so stated in terms, and of the French republic. The Eugenia was delivered to the consul of France, that it might be proceeded against in rem, if desired. In the forms of proceeding by the United States, and in the decrees, everything resembles what has been done or sought for in this case.

But, in fact, every instance of interposition of foreign functionaries, consuls and others, affords a precedent. They have no right of property. They are no parties in interest. They interpose in behalf of the citizen. Did not this court, in the case of The Bello Corrunes, 6 Wheat. 152, where the express point was made, and the interposition of the Spanish consul, on behalf of his fellow-citizens, was resisted, sustain his right, as a public functionary, although it was admitted, he could show no special authority in the particular proceeding? So, in the case of The Antelope, 10 Wheat. 66, the consul was allowed to interpose for Spanish subjects, who were actually unknown. It will hardly be denied, that where the foreign functionary may thus come into our courts, to prosecute for the party in interest, our own functionaries may do the same. As to the case of Nash, Bee 266, it clearly sustains, so far as the course of proceeding, by means of the judiciary, is concerned, the right and duty of the executive thus to interpose. This was an application for the restoration of a criminal under treaty stipulations. The main question was, whether this surrender belonged exclusively to the executive, or was to be effected through the medium of the judiciary, [40 U.S. 518, 574] and while Chief Justice MARSHALL sustained the authority of the executive, as founded on the casus foederis, he admitted, that the aid of the judiciary might, in some cases, be called in. If this were so, as to persons, it is at least equally so, in regard to property. In respect to both, proof is to be made; without proof, neither the restoration of the one nor the other can be effected; that proof is appropriately made to, and passed upon by, the judicial tribunals; but as the execution of the treaty stipulation is vested in the executive, if the case is proved to the satisfaction of the judiciary, its interposition, so far as is necessary to that end, forms a proper part of the judicial proceedings.

It seems clear, then, that these objections to the duty of the executive to interpose, where the property to be restored is in the custody of the court, cannot be sustained, either by principle or authority. And such

appears to be the sentiment of the counsel for the appellees, from the zeal with which they have pressed another argument, to reach the same end. That argument is, that the United States could not interpose, because the Spanish minister never had asked for the restoration of the slaves as property; and because, if he had, he had sought it solely from the executive department, and denied the jurisdiction of the court. Now, suppose this were so, it would be a sufficient answer to say, that, independent of the request of the foreign functionary, the United States had a treaty obligation to perform, which they were bound to perform; and that, if a request in regard to its performance was made, upon grounds not tenable, this did not release the United States from their obligation, on grounds which, as they knew, did properly exist. But, in point of fact, the Spanish minister did, from the first, demand these negroes, as property belonging to Spanish subjects, which ought to be restored as property, under the treaty of 1795.

Passages have been culled from the letters of Mr. Calderon, and Mr. Argaiz, to show that their surrender, as criminals, was only sought for; but the correspondence, taken together, bears no such construction. It is true, they were demanded as criminals; the alleged crime had been committed on Spanish subjects, and on board of a Spanish ship; by the law of nations and by the judgment of this court, such a case was within Spanish jurisdiction. Whether a nation has a right, by the public law, [40 U.S. 518, 575] under such circumstances, to require the extradition of the criminal, is a point on which jurists have differed; but most independent nations, if not all, have properly assumed and maintained the right to determine the question for themselves; denying the existence of any such obligation. To make the request, however, is a matter of constant occurrence; to sustain it by appeals to the law of nations, as conferring a right, is usual; we have, in our own government, asked for such extradition, at the very time we have denied the existence of the obligation. That the Spanish minister should, therefore, request the delivery of these persons as criminals; that he should sustain his request as one consonant to the law of nations, is not in the least a matter of surprise But did that interfere with his demand for them also, as property? There is no reason why it should do so, and the correspondence shows that it did not, in point of fact.

The very first letter of Mr. Calderon, that of 6th September 1839, quoted and commented upon by the counsel for the appellees, commences with a reference to the treaty stipulation, as one of the foundations and causes of his application. It is his imperious duty, he says, to claim an observance of the law of nations, and of the treaties existing between the United States and Spain. Then follow, throughout the letter, repeated references to the double character of the demand for the slaves; references which it seems scarcely possible to misconceive. He declares, officially declares, that the vessel, 'previous to her departure, obtained her clearance from the customhouse, the necessary permit from the authorities for the transportation of the negroes, a passport, and all the other documents required by the law of Spain for navigating a vessel, and for proving ownership of property; a circumstance particularly important,' in his opinion.

So Mr. Argaiz, in his letter of the 26th November 1839, evidently pursues the same double demand; that they should be surrendered under the treaty, as property, and that they are also subject to delivery, as criminals. If there were a doubt as to his meaning, it must be removed, by observing his course on the passage of the resolutions adopted unanimously by the American senate, on the 15th of April last. Those resolutions declared:

1. That a ship or vessel on the high seas, in time of peace, engaged in a lawful voyage, is, according to the law of nations, [40 U.S. 518, 576] under the exclusive jurisdiction of the state to which the flag belongs; as much so, as if constituting a part of its own domain.

2. That if such ship or vessel should be forced, by stress of weather, or other unavoidable cause, into the port and under the jurisdiction of a friendly power, she and her cargo, and persons on board, with their property, and all the rights belonging to their personal relations, as established by the laws of the state to which they belong, would be placed under the protection which the laws of nations extend to the unfortunate under such circumstances.

On the passage of these resolutions, so evidently referring to the slaves as property, adopted in relation to the slaves carried into Bermuda and there set free, Mr. Argaiz claimed, for the owners of the slaves on board the Amistad, the application of the same rules. To complete the chain of evidence derived from the correspondence, we have a letter addressed by him to the secretary of state, on the first moment that the allegation of the request being for their delivery as criminals, was made official, by the motion of the appellees lately filed in this court — we have a note to the secretary of state, explicitly renewing his demand in the double relation.

It is evident, then, that there was a clear, distinct and formal request, on the part of the Spanish minister, for the delivery of these negroes, by virtue of the treaty, as the property of Spanish subjects. This fact, it has

been endeavored to establish from the correspondence, because it has been alleged, that the executive of the United States has given a construction to the request of the Spanish minister, at variance with that stated in the libel of the district-attorney. As to any legal bearing on the case, it does not appear to be material. So far as the courts of justice are concerned, no principle is better settled, than that, in relation to the political operations of the government, the judiciary adopts the construction given to their own acts and those of foreign representatives, by the proper executive departments. The opinion of this court to that effect, is apparent in the decisions, already cited, in the cases of The Peggy and the Suffolk Insurance Co.; and when, in the case of Garcia v. Lee, the whole matter was received, with special reference to the construction of treaties, it was solemnly and deliberately affirmed. That the department [40 U.S. 518, 577] of state regarded this request as one for the delivery of property, is evident, not merely from the libel of the district-attorney, but from the whole correspondence. To obtain a different view, we must, indeed, pick out sentences separate from their context, and give to particular phrases a meaning not consistent with the whole scope of the documents in which they are found.

But as if the allegation, that the Spanish minister never required the restoration of these slaves as property, under the treaty, was not to be clearly established by the correspondence, it is endeavored to be sustained by the fact, that he refused to submit to the judgment of the court, as definitive of the rights of Spain and her subjects, under the treaty. How this refusal changes the character of his demand, on the one hand, or the proper mode of proceeding by the executive, on the other, it is not easy to perceive. No nation looks, in its intercourse, under a treaty, with another to any but the executive government. Every nation has a right to say with what act she will be satisfied as fulfilling a treaty stipulation, the other party to the treaty reserving the same right. Has not our executive, over and over again, demanded redress for acts sanctioned by decrees of foreign tribunals? Have we not sought that redress, by applications made directly to their executives? Has it ever been heard, that the claims of American citizens for redress from foreign governments, are precluded, because foreign courts have decided upon them? Such has not been the case, in point of fact, and such is not the course authorized by the aw, and adopted in the intercourse, of nations. To say, therefore, that Spain would not recognise a decree of a court, which should award her less than the treaty, in her opinion, stipulated she should receive, does not, as it must appear, affect, in any manner whatever, the rights under it, or the mode of proceeding to be adopted by our own executive. With the latter, the course was plain. The matter was already before the judiciary, a component and independent branch of the government to which it appropriately belonged. Its action is calmly waited for, as affording the just and only basis of ultimate decision by the executive.

Viewed, then, on every ground of treaty obligation, of constitutional duty, of precedent, or of international intercourse, the [40 U.S. 518, 578] interposition of the executive in the mode adopted, so far from being 'unnecessary and improper,' was one of duty and propriety, on receiving from the Spanish minister his official representation, and from the district-attorney the information that the matter was already in charge of the court.

And now it may be asked, whether there is anything in these facts to justify the censure so largely cast upon the executive for the course which it was deemed a duty to pursue; anything that authorizes 'its arraignment,' to use the language of the counsel for the appellees, before the judicial tribunals, 'for their judgment and censure?' Performing cautiously an international obligation; passing upon no rights, private or public; submitting to the courts of justice the facts made known officially to it; seeking the decrees of the legitimate tribunals; communicating to foreign functionaries, that by these decrees its course would be governed — it is these acts which are argued upon, as ground for censure and denunciation. With what justice, may be well tested, by placing another government in the position of our own. Let us recollect, that there is among nations, as among men, a golden rule; let us do to them, as we wish them to do to us; let us ask how we would have our own minister and representative in a foreign land to act by us, if we were thrown in like manner on a foreign shore — if a citizen of South Carolina, sailing to New Orleans with his slaves, were thus attacked, his associates killed, himself threatened with death, and carried for months in a vessel scarcely seaworthy, beneath a tropical sun.

Should we blame the American minister who had asked the interposition of the courts? Should we blame the foreign government that facilitated that interposition? Look at the case of the negroes carried to Bermuda; have we there — as we are now denounced for not doing — have we there gone as private suitors into the courts, or have we sought redress, as nations seek it for their citizens? The question of freedom or slavery was there brought, exactly as it was here, before the judicial tribunals, at the instance of persons who took up the cause of the slaves; the owners did not pursue their claims as a mere matter of private right; the government of the United States, through its minister, ap-

pealed to the executive government of Great Britain; sought redress from [40 U.S. 518, 579] that quarter; and received it. The value of the slaves was paid, not to the individuals, but to our own government, who took their business upon themselves, exactly as the Spanish minister has assumed that of Ruiz and Montez. Let us then be just; let us not demand one mode of proceeding for ourselves, and practise another towards those who have an equal right to claim similar conduct at our hands.

II. The attorney-general then proceeded to reply to the position of the counsel for the appellees, that whatever might be the right of the United States as parties to the proceedings in the district and circuit courts, they had yet no authority to appeal, in such a case, from the decrees of those courts, to this tribunal, and that, therefore, the present appeal should be dismissed. As no decision was given by the court on this point, and the argument in support of the motion, and on behalf of the apellees, has not been reported, that in reply, and in behalf of the United States, as appellants, is also necessarily omitted. The position contended for by the attorney-general was, that the case was before this court — coram judice; and that the case itself, the parties to it, and the mode of bringing it up, were all in accordance with the law authorizing appeals. If so, he submitted, that this court had jurisdiction of it, and would revise the decree that had been pronounced by the circuit court, which was all that was solicited. That the highest judicial tribunal should pronounce upon the facts set out in this record, was all that the executive could desire; they presented questions that appropriately belonged to the judiciary, as the basis of executive action; they related to the rights of property, and the proofs concerning it; and when the decision of that coordinate branch of the government, to which the examination of such questions appropriately belonged, should be made, the course of executive action would be plain.

III. The only question, then, that remains to be considered, is, was the decree erroneous? The decree, as it stands, and as it now comes up for examination, is, that this vessel and her cargo shall be delivered up to the Spanish minister, for the Spanish owners, not entire, but after deducting one-third for salvage, to be given to Lieutenant Gedney and his associates; and that the negroes, except Antonio, shall be delivered to the president of the United States, to be [40 U.S. 518, 580] sent to Africa, pursuant to the provisions of the act of 3d March 1819, 2. (2 Story's Laws 1752.) Now, it is submitted, that this decree is erroneous, because the vessel, cargo and negroes were all the property of Spanish subjects, rescued from robbers, and brought into a port of the United States, and due proof concerning the property in them was made; that, therefore, the decree should have been, that they be delivered to the Spanish owners, or to the Spanish minister, for the owners, according to the stipulations of the ninth article of the treaty of 1795.

The vessel and cargo are admitted to be merchandize or property, within the meaning of the treaty. Are slaves also property or merchandize, within its meaning? That they are not, has been very elaborately argued by the counsel for the appellees; yet, it is confidently submitted, that both by the laws of Spain and of the United States, slaves are property; and a fair construction of the treaty shows, that it was intended to embrace every species of property recognised by the laws of the two contracting nations. We are asked for a law to this effect; a law establishing the existence of slavery in the Spanish dominions. It might be sufficient to say, that what is matter of notorious history will be recognised by this court, without producing a statutory regulation; but the royal decree of 1817, which promulgates the abolition of the foreign slave-trade, refers throughout to the existence of slavery in the Spanish Indies, and this court, in many of its adjudications, has recognised its existence.

If slaves, then, were property by the laws of Spain, it might be justly concluded, that even if they were not so recognized by the United States, still they are property, within the meaning of the treaty, because the intention of the treaty was to protect the property of each nation. But, in fact, slaves were, and are, as clearly recognised by them to be property, as they ever were by Spain. Our citizens hold them as property; buy and sell them as property; legislate upon them as property. State after state has been received into this Union, with the solemn and deliberate assent of the national legislature, whose constitutions, previously submitted to and sanctioned by that legislature, recognise slaves as merchandize; to be held as such, carried as such from place to place, and bought and sold as such. It has been argued, that this government, as a government, never has [40 U.S. 518, 581] recognised property in slaves.

To this it is answered, that if no other proof could be adduced, these acts of the national government are evidence that it has done so. The constitution of the United States leaves to the states the regulation of their internal property, of which slaves were, at the time it was formed, a well-known portion.

It also guarantied and protected the rights of the states to increase this property, up to the year 1808, by importation from abroad. How, then, can it be said, that this government, as a government, never has recognised this property? But if slaves be not so regarded,

by what authority did the general government demand indemnity for slaves set free in Bermuda, by the British government? Is not this an act, recent in date, and deliberate in conduct, showing the settled construction put upon slaves as property. Is not the resolution of the senate (the unanimous resolution) a declaration, that slaves, though liberated as persons, and so adjudged by a foreign court, are, in fact, by the law of nations, property, if so allowed to be held in the country to which the owner belongs?

But it is contended, that although they may have been recognised as property by the two nations, they were not such property as was subject to restoration by the treaty. Now, to this it may be answered, in the first place, that every reason which can be suggested for the introduction of the treaty stipulations to protect and restore property, applies as fully to slaves as to any other. It is, in states where slavery exists, a valuable species of property; it is an object of traffic; it is transported from place to place. Can it be supposed, that the citizen of Virginia, sailing to New Orleans with his slaves, less needs the benefit of these treaty stipulations for them, than for any other property he may have on board, if he is carried into a port of Cuba, under any of the adverse circumstances for which the treaty was intended to provide? But again, is not the treaty so broad and general in its terms, that one of the contracting parties has no right to make an exclusion of this property, without the assent of the other? The 16th article of the treaty says, it is to extend to 'all kinds' of merchandize, except that which is contraband. Was not a slave a kind of merchandize, then recognized as such by each nation, and allowed to be imported into each nation, by their respective laws?

The treaty of 1819, which was ratified in 1821, after the slave-trade [40 U.S. 518, 582] was abolished, but while slave property was held in both countries' renews this article as it stood in 1795. Is it possible to imagine, that if a new policy was to be adopted, there would not have been an express stipulation or change in regard to this, as there was in regard to other articles of the old treaty? If further proof were wanting, it would be found in the fact, that the executive authorities of both nations, at once and unequivocally, considered the terms of the treaty as extending to slave property. Independently of the authority which this decision on the political construction of a treaty will have with this court, upon the principles it has laid down, it may be regarded as strong evidence of the intentions of the contracting parties; and when we see our own government and the senate of the United States, seriously examining how far a similar case is one that falls within the class of international obligations independent of treaty, we may give to its deliberate judgment, in the proper construction of this treaty, the highest weight.

The next inquiry is, whether the property in question was 'rescued out of the hands of any pirates or robbers, on the high seas, and brought into any port of the United States?' That the vessel was at anchor, below low-water mark, when taken possession of, and consequently, upon the high seas, as defined by the law of nations, is a fact not controverted; but it is objected, that the negroes by whom she was held were not pirates or robbers, in the sense of the treaty, and that if they were, its provisions could not apply to them, because they were themselves the persons who were rescued. That the acts committed by the negroes amount to piracy and robbery, seems too clear to be questioned. Piracy is an offence defined and ascertained by the law of nations; it is 'forcible depredation on the sea, animo furandi.' United States v. Smith, 5 Wheat. 153.

Every ingredient necessary to constitute a crime, thus defined, is proved in the present case. It was the intention of the treaty, that whenever, by an act of piracy, a vessel and property were run away with — taken from the owners, who are citizens of the United States or Spain — it should, if it came into the possession of the other party, be kept by that party and restored entire. Slaves differ from other property, in the fact, that they are persons as well as property; that they may be actors in the piracy; but it is not perceived, how [40 U.S. 518, 583] this act, of itself, changes the rights of the owners, where they exist and are recognised by law. If they are property, they are property rescued from pirates, and are to be restored, if brought by the necessary proof within the provisions of the treaty.

What are those provisions? That 'due and sufficient proof must be made concerning the property thereof.' The first inquiry 'concerning property,' is its identity. Is there any doubt as to the identity of these slaves? There is clearly none. Are they proved to have been slaves, owned by Spanish subjects? They are negroes, in a country where slavery exists, passing from one port of the Spanish dominions to another, in a regularly documented coasting vessel; and they are proved to be, at the time they leave Havana, in the actual possession of the persons claiming to be their owners. So far as all the prim a facie evidence extends, derived from the circumstances of the case at that time, they may be regarded as slaves, as much as the negroes who accompany a planter between any two ports of the United States. This, then, is the first evidence of property — their actual existence in a state of slavery, and in the possession of their alleged owners, in a place where slavery is recognised, and exists by law.

In addition to this evidence derived from possession, Ruiz and Montez had, according to the statement of the Spanish minister, which was read by the counsel for the appellees, 'all the documents required by the laws of Spain for proving ownership of property.' They have a certificate, under the signature of the governor-general, countersigned or attested by the captain of the port, declaring that these negroes are the property of the Spanish citizens who are in possession of them. It has already been shown, by reference to the laws of Spain, that the powers of a governor-general in a Spanish colony are of a most plenary character. That his powers are judicial, was expressly recognised by this court, in the case of Keene v. McDonough, 8 Pet. 310. If such are the powers of this officer, and if this be a document established as emanating from him, it must be regarded as conclusive, in a foreign country. The cases already cited, establish the two positions, that, as regards property on board of a vessel, the accompanying documents are the first and best evidence, especially, when attended with possession; and that a [40 U.S. 518, 584] decree or judgment, or declaration of a foreign tribunal, made within the scope of its authority, is evidence, beyond which the courts of another country will not look. These rules are essential to international intercourse. Could it be tolerated, that where vessels, on a coasting voyage, from one port of a country to another, are driven, without fault of their own, to take refuge in the harbor of another country, the authentic evidences of property in their own country are to be disregarded? That foreign courts are to execute the municipal laws of another country, according to their construction of them? Can it be, that the courts of this country will refuse to recognise the evidence of property, which is recognised and deemed sufficient in the country to which that property belongs? We have unquestionable evidence, that such documents as these are regarded as adequate proofs of property in Cuba. But it is said, this certificate is a mere passport, and no proof of property. To this it is replied, that it is recognised as the necessary and usual evidence of property, as appears by the testimony referred to. It is true, it is a passport for Ruiz, but it is not a mere personal passport; it is one to take property with him, and it ascertains and describes that property.

But we are told, it must be regarded as fraudulent by this court; and the grounds on which this assertion is made, are the evidence adduced to show that these negroes have been imported into Cuba from Africa, since the treaty between Great Britain and Spain. Is this evidence legal and sufficient to authorize this court to declare the particular fact for which it is vouched — that the negroes were imported into Cuba contrary to law? If it be sufficient for this, does such illegal importation make the negroes free men in the island of Cuba? If it does, will this court declare the certificate to be null and void, or leave that act to the decision of the appropriate Spanish tribunals?

In the argument submitted on the part of the United States, in opening the case, the nature of this evidence has been commented upon. It is such chiefly as is not legal evidence in the courts of the United States. Now the question is not as to the impression derived from such evidence, but it is whether, on testimony not legally sufficient, the declaration of a competent foreign functionary will be set aside? As if there were doubt, whether a court of the United States would so do, the admissions of Ruiz, and [40 U.S. 518, 585] of the attorney of the United States are vouched. Yet it is apparent, that these were admissions, not of facts known to themselves, but of impressions derived from evidence which is as much before this court as it was before them. To neither one nor the other was the fact in question personally known. It was inferred by them, from evidence now for the most part before this court.

But, admitting the fact of the recent importation from Africa, still, nothing has been adduced to controvert the position, taken in opening, that the laws of Spain required, in such a case, and even in the case of negroes actually seized on board of a Spanish vessel, on her voyage from Africa, a declaration by a court expressly recognised by Spain, to establish their freedom. However much we may abhor the African slave-trade, all nations have left to those in whose vessels it is carried on, the regulation and punishment of it. The extent to which Spain was willing to permit any other nation to interpose, where her vessels or her subjects were concerned, is carefully determined in this very treaty. The principal witness of the appellees expressly admits, that when negroes are landed, though in known violation of the treaty, it is a subject to be disposed of by the municipal law. Now, it is not pretended here, that, even if these negroes were unlawfully introduced, they have been declared free. Can, then, this court adjudge that these negroes were free in the island of Cuba, even if the fact of their recent importation be proved? Much more, can they assume to do it, by putting their construction on a treaty, not of the United States, but between two foreign nations; a treaty which those nations have the sole right to construe and act upon for themselves?

But, if satisfied that the governor-general has been imposed upon, and the documents fraudulently obtained, still, is the fraud to be punished and the error to be rectified in our courts, or in those of Spain? What says Sir WILLIAM SCOTT, in the case of The Louis, when asked what is to be done, if a French ship, laden

with slaves, in violation of the laws of that country, is brought into an English port: 'I answer,' says he, 'without hesitation, restore the possession which has been unlawfully divested; rescind the illegal act done by your own subject, and leave the foreigner to the justice of his own country.'

Can a rule more directly applicable to the present case be found? 'The courts of no [40 U.S. 518, 586] country,' says Chief Justice MARSHALL, in the case of The Antelope, 'execute the penal laws of another.' In the case of The Eugenia, where a French vessel was liable to forfeiture, under the laws of France, for violating the laws prohibiting the slave-trade, Judge STORY directed, not that she should be condemned in our own courts, but that she should be sent to France. 'This,' says he, 'enables the foreign sovereign to exercise complete jurisdiction, if he shall prefer to have it remitted to his own courts for adjudication.' 'This,' he afterwards adds, 'makes our own country, not a principal, but an auxiliary, in enforcing the interdict of France, and subserves the great interests of universal justice.'

Are not these the true principles which should govern nations in their intercourse with each other; principles sanctioned by great and venerated names? Are not these the principles by which we would require other nations to be governed, when our citizens are charged, in a foreign country, with a breach of our own municipal laws? And is it not productive of the same result? Do we doubt, that the courts and officers of Spain will justly administer her own laws? Will this court act on the presumption, that the tribunals of a foreign and friendly nation will fail to pursue that course which humanity, justice and the sacred obligations of their own laws demand? No nation has a right so to presume, in regard to another; and notwithstanding the distrust that has been repeatedly expressed in the progress of this cause, in regard to the Spanish tribunals and the Spanish functionaries; yet a just respect towards another and a friendly nation; the common courtesy which will not suppose in advance, that it will intentionally do wrong; oblige us to believe, and warrant us in so doing, that if the laws of Spain have been violated; if its officers have been deceived; and if these negroes are really free; these facts will be there ascertained and acted upon, and we shall as 'auxiliaries,' not principals, best 'subserve the cause of universal justice.'

If this view be correct, and if the evidence is sufficient to prove the property of the Spanish subjects in the island of Cuba, the only question that remains to be considered is, whether the acts of the slaves during the voyage changed their condition. It has been argued strongly, that they were free; that they were 'in the actual condition of freedom;' but how can [40 U.S. 518, 587] that be maintained? If slaves by the laws of Spain, they were so on board of a Spanish vessel, as much as on her soil; and will it be asserted, that the same acts in the island of Cuba would have made them free? This will hardly be contended. No nation, recognising slavery, admits the sufficiency of forcible emancipation. In what respect, were these slaves, if such by the laws of Spain, released from slavery by their own acts of aggression upon their masters, any more than a slave becomes free in Pennsylvania, who forcibly escapes from his owner in Virginia? For this court to say, that these acts constituted a release from slavery, would be to establish for another country municipal regulations in regard to her property; and not that only, but to establish them directly in variance with our own laws, in analogous cases. If the negroes in this case were free, it was because they were not slaves, when placed on board the Amistad, not because of the acts there committed by them.

It is submitted, then, that so far as this court is concerned, there is sufficient evidence concerning this property, to warrant its restoration pursuant to the provisions of the treaty with Spain; and that, therefore, the judgment of the court below should be reversed, and a decree made by this court for the entire restoration of the property.

STORY, Justice, delivered the opinion of the court.

This is the case of an appeal from the decree of the circuit court of the district of Connecticut, sitting in admiralty. The leading facts, as he appear upon the transcript of the proceedings, are as follows: On the 27th of June 1839, the schooner L'Amistad, being the property of Spanish subjects, cleared out from the port of Havana, in the island of Cuba, for Puerto Principe, in the same island. On board of the schooner were the master, Ramon Ferrer, and Jose Ruiz and Pedro Montez, all Spanish subjects. The former had with him a negro boy, named Antonio, claimed to be his slave. Jose Ruiz had with him forty-nine negroes, claimed by him as his slaves, and stated to be his property, in a certain pass or document, signed by the governor-general of Cuba. Pedro Montez had with him four other negroes, also claimed by him as his slaves, and stated to be his property, in a similar pass or document, also signed by the governor- general [40 U.S. 518, 588] of Cuba. On the voyage, and before the arrival of the vessel at her port of destination, the negroes rose, killed the master, and took possession of her. On the 26th of August, the vessel was discovered by Lieutenant Gedney, of the United States brig Washington, at anchor on the high seas, at the distance of half a mile from the shore of Long Island. A part of the negroes were then on shore, at Culloden Point, Long Island; who were seized by

Lieutenant Gedney, and brought on board. The vessel, with the negroes and other persons on board, was brought by Lieutenant Gedney into the district of Connecticut, and there libeled for salvage in the district court of the United States. A libel for salvage was also filed by Henry Green and Pelatiah Fordham, of Sag Harbor, Long Island. On the 18th of September, Ruiz and Montez filed claims and libels, in which they asserted their ownership of the negroes as their slaves, and of certain parts of the cargo, and prayed that the same might be 'delivered to them, or to the representatives of her Catholic Majesty, as might be most proper.' On the 19th of September, the attorney of the United States for the district of Connecticut, filed an information or libel, setting forth, that the Spanish minister had officially presented to the proper department of the government of the United States, a claim for the restoration of the vessel, cargo and slaves, as the property of Spanish subjects, which had arrived within the jurisdictional limits of the United States, and were taken possession of by the said public armed brig of the United States, under such circumstances as made it the duty of the United States to cause the same to be restored to the true proprietors, pursuant to the treaty between the United States and Spain; and praying the court, on its being made legally to appear that the claim of the Spanish minister was well founded, to make such order for the disposal of the vessel, cargo and slaves, as would best enable the United States to comply with their treaty stipulations. But if it should appear, that the negroes were persons transported from Africa, in violation of the laws of the United States, and brought within the United States, contrary to the same laws; he then prayed the court to make such order for their removal to the cost of Africa, pursuant to the laws of the United States, as it should deem fit.

On the 19th of November, the attorney of the United States [40 U.S. 518, 589] filed a second information or libel, similar to the first, with the exception of the second prayer above set forth in his former one. On the same day, Antonio G. Vega, the vice-consul of Spain for the state of Connecticut, filed his libel, alleging that Antonio was a slave, the property of the representatives of Ramon Ferrer, and praying the court to cause him to be delivered to the said vice-consul, that he might be returned by him to his lawful owner in the island of Cuba.

On the 7th of January 1840, the negroes, Cinque and others, with the exception of Antonio, by their counsel, filed an answer, denying that they were slaves, or the property of Ruiz and Montez, or that the court could, under the constitution or laws of the United States, or under any treaty, exercise any jurisdiction over their persons, by reason of the premises; and praying that they might be dismissed. They specially set forth and insisted in this answer, that they were native-born Africans; born free, and still, of right, ought to be free and not slaves; that they were, on or about the 15th of April 1839, unlawfully kidnapped, and forcibly and wrongfully carried on board a certain vessel, on the coast of Africa, which was unlawfully engaged in the slave-trade, and were unlawfully transported in the same vessel to the island of Cuba, for the purpose of being there unlawfully sold as slaves; that Ruiz and Montez, well knowing the premises, made a pretended purchase of them; that afterwards, on or about the 28th of June 1839, Ruiz and Montez, confederating with Ferrer (master of the Amistad), caused them, without law or right, to be placed on board of the Amistad, to be transported to some place unknown to them, and there to be enslaved for life; that, on the voyage, they rose on the master, and took possession of the vessel, intending to return therewith to their native country, or to seek an asylum in some free state; and the vessel arrived, about the 26th of August 1839, off Montauk Point, near Long Island; a part of them were sent on shore, and were seized by Lieutenant Gedney, and carried on board; and all of them were afterwards brought by him into the district of Connecticut.

On the 7th of January 1840, Jose Antonio Tellincas, and Messrs. Aspe and Laca, all Spanish subjects, residing in Cuba, filed their [40 U.S. 518, 590] claims, as owners to certain portions of the goods found on board of the schooner L'Amistad. On the same day, all the libellants and claimants, by their counsel, except Jose Ruiz and Pedro Montez (whose libels and claims, as stated of record, respectively, were pursued by the Spanish minister, the same being merged in his claims), appeared, and the negroes also appeared by their counsel; and the case was heard on the libels, claims, answers and testimony of witnesses.

On the 23d day of January 1840, the district court made a decree. By that decree, the court rejected the claim of Green and Fordham for salvage, but allowed salvage to Lieutenant Gedney and others, on the vessel and cargo, of one-third of the value thereof, but not on the negroes, Cinque and others; it allowed the claim of Tellincas, and Aspe and Laca, with the exception of the above-mentioned salvage; it dismissed the libels and claims of Ruiz and Montez, with costs, as being included under the claim of the Spanish minister; it allowed the claim of the Spanish vice-consul, for Antonio, on behalf of Ferrer's representatives; it rejected the claims of Ruiz and Montez for the delivery of the negroes, but admitted them for the cargo, with the exception of the above-mentioned salvage; it rejected the claim made by

the attorney of the United States on behalf of the Spanish minister, for the restoration of the negroes, under the treaty; but it decreed, that they should be delivered to the president of the United States, to be transported to Africa, pursuant to the act of 3d March 1819.

From this decree, the district-attorney, on behalf of the United States, appealed to the circuit court, except so far as related to the restoration of the slave Antonio. The claimants, Tellincas, and Aspe and Laca, also appealed from that part of the decree which awarded salvage on the property respectively claimed by them. No appeal was interposed by Ruiz or Montez, nor on behalf of the representatives of the owners of the Amistad. The circuit court by a mere pro form a decree, affirmed the decree of the district court, reserving the question of salvage upon the claims of Tellincas, and Aspe and Laca. And from that decree, the present appeal has been brought to this court.

The cause has been very elaborately argued, as well upon the [40 U.S. 518, 591] merits, as upon a motion of behalf of the appellees to dismiss the appeal. On the part of the United States, it has been contended: 1. That due and sufficient proof concerning the property has been made, to authorize the restitution of the vessel, cargo and negroes to the Spanish subjects on whose behalf they are claimed, pursuant to the treaty with Spain, of the 27th of October 1795. 2. That the United States had a right to intervene in the manner in which they have done, to obtain a decree for the restitution of the property, upon the application of the Spanish minister. These propositions have been strenuously denied on the other side. Other collateral and incidental points have been stated, upon which it is not necessary at this moment to dwell.

Before entering upon the discussion of the main points involved in this interesting and important controversy, it may be necessary to say a few words as to the actual posture of the case as it now stands before us. In the first place, then, the only parties now before the court on one side, are the United States, intervening for the sole purpose of procuring restitution of the property, as Spanish property, pursuant to the treaty, upon the grounds stated by the other parties claiming the property in their respective libels. The United States do not assert any property in themselves, nor any violation of their own rights, or sovereignty or laws, by the acts complained of. They do not insist that these negroes have been imported into the United States, in contravention of our own slave-trade acts. They do not seek to have these negroes delivered up, for the purpose of being transferred to Cuba, as pirates or robbers, or as fugitive criminals found within our territories, who have been guilty of offences against the laws of Spain. They do not assert that the seizure and bringing the vessel, and cargo and negroes, into port, by Lieutenant Gedney, for the purpose of adjudication, is a tortuous act. They simply confine themselves to the right of the Spanish claimants to the restitution of their property, upon the facts asserted in their respective allegations.

In the next place, the parties before the court, on the other side, as appellees, are Lieutenant Gedney, on his libel for salvage, and the negroes (Cinque and others), asserting themselves, in their answer, not to be slaves, but free native Africans, kidnapped [40 U.S. 518, 592] in their own country, and illegally transported by force from that country; and now entitled to maintain their freedom.

No question has been here made, as to the proprietary interests in the vessel and cargo. It is admitted, that they belong to Spanish subjects, and that they ought to be restored. The only point on this head is, whether the restitution ought to be upon the payment of salvage, or not? The main controversy is, whether these negroes are the property of Ruiz and Montez, and ought to be delivered up; and to this, accordingly, we shall first direct our attention. It has been argued on behalf of the United States, that the court are bound to deliver them up, according to the treaty of 1795, with Spain, which has in this particular been continued in full force, by the treaty of 1819, ratified in 1821. The sixth article of that treaty seems to have had, principally in view, cases where the property of the subjects of either state had been taken possession of within the territorial jurisdiction of the other, during war. The eighth article provides for cases where the shipping of the inhabitants of either state are forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity, to seek shelter in the ports of the other. There may well be some doubt entertained, whether the present case, in its actual circumstances, falls within the purview of this article. But it does not seem necessary, for reasons hereafter stated, absolutely to decide it. The ninth article provides, 'that all ships and merchandize, of what nature soever, which shall be rescued out of the hands of any pirates or robbers, on the high seas, shall be brought into some port of either state, and shall be delivered to the custody of the officers of that port, in order to be taken care of and restored, entire, to the true proprietor, as soon as due and sufficient proof shall be made concerning the property thereof.' This is the article on which the main reliance is placed on behalf of the United States, for the restitution of these negroes. To bring the case within the article, it is essential to establish: 1st, That these negroes, under all the circumstances, fall within the description of

merchandize, in the sense of the treaty. 2d, That there has been a rescue of them on the high seas, out of the hands of the pirates and robbers; which, in the present case, can only be, by showing that they [40 U.S. 518, 593] themselves are pirates and robbers: and 3d, That Ruiz and Montez, the asserted proprietors, are the true proprietors, and have established their title by competent proof.

If these negroes were, at the time, lawfully held as slaves, under the laws of Spain, and recognised by those laws as property, capable of being lawfully bought and sold; we see no reason why they may not justly be deemed, within the intent of the treaty, to be included under the denomination of merchandize, and as such ought to be restored to the claimants; for upon that point the laws of Spain would seem to furnish the proper rule of interpretation. But admitting this, it is clear, in our opinion, that neither of the other essential facts and requisites has been established in proof; and the onus probandi of both lies upon the claimants to give rise to the casus foederis. It is plain, beyond controversy, if we examine the evidence, that these negroes never were the lawful slaves of Ruiz or Montez, or of any other Spanish subjects. They are natives of Africa, and were kidnapped there, and were unlawfully transported to Cuba, in violation of the laws and treaties of Spain, and the most solemn edicts and declarations of that government. By those laws and treaties, and edicts, the African slave trade is utterly abolished; the dealing in that trade is deemed a heinous crime; and the negroes thereby introduced into the dominions of Spain, are declared to be free. Ruiz and Montez are proved to have made the pretended purchase of these negroes, with a full knowledge of all the circumstances. And so cogent and irresistible is the evidence in this respect, that the district-attorney has admitted in open court, upon the record, that these negroes were native Africans, and recently imported into Cuba, as alleged in their answers to the libels in the case. The supposed proprietary interest of Ruiz and Montez is completely displaced, if we are at liberty to look at the evidence, or the admissions of the district-attorney.

If then, these negroes are not slaves, but are kidnapped Africans, who, by the laws of Spain itself, are entitled to their freedom, and were kidnapped and illegally carried to Cuba, and illegally detained and restrained on board the Amistad; there is no pretence to say, that they are pirates or robbers. We may lament the dreadful acts by which they asserted their liberty, and took possession of the Amistad, and endeavored to regain their native [40 U.S. 518, 594] country; but they cannot be deemed pirates or robbers, in the sense of the law of nations, or the treaty with Spain, or the laws of Spain itself; at least, so far as those laws have been brought to our knowledge. Nor do the libels of Ruiz or Montez assert them to be such.

This posture of the facts would seem, of itself, to put an end to the whole inquiry upon the merits. But it is argued, on behalf of the United States, that the ship and cargo, and negroes, were duly documented as belonging to Spanish subjects, and this court have no right to look behind these documents; that full faith and credit is to be given to them; and that they are to be held conclusive evidence in this cause, even although it should be established by the most satisfactory proofs, that they have been obtained by the grossest frauds and impositions upon the constituted authorities of Spain. To this argument, we can, in no wise, assent. There is nothing in the treaty which justifies or sustains the argument. We do not here meddle with the point, whether thee h as been any connivance in this illegal traffic, on the part of any of the colonial authorities or subordinate officers of Cuba; because, in our view, such an examination is unnecessary, and ought not to be pursued, unless it were indispensable to public justice, although it has been strongly pressed at the bar. What we proceed upon is this, that although public documents of the government, accompanying property found on board of the private ships of a foreign nation, certainly are to be deemed prim a facie evidence of the facts which they purport to state, yet they are always open to be impugned for fraud; and whether that fraud be in the original obtaining of these documents, or in the subsequent fraudulent and illegal use of them, when once it is satisfactorily established, it overthrows all their sanctity, and destroys them as proof. Fraud will vitiate any, even the most solemn, transactions; and an asserted title to property, founded upon it, is utterly void. The very language of the ninth article of the treaty of 1795, requires the proprietor to make due and sufficient proof of his property. And how can that proof be deemed either due or sufficient, which is but a connected and stained tissue of fraud? This is not a mere rule of municipal jurisprudence. Nothing is more clear in the law of nations, as an established rule to regulate their rights and duties, [40 U.S. 518, 595] and intercourse, than the doctrine, that the ship's papers are but prim a facie evidence, and that, if they are shown to be fraudulent, they are not to be held proof of any valid title. This rule is familiarly applied, and, indeed, is of every-day's occurrence in cases of prize, in the contests between belligerents and neutrals, as is apparent from numerous cases to be found in the reports of this court; and it is just as applicable to the transactions of civil intercourse between nations, in times of peace. If a private ship, clothed with Spanish papers, should enter the ports of the United States, claiming the privileges

and immunities, and rights, belonging the bona fide subjects of Spain, under our treaties or laws, and she should, in reality, belong to the subjects of another nation, which was not entitled to any such privileges, immunities or rights, and the proprietors were seeking, by fraud, to cover their own illegal acts, under the flag of Spain; there can be no doubt, that it would be the duty of our courts to strip off the disguise, and to look at the case, according to its naked realities. In the solemn treaties between nations, it can never be presumed, that either state intends to provide the means of perpetrating or protecting frauds; but all the provisions are to be construed intended to be applied to bon a fide transactions. The 17th article of the treaty with Spain, which provides for certain passports and certificates, as evidence of property on board of the ships of both states, is, in its terms, applicable only to cases where either of the parties is engaged in a war. This article required a certain form of passport to be agreed upon by the parties, and annexed to the treaty; it never was annexed; and therefore, in the case of The Amiable Isabella, 6 Wheat. 1, it was held inoperative.

It is also a most important consideration, in the present case, which ought not to be lost sight of, that, supposing these African negroes not to be slaves, but kidnapped, and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties, under such circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice and international law. If the contest were about any goods on board of this ship, to which American citizens asserted a title, which was [40 U.S. 518, 596] denied by the Spanish claimants, there could be no doubt of the right to such American citizens to litigate their claims before any competent American tribunal, notwithstanding the treaty with Spain. A fortiori, the doctrine must apply, where human life and human liberty are in issue, and constitute the very essence of the controversy. The treaty with Spain never could have intended to take away the equal rights of all foreigners, who should contest their claims before any of our courts, to equal justice; or to deprive such foreigners of the protection given them by other treaties, or by the general law of nations. Upon the merits of the case, then, there does not seem to us to be any ground for doubt, that these negroes ought to be deemed free; and that the Spanish treaty interposes no obstacle to the just assertion of their rights.

There is another consideration, growing out of this part of the case, which necessarily rises in judgment. It is observable, that the United States, in their original claim, filed it in the alternative, to have the negroes, if slaves and Spanish property, restored to the proprietors; or, if not slaves, but negroes who had been transported from Africa, in violation of the laws of the United States, and brought into the United States, contrary to the same laws, then the court to pass an order to enable the United States to remove such persons to the coast of Africa, to be delivered there to such agent as may be authorized to receive and provide for them. At a subsequent period, this last alternative claim was not insisted on, and another claim was interposed, omitting it; from which the conclusion naturally arises, that it was abandoned.

The decree of the district court, however, contained an order for the delivery of the negroes to the United States, to be transported to the coast of Africa, under the act of the 3d of March 1819, ch. 224. The United States do not now insist upon any affirmance of this part of the decree; and in our judgment, upon the admitted facts, there is no ground to assert, that the case comes within the purview of the act of 1819, or of any other of our prohibitory slave-trade acts.

These negroes were never taken from Africa, or brought to the United States, in contravention of those acts. When the Amistad arrived, she was in possession of the negroes, asserting their freedom; and in no sense could they possibly intend to import themselves here, as [40 U.S. 518, 597] slaves, or for sale as slaves. In this view of the matter, that part of the decree of the district court is unmaintainable, and must be reversed.

The view which has been thus taken of this case, upon the merits, under the first point, renders it wholly unnecessary for us to give any opinion upon the other point, as to the right of the United States to intervene in this case in the manner already stated. We dismiss this, therefore, as well as several minor points made at the argument.

As to the claim of Lieutenant Gedney for the salvage service, it is understood, that the United States do not now desire to interpose any obstacle to the allowance of it, if it is deemed reasonable by the court. It was a highly meritorious and useful service to the proprietors of the ship and cargo; and such as, by the general principles of maritime law, is always deemed a just foundation for salvage. The rate allowed by the court, does not seem to us to have been beyond the exercise of a sound discretion, under the very particular and embarrassing circumstances of the case.

Upon the whole, our opinion is, that the decree of the circuit court, affirming that of the district court, ought to be affirmed, except so far as it directs the negroes to be delivered to the president, to be transported

to Africa, in pursuance of the act of the 3d of March 1819; and as to this, it ought to be reversed: and that the said negroes be declared to be free, and be dismissed from the custody of the court, and go without day.

BALDWIN, Justice, dissented.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Connecticut, and was argued by counsel: On consideration whereof, it is the opinion of this court, that there is error in that art of the decree of the circuit court, affirming the decree of the district court, which ordered the said negroes to be delivered to the president of the United States, to be transported to Africa, in pursuance of the act of congress of the 3d of March 1819; and that, as to that part, it ought to be reversed: and in all other respects, that the said decree of the [40 U.S. 518, 598] circuit court ought to be affirmed. It is, therefore, ordered, adjudged and decreed by this court, that the decree of the said circuit court be and the same is hereby affirmed, except as to the part aforesaid, and as to that part, that it be reversed; and that the cause be remanded to the circuit court, with directions to enter, in lieu of that part, a decree, that the said negroes be and are hereby declared to be free, and that they be dismissed from the custody of the court, and be discharged from the suit, and go thereof quit, without day.

Celebici

INTRODUCTION Celebici is a town in Central Bosnia, strategically located roughly halfway from Sarajevo to Mostar. In 1993, during the war in Bosnia and Herzegovina Serb elements lost military control to the combined forces of Muslims and Croats. A concentration camp was established in a factory complex where Serb prisoners were subjected to a range of abuses and atrocities. Several of those involved in the administration and supervision of the camp were tried in one of the first prosecutions before the International Criminal Tribunal for the former Yugoslavia. The November 1998 convictions of several of the accused were upheld by the Appeals Chamber in 2001.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Case No.: IT-96-21-A

Date: 20 February 2001

IN THE APPEALS CHAMBER

Before: Judge David Hunt, Presiding ; Judge Fouad Riad; Judge Rafael Nieto-Navia; Judge Mohamed Bennouna; Judge Fausto Pocar

Registrar: Mr. Hans Holthuis

Judgement of: 20 February 2001

PROSECUTOR V Zejnil DELALIC, Zdravko MUCIC (aka 'PAVO'), Hazim DELIC and Esad LANDZO (aka 'ZENGA') ('CELEBICI Case')

JUDGEMENT

Counsel for the Accused:

Mr. John Ackerman and Ms Edina Residovic for Zejnil Delalic Mr. Tomislav Kuzmanovic and Mr. Howard Morrison for Zdravko Mucic Mr. Salih Karabdic and Mr. Tom Moran for Hazim Delic Ms Cynthia Sinatra and Mr. Peter Murphy for Esad Landzo

The Office of the Prosecutor:

Mr. Upawansa Yapa Mr. William Fenrick Mr. Christopher Staker Mr. Norman Farrell Ms Sonja Boelaert-Suominen Mr Roeland Bos

Case No.: IT-96-21-A 20 February 2001

The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ('International Tribunal") is seized of appeals against the Judgement rendered by Trial Chamber II on 16 November 1998 in the case of *Prosecutor v Zejnil Delalic, Zdravko Mucic also known as 'Pavo", Hazim Delic, Esad Land'o also known as 'Zenga"* ('Trial Judgement").

Having considered the written and oral submissions of the Parties, the Appeals Chamber

HEREBY RENDERS ITS JUDGEMENT.

I. INTRODUCTION

1. The Indictment against *Zejnil Delalic, Zdravko Mucic, Hazim Delic* and *Esad Land'o*, confirmed on 21 March 1996, alleged serious violations of humanitarian law that occurred in 1992 when Bosnian Muslim and Bosnian Croat forces took control of villages within the Konjic municipality in central Bosnia and Herzegovina. The present appeal concerns events within the Konjic municipality, where persons were detained in a former Yugoslav People's Army ('JNA") facility: the Celebici camp. The Trial Chamber found that detainees were killed, tortured, sexually assaulted, beaten and otherwise subjected to cruel and inhumane treatment by Mucic, Delic and Land'o. Mucic was found to have been the commander of the Celebici camp, Delic the deputy commander and Land'o a prison guard.

2. In various forms, Delalic was co-ordinator of Bosnian Muslim and Bosnian Croat forces in the Konjic area between approximately April and September 1992. He was found not guilty of twelve counts of grave breaches of the Geneva Conventions of 1949 and violations of the laws or customs of war. The Trial Chamber concluded that Delalic did not have sufficient command and control over the Celebici camp or the guards that worked there to entail his criminal responsibility for their actions.

3. Mucic was found guilty of grave breaches of the Geneva Conventions and of violations of the laws or customs of war for crimes including murder, torture, inhuman treatment and unlawful confinement, principally on the basis of his superior responsibility as commander of the Celebici camp, but also, in respect of certain counts, for his direct participation in the crimes. Mucic was sentenced to seven years imprisonment. Delic was found guilty of grave breaches of the Geneva Conventions and violations of the laws or customs of war for his direct participation in crimes including murder, torture, and inhuman treatment. Delic was sentenced to twenty years imprisonment. Landzo was found guilty of grave breaches of the Geneva Conventions and violations of the laws or customs of war, for crimes including murder, torture, and cruel treatment, and sentenced to fifteen years imprisonment.

4. The procedural background of the appeal proceedings is found in Annex A, which also contains a complete list of the grounds of appeal. Certain of the grounds of appeal of the individual parties dealt with substantially the same subject matter, and certain grounds of appeal of Land'o were joined by Mucic and Delic. For that reason, this judgement considers the various grounds of appeal grouped by subject matter, which was also the way the different grounds of appeal were dealt with during oral argument.

Trial Judgement, pp 447-449.

II. GROUNDS OF APPEAL RELATING TO ARTICLE 2 OF THE STATUTE

5. Delic, Mucic and Landzo have raised two closely related issues in relation to the findings of the Trial Chamber based on Article 2 of the Statute. The first is the question of the legal test for determining the nature of the conflict, and the second, that of the criteria for establishing whether a person is 'protected" under Geneva Convention IV. Delic has raised a third issue as to whether Bosnia and Herzegovina was a party to the Geneva Conventions at the time of the events alleged in the Indictment.

A. Whether the Trial Chamber Erred in Holding that the Armed Conflict in Bosnia and Herzegovina at the Time Relevant to the Indictment was of an International Character

6. Delic, Mucic, and Land'o challenge the Trial Chamber's finding that the armed conflict in Bosnia and Herzegovina was international at all times relevant to the Indictment. Relying upon the reasoning of the majority in the *Tadic* and *Aleksovski* first instance Judgements, the appellants argue that the armed conflict was internal at all times. It is submitted that the Trial Chamber used an incorrect legal test to determine the nature of the conflict and that the test set out by the majority of the *Tadic* Trial Chamber, the 'effective control" test, based on *Nicaragua*, is the appropriate test. In the appellants' opinion, applying this correct test, the facts as found by the Trial Chamber do not support a finding that the armed conflict was international. Consequently, the appellants seek a reversal of the verdict of guilty on the counts of the Indictment based upon Article 2 of the Statute.

7. The Prosecution submits that these grounds of appeal should be dismissed. It submits that the correct legal test for determining whether an armed conflict is international was set forth by the Appeals Chamber in the *Tadic* Appeal Judgement, which rejected the 'effective control" test in relation to acts of armed forces or paramilitary units. Relying upon the *Aleksovski* Appeal Judgement, the Prosecution contends that the Appeals Chamber should follow its previous decision.

8. As noted by the Prosecution, the issue of the correct legal test for determining whether an armed conflict is international was addressed by the Appeals Chamber in the *Tadic* Appeal Judgement. In the *Aleksovski* Appeal Judgement, the Appeals Chamber found that 'in the interests of certainty and predictability, the Appeals Chamber should follow its previous decisions, but should be free to depart from them for cogent reasons in the interests of justice". Elaborating on this principle, the Chamber held:

> Instances of situations where cogent reasons in the interests of justice require a departure from a previous decision include cases where the previous decision has been decided on the basis of a wrong legal principle or cases where a previous decision has been given *per incuriam*, that is a judicial decision that has been 'wrongly decided, usually because the judge or judges were ill-informed about the applicable law."
>
> It is necessary to stress that the normal rule is that previous decisions are to be followed, and departure from them is the exception. The Appeals Chamber will only depart from a previous decision

> after the most careful consideration has been given to it, both as to the law, including the authorities cited, and the facts.
>
> What is followed in previous decisions is the legal principle *(ratio decidendi)*, and the obligation to follow that principle only applies in similar cases, or substantially similar cases. This means less that the facts are similar or substantially similar, than that the question raised by the facts in the subsequent case is the same as the question decided by the legal principle in the previous decision. There is no obligation to follow previous decisions which may be distinguished for one reason or another from the case before the court.

In light of this finding, the *Aleksovski* Appeals Chamber followed the legal test set out in the *Tadic* Appeal Judgement in relation to internationality.

9. Against this background, the Appeals Chamber will turn to the question of the applicable law for determining whether an armed conflict is international.

1. What is the Applicable Law? 10. The Appeals Chamber now turns to a consideration of the *Tadic* Appeal Judgement, and to the relevant submissions of the parties in this regard, in order to determine whether, applying the principle set forth in the *Aleksovski* Appeal Judgement, there are any cogent reasons in the interests of justice for departing from it.

11. From the outset, the Appeals Chamber notes that the findings of the Trial Chamber majorities in the *Tadic* and *Aleksovski* Judgements, upon which the appellants rely, were overturned on appeal.

12. In the *Tadic* case, the Appeals Chamber was concerned with, inter *alia*, the legal criteria for establishing when, in an armed conflict which is *prima facie* internal, armed forces may be regarded as acting on behalf of a foreign power, thereby rendering the conflict international.

13. The Appeals Chamber saw the question of internationality as turning on the issue of whether the Bosnian Serb forces 'could be considered as de iure or *de facto* organs of a foreign power, namely the FRY". The important question was 'what degree of authority or control must be wielded by a foreign State over armed forces fighting on its behalf in order to render international an armed conflict which is prima facie internal". The Chamber considered, after a review of various cases including *Nicaragua*, that international law does not always require the same degree of control over armed groups or private individuals for the purpose of determining whether they can be regarded as a *de facto* organ of the State. The Appeals Chamber found that there were three different standards of control under which an entity could be considered *de facto* organ of the State, each differing according to the nature of the entity. Using this framework, the Appeals Chamber determined that the situation with which it was concerned fell into the second category it identified, which was that of the acts of armed forces or militias or paramilitary units.

14. The Appeals Chamber determined that the legal test which applies to this category was the 'overall control" test:

> In order to attribute the acts of a military or paramilitary group to a State, it must be proved that the State wields *overall control* over the group, not only by equipping and financing the group, but also by co-ordinating or helping in the general planning of its military activity. [...] However, it is not necessary that, in addition, the State should also issue, either to the head or to members of the group, instructions for the commission of specific acts contrary to international law.

15. Overall control was defined as consisting of more than 'the mere provision of financial assistance or military equipment or training". Further, the Appeals Chamber adopted a flexible definition of this test, which allows it to take into consideration the diversity of situations on the field in present-day conflicts:

> This requirement, however, does not go so far as to include the issuing of specific orders by the State, or its direction of each individual operation. Under international law it is by no means necessary that the controlling authorities should plan all the operations of the units dependent on them, choose their targets, or give specific instructions concerning the conduct of military operations and any alleged violations of international humanitarian law. The control required by international law may be deemed to exist when a State (or in the context of an armed conflict, the Party to the conflict) *has a role in organising, coordinating or planning the military actions* of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of *de facto* State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts.

16. The Appeals Chamber in *Tadic* considered *Nicaragua* in depth, and based on two grounds, held that the 'effective control" test enunciated by the ICJ was not persuasive.

17. Firstly, the Appeals Chamber found that the *Nicaragua* 'effective control" test did not seem to be

consonant with the 'very logic of the entire system of international law on State responsibility", which is 'not based on rigid and uniform criteria". In the Appeals Chamber's view, 'the whole body of international law on State responsibility is based on a realistic concept of accountability, which disregards legal formalities". Thus, regardless of whether or not specific instructions were issued, the international responsibility of the State may be engaged.

18. Secondly, the Appeals Chamber considered that the *Nicaragua* test is at variance with judicial and State practice. Relying on a number of cases from claims tribunals, national and international courts, and State practice, the Chamber found that, although the 'effective control" test was upheld by the practice in relation to individuals or unorganised groups of individuals acting on behalf of States, it was not the case in respect of military or paramilitary groups.

19. The Appeals Chamber found that the armed forces of the Republika Srpska were to be regarded as acting under the overall control of, and on behalf of, the FRY, sharing the same objectives and strategy, thereby rendering the armed conflict international.

20. The Appeals Chamber, after considering in depth the merits of the *Nicaragua* test, thus rejected the 'effective control" test, in favour of the less strict 'overall control" test. This may be indicative of a trend simply to rely on the international law on the use of force, jus ad bellum, when characterising the conflict. The situation in which a State, the FRY, resorted to the indirect use of force against another State, Bosnia and Herzegovina, by supporting one of the parties involved in the conflict, the Bosnian Serb forces, may indeed be also characterised as a proxy war of an international character. In this context, the 'overall control" test is utilised to ascertain the foreign intervention, and consequently, to conclude that a conflict which was prima facie internal is internationalised.

21. The appellants argue that the findings of the *Tadic* Appeal Judgement which rejected the 'correct legal test" set out in *Nicaragua* are erroneous as the Tribunal is bound by the ICJ's precedent. It is submitted that when the ICJ has determined an issue, the Tribunal should follow it, (1) because of the ICJ's position within the United Nations Charter, and (2) because of the value of precedent. Further, even if the ICJ's decisions are not binding on the Tribunal, the appellants submits that it is 'undesirable to have two courts (...) having conflicting decisions on the same issue".

22. The Prosecution rebuts this argument with the following submissions: (1) The two courts have different jurisdictions, and in addition, the ICJ Statute does not provide for precedent. It would thus be odd that the decisions of the ICJ which are not strictly binding on itself would be binding on the Tribunal which has a different jurisdiction.31 (2) The Appeals Chamber in the *Tadic* appeal made specific reference to *Nicaragua* and held it not to be persuasive. (3) Judge Shahabuddeen in a dissenting opinion in an ICTR decision found that the differences between the Tribunal and the ICJ do not prohibit recourse to the relevant jurisprudence on relevant matters, and that the Tribunal can draw some persuasive value from the ICJ's decisions, without being bound by them.

23. The Appeals Chamber is not persuaded by the appellants' argument. The Appeals Chamber in *Tadic*, addressing the argument that it should not follow the *Nicaragua* test in relation to the issue at hand as the two courts have different jurisdiction, held:

> What is at issue is not the distinction between two classes of responsibility. What is at issue is a preliminary question: that of the conditions on which under international law an individual may be held to act as a *de facto* organ of a State.

24. The Appeals Chamber agrees that 'so far as international law is concerned, the operation of the desiderata of consistency, stability, and predictability does not stop at the frontiers of the Tribunal. [...] The Appeals Chamber cannot behave as if the general state of the law in the international community whose interests it serves is none of its concern". However, this Tribunal is an autonomous international judicial body, and although the ICJ is the 'principal judicial organ" within the United Nations system to which the Tribunal belongs, there is no hierarchical relationship between the two courts. Although the Appeals Chamber will necessarily take into consideration other decisions of international courts, it may, after careful consideration, come to a different conclusion.

25. An additional argument submitted by Land'o is that the Appeals Chamber in the *Tadic* Jurisdiction Decision accurately decided that the conflict was internal. The Appeals Chamber notes that this argument was previously raised by the appellants at trial. The Trial Chamber then concluded that it is 'incorrect to contend that the Appeals Chamber has already settled the matter of the nature of the conflict in Bosnia and Herzegovina. In the *Tadic* Jurisdiction Decision the Chamber found that 'the conflicts in the former Yugoslavia have both internal and international aspects' and deliberately left the question of the nature of particular conflicts open for the Trial Chamber to determine". The Appeals Chamber fully agrees with this conclusion.

26. Applying the principle enunciated in the *Aleksovski* Appeal Judgement, this Appeals Chamber is unable to conclude that the decision in the *Tadic* was arrived at on the basis of the application of a wrong legal principle, or arrived at *per incuriam*. After careful consideration of the arguments put forward by the appellants, this Appeals Chamber is unable to find cogent reasons in the interests of justice to depart from the law as identified in the *Tadic* Appeal Judgement. The 'overall control" test set forth in the *Tadic* Appeal Judgement is thus the applicable criteria for determining the existence of an international armed conflict.

27. The Appeals Chamber will now examine the Trial Judgement in order to ascertain what test was applied.

2. Has the Trial Chamber Applied the 'Overall Control" Test? 28. The Appeals Chamber first notes that the *Tadic* Appeal Judgement which set forth the 'overall control" test had not been issued at the time of the delivery of the Trial Judgement. The Appeals Chamber will thus consider whether the Trial Chamber, although not, from a formal viewpoint, having applied the 'overall control" test as enunciated by the Appeals Chamber in *Tadic*, based its conclusions on a legal reasoning consistent with it.

29. The issue before the Trial Chamber was whether the armed forces of the Bosnian Serbs could be regarded as acting on behalf of the FRY, in order to determine whether after its withdrawal in May 1992 the conflict continued to be international or instead became internal. More specifically, along the lines of *Tadic*, the relevant issue is whether the Trial Chamber came to the conclusion that the Bosnian Serb armed forces could be regarded as having been under the overall control of the FRY, going beyond the mere financing and equipping of such forces, and involving also participation in the planning and supervision of military operations after 19 May 1992.

30. The Prosecution submits that the test applied by the Trial Chamber is consistent with the 'overall control" test. In the Prosecution's submission, the Trial Chamber adopted the "same approach" as subsequently articulated by the Appeals Chamber in *Tadic* and *Aleksovski*. Further, the Trial Judgement goes through the "exact same facts, almost as we found in the *Tadic* decision". The Prosecution contends that the Appeals Chamber has already considered the same issues and facts in the *Tadic* appeal, and found that the same conflict was international after May 1992. In the Prosecution's opinion, the Trial Chamber's conclusion that "the government of the FRY was the [...] controlling force behind the VRS" is consistent with *Tadic*.

3. The Nature of the Conflict Prior to 19 May 1992 31. The Trial Chamber first addressed the question of whether there was an international armed conflict in Bosnia and Herzegovina in May 1992 and whether it continued throughout the rest of that year, *i.e.*, at the time relevant to the charges alleged in the Indictment.

32. The Trial Chamber found that a "significant numbers of [JNA] troops were on the ground when the [BH] government declared the State's independence on 6 March 1992". Further, "there is substantial evidence that the JNA was openly involved in combat activities in Bosnia and Herzegovina from the beginning of March and into April and May of 1992." The Trial Chamber therefore concluded that:

> [...] an international armed conflict existed in Bosnia and Herzegovina at the date of its recognition as an independent State on 6 April 1992. There is no evidence to indicate that the hostilities which occurred in the Konjic municipality at that time were part of a separate armed conflict and, indeed, there is some evidence of the involvement of the JNA in the fighting there.

33. The Trial Chamber's finding as to the nature of the conflict prior to 19 May 1992 is based on a finding of a direct participation of one State on the territory of another State. This constitutes a plain application of the holding of the Appeals Chamber in *Tadic* that it "is indisputable that an armed conflict is international if it takes place between two or more States", which reflects the traditional position of international law. The Appeals Chamber is in no doubt that there is sufficient evidence to justify the Trial Chamber's finding of fact that the conflict was international prior to 19 May 1992.

4. The Nature of the Conflict After 19 May 1992 34. The Trial Chamber then turned to the issue of the character of the conflict after the alleged withdrawal of the external forces it found to be involved prior to 19 May 1992. Based upon, amongst other matters, an analysis of expert testimony and of Security Council resolutions, it found that after 19 May 1992, the aims and objectives of the conflict remained the same as during the conflict involving the FRY and the JNA prior to that date, *i.e.*, to expand the territory which would form part of the Republic. The Trial Chamber found that "[t]he FRY, at the very least, despite the purported withdrawal of its forces, maintained its support of the Bosnian Serbs and their army and exerted substantial influence over their operations".

35. The Trial Chamber concluded that "[d]espite the formal change in status, the command structure of the new Bosnian Serb army was left largely unaltered from that of the JNA, from which the Bosnian Serbs re-

ceived their arms and equipment as well as through local SDS organisations".

36. In discussing the nature of the conflict, the Trial Chamber did not rely on *Nicaragua*, noting that, although "this decision of the ICJ constitutes an important source of jurisprudence on various issues of international law", the ICJ is "a very different judicial body concerned with rather different circumstances from the case in hand".

37. The Trial Chamber described its understanding of the factual situation upon which it was required to make a determination as being

> [...] characterised by the breakdown of previous State boundaries and the creation of new ones. Consequently, the question which arises is one of *continuity of control of particular forces*. The date which is consistently raised as the turning point in this matter is that of 19 May 1992, when the JNA apparently withdrew from Bosnia and Herzegovina.

38. It continued:

> The Trial Chamber must keep in mind that the forces constituting the VRS had a prior identity as an actual organ of the SFRY, as the JNA. When the FRY took control of this organ and subsequently severed the formal link between them, by creating the VJ and VRS, the *presumption* remains that these forces retained their link with it, unless otherwise demonstrated.

39. Along the lines of Judge McDonald's Dissenting Opinion in the *Tadic* case (which it cited), the Trial Chamber found that:

> [...] the withdrawal of JNA troops who were not of Bosnian citizenship, and the creation of the VRS and VJ, constituted a deliberate attempt to mask the continued involvement of the FRY in the conflict while its Government remained in fact the controlling force behind the Bosnian Serbs. From the level of strategy to that of personnel and logistics the operations of the JNA persisted in all but name. It would be wholly artificial to sever the period before 19 May 1992 from the period thereafter in considering the nature of the conflict and applying international humanitarian law.

40. The appellants submit that the Trial Chamber did not rely on any legal test to classify the conflict, *i.e.*, it failed to pronounce its own test to determine whether an intervening State has sufficient control over insurgents to render an internal conflict international. On the other hand, the Prosecution submits that the Trial Chamber classified the conflict on the basis of whether the Prosecution had proved that the FRY/VJ was the "controlling force behind the Bosnian Serbs".

41. The Appeals Chamber disagrees with the appellants' submission that the Trial Chamber did not rely on any legal test to determine the issue. The Trial Chamber appears to have relied on a "continuity of control" test in considering the evidence before it, in order to determine whether the nature of the conflict in Bosnia and Herzegovina, which was international until a point in May 1992, had subsequently changed. The Trial Chamber thus relied on a "control" test, evidently less strict than the "effective control" test. The Trial Chamber did not focus on the issuance of specific instructions, which underlies the "effective control" test. In assessing the evidence, however, the Trial Chamber clearly had regard to all the elements pointing to the influence and control retained over the VRS by the VJ, as required by the "overall control" test.

42. The method employed by the Trial Chamber was later considered as the correct approach in *Aleksovski*. The *Aleksovski* Appeals Chamber indeed interpreted the "overall control" test as follows:

> The "overall control" test calls for an assessment of all the elements of control taken as a whole, and a determination to be made on that basis as to whether there was the required degree of control. Bearing in mind that the Appeals Chamber in the *Tadic* Judgement arrived at this test against the background of the "effective control" test set out by the decision of the ICJ in *Nicaragua*, and the "specific instructions" test used by the Trial Chamber in *Tadic*, the Appeals Chamber considers it appropriate to say that the standard established by the "overall control" test is not as rigorous as those tests.

43. The Appeals Chamber finds that the Trial Chamber's assessment of the effect in reality of the formal withdrawal of the FRY army after 19 May 1992 was based on a careful examination of the evidence before it. That the Trial Chamber indeed relied on this approach is evidenced by the use of phrases such as "despite the attempt at camouflage by the authorities of the FRY", or "despite the formal change in status" in the discussion of the evidence before it.

44. An additional argument submitted by Land'o in support of his contention that the Trial Chamber decided the issue wrongly is based on the agreement concluded under the auspices of the ICRC on 22 May 1992. In Land'o's opinion, this agreement, which was based on common Article 3 of the Geneva Conventions, shows that the conflict was considered by the parties to it to be internal. The Appeals Chamber fully concurs with the Trial Chamber's finding that the *Tadic* Jurisdiction Decision's reference to the agreement "merely demonstrates that some of the norms applica-

ble to international armed conflicts were specifically brought into force by the parties to the conflict in Bosnia and Herzegovina, some of whom may have wished it to be considered internal, and does not show that the conflict must therefore have been internal in nature".

45. The appellants further argue that the Trial Chamber relied on a "presumption" that the FRY/VJ still exerted control over the VRS after 19 May 1992 to determine the nature of the conflict. The Trial Chamber thus used an "incorrect legal test" when it concluded that because of the former existing links between the FRY and the VRS, the FRY/VJ retained control over the VRS. The Prosecution responds that it is unfounded to suggest that the Trial Chamber shifted to the Defence the burden of proving that the conflict did not remain international after the withdrawal of the JNA.

46. The Appeals Chamber is of the view that although the use of the term "presumption" by the Trial Chamber may not be appropriate, the approach it followed, *i.e.*, assessing all of the relevant evidence before it, including that of the previous circumstances, is correct. This approach is clearly in keeping with the Appeals Chamber's holding in *Tadic* that in determining the issue of the nature of the conflict, structures put in place by the parties should not be taken at face value. There it held:

> Undue emphasis upon the ostensible structures and overt declarations of the belligerents, as opposed to a nuanced analysis of the reality of their relationship, may tacitly suggest to groups who are in *de facto* control of military forces that responsibility for the acts of such forces can be evaded merely by resort to a superficial restructuring of such forces or by a facile declaration that the reconstituted forces are henceforth independent of their erstwhile sponsors.

47. The Trial Chamber's finding is also consistent with the holding of the Appeals Chamber in *Tadic* that "[w]here the controlling State in question is an adjacent State with territorial ambitions on the State where the conflict is taking place, and the controlling State is attempting to achieve its territorial enlargement through the armed forces which it controls, it may be easier to establish the threshold". The "overall control" test could thus be fulfilled even if the armed forces acting on behalf of the "controlling State" had autonomous choices of means and tactics although participating in a common strategy along with the "controlling State".

48. Although the Trial Chamber did not formally apply the "overall control" test set forth by the *Tadic* Appeal Judgement, the Appeals Chamber is of the view that the Trial Chamber's legal reasoning is entirely consistent with the previous jurisprudence of the Tribunal. The Appeals Chamber will now turn to an additional argument of the parties concerning the Trial Chamber's factual findings.

49. Despite submissions in their briefs that suggested that the appellants wished the Appeals Chamber to review the factual findings of the Trial Chamber in addition to reviewing its legal conclusion, the appellants submitted at the hearing that they "just ask the Court to apply the proper legal test to the facts that were found by the Trial Chamber". The Appeals Chamber will thus not embark on a general assessment of the Trial Chamber's factual findings.

50. The Trial Chamber came to the conclusion, as in the *Tadic* case, that the armed conflict taking place in Bosnia and Herzegovina after 19 May 1992 could be regarded as international because the FRY remained the controlling force behind the Bosnian Serbs armed forces after 19 May 1992. It is argued by the parties that the facts relied upon in the present case are very similar to those found in the *Tadic* case. As observed previously, however, a general review of the evidence before the Trial Chamber does not fall within the scope of this appeal. It suffices to say that this Appeals Chamber is satisfied that the facts as found by the Trial Chamber fulfil the legal conditions as set forth in the *Tadic* case.

51. The Appeals Chamber therefore finds that Delic's Ground 8, Mucic's Ground 5, and Land'o's Ground 5 must fail.

B. Whether the Bosnian Serbs Detained in the Celebici Camp were Protected Persons Under Geneva Convention IV

52. Delalic, Mucic, Delic and Land'o submit that the Trial Chamber erred in law in finding that the Bosnian Serbs detainees at the Celebici camp could be considered not to be nationals of Bosnia and Herzegovina for the purposes of the category of persons protected under Geneva Convention IV. They contend that the Trial Chamber's conclusions are inconsistent with international law and Bosnian law. The appellants request that the Appeals Chamber enter judgements of acquittal on all counts based on Article 2 of the Statute.

53. The Prosecution submits that the appellants' grounds of appeal have no merit and that the Appeals Chamber should follow its previous jurisprudence on the issue, as set out in the *Tadic* Appeal Judgement, and confirmed by the *Aleksovski* Appeal Judgement. It submits that it is now settled in that jurisprudence that in an international conflict victims may be considered as not being nationals of the party in whose hands they find themselves, even if, as a matter of national law,

they were nationals of the same State as the persons by whom they are detained. Further, the Prosecution submits that the test applied by the Trial Chamber is consistent with the *Tadic* Appeal Judgement.

54. As noted by the Prosecution, the Appeals Chamber in *Tadic* has previously addressed the issue of the criteria for establishing whether a person is "protected" under Geneva Convention IV. In accordance with the principle set out in the *Aleksovski* Appeal Judgement, as enunciated in paragraph 8 of this Judgement, the Appeals Chamber will follow the law in relation to protected persons as identified in the *Tadic* Appeal Judgement, unless cogent reasons in the interests of justice exist to depart from it.

55. After considering whether cogent reasons exist to depart from the *Tadic* Appeal Judgement, the Appeals Chamber will turn to an analysis of the Trial Chamber's findings so as to determine whether it applied the correct legal principles to determine the nationality of the victims for the purpose of the application of the grave breaches provisions.

1. What is the Applicable Law?

56. Article 2 of the Statute of the Tribunal provides that it has the power to prosecute persons who committed grave breaches of the Geneva Conventions "against persons or property *protected under the provisions of the relevant Geneva Conventions*". The applicable provision to ascertain whether Bosnian Serbs detained in the Celebici camp can be regarded as victims of grave breaches is Article 4(1) of Geneva Convention IV on the protection of civilians, which defines "protected persons" as "those in the hands of a Party to the conflict or Occupying Power of which they are not nationals." The Appeals Chamber in *Tadic* found that:

> [...] the Convention intends to protect civilians (in enemy territory, occupied territory or the combat zone) who do not have the nationality of the belligerent in whose hands they find themselves, or who are stateless persons. In addition, as is apparent from the preparatory work, the Convention also intends to protect those civilians in occupied territory who, while having the nationality of the Party to the conflict in whose hands they find themselves, are refugees and thus no longer owe allegiance to this Party and no longer enjoy its diplomatic protection....

57. The Appeals Chamber held that "already in 1949 *the legal bond of nationality was not regarded as crucial* and allowance was made for special cases". Further, relying on a teleological approach, it continued:

58. The Appeals Chamber in *Aleksovski* endorsed the *Tadic* reasoning holding that "Article 4 may be given a wider construction so that a person may be accorded protected status, notwithstanding the fact that he is of the same nationality as his captors."

59. The appellants submit that the Appeals Chamber decisions in *Tadic* and *Aleksovski* wrongly interpreted Article 4 of Geneva Convention IV, and that the *Tadic* and *Aleksovski* Trial Chamber Judgements are correct. It is essentially submitted that in order for victims to gain "protected persons" status, Geneva Convention IV requires that the person in question be of a different nationality than the perpetrators of the alleged offence, based on the national law on citizenship of Bosnia and Herzegovina. This interpretation is based on a "strict" interpretation of the Convention which is, in the appellants' view, mandated by the "traditional rules of treaty interpretation".

60. The Prosecution contends that the Appeals Chamber in *Aleksovski* already adopted the approach used in the *Tadic* Appeal Judgement, and that the appellants in this case have not demonstrated any "cogent reasons in the interests of justice" that could justify a departure by the Appeals Chamber from its previous decisions on the issue.

61. Before turning to these arguments, the Appeals Chamber will consider an additional argument submitted by the appellants which goes to the status of the *Tadic* Appeal Judgement statement of the law and may be conveniently addressed as a preliminary matter.

62. The appellants submit that the *Tadic* statements on the meaning of protected persons are dicta, as in their view the Appeals Chamber in *Tadic* and *Aleksovski* cases derived the protected persons status of the victims from the finding that the perpetrators were acting on behalf of the FRY or Croatia. The Prosecution on the other hand submits that the Appeals Chamber's statement in *Tadic* was part of the ratio *decidendi*.

63. While the Appeals Chamber in *Tadic* appears to have reached a conclusion as to the status of the victims as protected persons based on the previous finding that the Bosnian Serbs acted as *de facto* organs of another State, the FRY, it set forth a clear statement of the law as to the applicable criteria to determine the nationality of the victims for the purposes of the Geneva Conventions. The Appeals Chamber is satisfied that this statement of the applicable law, which was endorsed by the Appeals Chamber in *Aleksovski*, falls within the scope of the *Aleksovski* statement in relation to the practice of following previous decisions of the Appeals Chamber.

64. The Appeals Chamber now turns to the main arguments relied upon by the appellants, namely that the Appeals Chamber's interpretation of the nationality

requirement is wrong as it is (1) contrary to the "traditional rules of treaty interpretation"; and (2) inconsistent with the national laws of Bosnia and Herzegovina on citizenship.

65. The appellants submit that "the traditional rules of treaty interpretation" should be applied to interpret strictly the nationality requirement set out in Article 4 of Geneva Convention IV. The word "national" should therefore be interpreted according to its natural and ordinary meaning. The appellants submit in addition that if the Geneva Conventions are now obsolete and need to be updated to take into consideration a "new reality", a diplomatic conference should be convened to revise them.

66. The Prosecution on the other hand contends that the Vienna Convention on the Law of Treaties of 1969 provides that the ordinary meaning is the meaning to be given to the terms of the treaty in their context and in the light of their object and purpose. It is submitted that the Appeals Chamber in *Tadic* found that the legal bond of nationality was not regarded as crucial in 1949, *i.e.*, that there was no intention at the time to determine that nationality was the sole criteria. In addition, adopting the appellants' position would result in the removal of protections from the Geneva Conventions contrary to their very object and purpose.

67. The argument of the appellants relates to the interpretative approach to be applied to the concept of nationality in Geneva Convention IV. The appellants and the Prosecution both rely on the Vienna Convention in support of their contentions. The Appeals Chamber agrees with the parties that it is appropriate to refer to the Vienna Convention as the applicable rules of interpretation, and to Article 31 in particular, which sets forth the general rule for the interpretation of treaties. The Appeals Chamber notes that it is generally accepted that these provisions reflect customary rules. The relevant part of Article 31 reads as follows:

> A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

68. The Vienna Convention in effect adopted a textual, contextual *and* a teleological approach of interpretation, allowing for an interpretation of the natural and ordinary meaning of the terms of a treaty in their context, while having regard to the object and purpose of the treaty.

69. In addition, Article 32 of the Vienna Convention, entitled "Supplementary means of interpretation", provides that:

> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
>
> (a) leaves the meaning ambiguous and obscure; or
>
> (b) leads to a result which is manifestly absurd or unreasonable.

70. Where the interpretative rule set out in Article 31 does not provide a satisfactory conclusion recourse may be had to the *travaux preparatoires* as a subsidiary means of interpretation.

71. In finding that ethnicity may be taken into consideration when determining the nationality of the victims for the purposes of the application of Geneva Convention IV, the Appeals Chamber in *Tadic* concluded:

> Under these conditions, the requirement of nationality is even less adequate to define protected persons. In such conflicts, *not only the text and the drafting history of the Convention but also, and more importantly, the Convention's object and purpose* suggest that allegiance to a Party to the conflict and, correspondingly, control by this Party over persons ina given territory, may be regarded as the crucial test.

72. This reasoning was endorsed by the Appeals Chamber in *Aleksovski*:

73. The Appeals Chamber finds that this interpretative approach is consistent with the rules of treaty interpretation set out in the Vienna Convention. Further, the Appeals Chamber in *Tadic* only relied on the *travaux preparatoires* to reinforce its conclusion reached upon an examination of the overall context of the Geneva Conventions. The Appeals Chamber is thus unconvinced by the appellants' argument and finds that the interpretation of the nationality requirement of Article 4 in the *Tadic* Appeals Judgement does not constitute a rewriting of Geneva Convention IV or a "recreation" of the law. The nationality requirement in Article 4 of Geneva Convention IV should therefore be ascertained within the context of the object and purpose of humanitarian law, which "is directed to the protection of civilians to the maximum extent possible". This in turn must be done within the context of the changing nature of the armed conflicts since 1945, and in particular of the development of conflicts based on ethnic or religious grounds.

74. The other set of arguments submitted by the appellants relates to the national laws of Bosnia and Herzegovina on citizenship, and the applicable criteria to ascertain nationality. The appellants contend that the term "national" in Geneva Convention IV refers to

nationality as defined by domestic law. It is argued that according to the applicable law of Bosnia and Herzegovina on citizenship at the time relevant to the Indictment, the Bosnian Serbs were of Bosnian nationality. In the appellants' submission, all former citizens of the former Socialist Republic of Bosnia and Herzegovina (including those of Serbian ethnic origin), one of the constituent republics of the SFRY, became Bosnian nationals when the SFRY was dissolved and Bosnia and Herzegovina was recognised as an independent State in April 1992. Further, FRY citizenship was limited to residents in its constituent parts, and the law of Bosnia and Herzegovina did not provide a possibility for its citizens of Serb ethnic background to opt for FRY citizenship. Delalic submits that in addition, the Bosnian Serbs subsequently agreed to the Dayton Agreement, which provides that they are nationals of Bosnia and Herzegovina.

75. The appellants' arguments go to the issue of whether domestic laws are relevant to determining the nationality of the victims for the purpose of applying the Geneva Conventions. As observed above, however, the nationality requirement of Article 4 of Geneva Convention IV is to be interpreted within the framework of humanitarian law.

76. It is a settled principle of international law that the effect of domestic laws on the international plane is determined by international law. As noted by the Permanent Court of International Justice in the *Case of Certain German Interests in Polish Upper Silesia*, "[f]rom the standpoint of International Law and of the Court which is its organ, municipal laws are merely facts which express the will and constitute the activities of States, in the same manner as do legal decisions or administrative measures". In relation to the admissibility of a claim within the context of the exercise of diplomatic protection based on the nationality granted by a State, the ICJ held in *Nottebohm*:

> But the issue which the Court must decide is not one which pertains to the legal system of Liechtenstein. It does not depend on the law or on the decision of Liechtenstein whether that State is entitled to exercise its protection, in the case under consideration. To exercise protection, to apply to the Court, is to place oneself on the plane of international law. It is international law which determines whether a State is entitled to exercise protection and to seize the Court.

77. The ICJ went on to state that "[i]nternational practice provides many examples of acts performed by States in the exercise of their domestic jurisdiction which do not necessarily or automatically have international effect". To paraphrase the ICJ in *Nottebohm*, the question at issue must thus be decided on the basis of international law; to do so is consistent with the nature of the question and with the nature of the Tribunal's own functions. Consequently, the nationality granted by a State on the basis of its domestic laws is not automatically binding on an international tribunal which is itself entrusted with the task of ascertaining the nationality of the victims for the purposes of the application of international humanitarian law. Article 4 of Geneva Convention IV, when referring to the absence of national link between the victims and the persons in whose hands they find themselves, may therefore be considered as referring to a nationality link defined for the purposes of international humanitarian law, and not as referring to the domestic legislation as such. It thus falls squarely within the competence of this Appeals Chamber to ascertain the effect of the domestic laws of the former Yugoslavia within the international context in which this Tribunal operates.

78. Relying on the ICRC Commentary to Article 4 of Geneva Convention IV, the appellants further argue that international law cannot interfere in a State's relations with its own nationals, except in cases of genocide and crimes against humanity. In the appellants' view, in the situation of an internationalised armed conflict where the victims and the perpetrators are of the same nationality, the victims are only protected by their national laws.

79. The purpose of Geneva Convention IV in providing for universal jurisdiction only in relation to the grave breaches provisions was to avoid interference by domestic courts of other States in situations which concern only the relationship between a State and its own nationals. The ICRC Commentary (GC IV), referred to by the appellants, thus stated that Geneva Convention IV is "faithful to a recognised principle of international law: it does not interfere in a State's relations with its own nationals". The Commentary did not envisage the situation of an internationalised conflict where a foreign State supports one of the parties to the conflict, and where the victims are detained because of their ethnicity, and because they are regarded by their captors as operating on behalf of the enemy. In these circumstances, the formal national link with Bosnia and Herzegovina cannot be raised before an international tribunal to deny the victims the protection of humanitarian law. It may be added that the government of Bosnia and Herzegovina itself did not oppose the prosecution of Bosnian nationals for acts of violence against other Bosnians based upon the grave breaches regime.

80. It is noteworthy that, although the appellants emphasised that the "nationality" referred to in Geneva Convention IV is to be understood as referring to the

legal citizenship under domestic law, they accepted at the hearing that in the former Yugoslavia "nationality", in everyday conversation, refers to ethnicity.

81. The Appeals Chamber agrees with the Prosecution that depriving victims, who arguably are of the same nationality under domestic law as their captors, of the protection of the Geneva Conventions solely based on that national law would not be consistent with the object and purpose of the Conventions. Their very object could indeed be defeated if undue emphasis were placed on formal legal bonds, which could also be altered by governments to shield their nationals from prosecution based on the grave breaches provisions of the Geneva Conventions. A more purposive and realistic approach is particularly apposite in circumstances of the dissolution of Yugoslavia, and in the emerging State of Bosnia and Herzegovina where various parties were engaged in fighting, and the government was opposed to a partition based on ethnicity, which would have resulted in movements of population, and where, ultimately, the issue at stake was the final shape of the State and of the new emerging entities.

82. In *Tadic*, the Appeals Chamber, relying on a teleological approach, concluded that formal nationality may not be regarded as determinative in this context, whereas ethnicity may reflect more appropriately the reality of the bonds:

> This legal approach, hinging on substantial relations more than on formal bonds, becomes all the more important in present-day international armed conflicts. While previously wars were primarily between well-established States, in modern inter-ethnic armed conflicts such as that in the former Yugoslavia, new States are often created during the conflict and ethnicity rather than nationality may become the grounds for allegiance. Or, put another way, ethnicity may become determinative of national allegiance.

83. As found in previous Appeals Chamber jurisprudence, Article 4 of Geneva Convention IV is to be interpreted as intending to protect civilians who find themselves in the midst of an international, or internationalised, conflict to the maximum extent possible. The nationality requirement of Article 4 should therefore be ascertained upon a review of "the substance of relations" and not based on the legal characterisation under domestic legislation. In today's ethnic conflicts, the victims may be "assimilated" to the external State involved in the conflict, even if they formally have the same nationality as their captors, for the purposes of the application of humanitarian law, and of Article 4 of Geneva Convention IV specifically. The Appeals Chamber thus agrees with the *Tadic* Appeal Judgement that "even if in the circumstances of the case the perpetrators and the victims were to be regarded as possessing the same nationality, Article 4 would still be applicable".

84. Applying the principle enunciated in *Aleksovski*, the Appeals Chamber sees no cogent reasons in the interests of justice to depart from the *Tadic* Appeal Judgement. The nationality of the victims for the purpose of the application of Geneva Convention IV should not be determined on the basis of formal national characterisations, but rather upon an analysis of the substantial relations, taking into consideration the different ethnicity of the victims and the perpetrators, and their bonds with the foreign intervening State.

85. It is therefore necessary to consider the findings of the Trial Chamber to ascertain whether it applied these principles correctly.

2. Did the Trial Chamber Apply the Correct Legal Principles? 86. As in the section relating to the nature of the conflict, the Appeals Chamber first notes that the *Tadic* Appeal Judgement, which set forth the law applicable to the determination of protected person status, had not been issued at the time of the issue of the Trial Judgement. The Appeals Chamber will thus consider whether the Trial Chamber, although having not, from a formal viewpoint, applied the reasoning of the Appeals Chamber in the *Tadic* Appeal Judgement, based its conclusions on legal reasoning consistent with it.

87. The issue before the Trial Chamber was whether the Bosnian Serb victims in the hands of Bosnian Muslims and Bosnian Croats could be regarded as protected persons, *i.e.*, as having a different nationality from that of their captors.

88. The appellants argue that the Bosnian Serb victims detained in the Celebici camp were clearly nationals of Bosnia and Herzegovina, and cannot be considered as FRY nationals. Thus, the victims could not be considered as "protected persons". The Prosecution on the other hand contends that the test applied by the Trial Chamber was consistent with the *Tadic* Appeal Judgement.

89. It is first necessary to address a particular argument before turning to an examination of the Trial Chamber's findings. Delalic submits, contrary to the Prosecution's assertions, the *Tadic* Appeal Judgement does not govern the protected persons issue in this case, because the facts of the two cases are dramatically different. The Appeals Chamber in *Aleksovski* observed that the principle that the Appeals Chamber will follow its previous decisions "only applies in similar cases, or substantially similar cases. This means less that the facts are similar or substantially similar, than that the

question raised by the facts in the subsequent case is the same as the question decided by the legal principle in the previous decision".

90. In *Tadic* and *Aleksovski* the perpetrators were regarded as acting on behalf of an external party, the FRY and Croatia respectively, and the Bosnian Muslim victims were considered as protected persons by virtue of the fact that they did not have the nationality of the party in whose hands they found themselves. By contrast, in this case, where the accused are Bosnian Muslim or Bosnian Croat, no finding was made that they were acting on behalf of a foreign State, whereas the Bosnian Serb victims could be regarded as having links with the party (the Bosnian Serb armed forces) acting on behalf of a foreign State (the FRY). However, although the factual circumstances of these cases are different, the legal principle which is applicable to the facts is identical. The Appeals Chamber therefore finds the appellant's argument unconvincing.

91. The Trial Chamber found that the Bosnian Serb victims could be regarded "as having been in the hands of a party to the conflict of which they were not nationals, being Bosnian Serbs detained during an international armed conflict by a party to that conflict, the State of Bosnia and Herzegovina". The Trial Chamber essentially relied on a broad and purposive approach to reach its conclusion, rejecting the proposition that a determination of the nationality of the victims should be based on the domestic laws on citizenship.

92. The Trial Chamber first emphasised the role played by international law in relation to nationality, holding that "the International Tribunal may choose to refuse to recognise (or give effect to) a State's grant of its nationality to individuals for the purposes of applying international law". It then nevertheless found that "[a]n analysis of the relevant laws on nationality in Bosnia and Herzegovina in 1992 does not, however, reveal a clear picture. At that time, as we have discussed, the State was struggling to achieve its independence and all the previous structures of the SFRY were dissolving. In addition, an international armed conflict was tearing Bosnia and Herzegovina apart and the very issue which was being fought over concerned the desire of certain groups within its population to separate themselves from that State and join with another". The Trial Chamber also noted that "the Bosnian Serbs, in their purported constitution of the SRBH, proclaimed that citizens of the Serb Republic were citizens of Yugoslavia".

93. The Trial Chamber also declined to rely upon the argument presented by the Prosecution's expert Professor Economides that there is an emerging doctrine in international law of the right to the nationality of one's own choosing. Finding that the principle of a right of option was not a settled rule of international law, the Trial Chamber held that this principle could not be, of itself, determinative in viewing the Bosnian Serbs to be non-nationals of Bosnia and Herzegovina.

94. The Trial Chamber discussed the nationality link in the light of the *Nottebohm* case and concluded:

> Assuming that Bosnia and Herzegovina had granted its nationality to the Bosnian Serbs, Croats and Muslims in 1992, there may be an insufficient link between the Bosnian Serbs and that State for them to be considered Bosnian nationals by this Trial Chamber in the adjudication of the present case. The granting of nationality occurred within the context of the dissolution of a State and a consequent armed conflict. Furthermore, the Bosnian Serbs had clearly expressed their wish not to be nationals of Bosnia and Herzegovina by proclaiming a constitution rendering them part of Yugoslavia and engaging in this armed conflict in order to achieve that aim. Such finding would naturally be limited to the issue of the application of international humanitarian law and would be for no wider purpose. It would also be in the spirit of that law by rendering it as widely applicable as possible.

95. In the light of its finding on the international character of the conflict, the Trial Chamber held that it is "possible to regard the Bosnian Serbs as acting on behalf of the FRY in its continuing armed conflict against the authorities of Bosnia and Herzegovina". The Bosnian Serb victims could thus be considered as having a different nationality from that of their captors.

96. That the Trial Chamber relied upon a broad and purposive, and ultimately realistic, approach is indicated by the following references which concluded its reasoning:

> [T]his Trial Chamber wishes to emphasise the necessity of considering the requirements of article 4 of the Fourth Geneva Convention in a more flexible manner. The provisions of domestic legislation on citizenship in a situation of violent State succession cannot be determinative of the protected status of persons caught up in conflicts which ensue from such events. The Commentary to the Fourth Geneva Convention charges us not to forget that "the Conventions have been drawn up first and foremost to protect individuals, and not to serve State interests" and thus it is the view of this Trial Chamber that their protections should be applied to as broad a category of persons as possible. It would indeed be contrary to the intention of the Security Council, which was concerned with effec-

> tively addressing a situation that it had determined to be a threat to international peace and security, and with ending the suffering of all those caught up in the conflict, for the International Tribunal to deny the application of the Fourth Geneva Convention to any particular group of persons solely on the basis of their citizenship status under domestic law.

97. The Appeals Chamber finds that the legal reasoning adopted by the Trial Chamber is consistent with the *Tadic* reasoning. The Trial Chamber rejected an approach based upon formal national bonds in favour of an approach which accords due emphasis to the object and purpose of the Geneva Conventions. At the same time, the Trial Chamber took into consideration the realities of the circumstances of the conflict in Bosnia and Herzegovina, holding that "(t)he law must be applied to the reality of the situation". Although in some respects the legal reasoning of the Trial Chamber may appear to be broader than the reasoning adopted by the Appeals Chamber, this Appeals Chamber is satisfied that the conclusions reached fall within the scope of the *Tadic* reasoning. As submitted by the Prosecution, the Trial Chamber correctly sought to establish whether the victims could be regarded as belonging to the opposing side of the conflict.

98. The Appeals Chamber particularly agrees with the Trial Chamber's finding that the Bosnian Serb victims should be regarded as protected persons for the purposes of Geneva Convention IV because they "were arrested and detained mainly on the basis of their Serb identity" and "they were clearly regarded by the Bosnian authorities as belonging to the opposing party in an armed conflict and as posing a threat to the Bosnian State".

99. The Trial Chamber's holding that its finding "would naturally be limited to the issue of the application of international humanitarian law and would be for no wider purpose"123 also follows closely the Appeals Chamber's position that the legal test to ascertain the nationality of the victims is applicable within the limited context of humanitarian law, and for the specific purposes of the application of Geneva Convention IV in cases before the Tribunal. Land'o submitted in his brief that the Trial Chamber's finding suggests that a person can have one nationality for the purposes of national law, and another for purposes of international law, which, in his opinion, is contrary to international law. He also contended that the Trial Chamber's holding involuntarily deprives all Bosnian Serbs of their nationality. The argument that the Trial Chamber's findings have the consequence of regulating the nationality of the victims in the national sphere is unmeritorious. It should be made clear that the conclusions reached by international judges in the performance of their duties do not have the effect of regulating the nationality of these persons *vis a vis* the State within the national sphere. Nor do they purport to pronounce on the internal validity of the laws of Bosnia and Herzegovina. The Appeals Chamber agrees with the Prosecution that the Trial Chamber did not act unreasonably in not giving weight to the evidence led by the Defence concerning the nationality of the particular victims under domestic law.

100. The appellants submit arguments based upon the "effective link" test derived from the ICJ case *Nottebohm*. In their view, the following indicia should be taken into consideration when assessing the nationality link of the victims with the FRY: place of birth, of education, of marriage, of vote, and habitual residence; the latter being, they submit, the most important criterion.

101. The *Nottebohm* case was concerned with ascertaining the effects of the national link for the purposes of the exercise of diplomatic protection, whereas in the instant case, the Appeals Chamber is faced with the task of determining whether the victims could be considered as having the nationality of a foreign State involved in the conflict, for the purposes of their protection under humanitarian law. It is thus irrelevant to demonstrate, as argued by the appellants, that the victims and their families had their habitual residence in Bosnia and Herzegovina, or that they exercised their activities there. Rather, the issue at hand, in a situation of internationalised armed conflict, is whether the victims can be regarded as not sharing the same nationality as their captors, for the purposes of the Geneva Conventions, even if arguably they were of the same nationality from a domestic legal point of view.

102. Although the Trial Chamber referred to the *Nottebohm* "effective link" test in the course of its legal reasoning, its conclusion as to the nationality of the victims for the purposes of the Geneva Conventions did not depend on that test. The Trial Chamber emphasised that "operating on the international plane, the International Tribunal may choose to refuse to recognise (or give effect to) a State's grant of its nationality to individuals for the purposes of applying international law". Further, the Trial Chamber when assessing the nationality requirement clearly referred to the specific circumstances of the case and to the specific purposes of the application of humanitarian law.

103. Delalic further submitted that the Trial Chamber altered international law in relying upon the "secessionist activities" of the Bosnian Serbs to reach its conclusion, as the right to self-determination is not recognised in international law.

104. It is irrelevant to determine whether the activities with which the Bosnian Serbs were associated were in conformity with the right to self-determination or not. As previously stated, the question at issue is not whether this activity was lawful or whether it is in compliance with the right to self-determination. Rather, the issue relevant to humanitarian law is whether the civilians detained in the Celebici camp were protected persons in accordance with Geneva Convention IV.

105. Delic also submits that the Trial Chamber's finding that the Bosnian Serb victims were not Bosnian nationals is at odds with its factual conclusions that Bosnian Serbs were Bosnian citizens for the purpose of determining the existence of an international armed conflict.127 This argument has no merit. Contrary to the Appellant's contention, the findings of the Trial Chamber are not contradictory. In finding that the conflict which took place in Bosnia and Herzegovina was of an international character, the Trial Chamber merely concluded that a foreign State was involved and was supporting one of the parties in a conflict that was *prima facie* internal. This finding did not purport to make a determination as to the nationality of the party engaged in fighting with the support of the foreign State.

3. Conclusion 106. The Appeals Chamber finds that the legal reasoning applied by the Trial Chamber is consistent with the applicable legal principles identified in the *Tadic* Appeal Judgement. For the purposes of the application of Article 2 of the Statute to the present case, the Bosnian Serb victims detained in the Celebici camp must be regarded as having been in the hands of a party to the conflict, Bosnia and Herzegovina, of which they were not nationals. The appellants' grounds of appeal therefore fail.

C. Whether Bosnia and Herzegovina was a Party to the Geneva Conventions at the Time of the Events Alleged in the Indictment

107. Delic challenges the Trial Chamber's findings of guilt based on Article 2 of the Statute, which vests the Tribunal with the jurisdiction to prosecute grave breaches of the 1949 Geneva Conventions. Delic contends that because Bosnia and Herzegovina did not "accede" to the Geneva Conventions until 31 December 1992, *i.e.*, after the events alleged in the Indictment, his acts committed before that date cannot be prosecuted under the treaty regime of grave breaches. Delic also argues that the Geneva Conventions do not constitute customary law. Therefore, in his opinion, the application of the Geneva Conventions to acts which occurred before the date of Bosnia and Herzegovina's "accession" to them would violate the principle of legality or *nullem crimen sine lege*. All counts based on Article 2 of the Statute in the Indictment should, he argues, thus be dismissed.

108. The Prosecution contends that regardless of whether or not Bosnia and Herzegovina was bound by the Geneva Conventions *qua* treaty obligations at the relevant time, the grave breaches provisions of the Geneva Conventions reflected customary international law at all material times. Further, Bosnia and Herzegovina was bound by the Geneva Conventions as a result of their instrument of succession deposited on 31 December 1992, which took effect on the date on which Bosnia and Herzegovina became independent, 6 March 1992.

109. The Appeals Chamber first takes note of the "declaration of succession" deposited by Bosnia and Herzegovina on 31 December 1992 with the Swiss Federal Council in its capacity as depositary of the 1949 Geneva Conventions.

110. Bosnia and Herzegovina's declaration of succession may be regarded as a "notification of succession" which is now defined by the 1978 Vienna Convention on Succession of States in Respect of Treaties as "any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty".132 Thus, in the case of the replacement of a State by several others, "a newly independent State which makes a notification of succession [...] shall be considered a party to the treaty from the date of the succession of States or from the date of entry into force of the treaty, whichever is the later date.133 The date of 6 March 1992 is generally accepted as the official date of Bosnia and Herzegovina's independence (when it became a sovereign State) and it may be considered that it became an official party to the Geneva Conventions from this date". Indeed, the Swiss Federal Council subsequently notified the State parties to the Geneva Conventions that Bosnia and Herzegovina "became a party to the Conventions [...] at the date of its independence, *i.e.* on 6 March 1992".135 In this regard, the argument put forward by the appellants appears to confuse the concepts of "accession" and "succession".

111. Although Article 23(2) of the Convention also provides that pending notification of succession, the operation of the treaty in question shall be considered "suspended" between the new State and other parties to the treaty, the Appeals Chamber finds that in the case of this type of treaty, this provision is not applicable. This is because, for the following reasons, the Appeals Chamber confirms that the provisions applicable are binding on a State from creation. The Appeals Chamber is of the view that irrespective of any findings as to formal succession, Bosnia and Herzegovina would

in any event have succeeded to the Geneva Conventions under customary law, as this type of convention entails automatic succession, *i.e.*, without the need for any formal confirmation of adherence by the successor State. It may be now considered in international law that there is automatic State succession to multilateral humanitarian treaties in the broad sense, *i.e.*, treaties of universal character which express fundamental human rights. It is noteworthy that Bosnia and Herzegovina itself recognised this principle before the ICJ.

> Convention on 23 July 1993. Although the Convention was not in force at the time relevant to the issue at hand, the provisions of relevance to the issue before the Appeals Chamber codify rules of customary international law, as has been recognised by State. *See, e.g.*, Declaration of Tanganyika, 1961, and the subsequent declarations made by new States since then (United Nations Legislative Series, ST/LEG/SER.B/14 p 177). The Appeals Chamber notes that the practice of international organisations (UN, ILO, ICRC) and States shows that there was a customary norm on succession *de jure* of States to general treaties, which applies automatically to human rights treaties.

112. It is indisputable that the Geneva Conventions fall within this category of universal multilateral treaties which reflect rules accepted and recognised by the international community as a whole. The Geneva Conventions enjoy nearly universal participation.

113. In light of the object and purpose of the Geneva Conventions, which is to guarantee the protection of certain fundamental values common to mankind in times of armed conflict, and of the customary nature of their provisions, the Appeals Chamber is in no doubt that State succession has no impact on obligations arising out from these fundamental humanitarian conventions. In this regard, reference should be made to the Secretary-General's Report submitted at the time of the establishment of the Tribunal, which specifically lists the Geneva Conventions among the international humanitarian instruments which are "beyond any doubt part of customary law so that the problem of adherence of some but not all States to specific conventions does not arise". The Appeals Chamber finds further support for this position in the *Tadic* Jurisdiction Decision.

114. For these reasons the Appeals Chamber finds that there was no gap in the protection afforded by the Geneva Conventions, as they, and the obligations arising therefrom, were in force for Bosnia and Herzegovina at the time of the acts alleged in the Indictment.

115. The Appeals Chamber dismisses this ground of appeal.

III. GROUNDS OF APPEAL RELATING TO ARTICLE 3 OF THE STATUTE

116. Delalic, Mucic and Delic challenge the Trial Chamber's findings that (1) offences within common Article 3 of the Geneva Conventions of 1949 are encompassed within Article 3 of the Statute; (2) common Article 3 imposes individual criminal responsibility; and (3) that common Article 3 is applicable to international armed conflicts. The appellants argue that the Appeals Chamber should not follow its previous conclusions in the *Tadic* Jurisdiction Decision, which, it is submitted, was wrongly decided. That Decision determined that violations of common Article 3 were subjected to the Tribunal's jurisdiction under Article 3 of its Statute, and that, as a matter of customary law, common Article 3 was applicable to both internal and international conflicts and entailed individual criminal responsibility. The Prosecution submits that the appellants' grounds should be rejected because they are not consistent with the *Tadic* Jurisdiction Decision, which the Appeals Chamber should follow. The Prosecution contends that the grounds raised by the appellants for reopening the Appeals Chamber's previous reasoning are neither founded nor sufficient.

117. As noted by the parties, the issues raised in this appeal were previously addressed by the Appeals Chamber in the *Tadic* Jurisdiction Decision. In accordance with the principle set out in the *Aleksovski* Appeal Judgement, as enunciated in paragraph 8 of this Judgement, the Appeals Chamber will follow its *Tadic* jurisprudence on the issues, unless there exist cogent reasons in the interests of justice to depart from it.

118. The grounds presented by the appellants raise three different issues in relation to common Article 3 of the Geneva Conventions: (1) whether common Article 3 falls within the scope of Article 3 of the Tribunal's Statute; (2) whether common Article 3 is applicable to international armed conflicts; (3) whether common Article 3 imposes individual criminal responsibility. After reviewing the *Tadic* Jurisdiction Decision in respect of each of these issues to determine whether there exist cogent reasons to depart from it, the Appeals Chamber will turn to an analysis of the Trial Judgement to ascertain whether it applied the correct legal principles in disposing of the issues before it.

119. As a preliminary issue, the Appeals Chamber will consider one of the appellants' submissions concerning the status of the *Tadic* Jurisdiction Decision, which is relevant to the discussion of all three issues.

120. In their grounds of appeal, the appellants invite the Appeals Chamber to reverse the position it took in the *Tadic* Jurisdiction Decision concerning the applicability of common Article 3 of the Geneva Conven-

tions under Article 3 of the Statute, and thus to revisit the issues raised. Delalic inter alia submits that the Appeals Chamber did not conduct a rigorous analysis at the time (suggesting also that there is a difference in nature between interlocutory appeals and post-judgement appeals) and that many of the issues raised now were not briefed or considered in the *Tadic* Jurisdiction Decision. In the appellants' view, the Decision was rendered *per incuriam*. Such a reason affecting a judgement was envisaged in the *Aleksovski* Appeal Judgement as providing a basis for departing from an earlier decision.

121. As to the contention that the arguments which the appellants make now were not before the Appeals Chamber in *Tadic*, the Prosecution submits that it is not the case that they were not considered in the *Tadic* Jurisdiction Decision: the essence of most of the arguments now submitted by the appellants was addressed and decided by the Appeals Chamber in that Decision. In relation to the argument that the *Tadic* Jurisdiction Decision was not based on a rigorous analysis, the Prosecution submits that that Decision contains detailed reasoning and that issues decided in an interlocutory appeal should not be regarded as having any lesser status than a decision of the Appeals Chamber given after the Trial Chamber's judgement. Further, the Decision was not given *per incuriam*, as the Appeals Chamber focused specifically on this issue, the arguments were extensive and many authorities were referred to. In the Prosecution's submission, there are therefore no reasons to depart from it.

122. This Appeals Chamber is of the view that there is no reason why interlocutory decisions of the Appeals Chamber should be considered, as a matter of principle, as having any lesser status than a final decision on appeal. The purpose of an appeal, whether on an interlocutory or on a final basis, is to determine the issues raised with finality. There is therefore no basis in the interlocutory status of the *Tadic* Jurisdiction Decision to consider it as having been made *per incuriam*.

A. Whether Common Article 3 of the Geneva Conventions Falls Within the Scope of Article 3 of the Statute

1. What is the Applicable Law? 123. Article 3 of the Statute entitled "Violations of the Laws or Customs of War" reads:

> The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:
>
> (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
>
> (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
>
> (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
>
> (d) seizure of, destruction or willful damage done to institutions dedicated to religion, charity and education, the arts and science, historic monuments and works of art and science;
>
> (e) plunder of public or private property.

124. Common Article 3 of the Geneva Conventions provides in relevant parts that:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time and in anyplace whatsoever with respect to the above-mentioned persons:
>
> (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> (b) Taking of hostages;
>
> (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> (d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.
>
> (2) The wounded and the sick shall be collected and cared for.

125. In relation to the scope of Article 3 of the Statute, the Appeals Chamber in the *Tadic* Jurisdiction Decision held that Article 3 "is a general clause covering all violations of humanitarian law not falling under Article 2 or covered by Articles 4 and 5". It went on:

> Article 3 thus confers on the International Tribunal jurisdiction over any serious offence against international humanitarian law not covered by Arti-

cles 2, 4 or 5. Article 3 is a fundamental provision laying down that any "serious violation of international humanitarian law" must be prosecuted by the International Tribunal. In other words, Article 3 functions as a residual clause designed to ensure that no serious violation of international humanitarian law is taken away from the jurisdiction of the International Tribunal. Article 3 aims to make such jurisdiction watertight and inescapable.

126. The conclusion of the Appeals Chamber was based on a careful analysis of the Secretary-General's Report. The Appeals Chamber *inter alia* emphasised that the Secretary-General acknowledged that the Hague Regulations, annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land, which served as a basis for Article 3 of the Statute, "have a broader scope than the Geneva Conventions, in that they cover not only the protection of victims of armed violence (civilians) or of those who no longer take part in the hostilities (prisoners of war), but also the conduct of hostilities". The Appeals Chamber noted that, although the Secretary-General's Report subsequently indicated "that the violations explicitly listed in Article 3 relate to Hague law not contained in the Geneva Conventions", Article 3 contains the phrase "shall include but not be limited to". The Appeals Chamber concluded: "Considering this list in the general context of the Secretary-General's discussion of the Hague Regulations and international humanitarian law, we conclude that this list may be construed to include other infringements of international humanitarian law."

127. In support of its conclusion, the Appeals Chamber also relied on statements made by States in the Security Council at the time of the adoption of the Statute of the Tribunal, which "can be regarded as providing an authoritative interpretation of Article 3 to the effect that its scope is much broader than the enumerated violations of Hague law". The Appeals Chamber also relied on a teleological approach in its analysis of the provisions of the Statute. Reference was also made to the context and purpose of the Statute as a whole, and in particular to the fact that the Tribunal was established to prosecute "serious violations of international humanitarian law". It continued: "Thus, if correctly interpreted, Article 3 fully realises the primary purpose of the establishment of the International Tribunal, that is, not to leave unpunished any person guilty of any such serious violation, whatever the context within which it may have been committed". The Appeals Chamber concluded that Article 3 is intended to incorporate violations of both Hague (conduct of war) and Geneva (protection of victims) law provided that certain conditions, *inter alia* relating to the customary status of the rule, are met.

128. The Appeals Chamber then went on to specify four requirements that must be met in order for a violation of international humanitarian law to be subject to Article 3 of the Statute. The Appeals Chamber then considered the question of which such violations, when committed in internal conflicts, met these requirements. It discussed in depth the existence of customary international humanitarian rules applicable to internal conflicts, and found that State practice had developed since the 1930s, to the effect that customary rules exist applicable to non-international conflicts. These rules include common Article 3 but also go beyond it to include rules relating to the methods of warfare.

129. The Appeals Chamber will now turn to the arguments of the appellants which discuss the *Tadic* Jurisdiction Decision conclusions in order to determine whether there exist cogent reasons in the interests of justice to depart from them.

130. In support of their submission that violations of common Article 3 are not within the jurisdiction of the Tribunal, the appellants argue that in adopting Article 3 of the Statute, the Security Council never intended to permit prosecutions under this Article for violations of common Article 3, and, had the Security Council intended to include common Article 3 within the ambit of Article 3, it would have expressly included it in Article 2 of the Statute, which deals with the law related to the protection of victims. In their opinion, an analysis of Article 3 of the Statute shows that it is limited to Hague law. A related argument presented by the appellants is that Article 3 can only be expanded to include offences which are comparable and lesser offences than those already listed, and not to include offences of much greater magnitude and of a completely different character. In support of their argument, the appellants also rely on a comparison of the ICTY and ICTR Statutes, as Article 4 of the ICTR Statute *explicitly* includes common Article 3. The appellants further argue that the Security Council viewed the conflict taking place in the former Yugoslavia as international, and accordingly provided for the prosecution of serious violations of humanitarian law in the context of an international conflict only. The Prosecution submits that the Appeals Chamber should follow its previous conclusion in the *Tadic* Jurisdiction Decision.

131. As to the appellants' argument based on the intention of the Security Council, the Appeals Chamber is of the view that the Secretary-General's Report and the statements made by State representatives in the Security Council at the time of the adoption of the Statute, as analysed in *Tadic*, clearly support a conclusion

that the list of offences listed in Article 3 was meant to cover violations of *all* of the laws or customs of war, understood broadly, in addition to those mentioned in the Article by way of example. Recourse to interpretative statements made by States at the time of the adoption of a resolution may be appropriately made by an international court when ascertaining the meaning of the text adopted, as they constitute an important part of the legislative history of the Statute. These statements may shed light on some aspects of the drafting and adoption of the Statute as well as on its object and purpose, when no State contradicts that interpretation, as noted in *Tadic*.166 This is consistent with the accepted rules of treaty interpretation.

132. The Appeals Chamber is similarly unconvinced by the appellants' submission that it is illogical to incorporate violations of common Article 3 which are "Geneva law" rules, within Article 3 which covers "Hague law" rules. The Appeals Chamber in *Tadic* discussed the evolution of the meaning of the expression "war crimes". It found that war crimes have come to be understood as covering both Geneva and Hague law, and that violations of the laws or customs of war cover both types of rules. The traditional law of warfare concerning the protection of persons (both taking part and not taking part in hostilities) and property is now more correctly termed "international humanitarian law" and has a broader scope, including, for example, the Geneva Conventions. The ICRC Commentary (GC IV) indeed stated that "the Geneva Conventions form part of what are generally called the laws and customs of war, violations of which are commonly called war crimes". Further, Additional Protocol I contains rules of both Geneva and Hague origin.

133. Recent confirmation that a strict separation between Hague and Geneva law in contemporary international humanitarian law based on the "type" of rules is no longer warranted may be found in Article 8 of the ICC Statute. This Article covers "War crimes" generally, namely grave breaches and "other serious violations of the laws and customs of war applicable in international armed conflict"; violations of common Article 3 in non-international armed conflicts; and "other serious violations of the laws and customs of war applicable in non-international armed conflict". The Appeals Chamber thus confirms the view expressed in the *Tadic* Appeal Judgement that the expression "laws and customs of war" has evolved to encompass violations of Geneva law at the time the alleged offences were committed, and that consequently, Article 3 of the Statute may be interpreted as intending the incorporation of Geneva law rules. It follows that the appellants' argument that violations of common Article 3 cannot be included in Article 3 as they are of a different fails.

134. Turning next to the appellants' argument that common Article 3 would more logically be incorporated in Article 2 of the Statute, the Appeals Chamber observes that the Geneva Conventions themselves make a distinction between the grave breaches and other violations of their provisions. The offences enumerated in common Article 3 may be considered as falling into the category of other serious violations of the Geneva Conventions, and are thus included within the general clause of Article 3. There is thus no apparent inconsistency in not including them in the scope of Article 2 of the Statute. This approach based on a distinction between the grave breaches of the Geneva Conventions and other serious violations of the Conventions, has also later been followed in the ICC Statute.

135. As will be discussed below, the appellants' argument that the Security Council viewed the conflict as international, even if correct, would not be determinative of the issue, as the prohibitions listed under common Article 3 are also applicable to international conflicts. It is, however, appropriate to note here that the Appeals Chamber does not share the view of the appellants that the Security Council and the Secretary-General determined that the conflict in the former Yugoslavia at the time of the creation of the Tribunal was international. In the Appeals Chamber's view, the Secretary-General's Report does not take a position as to whether the various conflicts within the former Yugoslavia were international in character for purposes of the applicable law as of a particular date. The Statute was worded neutrally. Article 1 of the Statute entitled "Competence of the International Tribunal" vests the Tribunal with the power to prosecute "serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991", making no reference to the nature of the conflict. This supports the interpretation that the Security Council in adopting the Statute was of the view that the question of the nature of the conflict should be judicially determined by the Tribunal itself, the issue involving factual and legal questions.

136. The Appeals Chamber thus finds no cogent reasons in the interests of justice to depart from its previous jurisprudence concerning the question of whether common Article 3 of the Geneva Conventions is included in the scope of Article 3 of the Statute.

2. Did the Trial Chamber Follow the *Tadic* Jurisdiction Decision? 137. The Trial Chamber generally relied on the *Tadic* Jurisdiction Decision as it found "no reason to depart" from it. That the Trial Chamber accepted that common Article 3 is incorporated in Article 3 of the Statute appears clearly from the following findings. The Trial Chamber referred to paragraphs 87 and 91 of

the *Tadic* Jurisdiction Decision to describe the "division of labour between Articles 2 and 3 of the Statute". The Trial Chamber went on to hold that "this Trial Chamber is in no doubt that the intention of the Security Council was to ensure that all serious violations of international humanitarian law, committed within the relevant geographical and temporal limits, were brought within the jurisdiction of the International Tribunal."

138. In respect of the customary status of common Article 3, the Trial Chamber found:

> While in 1949 the insertion of a provision concerning internal armed conflicts into the Geneva Conventions may have been innovative, there can be no question that the protections and prohibitions enunciated in that provision have come to form part of customary international law. As discussed at length by the Appeals Chamber, a corpus of law concerning the regulation of hostilities and protection of victims in internal armed conflicts is now widely recognised.

139. The Appeals Chamber therefore finds that the Trial Chamber correctly adopted the Appeals Chamber's statement of the law in disposing of this issue.

B. Whether Common Article 3 is Applicable to International Armed Conflicts

1. What is the Applicable Law? 140. In the course of its discussion of the existence of customary rules of international humanitarian law governing internal armed conflicts, the Appeals Chamber in the *Tadic* Jurisdiction Decision observed a tendency towards the blurring of the distinction between interstate and civil wars as far as human beings are concerned. It then found that some treaty rules, and common Article 3 in particular, which constitutes a mandatory minimum code applicable to internal conflicts, had gradually become part of customary law. In support of its position that violations of common Article 3 are applicable regardless of the nature of the conflict, the Appeals Chamber referred to the ICJ holding in *Nicaragua* that the rules set out in common Article 3 reflect "elementary considerations of humanity" applicable under customary international law to any conflict. The ICJ in *Nicaragua* discussed the customary status of common Article 3 to the Geneva Conventions and held:

> Article 3 which is common to all four Geneva Conventions of 12 August 1949 defines certain rules to be applied in the armed conflicts of a non-international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court's opinion, reflect what the Court in 1949 called "elementary considerations of humanity" (Corfu Channel, Merits, I.C.J. Reports 1949, p. 22; paragraph 215).

Thus, relying on *Nicaragua*, the Appeals Chamber concluded:

> Therefore at least with respect to the minimum rules in common Article 3, the character of the conflict is irrelevant.

141. The Appeals Chamber also considered that the procedural mechanism, provided for in common Article 3, inviting parties to internal conflicts to agree to abide by the rest of the Conventions, "reflect an understanding that certain fundamental rules should apply regardless of the nature of the conflict." The Appeals Chamber also found that General Assembly resolutions corroborated the existence of certain rules of war concerning the protection of civilians and property applicable in both internal and international armed conflicts.

142. Referring to the *Tadic* Jurisdiction Decision, which the Trial Chamber followed, Delalic argues that the Appeals Chamber failed to properly consider the status of common Article 3, and in particular failed to analyse state practice and *opinio juris*, in support of its conclusion that it was, as a matter of customary international law, applicable to international armed conflicts. Further, in his opinion, the findings of the ICJ on the customary status of common Article 3 and its applicability to both internal and international conflicts are *dicta*. The Prosecution is of the view that, as stated by the ICJ in *Nicaragua*, it is because common Article 3 gives expression to elementary considerations of humanity, which are applicable irrespective of the nature of the conflict, that common Article 3 is applicable to international conflicts.

143. It is indisputable that common Article 3, which sets forth a minimum core of mandatory rules, reflects the fundamental humanitarian principles which underlie international humanitarian law as a whole, and upon which the Geneva Conventions in their entirety are based. These principles, the object of which is the respect for the dignity of the human person, developed as a result of centuries of warfare and had already become customary law at the time of the adoption of the Geneva Conventions because they reflect the most universally recognised humanitarian principles. These principles were codified in common Article 3 to constitute the minimum core applicable to internal conflicts, but are so fundamental that they are

regarded as governing both internal and international conflicts. In the words of the ICRC, the purpose of common Article 3 was to "ensur(e) respect for the few essential rules of humanity which all civilised nations consider as valid everywhere and under all circumstances and as being above and outside war itself". These rules may thus be considered as the "quintessence" of the humanitarian rules found in the Geneva Conventions as a whole.

144. It is these very principles that the ICJ considered as giving expression to fundamental standards of humanity applicable in *all* circumstances.

145. That these standards were considered as reflecting the principles applicable to the Conventions in their entirety and as constituting substantially similar core norms applicable to both types of conflict is clearly supported by the ICRC Commentary (GC IV):

> This minimum requirement in the case of non-international conflict, is *a fortiori* applicable in international armed conflicts. It proclaims the guiding principle common to all four Geneva Conventions, and from it each of them derives the essential provision around which it is built.

146. This is entirely consistent with the logic and spirit of the Geneva Conventions; it is a "logical application of its fundamental principle". Specifically, in relation to the substantive rules set out in subparagraphs (1) (a)-(d) of common Article 3, the ICRC Commentary continues:

> The value of the provision is not limited to the field dealt with in Article 3. Representing, as it does, the minimum which must be applied in the least determinate of conflicts, its terms must *a fortiori* be respected in the case of international conflicts proper, when all the provisions of the Convention are applicable. For "the greater obligation includes the lesser", as one might say.

147. Common Article 3 may thus be considered as the "minimum yardstick" of rules of international humanitarian law of similar substance applicable to both internal and international conflicts. It should be noted that the rules applicable to international conflicts are not limited to the minimum rules set out in common Article 3, as international conflicts are governed by more detailed rules. The rules contained in common Article 3 are considered as applicable to international conflicts because they constitute the core of the rules applicable to such conflicts. There can be no doubt that the acts enumerated in *inter alia* subparagraphs (a), violence to life, and (c), outrages upon personal dignity, are heinous acts "which the world public opinion finds particularly revolting". These acts are also prohibited in the grave breaches provisions of Geneva Convention IV, such as Article 147. Article 75 of Additional Protocol I, applicable to international conflicts, also provides a minimum of protection to any person unable to claim a particular status. Its paragraph 75(2) is directly inspired by the text of common Article 3.

148. This interpretation is further confirmed by a consideration of other branches of international law, and more particularly of human rights law.

149. Both human rights and humanitarian law focus on respect for human values and the dignity of the human person. Both bodies of law take as their starting point the concern for human dignity, which forms the basis of a list of fundamental minimum standards of humanity. The ICRC Commentary on the Additional Protocols refers to their common ground in the following terms: "This irreducible core of human rights, also known as 'non-derogable rights' corresponds to the lowest level of protection which can be claimed by anyone at anytime [...]".

The universal and regional human rights instruments and the Geneva Conventions share a common "core" of fundamental standards which are applicable at all times, in all circumstances and to all parties, and from which no derogation is permitted. The object of the fundamental standards appearing in both bodies of law is the protection of the human person from certain heinous acts considered as unacceptable by all civilised nations in all circumstances.

150. It is both legally and morally untenable that the rules contained in common Article 3, which constitute mandatory minimum rules applicable to internal conflicts, in which rules are less developed than in respect of international conflicts, would not be applicable to conflicts of an international character. The rules of common Article 3 are encompassed and further developed in the body of rules applicable to international conflicts. It is logical that this minimum be applicable to international conflicts as the substance of these core rules is identical. In the Appeals Chamber's view, something which is prohibited in internal conflicts is necessarily outlawed in an international conflict where the scope of the rules is broader. The Appeals Chamber is thus not convinced by the arguments raised by the appellants and finds no cogent reasons to depart from its previous conclusions.

2. Did the Trial Chamber Follow the *Tadic* Jurisdiction Decision? 151. The Trial Chamber found:

> While common Article 3 of the Geneva Conventions was formulated to apply to internal armed conflicts, it is also clear from the above discussion that its substantive prohibitions apply equally in

> situations of international armed conflicts. Similarly, and as stated by the Appeals Chamber, the crimes falling under Article 3 of the Statute of the International Tribunal may be committed in either kind of conflicts. The Trial Chamber's finding that the conflict in Bosnia and Herzegovina in 1992 was of an international nature does not, therefore, impact upon the application of Article 3.

152. The Trial Chamber therefore clearly followed the Appeals Chamber jurisprudence.

C. Whether Common Article 3 Imposes Individual Criminal Responsibility

1. What is the Applicable Law? 153. The Appeals Chamber in the *Tadic* Jurisdiction Decision, in analysing whether common Article 3 attracts individual criminal responsibility first noted that "common Article 3 of the Geneva Conventions contains no explicit reference to criminal liability for violation of its provisions". Referring however to the findings of the International Military Tribunal at Nuremberg that a finding of individual criminal responsibility is not barred by the absence of treaty provisions on punishment of breaches, provided certain conditions are fulfilled, it found:

> Applying the foregoing criteria to the violations at issue here, we have no doubt that they entail individual criminal responsibility, regardless of whether they are committed in internal or international conflicts. Principles and rules of humanitarian law reflect "elementary considerations of humanity" widely recognised as the mandatory minimum for conduct in armed conflict of any kind. No one can doubt the gravity of the acts at issue, nor the interest of the international community in their prohibition.

154. In the Appeals Chamber's opinion, this conclusion was also supported by "many elements of international practice (which) show that States intend to criminalise serious breaches of customary rules and principles on internal conflicts". Specific reference was made to prosecutions before Nigerian courts, national military manuals, national legislation (including the law of the former Yugoslavia adopted by Bosnia and Herzegovina after its independence),204 and resolutions adopted unanimously by the Security Council.

155. The Appeals Chamber found further support for its conclusion in the law of the former Yugoslavia as it stood at the time of the offences alleged in the Indictment:

> Nationals of the former Yugoslavia as well as, at present, those of Bosnia-Herzegovina were therefore aware, or should have been aware, that they were amenable to the jurisdiction of their national criminal courts in cases of violation of international humanitarian law.

156. Reliance was also placed by the Appeals Chamber on the agreement reached under the auspices of the ICRC on 22 May 1992, in order to conclude that the breaches of international law occurring within the context of the conflict, regarded as internal by the agreement, could be criminally sanctioned.

157. The appellants contend that the evidence presented in the *Tadic* Jurisdiction Decision does not establish that common Article 3 is customary international law that creates individual criminal responsibility because there is no showing of State practice and *opinio juris*. Additionally, the appellants submit that at the time of the adoption of the Geneva Conventions in 1949, common Article 3 was excluded from the grave breaches system and thus did not fall within the scheme providing for individual criminal responsibility. In their view, the position had not changed at the time of the adoption of Additional Protocol II in 1977. It is further argued that common Article 3 imposes duties on States only and is meant to be enforced by domestic legal systems.

158. In addition, the appellants argue that solid evidence exists which demonstrates that common Article 3 is *not* a rule of customary law which imposes liability on natural persons. Particular emphasis is placed on the ICTR Statute and the Secretary-General's Report which states that common Article 3 was criminalised for the first time in the ICTR Statute.

159. The Prosecution argues that the *Tadic* Jurisdiction Decision previously disposed of the issue and should be followed. The Prosecution submits that, if violations of the international laws of war have traditionally been regarded as criminal under international law, there is no reason of principle why once those laws came to be extended to the context of internal armed conflicts, their violation in that context should not have been criminal, at least in the absence of clear indications to the contrary. It is further submitted that since 1949, customary law and international humanitarian law have developed to such an extent that today universal jurisdiction does not only exist in relation to the grave breaches of the Geneva Conventions but also in relation to other types of serious violations of international humanitarian law. The Prosecution contends that this conclusion is not contrary to the principle of legality, which does not preclude development of criminal law, so long as those developments do not criminalise conduct which at the time it was committed could reasonably have been regarded as legitimate.

160. Whereas, as a matter of strict treaty law, provision is made only for the prosecution of grave breaches committed within the context of an international conflict, the Appeals Chamber in *Tadic* found that as a matter of customary law, breaches of international humanitarian law committed in internal conflicts, including violations of common Article 3, could also attract individual criminal responsibility.

161. Following the appellants' argument, two different regimes of criminal responsibility would exist based on the different legal characterisation of an armed conflict. As a consequence, the same horrendous conduct committed in an internal conflict could not be punished. The Appeals Chamber finds that the arguments put forward by the appellants do not withstand scrutiny.

162. As concluded by the Appeals Chamber in *Tadic*, the fact that common Article 3 does not contain an explicit reference to individual criminal liability does not necessarily bear the consequence that there is no possibility to sanction criminally a violation of this rule. The IMT indeed followed a similar approach, as recalled in the *Tadic* Jurisdiction Decision when the Appeals Chamber found that a finding of individual criminal responsibility is not barred by the absence of treaty provisions on punishment of breaches. The Nuremberg Tribunal clearly established that individual acts prohibited by international law constitute criminal offences even though there was no provision regarding the jurisdiction to try violations: "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced".

163. The appellants argue that the exclusion of common Article 3 from the Geneva Conventions grave breaches system, which provides for universal jurisdiction, has the necessary consequence that common Article 3 attracts no individual criminal responsibility. This is misconceived. In the Appeals Chamber's view, the appellants' argument fails to make a distinction between two separate issues, the issue of criminalisation on the one hand, and the issue of jurisdiction on the other. Criminalisation may be defined as the act of outlawing or making illegal certain behaviour. Jurisdiction relates more to the judicial authority to prosecute those criminal acts. These two concepts do not necessarily always correspond. The Appeals Chamber is in no doubt that the acts enumerated in common Article 3 were intended to be criminalised in 1949, as they were clearly intended to be illegal within the international legal order. The language of common Article 3 clearly prohibits fundamental offences such as murder and torture. However, no jurisdictional or enforcement mechanism was provided for in the Geneva Conventions at the time.

164. This interpretation is supported by the provisions of the Geneva Conventions themselves, which impose on State parties the duty "to respect and ensure respect for the present Conventions in all circumstances". Common Article 1 thus imposes upon State parties, upon ratification, an obligation to implement the provisions of the Geneva Conventions in their domestic legislation. This obligation clearly covers the Conventions in their entirety and this obligation thus includes common Article 3. The ICJ in the *Nicaragua* case found that common Article 1 also applies to internal conflicts.

165. In addition, the third paragraph of Article 146 of Geneva Convention IV, after setting out the universal jurisdiction mechanism applicable to grave breaches, provides:

> Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

166. The ICRC Commentary (GC IV) stated in relation to this provision that "there is no doubt that what is primarily meant is the repression of breaches other than the grave breaches listed and only in the second place administrative measures to ensure respect for the provisions of the Convention". It then concluded:

> This shows that all breaches of the Convention should be repressed by national legislation. The Contracting Parties who have taken measures to repress the various grave breaches of the Convention and have fixed an appropriate penalty in each case should at least insert in their legislation a general clause providing for the punishment of other breaches. Furthermore, under the terms of this paragraph, the authorities of the Contracting Parties should give all those subordinate to them instructions in conformity with the Convention and should institute judicial or disciplinary punishment for breaches of the Convention.

167. This, in the Appeals Chamber's view, clearly demonstrates that, as these provisions do not provide for exceptions, the Geneva Conventions envisaged that violations of common Article 3 could entail individual criminal responsibility under domestic law, which is accepted by the appellants. The absence of such legislation providing for the repression of such violations would, arguably, be inconsistent with the general obligation contained in common Article 1 of the Conventions.

168. As referred to by the Appeals Chamber in the *Tadic* Jurisdiction Decision, States have adopted domestic legislation providing for the prosecution of violations of common Article 3. Since 1995, several more States have adopted legislation criminalising violations of common Article 3, thus further confirming the conclusion that States regard violations of common Article 3 as constituting crimes. Prosecutions based on common Article 3 under domestic legislation have also taken place.

169. The Appeals Chamber is also not convinced by the appellants' submission that sanctions for violations of common Article 3 are intended to be enforced at the national level only. In this regard, the Appeals Chambers refers to its previous conclusion on the customary nature of common Article 3 and its incorporation in Article 3 of the Statute.

170. The argument that the ICTR Statute, which is concerned with an internal conflict, made violations of common Article 3 subject to prosecution at the international level, in the Appeals Chamber's opinion, reinforces this interpretation. The Secretary-General's statement that violations of common Article 3 of the Geneva Conventions were criminalised for the first time, meant that provisions for international jurisdiction over such violations were *expressly* made for the first time. This is so because the Security Council when it established the ICTR was not creating new law but was *inter alia* codifying existing customary rules for the purposes of the jurisdiction of the ICTR. In the Appeals Chamber's view, in establishing this Tribunal, the Security Council simply created an international mechanism for the prosecution of crimes which were already the subject of individual criminal responsibility.

171. The Appeals Chamber is unable to find any reason of principle why, once the application of rules of international humanitarian law came to be extended (albeit in an attenuated form) to the context of internal armed conflicts, their violation in that context could not be criminally enforced at the international level. This is especially true in relation to prosecution conducted by an international tribunal created by the UN Security Council, in a situation where it specifically called for the prosecution of persons responsible for violations of humanitarian law in an armed conflict regarded as constituting a threat to international peace and security pursuant to Chapter VII of the UN Charter.

172. In light of the fact that the majority of the conflicts in the contemporary world are internal, to maintain a distinction between the two legal regimes and their criminal consequences in respect of similarly egregious acts because of the difference in nature of the conflicts would ignore the very purpose of the Geneva Conventions, which is to protect the dignity of the human person.

173. The Appeals Chamber is similarly unconvinced by the appellants' argument that such an interpretation of common Article 3 violates the principle of legality. The scope of this principle was discussed in the *Aleksovski* Appeal Judgement, which held that the principle of *nullem crimen sine lege* does not prevent a court from interpreting and clarifying the elements of a particular crime. It is universally acknowledged that the acts enumerated in common Article 3 are wrongful and shock the conscience of civilised people, and thus are, in the language of Article 15(2) of the ICCPR, "criminal according to the general principles of law recognised by civilised nations."

174. The Appeals Chamber is unable to find any cogent reasons in the interests of justice to depart from the conclusions on this issue in the *Tadic* Jurisdiction Decision.

2. Did the Trial Chamber Apply the Correct Legal Principles? 175. The Appeals Chamber notes that the appellants raised before the Trial Chamber the same arguments now raised in this appeal. The Trial Chamber held:

> Once again, this is a matter which has been addressed by the Appeals Chamber in the *Tadic* Jurisdiction Decision and the Trial Chamber sees no reason to depart from its findings. In its Decision, the Appeals Chamber examines various national laws as well as practice, to illustrate that there are many instances of penal provisions for violations of the laws applicable in internal armed conflicts. From these sources, the Appeals Chamber extrapolates that there is nothing inherently contrary to the concept of individual criminal responsibility for violations of common Article 3 of the Geneva Conventions and that, indeed, such responsibility does ensue.

176. It then concluded:

> The fact that the Geneva Conventions themselves do not expressly mention that there shall be criminal liability for violations of common Article 3 clearly does not in itself preclude such liability. Furthermore, identification of the violation of certain provisions of the Conventions as constituting "grave breaches" and thus subject to mandatory universal jurisdiction, certainly cannot be interpreted as rendering all of the remaining provisions of the Conventions as without criminal sanction. While "grave breaches" *must* be prosecuted and punished by all States, "other" breaches of the Ge-

neva Conventions *may* be so. Consequently, an international tribunal such as this must also be permitted to prosecute and punish such violations of the Conventions.

177. In support of this conclusion, which fully accords with the position taken by the Appeals Chamber, the Trial Chamber went on to refer to the ILC Draft Code of Crimes against the Peace and Security of Mankind and the ICC Statute. The Trial Chamber was careful to emphasise that although "these instruments were all drawn up after the acts alleged in the Indictment, they serve to illustrate the widespread conviction that the provisions of common Article 3 are not incompatible with the attribution of individual criminal responsibility".

178. In relation to the ICTR Statute and the Secretary-General's statement in his ICTR report that common Article 3 was criminalised for the first time, the Trial Chamber held: "the United Nations cannot 'criminalise' any of the provisions of international humanitarian law by the simple act of granting subject-matter jurisdiction to an international tribunal. The International Tribunal merely identifies and applies existing customary international law and, as stated above, this is not dependent upon an express recognition in the Statute of the content of that custom, although express reference may be made, as in the Statute of the ICTR". This statement is fully consistent with the Appeals Chamber's finding that the lack of explicit reference to common Article 3 in the Tribunal's Statute does not warrant a conclusion that violations of common Article 3 may not attract individual criminal responsibility.

179. The Trial Chamber's holding in respect of the principle of legality is also consonant with the Appeals Chamber's position. The Trial Chamber made reference to Article 15 of the ICCPR, and to the Criminal Code of the SFRY, adopted by Bosnia and Herzegovina, before concluding:

> It is undeniable that acts such as murder, torture, rape and inhuman treatment are criminal according to "general principles of law" recognised by all legal systems. Hence the caveat contained in Article 15, paragraph 2, of the ICCPR should be taken into account when considering the application of the principle of *nullum crimen sine lege* in the present case. The purpose of this principle is to prevent the prosecution and punishment of an individual for acts which he reasonably believed to be lawful at the time of their commission. It strains credibility to contend that the accused would not recognise the criminal nature of the acts alleged in the Indictment. The fact that they could not foresee the creation of an International Tribunal which would be the forum for prosecution is of no consequence.

180. The Appeals Chamber fully agrees with this statement and finds that the Trial Chamber applied the correct legal principles in disposing of the issues before it.

181. It follows that the appellants' grounds of appeal fail.

IV. GROUNDS OF APPEAL CONCERNING COMMAND RESPONSIBILITY

182. In the present appeal, Mucic and the Prosecution have filed grounds of appeal which relate to the principles of command responsibility. Article 7(3) of the Statute, "Individual criminal responsibility", provides that:

> The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

A. The Ninth Ground of Appeal of Mucic

183. The ninth ground of Mucic's appeal alleges both a legal and factual error on the part of the Trial Chamber in finding that Mucic had, at the time when the crimes concerned in this case were being committed, the *de facto* authority of a commander in the Celebici camp. Most of the arguments presented by Mucic are concerned with the Trial Chamber's factual findings. The Prosecution argues that Mucic's ground be denied.

184. The Appeals Chamber understands that the remedy desired by the appellant in this ground of appeal is an acquittal of those convictions based on his command responsibility.

185. The Appeals Chamber will first consider the issue of whether a superior may be held liable for the acts of subordinates on the basis of *de facto* authority, before turning to the arguments relating to alleged errors of fact.

1. *de facto* Authority as a Basis for a Finding of Superior Responsibility in International Law 186. In his brief, Mucic appeared to contest the issue of whether a *de facto* status is sufficient for the purpose of ascribing criminal responsibility under Article 7(3) of the Statute. It is submitted that *de facto* status must be equivalent to *de jure* status in order for a superior to be held responsible for the acts of subordinates. He submits

that a person in a position of *de facto* authority must be shown to wield the same kind of control over subordinates as *de jure* superiors. In the appellant's view, the approach taken by the Trial Chamber that the absence of formal legal authority, in relation to civilian and military structures, does not preclude a finding of superior responsibility, "comes too close to the concept of strict responsibility". Further, Mucic interprets Article 28 of the ICC Statute as limiting the application of the doctrine of command responsibility to "commanders or those effectively acting as commanders". He submits that "the law relating to *de jure/de facto* command responsibility is far from certain" and that the Appeals Chamber should address the issue.

187. The Prosecution argues that Mucic has failed to adduce authorities to support his argument that the Trial Chamber erred in finding Mucic to be a *de facto* superior. In its view, the finding of the *de facto* responsibility does not amount to a form of strict liability, and *de facto* authority does not have to possess certain features of *de jure* authority. It is submitted that Mucic has not identified any legal basis for alleging that the Trial Chamber has erred in holding that the doctrine of command responsibility applies to civilian superiors.

188. The Trial Chamber found:

> [...] a *position of command is indeed a necessary precondition* for the imposition of command responsibility. However, this statement must be qualified by the recognition that the existence of such a position *cannot be determined by reference to formal status alone*. Instead, the factor that determines liability for this type of criminal responsibility is the *actual possession, or non-possession, of powers of control over the actions of subordinates*. Accordingly, formal designation as a commander should not be considered to be a necessary prerequisite for command responsibility to attach, as such responsibility may be imposed by virtue of a person's *de facto*, as well as *de jure*, position as a commander.

189. It is necessary to consider first the notion of command or superior authority within the meaning of Article 7(3) of the Statute before examining the specific issue of *de facto* authority. Article 87(3) of Additional Protocol I to the 1949 Geneva Conventions provides:

> The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons *under his control* are going to commit or have committed a breach of the Conventions or of his Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

190. The *Blaskic* Judgement, referring to the Trial Judgement and to Additional Protocol I, construed control in terms of the material ability of a commander to punish:

> What counts is his material ability, which instead of issuing orders or taking disciplinary action may entail, for instance, submitting reports to the competent authorities in order for proper measures to be taken.

191. In respect of the meaning of a commander or superior as laid down in Article 7(3) of the Statute, the Appeals Chamber held in *Aleksovski*:

> Article 7(3) provides the legal criteria for command responsibility, thus giving the word "commander" a juridical meaning, in that the provision becomes applicable only where a superior with the required mental element failed to exercise his powers to prevent subordinates from committing offences or to punish them afterwards. This necessarily implies that a superior must have such powers prior to his failure to exercise them. If the facts of a case meet the criteria for the authority of a superior as laid down in Article 7(3), the legal finding would be that an accused is a superior within the meaning of that provision.

192. Under Article 7(3), a commander or superior is thus the one who possesses the power or authority in either a *de jure* or a *de facto* form to prevent a subordinate's crime or to punish the perpetrators of the crime after the crime is committed.

193. The power or authority to prevent or to punish does not solely arise from *de jure* authority conferred through official appointment. In many contemporary conflicts, there may be only *de facto*, self-proclaimed governments and therefore *de facto* armies and paramilitary groups subordinate thereto. Command structure, organised hastily, may well be in disorder and primitive. To enforce the law in these circumstances requires a determination of accountability not only of individual offenders but of their commanders or other superiors who were, based on evidence, in control of them without, however, a formal commission or appointment. A tribunal could find itself powerless to enforce humanitarian law against *de facto* superiors if it only accepted as proof of command authority a formal letter of authority, despite the fact that the superiors acted at the relevant time with all the powers that would attach to an officially appointed superior or commander.

194. In relation to Mucic's responsibility, the Trial Chamber held:

> [...] whereas formal appointment is an important aspect of the exercise of command authority or su-

> perior authority, the actual exercise of authority in the absence of a formal appointment is sufficient for the purpose of incurring criminal responsibility. Accordingly, the factor critical to the exercise of command responsibility is the actual possession, or non-possession, of powers of control over the actions of the subordinates.

195. The Trial Chamber, prior to making this statement in relation to the case of Mucic, had already considered the origin and meaning of *de facto* authority with reference to existing practice. Based on an analysis of World War II jurisprudence, the Trial Chamber also concluded that the principle of superior responsibility reflected in Article 7(3) of the Statute encompasses political leaders and other civilian superiors in positions of authority. The Appeals Chamber finds no reason to disagree with the Trial Chamber's analysis of this jurisprudence. The principle that military and other superiors may be held criminally responsible for the acts of their subordinates is well-established in conventional and customary law. The standard of control reflected in Article 87(3) of Additional Protocol I may be considered as customary in nature. In relying upon the wording of Articles 86 and 87 of Additional Protocol I to conclude that "it is clear that the term 'superior' is sufficiently broad to encompass a position of authority based on the existence of *de facto* powers of control", the Trial Chamber properly considered the issue in finding the applicable law.

196. "Command", a term which does not seem to present particular controversy in interpretation, normally means powers that attach to a military superior, whilst the term "control", which has a wider meaning, may encompass powers wielded by civilian leaders. In this respect, the Appeals Chamber does not consider that the rule is controversial that civilian leaders may incur responsibility in relation to acts committed by their subordinates or other persons under their effective control. Effective control has been accepted, including in the jurisprudence of the Tribunal, as a standard for the purposes of determining superior responsibility. The *Blaîkic* Trial Chamber for instance endorsed the finding of the Trial Judgement to this effect. The showing of effective control is required in cases involving both *de jure* and *de facto* superiors. This standard has more recently been reaffirmed in the ICC Statute, Article 28 of which reads in relevant parts:

> In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court;
>
> (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, [...]
>
> (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates [...]

197. In determining questions of responsibility it is necessary to look to effective exercise of power or control and not to formal titles. This would equally apply in the context of criminal responsibility. In general, the possession of *de jure* power in itself may not suffice for the finding of command responsibility if it does not manifest in effective control, although a court may presume that possession of such power *prima facie* results in effective control unless proof to the contrary is produced. The Appeals Chamber considers that the ability to exercise effective control is necessary for the establishment of *de facto* command or superior responsibility and thus agrees with the Trial Chamber that the absence of formal appointment is not fatal to a finding of criminal responsibility, provided certain conditions are met. Mucic's argument that *de facto* status must be equivalent to *de jure* status for the purposes of superior responsibility is misplaced. Although the degree of control wielded by a *de jure* or *de facto* superior may take different forms, a *de facto* superior must be found to wield substantially similar powers of control over subordinates to be held criminally responsible for their acts. The Appeals Chamber therefore agrees with the Trial Chamber's conclusion:

> While it is, therefore, the Trial Chamber's conclusion that a superior, whether military or civilian, may be held liable under the principle of superior responsibility on the basis of his *de facto* position of authority, the fundamental considerations underlying the imposition of such responsibility must be borne in mind. *The doctrine of command responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates.* A duty is placed upon the superior to exercise this power so as to prevent and repress the crimes committed by his subordinates, and a failure by him to do so in a diligent manner is sanctioned by the imposition of individual criminal responsibility in accordance with the doctrine. *It follows that there is a threshold at which persons cease to possess the necessary powers of control over the actual perpetrators*

> *of offences and, accordingly, cannot properly be considered their "superiors" within the meaning of Article 7(3) of the Statute*. While the Trial Chamber must at all times be alive to the realities of any given situation and be prepared to pierce such veils of formalism that may shield those individuals carrying the greatest responsibility for heinous acts, *great care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote*.
>
> Accordingly, it is the Trial Chamber's view that, in order for the principle of superior responsibility to be applicable, *it is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences*. With the caveat that such authority can have a *de facto* as well as a *de jure* character, the Trial Chamber accordingly shares the view expressed by the International Law Commission that the doctrine of superior responsibility extends to civilian superiors only to the extent that they exercise a degree of control over their subordinates which is similar to that of military commanders.

198. As long as a superior has effective control over subordinates, to the extent that he can prevent them from committing crimes or punish them after they committed the crimes, he would be held responsible for the commission of the crimes if he failed to exercise such abilities of control.

199. The remainder of Mucic's ground of appeal concerns the sufficiency of the evidence regarding the existence of his *de facto* authority. This poses a question of fact, which the Appeals Chamber will now consider.

2. The Trial Chamber's Factual Findings 200. At the appeal hearing, Mucic argued that the Trial Chamber's reliance on the evidence cited in the Trial Judgement in support of the finding that he exercised superior authority was unreasonable. He made a number of arguments which were ultimately directed to his central contention that the evidence was insufficient to support a conclusion that he was a *de facto* commander for the entire period of time set forth in the Indictment. His submissions particularly emphasised that he had no authority in the camp during the months of May, June, or July of 1992.

201. At the hearing, the Prosecution submitted that it was open to a reasonable Trial Chamber to conclude from the evidence as a whole that Mucic was commander of the Celebici camp throughout the period referred to in the Indictment. It was argued that Mucic has not shown that the Trial Chamber has been unreasonable in its evaluation of evidence, and that it is a reasonable inference of the Trial Chamber that Mucic wielded a degree of control and authority in the Celebici camp, drawn from the fact that he had the ability to assist detainees.

3. Discussion 202. In respect of a factual error alleged on appeal, the *Tadic* Appeal Judgement provides the test that:

> It is only where the evidence relied on by the Trial Chamber could not reasonably have been accepted by any reasonable person that the Appeals Chamber can substitute its own finding for that of the Trial Chamber.

203. In the appeal of *Furund'ija*, the Appeals Chamber declined to conduct an independent assessment of the evidence admitted at trial, as requested by the appellants, understood as a request for *de novo* review, and took the view that "[t]his Chamber does not operate as a second Trial Chamber."

204. In paragraphs 737-767 of the Trial Judgement, a thorough analysis of evidence led the Trial Chamber to conclude that Mucic "had all the powers of a commander" in the camp. The conclusion was also based on Mucic's own admission that he had "necessary disciplinary powers". Mucic, who disputes this conclusion on appeal, must persuade the Appeals Chamber that the conclusion is one which could not have reasonably been made by a reasonable tribunal of fact, so that a miscarriage of justice has occurred.

205. The Appeals Chamber notes that Mucic argued at trial to the effect that, in the absence of any document formally appointing him to the position of commander or warden of the camp, it was not shown what authority he had over the camp personnel. On appeal, he repeats this argument, and reiterates some of his objections made at trial in respect of the Prosecution evidence which was accepted by the Trial Chamber as showing that he had *de facto* authority in the camp in the period alleged in the Indictment.

206. Having concluded that "the actual exercise of authority in the absence of a formal appointment is sufficient for the purpose of incurring criminal responsibility" provided that the *de facto* superior exercises actual powers of control, the Trial Chamber considered the argument of Mucic that he had no "formal authority". It looked at the following factors to establish that Mucic had *de facto* authority: Mucic's acknowledgement of his having authority over the Celebici camp since 27 July 1992, the submission in the defence closing brief that Mucic used his "limited" authority to pre-

vent crimes and to order that the detainees not be mistreated and that the offenders tried to conceal offences from him, the defence statement that when Mucic was at the camp, there was "far greater" discipline than when he was absent, the evidence that co-defendant Delic told the detainees that Mucic was commander, the evidence that he arranged for the transfer of detainees, his classifying of detainees for the purpose of continued detention or release, his control of guards, and the evidence that he had the authority to release prisoners. At trial, the Trial Chamber accepted this body of evidence. The Appeals Chamber considers that it has not been shown that the Trial Chamber erred in accepting the evidence which led to the finding that Mucic was commander of the camp and as such exercised command responsibility.

207. Mucic argues that the Trial Chamber failed to explain on what date he became commander of the camp. The Trial Chamber found:

208. The Appeals Chamber can see no reason why the Trial Chamber's conclusion that it was unnecessary to make a finding as to the exact date of his appointment — as opposed to his status during the relevant period — was unreasonable.

209. Mucic claims that he had no authority of whatever nature during the months of May, June and July of 1992. The Indictment defined the relevant period in which Mucic was commander of the camp to be "from approximately May 1992 to November 1992". The offences of subordinates upon which the relevant charges against Mucic were based took place during that period. The Appeals Chamber notes that the Trial Judgement considered the objection of Mucic to the evidence which was adduced to show that he was present in the camp in May 1992. The objection was made through the presentation of defence evidence, which was rejected by the Trial Chamber as being inconclusive. On this point, the Appeals Chamber observes that Mucic did not challenge the testimony of certain witnesses which was adduced to show that Mucic was not only present in the camp but in a position of authority in the months of May, June and July of 1992. Reference is made to the evidence given by Witness D, who was a member of the Military Investigative Commission in the camp and worked closely with Mucic in the classification of the detainees. The Trial Chamber was "completely satisfied" with this evidence. The witness testified that Mucic was present at the meeting of the Military Investigative Commission held in early June 1992 to discuss the classification and continued detention or release of the detainees. It is also noteworthy that, in relation to a finding in the case of Delic, it was found that the Military Investigative Commission only conducted interviews with detainees after informing Mucic, or Delic when the former was absent, and that only Mucic and Delic had access to the files of the Commission. Further, Mucic conceded in his interview with the Prosecution that he went to the camp as early as 20 May 1992. Moreover, Grozdana]ecez, a former detainee at the camp, was interrogated by Mucic in late May or early June 1992. The Appeals Chamber is satisfied that the evidence relied upon by the Trial Chamber constitutes adequate support for its findings.

210. The Appeals Chamber is satisfied that it was open to the Trial Chamber to find that from "before the end of May 1992" Mucic was exercising *de facto* authority over the camp and its personnel.

211. In addition, Mucic submitted:

> (i) The Trial Chamber failed to consider the causal implications of the acquittal of the co-defendant Delalic from whom the Prosecution alleged Mucic obtained his necessary authority; and (ii) The Trial Chamber gave wrongful and/or undue weight to the acts of benefice *[sic]* attributed to Mucic at, *inter alia*, paragraph 1247 of the Trial Judgement, to found command responsibility, instead of treating them as acts of compassion coupled with the strength of personal character which constitute some other species of authority.

212. The first argument appears to be based on an assumption that Mucic's authority rested in some formal way on that of Delalic. This argument has no merit. It is clear that the Trial Chamber found that, regardless of the way Mucic was appointed, he in fact exercised *de facto* authority, irrespective of Delalic's role in relation to the camp.

213. The second point lacks merit in that the acts related to in paragraph 1247 of the Trial Judgement were considered by the Trial Chamber for the purpose of sentencing, rather than conviction; and that acts beneficial to detainees done by Mucic referred to by the Trial Chamber may reasonably be regarded as strengthening its view that Mucic was in a position of authority to effect "greater discipline" in the camp than when he was absent. Although potentially compassionate in nature, these acts are nevertheless evidence of the powers which Mucic exercised and thus of his authority.

4. Conclusion 214. For the foregoing reasons, the Appeals Chamber dismisses this ground of appeal and upholds the finding of the Trial Chamber that Mucic was the *de facto* commander of the Celebici camp during the relevant period indicated in the Indictment.

B. The Prosecution Grounds of Appeal

215. The Prosecution has filed three grounds of appeal relating to command responsibility.

1. Mental Element — "Knew or had Reason to Know"

216. The Prosecution's first ground of appeal is that the Trial Chamber has erred in law by its interpretation of the standard of "knew or had reason to know" as laid down in Article 7(3) of the Statute.

217. Delalic argues that the Trial Chamber's interpretation of "had reason to know" is *obiter dicta* and does not affect the finding concerning Delalic that he never had a superior-subordinate relationship with Delic, Mucic, and Land'o. He submits that the Trial Chamber did not determine the matter of the mental element of command responsibility in terms of customary law. The ground should therefore not be considered. He argues that if the Appeals Chamber proceeds to deal with this ground, Delalic will agree with the interpretation given by the Trial Chamber in this regard.

218. Acknowledging Delalic's submission, the Prosecution asks the Appeals Chamber to deal with the mental element as a matter of general significance to the Tribunal's jurisprudence. The Trial Chamber, it contends, determined the matter in terms of the customary law applicable at the time of the offences. The Prosecution does not argue for a mental standard based on strict liability.

219. Delic agrees with the Prosecution's position that Articles 86 and 87 of Additional Protocol I reflect customary law as established through the post Second World War cases. A commander has a duty to be informed, but not every failure in this duty gives rise to command responsibility.

220. The issues raised by this ground of appeal of the Prosecution include:

> (i) whether in international law, the duty of a superior to control his subordinates includes a duty to be apprised of their action, *i.e.* a duty to know of their action and whether neglect of such duty will always result in criminal liability;
>
> (ii) whether the standard of "had reason to know" means either the commander had information indicating that subordinates were about to commit or had committed offences or he did not have this information due to dereliction of his duty; and
>
> (iii) whether international law acknowledges any distinction between military and civil leaders in relation to the duty to be informed.

221. The Appeals Chamber takes note of the fact that this ground of appeal is raised by the Prosecution for its general importance to the "jurisprudence of the Tribunal". Considering that this ground concerns an important element of command responsibility, that the Prosecution alleges an error on the part of the Trial Chamber in respect of a finding as to the applicable law, that the parties have made extensive submissions on it, and that it is indeed an issue of general importance to the proceedings before the Tribunal, the Appeals Chamber will consider it by reference to Article 7(3) of the Statute and customary law at the time of the offences alleged in the Indictment.

(i) The Mental Element Articulated by the Statute

222. Article 7(3) of the Statute provides that a superior may incur criminal responsibility for criminal acts of subordinates "if he knew or had reason to know that the subordinate was about to commit such acts or had done so" but fails to prevent such acts or punish those subordinates.

223. The Trial Chamber held that a superior:

> [...] may possess the *mens rea* for command responsibility where: (1) he had actual knowledge, established through direct or circumstantial evidence, that his subordinates were committing or about to commit crimes referred to under Articles 2 through 5 of the Statute, or (2) where he had in his possession information of a nature, which at the least, would put him on notice of the risk of such offences by indicating the need for additional investigation in order to ascertain whether such crimes were committed or were about to be committed by his subordinates.

224. The Prosecution position is essentially that the reference to "had reason to know" in Article 7(3) of the Statute, refers to two possible situations. First, a superior had information which put him on notice or which suggested to him that subordinates were about to commit or had committed crimes. Secondly, a superior lacked such information as a result of a serious dereliction of his duty to obtain the information within his reasonable access. As acknowledged by the Prosecution, only the second situation is not encompassed by the Trial Chamber's findings. Delalic argues to the effect that the Trial Chamber was correct in its statement of the law in this regard, and that the second situation envisaged by the Prosecution was in effect an argument based on strict liability. Delic agrees with the Prosecution's assessment of customary law that "the commander has an international duty to be informed", but argues that the Statute was designed by the UN Security Council in such a way that the jurisdiction of the Tribunal was limited to cases where the commander had actual knowledge or such knowledge that it gave him reason to know of subordinate offences, which was a rule inconsistent with customary law laid down in the military trials conducted after the Second World War.

225. The literal meaning of Article 7(3) is not difficult to ascertain. A commander may be held criminally

liable in respect of the acts of his subordinates in violation of Articles 2 to 5 of the Statute. Both the subordinates and the commander are individually responsible in relation to the impugned acts. The commander would be tried for failure to act in respect of the offences of his subordinates in the perpetration of which he did not directly participate.

226. Article 7(3) of the Statute is concerned with superior liability arising from failure to act in spite of knowledge. Neglect of a duty to acquire such knowledge, however, does not feature in the provision as a separate offence, and a superior is not therefore liable under the provision for such failures but only for failing to take necessary and reasonable measures to prevent or to punish. The Appeals Chamber takes it that the Prosecution seeks a finding that "reason to know" exists on the part of a commander if the latter is seriously negligent in his duty to obtain the relevant information. The point here should not be that knowledge may be presumed if a person fails in his *duty* to obtain the relevant information of a crime, but that it may be presumed if he had the *means* to obtain the knowledge but deliberately refrained from doing so. The Prosecution's argument that a breach of the duty of a superior to remain constantly informed of his subordinates actions will necessarily result in *criminal* liability comes close to the imposition of criminal liability on a strict or negligence basis. It is however noted that although a commander's failure to remain apprised of his subordinates' action, or to set up a monitoring system may constitute a neglect of duty which results in liability within the military disciplinary framework, it will not necessarily result in criminal liability.

227. As the Tribunal is charged with the application of customary law, the Appeals Chamber will briefly consider the case-law in relation to whether there is a duty in customary law to know of all subordinate activity, breach of which will give rise to criminal responsibility in the context of command or superior responsibility.

(ii) Duty to Know In Customary Law 228. In the *Yamashita* case, the United States Military Commission found that:

> Clearly, assignment to command military troops is accompanied by broad authority and heavy responsibility [...]. It is absurd, however, to consider a commander a murderer or rapist because one of his soldiers commits a murder or a rape. Nevertheless, where murder and rape and vicious, revengeful actions are widespread offences, and there is no effective attempt by a commander to discover and control the criminal acts, such a commander may be held responsible, even criminally liable, for the lawless acts of his troops, depending upon their nature and the circumstances surrounding them.

The Military Commission concluded that proof of widespread offences, and secondly of the failure of the commander to act in spite of the offences, may give rise to liability. The second factor suggests that the commander needs to discover and control. But it is the first factor that is of primary importance, in that it gives the commander a reason or a basis to discover the scope of the offences. In the *Yamashita* case, the fact stood out that the atrocities took place between 9 October 1944 to 3 September 1945, during which General Yamashita was the commander-in-chief of the 14th Army Group including the Military Police. This length of time begs the question as to how the commander and his staff could be ignorant of large-scale atrocities spreading over this long period. The statement of the commission implied that it had found that the circumstances demonstrated that he had enough notice of the atrocities to require him to proceed to investigate further and control the offences. The fact that widespread offences were committed over a long period of time should have put him on notice that crimes were being or had been committed by his subordinates.

229. On the same case, the United Nations War Crimes Commission commented:

> [...] the crimes which were shown to have been committed by Yamashita's troops were so widespread, both in space and in time, that they could be regarded as providing either prima facie evidence that the accused *knew* of their perpetration, or evidence that he must have failed to fulfill a duty to *discover* the standard of conduct of his troops.

This last sentence deserves attention. However, having considered several cases decided by other military tribunals, it went on to qualify the above statement:

> Short of maintaining that a Commander has a duty to *discover* the state of discipline prevailing among his troops, Courts dealing with cases such as those at present under discussion may in suitable instances have regarded *means of knowledge* as being the same as knowledge itself.

In summary, it pointedly stated that "the law on this point awaits further elucidation and consolidation". Contrary to the Trial Chamber's conclusion, other cases discussed in the Judgement do not show a consistent trend in the decisions that emerged out of the military trials conducted after the Second World War. The citation from the Judgement in the case of *United States v Wilhelm List ("Hostage case")* indicates that List failed to acquire "supplementary reports to ap-

prise him of all the pertinent facts". The tribunal in the case found that if a commander of occupied territory "fails to require and obtain *complete* information" he is guilty of a dereliction of his duty. List was found to be charged with notice of the relevant crimes because of reports which had been made to him. Therefore, List had in his possession information that should have prompted him to investigate further the situation under his command. The Trial Chamber also quoted from the *Pohl* case. The phrase quoted is also meant to state a different point than that suggested by the Trial Chamber. In that case, the accused Mummenthey pleaded ignorance of fact in respect of certain aspects of the running of his business which employed concentration camp prisoners. Having refuted this plea by invoking evidence showing that the accused knew fully of those aspects, the tribunal stated:

> Mummenthey's assertions that he did not know what was happening in the labor camps and enterprises under his jurisdiction does not exonerate him. It was his duty to know.

That statement, when read in the context of that part of the judgement, means that the accused was under a duty arising from his position as an SS officer and business manager in charge of a war-time enterprise to know what was happening in his business, including the conditions of the labour force who worked in that business. Any suggestion that the tribunal used that statement to express that the accused had a duty under international law to know would be *obiter* in light of the finding that he had knowledge. In the *Roechling* case, which was also referred to by the Trial Chamber, the court concluded that Roechling had a "duty to keep himself informed about the treatment of the deportees." However, it also noted that "Roechling [...] had repeated opportunities during the inspection of his concerns to ascertain the fate meted out to his personnel, since he could not fail to notice the prisoner's uniform on those occasions". This was information which would put him on notice. It is to be noted that the courts which referred to the existence of a "duty to know" at the same time found that the accused were put on notice of subordinates' acts.

230. Further, the Field Manual of the US Department of Army 1956 (No. 27-10, Law of Land Warfare) provides:

> The commander is...responsible, if he had actual knowledge, or *should have had knowledge, through reports received by him or through other means,* that troops or other persons subject to his control are about to commit or have committed a war crime and he fails to use the means at his disposal to insure compliance with the law of war.

The italicised clause is clear that the commander should be presumed to have had knowledge if he had reports or other means of communication; in other words, he *had already information* as contained in reports or through other means, which put him on notice. On the basis of this analysis, the Appeals Chamber must conclude, in the same way as did the United Nations War Crimes Commission, that the then customary law did not impose in the criminal context a general duty to know upon commanders or superiors, breach of which would be sufficient to render him responsible for subordinates' crimes.

231. The anticipated elucidation and consolidation of the law on the question as to whether there was a duty under customary law for the commander to obtain the necessary information came with Additional Protocol I. Article 86(2) of the protocol provides:

> The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or *had information which should have enabled them to conclude in the circumstances at the time*, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

232. The phrase, "had reason to know", is not as clear in meaning as that of "had information enabling them to conclude", although it may be taken as effectively having a similar meaning. The latter standard is more explicit, and its rationale is plain: failure to conclude, or conduct additional inquiry, in spite of alarming information constitutes knowledge of subordinate offences. Failure to act when required to act with such knowledge is the basis for attributing liability in this category of case.

233. The phrase "had information", as used in Article 86(2) of Additional Protocol I, presents little difficulty for interpretation. It means that, at the critical time, the commander had in his possession such information that should have put him on notice of the fact that an unlawful act was being, or about to be, committed by a subordinate. As observed by the Trial Chamber, the apparent discrepancy between the French version, which reads *"des informations leur permettant de conclure"* (literally: information enabling them to conclude), and the English version of Article 86(2) does not undermine this interpretation. This is a reference to information, which, if at hand, would oblige the commander to obtain more information (*i.e.* conduct further inquiry), and he therefore "had reason to know".

234. As noted by the Trial Chamber, the formulation of the principle of superior responsibility in the ILC Draft Code is very similar to that in Article 7(3) of the Statute. Further, as the ILC comments on the draft articles drew from existing practice, they deserve close attention. The ILC comments on the *mens rea* for command responsibility run as follows:

> Article 6 provides two criteria for determining whether a superior is to be held criminally responsible for the wrongful conduct of a subordinate. First, a superior must have known or had reason to know *in the circumstances at the time* that a subordinate was committing or was going to commit a crime. This criterion indicates that a superior may have the *mens rea* required to incur criminal responsibility in two different situations. In the first situation, a superior has actual knowledge that his subordinate is committing or is about to commit a crime...In the second situation, he has *sufficient relevant information to enable him to conclude under the circumstances at the time* that his subordinates are committing or are about to commit a crime. The ILC further explains that "[t]he phrase 'had reason to know' is taken from the statutes of the ad hoc tribunals and should be understood as having the same meaning as the phrase 'had information enabling them to conclude' which is used in the Additional Protocol I. The Commission decided to use the former phrase to ensure an objective rather than a subjective interpretation of this element of the first criterion."

235. The consistency in the language used by Article 86(2) of Additional Protocol I, and the ILC Report and the attendant commentary, is evidence of a consensus as to the standard of the *mens rea* of command responsibility. If "had reason to know" is interpreted to mean that a commander has a duty to inquire further, on the basis of information of a general nature he has in hand, there is no material difference between the standard of Article 86(2) of Additional Protocol I and the standard of "should have known" as upheld by certain cases decided after the Second World War.

236. After surveying customary law and especially the drafting history of Article 86 of Additional Protocol I, the Trial Chamber concluded that:

> An interpretation of the terms of this provision [Article 86 of Additional Protocol I] in accordance with their ordinary meaning thus leads to the conclusion, confirmed by the *travaux preparatoires*, that a superior can be held criminally responsible only if some specific information was in fact available to him which would provide notice of offences committed by his subordinates. This information need not be such that it by itself was sufficient to compel the conclusion of the existence of such crimes. It is sufficient that the superior was put on further inquiry by the information, or, in other words, that it indicated the need for additional investigation in order to ascertain whether offences were being committed or about to be committed by his subordinates. This standard, which must be considered to reflect the position of customary law at the time of the offences alleged in the Indictment, is accordingly controlling for the construction of the *mens rea* standard established in Article 7(3). The Trial Chamber thus makes no finding as to the present content of customary law on this point.

237. The Prosecution contends that the Trial Chamber relied improperly upon reference to the object and purpose of Additional Protocol I. The ordinary meaning of the language of Article 86(2) regarding the knowledge element of command responsibility is clear. Though adding little to the interpretation of the language of the provision, the context of the provision as provided by Additional Protocol I simply confirms an interpretation based on the natural meaning of its provisions. Article 87 requires parties to a conflict to impose certain duties on commanders, including the duty in Article 87(3) to "initiate disciplinary or penal action" against subordinates or other persons under their control who have committed a breach of the Geneva Conventions or of the Protocol. That duty is limited by the terms of Article 87(3) to circumstances where the commander "is aware" that his subordinates are going to commit or have committed such breaches. Article 87 therefore interprets Article 86(2) as far as the duties of the commander or superior are concerned, but the criminal offence based on command responsibility is defined in Article 86(2) only.

238. Contrary to the Prosecution's submission, the Trial Chamber did not hold that a superior needs to have information on subordinate offences in his actual possession for the purpose of ascribing criminal liability under the principle of command responsibility. A showing that a superior had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates would be sufficient to prove that he "had reason to know". The ICRC Commentary (Additional Protocol I) refers to "reports addressed to (the superior), [...] the tactical situation, the level of training and instruction of subordinate officers and their troops, and their character traits" as potentially constituting the information referred to in Article 86(2) of Additional Protocol I. As to the form of the information available to him, it may

be written or oral, and does not need to have the form of specific reports submitted pursuant to a monitoring system. This information does not need to provide specific information about unlawful acts committed or about to be committed. For instance, a military commander who has received information that some of the soldiers under his command have a violent or unstable character, or have been drinking prior to being sent on a mission, may be considered as having the required knowledge.

239. Finally, the relevant information only needs to have been provided or available to the superior, or in the Trial Chamber's words, "in the possession of". It is not required that he actually acquainted himself with the information. In the Appeals Chamber's view, an assessment of the mental element required by Article 7(3) of the Statute should be conducted in the specific circumstances of each case, taking into account the specific situation of the superior concerned at the time in question. Thus, as correctly held by the Trial Chamber,341 as the element of knowledge has to be proved in this type of cases, command responsibility is not a form of strict liability. A superior may only be held liable for the acts of his subordinates if it is shown that he "knew or had reason to know" about them. The Appeals Chamber would not describe superior responsibility as a vicarious liability doctrine, insofar as vicarious liability may suggest a form of strict imputed liability.

(iii) Civilian Superiors 240. The Prosecution submits that civilian superiors are under the same duty to know as military commanders. If, as found by the Appeals Chamber, there is no such "duty" to know in customary law as far as military commanders are concerned, this submission lacks the necessary premise. Civilian superiors undoubtedly bear responsibility for subordinate offences under certain conditions, but whether their responsibility contains identical elements to that of military commanders is not clear in customary law. As the Trial Chamber made a factual determination that Delalic was not in a position of superior authority over the Celebici camp in any capacity, there is no need for the Appeals Chamber to resolve this question.

(iv) Conclusion 241. For the foregoing reasons, this ground of appeal is dismissed. The Appeals Chamber upholds the interpretation given by the Trial Chamber to the standard "had reason to know", that is, a superior will be criminally responsible through the principles of superior responsibility only if information was available to him which would have put him on notice of offences committed by subordinates. This is consistent with the customary law standard of *mens rea* as existing at the time of the offences charged in the Indictment.

2. Whether Delalic Exercised Superior Responsibility

242. The Prosecution's second ground of appeal alleges an error of law in the Trial Chamber's interpretation of the nature of the superior-subordinate relationship which must be established to prove liability under Article 7(3) of the Statute. The Prosecution contends that the Trial Chamber wrongly "held that the doctrine of superior responsibility requires the perpetrator to be part of a subordinate unit in a direct chain of command under the superior." This legal error, it is said, led to the erroneous finding that Delalic did not exercise superior responsibility over the Celebici camp and thus was not responsible for the offences of the camp staff.

243. The Prosecution argues that, contrary to the finding of the Trial Chamber, the doctrine of command responsibility does not require the existence of a direct chain of command under the superior, and that other forms of *de jure* and *de facto* control, including forms of influence, may suffice for ascribing liability under the doctrine. The criterion for superior responsibility is actual control, which entails the ability to prevent violations, rather than direct subordination. Delalic was in a special position in that the facts found by the Trial Chamber established that he "act[ed] on behalf of the War Presidency, he act[ed] on behalf of the supreme command in Sarajevo, he act[ed] on behalf of the investigating commission with respect to prisoners, he issued orders with respect to the functioning of the Celebici prison". It concludes that, as the Trial Chamber found him to have knowledge of the ill-treatment in the camp, and yet failed to prevent or punish the violations, the Appeals Chamber may substitute verdicts of guilty on those counts under which command responsibility was charged.

244. The Prosecution submits that, if the Appeals Chamber applies the correct test to all of the facts found by the Trial Chamber, the *only* conclusion it could reach is that Delalic was a superior and was guilty of the crimes charged, which would permit it to reverse the verdict of acquittal. If the Appeals Chamber finds that the facts found by the Trial Chamber do not permit it to reach that conclusion, it should remit the case to a newly constituted Trial Chamber to determine the relevant counts.

245. In the alternative, the Prosecution requests leave to be granted to present additional evidence which had been "wrongly excluded by the Trial Chamber", being evidence that it sought to call in rebuttal. The documentary evidence which had not been admitted was annexed to the Prosecution Brief. The submission in relation to admission of wrongfully excluded evidence as expressed in the Prosecution Brief initially

suggested that this course was proposed as an alternative *remedy* which would fall for consideration only should the Appeals Chamber accept the argument that the Trial Chamber made an error of law in its statement of the nature of the superior-subordinate relationship. However, it was also stated that the Prosecution alleges that the Trial Chamber's exclusion of the evidence constituted a distinct error of law, and in subsequent written and oral submissions it was made apparent that, although not expressed as a separate ground of appeal, the submissions as to erroneous exclusion of evidence constitute an independent basis for challenging the Trial Chamber's finding that Delalic was not a superior. As Delalic in fact answered this Prosecution argument, no prejudice will result if the Appeals Chamber deals with this alternative submission as an independent allegation of error of law.

246. Delalic contends that in any event the evidence of the position of Delalic in relation to the Celebici camp demonstrates that he had no superior authority there, and that the Prosecution's theory of "influence responsibility" is not supported by customary law. He argues that a revision of the judgement by the Appeals Chamber can only concern errors of law, and that, where there is a mix of factual and legal errors, the appropriate remedy is that a new trial be ordered. Delalic submits that the Trial Chamber was correct in refusing the to allow the proposed Prosecution witnesses to testify as rebuttal witnesses and in rejecting the Prosecution motion to re-open the proceedings.

247. The Prosecution's argument relating to the Trial Chamber's findings as to the nature of the superior-subordinate relationship is considered first before turning to the second argument relating to the exclusion of evidence which was sought to be admitted as rebuttal or fresh evidence.

(i) The Superior-Subordinate Relationship in the Doctrine of Command Responsibility 248. The Prosecution interprets the Trial Chamber to have held that, in cases involving command or superior responsibility, the perpetrator must be "part of a subordinate unit in a direct chain of command under the superior" for the superior to be held responsible. The Prosecution submissions do not refer to any specific express statement of the Trial Chamber to this effect but appear to consider that this was the overall effect of the Trial Chamber's findings. The Prosecution first refers to, and apparently accepts, the finding of the Trial Chamber that:

> [...] in order for the principle of superior responsibility to be applicable, it is necessary that the superior have effective control over the persons committing the underlying violations of international humanitarian law, in the sense of having the material ability to prevent and punish the commission of these offences [...] such authority can have a *de facto* or *de jure* character.

249. The Prosecution then refers to certain subsequent conclusions of the Trial Chamber which it apparently regards as supporting its interpretation that the Trial Chamber held that the doctrine of superior responsibility requires the perpetrator to be part of a subordinate unit in a direct chain of command under the superior. First, the Prosecution refers to the Trial Chamber's statement that, in the case of the exercise of *de facto* authority, it must be

> [...] accompanied by the trappings of the exercise of *de jure* authority. By this, the Trial Chamber means that the perpetrator of the underlying offence must be the subordinate of the person of higher rank *and under his direct or indirect control*.

The section of the judgement cited and relied upon in the Prosecution Brief, however, omits the italicised portion of the passage. This qualification expressly conveys the Trial Chamber's view that the relationship of subordination required by the doctrine of command responsibility may be direct *or indirect*.

250. The Trial Chamber also referred to the ICRC Commentary (Additional Protocols), where it is stated that the superior-subordinate relationship should be seen "in terms of a hierarchy encompassing the concept of control". Noting that Article 87 of Additional Protocol I establishes that the duty of a military commander to prevent violations of the Geneva Conventions extends not only to his subordinates but also to "other persons under his control", the Trial Chamber stated that:

> This type of superior-subordinate relationship is described in the Commentary to the Additional Protocols by reference to the concept of "indirect subordination", in contrast to the link of "direct subordination" which is said to relate the tactical commander to his troops.

251. Two points are clear from the Trial Chamber's consideration of the issue. First, the Trial Chamber found that a *de facto* position of authority suffices for the purpose of ascribing command responsibility. Secondly, it found that the superior-subordinate relationship is based on the notion of control within a hierarchy and that this control can be exercised in a direct or indirect manner, with the result that the superior-subordinate relationship itself may be both direct and indirect. Neither these findings, nor anything else expressed within the Trial Judgement, demonstrates that the Trial Chamber considered that, for the necessary superior-subordinate relationship to exist, the perpe-

trator must be in a direct chain of command under the superior.

252. Examining the actual findings of the Trial Chamber on the issue, it is therefore far from apparent that it found that the doctrine of superior responsibility requires the perpetrator to be part of a subordinate unit in a *direct* chain of command under the superior; nor is such a result a necessary implication of its findings. This seems to have been implicitly recognised by the Prosecution in its oral submissions on this ground of appeal at the hearing. The Appeals Chamber regards the Trial Chamber as having recognised the possibility of both indirect as well as direct relationships subordination and agrees that this may be the case, with the proviso that effective control must always be established.

253. However, the argument of the Prosecution goes further than challenging the perceived requirement of *direct* subordination. The key focus of the Prosecution argument appears to be the Trial Chamber's rejection of the Prosecution theory that persons who can exert "substantial influence" over a perpetrator who is not necessarily a subordinate may, by virtue of that influence, be held responsible under the principles of command responsibility. The Prosecution does not argue that *anyone* of influence may be held responsible in the context of superior responsibility, but that a superior encompasses someone who "may exercise a substantial degree of influence over the perpetrator or over the entity to which the perpetrator belongs."

254. The Trial Chamber understood the Prosecution at trial to be seeking "to extend the concept of the exercise of superior authority to persons over whom the accused can exert substantial influence in a given situation, who are clearly not subordinates", which is essentially the approach taken by the Prosecution on appeal. The Trial Chamber also rejected the idea, which it apparently regarded as being implicit in the Prosecution view, that a superior-subordinate relationship could exist in the absence of a subordinate:

> The view of the Prosecution that a person may, in the absence of a subordinate unit through which authority is exercised, incur responsibility for the exercise of a superior authority seems to the Trial Chamber a novel proposition clearly at variance with the principle of command responsibility. The law does not know of a universal superior without a corresponding subordinate. The doctrine of command responsibility is clearly articulated and anchored on the relationship between superior and subordinate, and the responsibility of the commander for actions of members of his troops. It is a species of vicarious responsibility through which military discipline is regulated and ensured. This is why a subordinate unit of the superior or commander is a sine qua non for superior responsibility.

The Trial Chamber thus unambiguously required that the perpetrator be subordinated to the superior. While it referred to hierarchy and chain of command, it was clear that it took a wide view of these concepts:

> The requirement of the existence of a "superior-subordinate relationship" which, in the words of the Commentary to Additional Protocol I, should be seen "in terms of a hierarchy encompassing the concept of control", is particularly problematic in situations such as that of the former Yugoslavia during the period relevant to the present case — situations where previously existing formal structures have broken down and where, during an interim period, the new, possibly improvised, control and command structures may be ambiguous and ill-defined. It is the Trial Chamber's conclusion... that persons effectively in command of such more informal structures, with power to prevent and punish the crimes of persons who are in fact under their control, may under certain circumstances be held responsible for their failure to do so.

The Trial Chamber's references to concepts of subordination, hierarchy and chains of command must be read in this context, which makes it apparent that they need not be established in the sense of formal organisational structures so long as the fundamental requirement of an effective power to control the subordinate, in the sense of preventing or punishing criminal conduct, is satisfied.

255. It is clear that the Trial Chamber drew a considerable measure of assistance from the ICRC Commentary (Additional Protocols) on Article 86 of Additional Protocol I (which refers to the circumstances in which a superior will be responsible for breaches of the Conventions or the Protocol committed by his subordinate) in finding that actual control of the subordinate is a necessary requirement of the superior-subordinate relationship. he Commentary on Article 86 of Additional Protocol I states that:

> we are concerned only with the superior who has a personal responsibility with regard to the perpetrator of the acts concerned because the latter, *being his subordinate, is under his control*. The direct link which must exist between the superior and the subordinate clearly follows from the duty to act laid down in paragraph 1 [of Article 86]. Furthermore only that superior is normally in the position

> of having information enabling him to conclude in the circumstances at the time that the subordinate has committed or is going to commit a breach. However it should not be concluded from this that the provision only concerns the commander under whose direct orders the subordinate is placed. The concept of the superior is broader and should be seen in terms of a hierarchy encompassing the concept of control.

The point which the commentary emphasises is the concept of control, which results in a relationship of superior and subordinate.

256. The Appeals Chamber agrees that this supports the Trial Chamber's interpretation of the law on this point. The concept of effective *control* over a subordinate - in the sense of a material ability to prevent or punish criminal conduct, however that control is exercised - is the threshold to be reached in establishing a superior-subordinate relationship for the purpose of Article 7(3) of the Statute.

257. In considering the Prosecution submissions relating to "substantial influence", it can be noted that they are not easily reconcilable with other Prosecution submissions in relation to command responsibility. The Prosecution expressly endorses the requirement that the superior have effective *control* over the perpetrator, but then espouses, apparently as a matter of general application, a theory that in fact "substantial influence" alone may suffice, in that "where a person's powers of influence amount to a *sufficient* degree of authority or control in the circumstances to put that person in a position to take preventative action, a failure to do so may result in criminal liability." This latter standard appears to envisage a lower threshold of control than an effective control threshold; indeed, it is unclear that in its natural sense the concept of "substantial *influence*" entails any necessary notion of control at all. Indeed, certain of the Prosecution submissions at the appeal hearing suggest that the substantial influence standard it proposes is not intended to pose any different standard than that of control in the sense of the ability to prevent or punish:

> But we would submit that if there is the substantial influence, which we concede is something which has got to be determined essentially on a case-by-case basis, if this superior does have *the material ability to prevent or punish*, he or she should be within the confines of this doctrine of command responsibility as set forth in Article 7(3).

The Appeals Chamber will consider whether substantial influence has ever been recognised as a foundation of superior responsibility in customary law.

258. The Prosecution relied at trial and on appeal on the Hostage case in support of its position that the perpetrators of the crimes for which the superior is to be held responsible need not be subordinates, and that substantial influence is a sufficient degree of control. The Appeals Chamber concurs with the view of the Trial Chamber that the *Hostage case* is based on a distinction in international law between the duties of a commander for occupied territory and commanders in general. That case was concerned with a commander in occupied territory. The authority of such a commander is to a large extent territorial, and the duties applying in occupied territory are more onerous and far-reaching than those applying to commanders generally. Article 42 of the Regulations Respecting the Laws and Customs of War on Land, annexed to the Hague Convention (IV) Respecting the Laws and Customs of War on Land 1907, provides:

> Territory is considered occupied when it is actually placed under the authority of the hostile army.
>
> The occupation extends only to the territory where such authority has been established and can be exercised.

Article 43 provides:

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

This clearly does not apply to commanders in general. It was not then alleged, nor could it now be, that Delalic was a commander in occupied territory, and the Trial Chamber found expressly that he was not.

259. The Prosecution emphasises however that it did not rely on the *Hostage case* alone. At trial, and on appeal, the Prosecution relied on the judgement in the *Muto* case before the International Military Tribunal for the Far East. The Appeals Chamber regards the *Muto* case as providing limited assistance for the present purpose. Considering Muto's liability as Chief-of-Staff to General Yamashita, the Tokyo Tribunal found him to be in a position "to influence policy", and for this reason he was held responsible for atrocities by Japanese troops in the Philippines. It is difficult to ascertain from the judgement in that case whether his conviction on Count 55 for his failure to take adequate steps to ensure the observance of the laws of war reflected his participation in the making of that policy or was linked to his conviction on Count 54 which alleged that he "ordered, authorized and permitted" the commission of conventional war crimes. It is possible that the conviction on Count 54 led to that on Count 55.

260. On the other hand, the Military Tribunal V in *United States v Wilhelm von Leeb et al*, states clearly that:

> In the absence of participation in criminal orders or their execution within a command, a Chief of Staff does not become criminally responsible for criminal acts occurring therein. He has no command authority over subordinate units. All he can do in such cases is call those matters to the attention of his commanding general. Command authority and responsibility for its exercise rest definitively upon his commander.

This suggests that a Chief-of-Staff would be found guilty only if he were involved in the execution of criminal policies by writing them into orders that were subsequently signed and issued by the commanding officer. In that case, he could be *directly* liable for aiding and abetting or another form of participation in the offences that resulted from the orders drafted by him. The Appeals Chamber therefore confines itself to stating that the case-law relied on by the Prosecution was not uniform on this point. No force of precedent can be ascribed to a proposition that is interpreted differently by equally competent courts.

261. The Prosecution also relies on the *Hirota* and *Roechling* cases. In the *Hirota* case, the Tokyo Tribunal found that Hirota, the Japanese Foreign Minister at the time of the atrocities committed by Japanese forces during the Rape of Nanking, "was derelict in his duty in not insisting before the Cabinet that immediate action be taken to put an end to the atrocities, failing any other action open to him to bring about the same result." The Trial Chamber found this to be "language indicating powers of persuasion rather than formal authority to order action to be taken".

262. In the *Roechling* case, a number of civilian industrialists were found guilty in respect of the ill-treatment of deportees employed in forced labour, not on the basis that they ordered the treatment but because they "permitted it; and indeed supported it, and in addition, for not having done their utmost to put an end to the abuses". The Trial Chamber referred specifically to the findings in relation to von Gemmingen-Hornberg, who was the president of the Directorate and works manager of the Roechling steel plants. The tribunal at first instance had found that "the high position which he occupied in the corporation, as well as the fact that he was Herman Roechling's son-in-law, gave him certainly sufficient authority to obtain an alleviation in the treatment of these workers", and that this constituted "cause under the circumstances" to find him guilty of inhuman treatment of the workers. The reference to "sufficient authority" was interpreted by the Trial Chamber as indicating "powers of persuasion rather than formal authority", partly because of the tribunal's reference to the fact that the accused was Roechling's son-in-law, and it is upon this interpretation that the Prosecution appears to rely.

263. The Appeals Chamber does not interpret the reference to "sufficient authority" as entailing an acceptance of powers of persuasion or influence alone as being a sufficient basis on which to found command responsibility. The *Roechling* judgement on appeal does not refer to the fact that the accused was Roechling's son-in-law, but it emphasises his senior position as president of the Directorate and his position as works manager, "that is, as the works representative in negotiations with the authorities specially competent to deal with matters relating to labor. His sphere of competence also included contact with the Gestapo in regard to the works police". The judgements suggest that he was found to have powers of control over the conditions of the workers which, although not involving any formal ability to give orders to the works police, exceeded mere powers of persuasion or influence. Thus the Appeals Chamber considers the Trial Chamber's initial characterisation of the case as being "best construed as an example of the imposition of superior responsibility on the basis of *de facto* powers of control possessed by civilian industrial leaders" as being the more accurate one.

264. The Appeals Chamber also considers that the *Pohl* case does not support the proposition of the Prosecution that the substantial influence alone of a superior may suffice for the purpose of command responsibility. The person in question, Karl Mummenthey, an SS officer and a business manager, not only possessed "military power of command" but, more importantly in this case, "control" over the industries where mistreatment of concentration camp labourers occurred. This is apparent even from the passage of the judgement cited by the Prosecution in its Appeal Brief:

> Mummenthey was a definite integral and important figure in the whole concentration camp set-up, and, as an SS officer, *wielded military power of command*. If excesses occurred in the industries *under his control* he was in a position not only to know about them, but to do something.

265. In the context of relevant jurisprudence on the question, it should also be noted that the Prosecution also relies on the fact that a Trial Chamber of the International Criminal Tribunal for Rwanda, in *Prosecutor v Kayishema and Ruzindana*, relied on these World War II authorities, and on the references to them in the judgement of the Trial Chamber in *Celebici*, to find that powers of influence are sufficient to impose superior responsibility. The ICTR Trial Chamber stated:

> [...] having examined the *Hostage* and *High Command* cases the Chamber in *Celebici* concluded that they authoritatively asserted the principle that, "powers of influence not amounting to formal powers of command provide a sufficient basis for the imposition of command responsibility." This Trial Chamber concurs.

No weight can be afforded to this statement of the ICTR Trial Chamber, as it is based on a misstatement of what the Trial Chamber in *Celebici* actually held. The quoted statement was not a conclusion of the Trial Chamber, nor its interpretation of the *Hostage* and *High Command* cases, but the ICTR Trial Chamber's interpretation of the decision of the Tokyo Tribunal in the *Muto* case. The Trial Chamber in *Celebici* ultimately regarded any "influence" principle which may have been established by *Muto* case as being outweighed by other authorities which suggested that a position of command in the sense of effective control was necessary.

266. The Appeals Chamber considers, therefore, that customary law has specified a standard of *effective* control, although it does not define precisely the means by which the control must be exercised. It is clear, however, that substantial influence as a means of control in any sense which falls short of the possession of effective control over subordinates, which requires the possession of material abilities to prevent subordinate offences or to punish subordinate offenders, lacks sufficient support in State practice and judicial decisions. Nothing relied on by the Prosecution indicates that there is sufficient evidence of State practice or judicial authority to support a theory that substantial influence as a means of exercising command responsibility has the standing of a rule of customary law, particularly a rule by which criminal liability would be imposed.

267. The Appeals Chamber therefore finds that the Trial Chamber has applied the correct legal test in the case of Delalic. There is, therefore, no basis for any further application of that test to the Trial Chamber's findings, whether by the Appeals Chamber or by a reconstituted Trial Chamber.

268. The Prosecution's argument dealt with here is limited to the submission that it was the Trial Chamber's alleged error of law in the legal test which led it to an erroneous conclusion that Delalic did not exercise superior authority. There was no independent allegation in the Prosecution Brief that the Trial Chamber made errors of fact in its factual findings which should be overturned by the Appeals Chamber, although certain submissions at the hearing of the appeal suggest that the Prosecution submits that, even under the standard of effective control (which was in fact applied by the Trial Chamber), the Trial Chamber should have found Delalic to have exercised superior authority. However, nothing raised by the Prosecution would support a finding by the Appeals Chamber that the Trial Chamber's findings, and its ultimate conclusion from those facts that Delalic did not exercise the requisite degree of control, was so unreasonable that no reasonable tribunal of fact could have reached them.

(ii) Whether the Trial Chamber erred in excluding rebuttal or fresh evidence 269. As discussed above, the Prosecution submitted "in the alternative" that the Appeals Chamber should grant leave to the Prosecution to present "additional" evidence that was wrongly excluded by the Trial Chamber. The nature of the "alternative" was described as follows:

> The issue is an issue of an error of law. The issue is whether or not the Trial Chamber applied the correct test for the admission of rebuttal or fresh evidence. If they applied the incorrect test and it's an error of law, then the Trial Chamber erred.

270. As noted above, the Appeals Chamber deals with this argument as an independent allegation of an error of law on behalf of the Trial Chamber.

271. At the request of the Trial Chamber during the case of the last of the accused to present his defence, the Prosecution filed a notification of witnesses proposed to testify in rebuttal. It proposed to call four witnesses, one relating to the case against Landzo and the others relating to the case against Delalic, one of whom was a Prosecution investigator being called essentially to tender a number of documents "not previously available to the prosecution". Oral submissions on the proposal were heard by the Trial Chamber on 24 July 1998, and the Trial Chamber ruled that, with the exception of the witness relating to the case against Landzo, the proposed evidence was not rebuttal evidence, but fresh evidence, and that the Prosecution had not put forward anything which would support an application to admit fresh evidence. This decision was reflected in a written Order which noted that "rebuttal evidence is limited to matters that arise directly and specifically out of defence evidence".

272. The evidence which was not admitted by the Trial Chamber related to Delic, Mucic and Delalic, but the Prosecution submission that the exclusion constituted an error invalidating the decision is limited in application to the effect of this evidence on its case against Delalic. Its overall purpose was to show that Delalic had the requisite degree of control over the Celebici camp. The three proposed witnesses, and the documents they sought to adduce, were as follows:

> (i) Rajko Dordic, Sr, to testify as to his release from the Celebici camp pursuant to a release form

signed by Delalic and dated 3 July 1992. It was proposed that the witness produce and authenticate the document. This was intended to rebut the evidence of defence witnesses that Delalic was authorised to sign release documents only in exceptional circumstances when the members of the Investigative Commission were not present in Celebici.

(ii) Stephen Chambers, an investigator of the Office of the Prosecutor, to present "documentary evidence not previously available to the Prosecutor" which had been seized from the State Commission for the Search for the Missing in Sarajevo and from the home and work premises of an official of the State Commission for Gathering Facts on War Crimes in Konjic. This was said to rebut the testimony of witnesses that Delalic, as commander of Tactical Group 1, had no authority over the Celebici camp.

(iii) Professor Andrea Stegnar, a handwriting expert, to give expert testimony in relation to a number of the recently obtained documents alleged to bear the signature of the accused. This was not argued to have any independent rebuttal basis.

273. The Trial Chamber characterised the nature of rebuttal evidence as "evidence to refute a particular piece of evidence which has been adduced by the defence", with the result that it is "limited to matters that arise directly and specifically out of defence evidence." This standard is essentially consistent with that used previously and subsequently by other Trial Chambers. The Appeals Chamber agrees that this standard — that rebuttal evidence must relate to a significant issue arising directly out of defence evidence which could not reasonably have been anticipated — is correct. It is in this context that the Appeals Chamber understands the Trial Chamber's statement, made later in its Decision on Request to Reopen, that "evidence available to the Prosecution *ab initio*, the relevance of which does not arise *ex improviso*, and which remedies a defect in the case of the Prosecution, is generally not admissible." Although the Appeals Chamber would not itself use that particular terminology, it sees, contrary to the Prosecution submission, no error in that statement when read in context.

274. The Trial Chamber's particular reasons for rejecting the evidence as rebuttal evidence, as expressed in the oral hearing on 24 July, were, in relation to category (i), that the other evidence heard by the Trial Chamber was that Delalic had signed such documents only on behalf of the Investigating Commission and not in his own capacity. As the relevant release document also was acknowledged to state that Delalic was signing "for" the Commission, the Trial Chamber queried how it could be considered to rebut what had already been put in evidence. The Trial Chamber appeared to assess the document as having such low probative value in relation to the fundamental matter that the Prosecution was trying to prove — namely, Delalic's authority to release prisoners in his own capacity — that it could not be considered to rebut the defence evidence identified by the Prosecution. This assessment was reasonably open to the Trial Chamber.

275. In relation to category (ii), the Trial Chamber rejected the characterisation of the evidence as rebuttal evidence on the basis that it was better characterised as fresh evidence. While it may have been desirable for the Trial Chamber to state more specifically its view as to why the evidence did not refute a particular matters arising directly and specifically out of defence evidence, the Appeals Chamber agrees that it was open to regard the evidence as not being evidence in rebuttal. It is first noteworthy that the Prosecution, in applying to adduce the evidence, described it first as "fresh evidence, not previously available to the prosecution" and gave only a fairly cursory description of how in its view the evidence rebutted defence evidence. It said that the evidence would rebut the evidence of witnesses "who all stated that Zejnil Delalic as Commander of Tactical Group 1 had no *de facto* authority, or any other authority whatsoever" over the Celebici camp. Thus the evidence was intended to establish that Delalic did in fact exercise such authority. As such, it went to a matter which was a fundamental part of the case the Prosecution was required to prove in relation to its counts under Article 7(3). Such evidence should be brought as part of the Prosecution case in chief and not in rebuttal. As the Trial Chamber correctly observed, where the evidence which "is itself evidence probative of the guilt of the accused, and where it is reasonably foreseeable by the Prosecution that some gap in the proof of guilt needs to be filled by the evidence called by it", it is inappropriate to admit it in rebuttal, and the Prosecution "cannot call additional evidence merely because its case has been met by certain evidence to contradict it."

276. Where such evidence could not have been brought as part of the Prosecution case in chief because it was not in the hands of the Prosecution at the time, this does not render it admissible as rebuttal evidence. The fact that evidence is newly obtained, if that evidence does not meet the standard for admission of rebuttal evidence, will not render it admissible as rebuttal evidence. It merely puts it into the category of fresh evidence, to which a different basis of admissibility applies. This is essentially what the Trial Chamber found. There is therefore no merit in the Prosecution's submission that the evidence should have been admitted as

"the reason for not adducing it during the Prosecution's case [was] not due to the failure to foresee the issues that may arise during the Defence case." The issue as to whether the evidence should have been admitted as fresh evidence is considered below.

277. The admission of the testimony of the handwriting expert referred to in category (iii) essentially relied on the admission of the category (ii) evidence, so it need not be further considered.

278. Following the Trial Chamber's rejection of the evidence as rebuttal evidence, the Prosecution filed an alternative request to re-open the Prosecution case. The Trial Chamber rejected this alternative orally, issuing its written reasons on 19 August 1998. The Prosecution filed applications under Rule 73 for leave to appeal the Order of 30 July and the Decision of 4 August, on 6 August and 17 August, respectively. A Bench of the Appeals Chamber denied leave to appeal in respect of both applications on the basis that it saw no issue that would cause such prejudice to the case of the Prosecution as could not be cured by the final disposal of the trial including post-judgement appeal, or which assumed general importance to the proceedings of the Tribunal or in international law generally, these being the two tests established by Rule 73(B) regarding the granting or withholding of leave to appeal.

279. In its Decision on Request to Reopen the Trial Chamber, after considering the basis on which evidence could be admitted as rebuttal evidence, acknowledged the possibility that the Prosecution "may further be granted leave to re-open its case in order to present new evidence not previously available to it." It stated:

> Such fresh evidence is properly defined not merely as evidence that was not in fact in the possession of the Prosecution at the time of the conclusion of its case, but as evidence which by the exercise of reasonable diligence could not have been obtained by the Prosecution at that time. The burden of establishing that the evidence sought to be adduced is of this character rests squarely on the Prosecution.

280. The Trial Chamber also identified the factors which it considered relevant to the exercise of its discretion to admit the fresh evidence. These were described as:

> (i)the "advanced stage of the trial"; *i.e.*, the later in the trial that the application is made, the less likely the evidence will be admitted;
>
> (ii)the delay likely to be caused by a re-opening of the Prosecution case, and the suitability of an adjournment in the overall context of the trial; and
>
> (iii)the probative value of the evidence to be presented.

281. Taking these considerations into account the Trial Chamber assessed both the evidence and the Prosecution's explanation for its late application to adduce it and concluded that the Prosecution had not discharged its burden of proving that the evidence could not have been found earlier with the exercise of reasonable diligence. In addition, it found that the admission of the evidence would result in the undue protraction of the trial for up to three months, as the testimony of further witnesses to authenticate the relevant documents could be required as well as the evidence of any witnesses that the defence should be permitted to bring in response. Finally, the Trial Chamber assessed the evidence to be of minimal probative value, consisting of "circumstantial evidence of doubtful validity", with the result that its exclusion would not cause the Prosecution injustice. It concluded generally that "the justice of the case and the fair and expeditious conduct of the proceedings enjoins a rejection of the application."

282. The Prosecution does not challenge the Trial Chamber's definition of fresh evidence as evidence which was not in the possession of the party at the time and which by the exercise of all reasonable diligence could not have been obtained by the relevant party at the conclusion of its case. Nor does it challenge the "general principle of admissibility" used by the Trial Chamber.

283. The Appeals Chamber agrees that the primary consideration in determining an application for reopening a case to allow for the admission of fresh evidence is the question of whether, with reasonable diligence, the evidence could have been identified and presented in the case in chief of the party making the application. If it is shown that the evidence could *not* have been found with the exercise of reasonable diligence before the close of the case, the Trial Chamber should exercise its discretion as to whether to admit the evidence by reference to the probative value of the evidence and the fairness to the accused of admitting it late in the proceedings. These latter factors can be regarded as falling under the general discretion, reflected in Rule 89 (D) of the Rules, to exclude evidence where its probative value is substantially outweighed by the need to ensure a fair trial. Although this second aspect of the question of admissibility was less clearly stated by the Trial Chamber, the Appeals Chamber, for the reasons discussed below, considers that it applied the correct principles in this respect.

284. The Prosecution contends that although the Trial Chamber was correct in requiring proof of the exercise of reasonable diligence, it should have found that it had exercised such diligence. The Trial Chamber took the view, having considered the reasons put for-

ward by the Prosecution, that the Prosecution had not discharged its burden of demonstrating that even with reasonable diligence the proposed evidence could not have been previously obtained and presented as part of its case in chief. It implicitly expressed its opinion that the Prosecution had not pursued the relevant evidence vigorously until after the close of the Defence case. The Prosecution submits that this finding was "factually incorrect" and represented "a misapprehension of the facts in relation to the efforts of the Prosecution to obtain this evidence", but does not more than reiterate the description of the efforts to obtain the evidence which it had already provided to the Trial Chamber. It does not identify how, in its view, the Trial Chamber's conclusion on the facts were so unreasonable that no reasonable Trial Chamber could have reached it. It is not suggested that the Trial Chamber did not consider the Prosecution's explanation. No such suggestion could be made in light of the obvious demonstrations both in the hearing of the oral submissions on the issue and the Decision on the Request to Reopen that the Trial Chamber did consider the explanations the Prosecution was putting to it. In the Appeals Chamber's view, even making considerable allowances to the Prosecution in relation to the "complexities involved in obtaining the evidence", it is apparent that there were failures to pursue diligently the investigations for which no adequate attempt to provide an explanation was made.

285. Two examples demonstrate this problem. A number of the documents which were sought to be admitted had been seized in June 1998 from the office and home of Jasminka Dzumhur, a former official of the State Commission for Exchange in Konjic and the Army of Bosnia and Herzegovina 4th Corps Military Investigative Commission. The material provided by the Prosecution in its Request to Reopen to explain its prior effort to obtain documents and information from Ms Dzumhur includes the statement that:

> Between late 1996 and early 1997, the Prosecution contacted Jasminka Dzumhur three times. She consistently refused to provide a statement, but on one occasion, *briefly showed an investigator an untranslated document concerning the transfer of duties in Celebici prison in November 1996*, signed by Zdravko Mucic and Zejnil Delalic. *She said she had other documents, but none of the documents were provided to the Prosecution.*

With this knowledge, obtained in November 1996, that Ms Dzumhur held documents which they considered would be relevant to their case, the next step apparently taken by the Prosecution was four to five months later in mid-April 1997, when it made a formal request for assistance to the Government of Bosnia and Herzegovina. The Prosecution received a response on 23 July 1997, following a reminder in June 1997. On the material provided by the Prosecution, it was almost five months later that it took the next step of issuing a second request to the Government of Bosnia and Herzegovina, which received a relatively rapid response in early January, by providing certain documents. Given that the trial had opened in March 1997, it was open to the Trial Chamber to regard the lapse of these periods of time between the taking of active steps to pursue the documents during after the trial had actually commenced as an indication that reasonable diligence was not being exercised.

286. Secondly, in a case such as the present where the evidence is sought to be presented not only after the close of the case of the Prosecution but long after the close of the case of the relevant accused, it was necessary for the Prosecution to establish that the evidence could not have been obtained, even if after the close of its case, at an earlier stage in the trial. The application to have the new evidence admitted was made many months after the Prosecution gained actual knowledge of the location at which the relevant documents were likely to be held. The information provided by the Prosecution, in its "Alternative Request to Reopen the Prosecution's Case", indicated that the Prosecution gained possession of certain documents from the State Commission for the Search for the Missing on 27 March 1998, which indicated that the relevant documents were in the possession of Jasminka Dzumhur. It was not until 5 May 1998 that the Prosecution took any further step in trying to obtain the documents, when it "informed the authorities that various requests concerning the contacting of officials and former officials of Konjic Municipality, including Jasminka Dzumhur remained outstanding". An application for a search warrant was made to a Judge of the Tribunal on 10 June 1998, after Delalic's defence case had closed. Even making allowances for the complexities of such investigations, allowing a period of over five weeks to elapse between becoming aware of the location of the documents and taking any further active step to obtain them, in light of the advanced state of the defence case, cannot be considered to be the exercise of reasonable diligence. If the Prosecution was in fact taking steps to obtain the information at that time, it did not disclose them to the Trial Chamber and cannot now complain at the assessment that it did not exercise "reasonable diligence" in obtaining and presenting the evidence earlier. Given that the burden of proving that reasonable diligence was exercised in obtaining the evidence lies on the Prosecution, it was open to the Trial Chamber to decide on the information provided to it by the Prosecution that it has not discharged that burden.

287. The Prosecution further submits that the Trial Chamber erred in the exercise of its discretion in certain of the matters it took into account. As the Trial Chamber's finding that reasonable diligence had not been exercised was a sufficient basis on which to dispose of the application, it is not strictly necessary to determine this issue, but as the Trial Chamber expressed its views on this aspect of the application, the Appeals Chamber will consider it here. The Prosecution argues that relevant and probative evidence is only excluded when its admission is substantially outweighed by the need to ensure a fair trial, and cites the provisions of certain national systems in support of this. In relation to these provisions which the Prosecution has selectively drawn from only three national jurisdictions, it can be observed that even if they were to be accepted as a guide to the principles applicable to this issue in the Tribunal, two of them simply confer a discretion on the Trial Chamber *exceptionally* to admit new evidence. The provision cited from the Costa Rican Code of Criminal Procedure states that:

> *Exceptionally*, the court *may* order [...] that new evidence be introduced if, during the trial proceedings new facts or circumstances have arisen that *need to be established*.

The provision relied on from the German Code provides for the admission of new evidence "if this is absolutely necessary".

288. The Trial Chamber stated the principle as being that:

> While it is axiomatic that all evidence must fulfill the requirements of admissibility, for the Trial Chamber to grant the Prosecution permission to reopen its case, the probative value of the proposed evidence must be such that it outweighs any prejudice caused to the accused. Great caution must be exercised by the Trial Chamber lest injustice be done to the accused, and it is therefore only in exceptional circumstances where the justice of the case so demands that the Trial Chamber will exercise its discretion to allow the Prosecution to adduce new evidence after the parties to a criminal trial have closed their case.

The Prosecution argues that the statement of the Trial Chamber that "the probative value of the proposed evidence must be such that it outweighs any prejudice caused to the accused" incorrectly states the applicable principle, which is that stated in Rule 89(D), namely that the need to ensure a fair trial substantially outweighs the probative value of the evidence. The reference by the Trial Chamber to the potential "prejudice caused to the accused" was not, in the view of the Appeals Chamber, the appropriate one in the context. However it is apparent from a reading of the rest of the Decision on Request to Reopen that the Trial Chamber, in referring to prejudice to the accused was turning its mind to matters which may affect the fairness of the accused's trial. This is apparent both from the reference, in the passage cited above, to the need to avoid "injustice to the accused" and the concluding statement in the decision:

> In our view, the justice of the case and the fair and expeditious conduct of the proceedings enjoins a rejection of the application.

289. The Prosecution also argues that the Trial Chamber erred in its assessment of the probative value of the evidence. It contends that the Trial Chamber erred in finding that the evidence was inferential and equivocal. The Prosecution relies on a statement by the Trial Chamber that the documents "cannot be probative". Although this was perhaps unfortunate terminology, it is apparent from the Trial Chamber's decision that after considering the evidence it was of the view not that it could not be probative but that the documents "contain circumstantial evidence of doubtful validity". This was an assessment not that the documents were incapable, as a matter of law, of having probative value, but that, having regard to their contents which did not disclose direct evidence of the matters in dispute but, at best, gave rise to "mere inferences", the documents had a low probative value. This assessment, and more specifically the exercise of balancing the particular degree of probative value disclosed by the documents against the unfairness which would result if the evidence were admitted, is a matter for the Trial Chamber which will not be interfered with on appeal in the absence of convincing demonstration of error. No such demonstration has been made. 290. The Prosecution also specifically challenged the Trial Chamber's conclusion that the trial had reached such a stage that the evidence should not be admitted.452 The stage in the trial at which the evidence is sought to be adduced and the potential delay that will be caused to the trial are matters highly relevant to the fairness to the accused of admission of fresh evidence. This consideration extends not only to Delalic as the accused against whom the evidence was sought to be admitted, but also the three co-accused whose trial would be equally delayed for reasons unrelated to themselves. The Appeals Chamber does not understand the Trial Chamber to have taken the stage of the trial into account in any sense other than its impact on the fairness of the trial of the accused, and, in the circumstances, the Appeals Chamber regards the Trial Chamber as having been fully justified in taking the very late stage of the trial into account.

The Prosecution sought to have this evidence admitted not only after the close of its own case, but well after the close of the defence case of Delalic and only very shortly before the close of the case of the last accused. The Prosecution contends that "none of the accused objected to the potential presentation of the evidence of Mr Chambers."453 This assertion is clearly incorrect. At the hearing of oral submissions on whether the evidence could be admitted as rebuttal or fresh evidence, counsel for Delalic stated:

> His Honour Karibi-Whyte has said what I was thinking and that is that we're in the second year of this trial, and, perhaps, the third or fourth year of investigations concerning these matters. And the Prosecution, despite what they say, despite what reasons they may offer, I think is a matter of law. *It's unfair at this point to produce documents in June,1998.*

The defence for Delalic also expressed its opposition to the presentation of the fresh evidence in its written response to the request to reopen.

291. The Prosecution also argued that the Trial Chamber was wrong in its finding that the admission of the evidence would cause three months' delay:

> The Prosecutor calculated that the three remaining proposed witnesses would take, on direct examination, less than four hours. It is respectfully submitted that the Trial Chamber's estimation that this would likely postpone the trial for three months is not borne out, given that there were only three witnesses and approximately 22 documents, some only supporting documents for the search warrant.

This submission is disingenuous. The time which the Trial Chamber needed to take into account in determining the effect on the accused was not limited to the time which it may take to examine the three witnesses. The Trial Chamber found that, given the nature of the documents, it was likely that the testimony of further witnesses would be required to authenticate the relevant documents. It would also be necessary to allow for the defence to call appropriate witnesses in response. Further, as noted by the Trial Chamber, the Prosecution had stated in its Request to Reopen, after acknowledging that the defence may need to call witnesses:

> In addition, the Prosecution would seek leave to call witnesses to rebut the testimony of those brought by the Defence.

292. In light of these considerations, it was open to the Trial Chamber — which, having presided over the trial which had already taken over eighteen months, was well-placed to assess the time required taking into account practical considerations such as temporary witness unavailability — to conclude that the likely delay would be up to three months. In light of this finding, it is apparent that the Trial Chamber considered that the admission of the evidence would create a sufficiently adverse effect on the fairness of the trial of all of the accused, that it outweighed the limited probative value of the evidence. As a secondary matter, it is also apparent that the Trial Chamber was concerned to fulfill its obligation under Article 20 of the Statute to ensure the trial was expeditious. In light of these considerations, the decision not to exercise its discretion to grant the application was open to the Trial Chamber.

293. For the above reasons, the Appeals Chamber finds that the Prosecution has not demonstrated that the Trial Chamber committed any error in the exercise of its discretion. This aspect of this ground of appeal relating to the exclusion of evidence by the Trial Chamber is therefore also dismissed, and with it this ground of appeal in its entirety.

. Delic's Acquittal under Article 7(3) 4. The Prosecution's fifth ground of appeal alleges that the Trial Chamber "erred when it decided... that Hazim Delic was not a 'superior' in the Celebici Prison Camp for the purposes of ascribing criminal responsibility to him under Article 7(3) of the Statute." The Prosecution submits that the Trial Chamber applied the wrong legal test when it held that "the perpetrator of the underlying offence must be the *subordinate* of the person of higher rank" and that "a subordinate unit of the superior or commander is a *sine qua non* for superior responsibility." The Prosecution also submits, apparently in the alternative, that, even if the test formulated by the Trial Chamber for determining who is a superior for the purposes of Article 7(3) was correct, it misapplied the test in this case. The Prosecution refers to the Trial Chamber's findings, including its finding that Delic was the "deputy commander" of the camp, to say that he should have been found to be a superior. Because, it is said, the Trial Chamber's findings also establish that he was aware of the offences of subordinates, and that he failed to prevent or punish them, the Appeals Chamber should find Delic guilty under Article 7(3) on counts 13, 14, 33, 34, 38, 39, 44, 45, 46 and 47.

295. In support of this ground, the Prosecution reiterates its theory that command responsibility entails a superior-subordinate relationship in which the superior effectively controls the subordinate, in the sense that the superior possesses the material ability to prevent or punish the offences and that "[s]uch control can be manifest in powers of influence which permit the superior to intervene". It also argues that the Trial Chamber erred in requiring Delic to be part of the chain of command, as the correct test is whether he has suffi-

cient control, influence, or authority to prevent or punish. If, as the Trial Chamber found, *de facto* control is sufficient in this context, it should assess in each case whether an accused has *de facto* powers or control to prevent or punish.

296. Delic responds that among the elements required for finding a person liable under the doctrine of command responsibility are the requirement of "a hierarchy in which superiors are authorized to control their subordinates to a degree that the superior is responsible for the actions of his subordinates" and that the superior must be "vested with authority to control his subordinates." In the military, the chain of command is a hierarchy of commanders, with deputy commanders being outside this chain of command.

297. Turning to the Trial Chamber's findings on the question of Delic's liability under Article 7(3), it clearly found that Delic held the position of "deputy commander" of the Celebici camp. However, it also found that this was "not dispositive of Delic's status" as the real issue before the Trial Chamber was:

> [w]hether the accused had the power to issue orders to subordinates and to prevent or punish the criminal acts of his subordinates, thus placing him within the chain of command. In order to do so the Trial Chamber must look to the actual authority of Hazim Delic as evidenced by his acts in the Celebici prison camp.

298. The Chamber proceeded to consider evidence of the degree of actual authority wielded by Delic in the camp, and concluded that:

> [...] this evidence is indicative of *a degree of influence* Hazim Delic had in the Celebici prison-camp on some occasions, in the criminal mistreatment of detainees. However, this influence could be attributable to the guards' fear of an intimidating and morally delinquent individual who was the instigator of and a participant in the mistreatment of detainees, and *is not, on the facts before the Trial Chamber, of itself indicative of the superior authority of. Delic sufficient to attribute superior responsibility to him.*

Having examined more evidence, it further found:

> This evidence indicates that Hazim Delic was tasked with assisting Zradvko Mucic by organising and arranging for the daily activities in the Celebici prison-camp. However, it cannot be said to indicate that he had actual command authority in the sense that he could issue orders and punish and prevent the criminal acts of subordinates.

299. The Trial Chamber therefore concluded that, despite Delic's position of deputy commander of the camp, he did not exercise actual authority in the sense of having powers to prevent or punish and therefore was not a superior or commander of the perpetrators of the relevant offences in the sense required by Article 7(3).

300. The Appeals Chamber has already rejected, in its discussion of the Prosecution's second ground of appeal, the Prosecution argument that "substantial influence" is a sufficient measure of "control" for the imposition of liability under Article 7(3). It need only therefore confirm that the Trial Chamber's finding that Delic had powers of influence was not of itself a sufficient basis on which to find him a superior if it was not established beyond reasonable doubt by the evidence that he actually had the ability to exercise effective control over the relevant perpetrators.

301. The remaining issue as to the applicable law raised by the Prosecution in relation to this ground which has not previously been considered is its contention that the Trial Chamber erred because it required Delic to be part of the chain of command and, more generally, it required the perpetrators of the underlying offences to be his "subordinates" before liability under Article 7(3) could be imposed.

302. It is beyond question that the Trial Chamber considered Article 7(3) to impose a requirement that there be a superior with a corresponding subordinate. The Prosecution itself submits that one of the three requirements under Article 7(3) is that of a superior-subordinate relationship. There is therefore a certain difficulty in comprehending the Prosecution submission that the Trial Chamber erred in law in requiring the perpetrator of the underlying offence to be a subordinate of the person of higher rank. The Trial Chamber clearly did understand the relationship of subordination to encompass indirect and informal relationships, as is apparent from its acceptance of the concepts of civilian superiors and *de facto* authority, to which the Appeals Chamber has referred in its discussion of the issue in relation to the Prosecution's second ground of appeal.

303. The Appeals Chamber understands the necessity to prove that the perpetrator was the "subordinate" of the accused, not to import a requirement of *direct or formal* subordination but to mean that the relevant accused is, by virtue of his or her position, senior in some sort of formal or informal hierarchy to the perpetrator. The ability to exercise effective control in the sense of a material power to prevent or punish, which the Appeals Chamber considers to be a minimum requirement for the recognition of the superior-subordinate relationship, will almost invariably not be satisfied unless such a relationship of subordination exists. However,

it is possible to imagine scenarios in which one of two persons of equal status or rank — such as two soldiers or two civilian prison guards — could in fact exercise "effective control" over the other at least in the sense of a purely practical ability to prevent the conduct of the other by, for example, force of personality or physical strength. The Appeals Chamber does not consider the doctrine of command responsibility — which developed with an emphasis on persons who, by virtue of the position which they occupy, have authority over others — as having been intended to impose criminal liability on persons for the acts of other persons of completely equal status.

304. The Appeals Chamber acknowledges that the Trial Chamber's references to the absence of evidence that Delic "lay within" or was "part of" the chain of command may, if taken in isolation, be open to the interpretation that the Trial Chamber believed Article 7(3) to require the accused to have a formal position in a formal hierarchy which directly links him to a subordinate who also holds a formal position within that hierarchy. Given that it has been accepted that the law relating to command responsibility recognises not only civilian superiors, who may not be in any such formal chain of command, and *de facto* authority, for which no formal appointment is required, the law does not allow for such an interpretation. However, when read in the context of the rest of the Trial Chamber's Judgement, the Appeals Chamber is satisfied that the Trial Chamber was *not* in fact imposing the requirement of such a formalised position in a formal chain of command, as opposed to requiring that there be proof that Delic was a superior in the sense of having the material ability to prevent or punish the acts of persons subordinate to him. This is apparent from, for example, the Trial Chamber's references to the sufficiency of *indirect* control (where it amounts to effective control) and its acceptance of *de facto* authority, to which reference has already been made by the Appeals Chamber in the context of the Prosecution's second ground of appeal.

305. However, the Prosecution has also submitted that, "even on the Trial Chamber's test for the superior-subordinate relationship, Delic should have been convicted as the Trial Chamber misapplied this test to its own findings of fact". The Prosecution, based on its understanding that the Trial Chamber required proof that Delic was exercising authority within a formal chain of command, contends that the facts found by the Trial Chamber establish this. As indicated above, the Appeals Chamber considers that the Trial Chamber essentially applied the correct test — whether Delic exercised effective control in having the material ability to prevent or punish crimes committed by subordinates — and did not require him to have a formalised position in a direct chain of command over the subordinates. However, the Appeals Chamber will consider the Trial Chamber findings which are relied on by the Prosecution to determine whether those findings must have compelled a conclusion that either standard was satisfied. As this aspect of the appeal involves an allegation that the Trial Chamber erred in its findings of fact, the Prosecution must establish that the conclusion reached by the Trial Chamber (that Delic did not exercise superior authority) was one which no reasonable tribunal of fact could have reached. In order to succeed on its submission that the Appeals Chamber should substitute its own finding for that of the Trial Chamber — that is, that Delic did in fact exercise command responsibility and enter convictions accordingly — it is necessary for the Prosecution to establish that this finding is the *only reasonable* finding available on the evidence. This standard was acknowledged by the Prosecution.

306. The Prosecution first relies on the Trial Chamber's finding that Delic was deputy commander of the camp. The Appeals Chamber accepts the Trial Chamber's view that this title or position is not dispositive of the issue and that it is necessary to look to whether there was evidence of *actual* authority or control exercised by Delic. For the same reason, the fact that the detainees regarded him as the deputy commander, and as a person with influence over the guards, is not conclusive evidence of his *actual* authority.

307. The Prosecution identifies four other findings of the Trial Chamber which it says demonstrate such actual control. The Appeals Chamber considers them in turn.

308. The Trial Chamber referred to testimony of four witnesses to the effect that the guards feared Delic and that he occasionally criticised them severely. This evidence appeared to be accepted by the Trial Chamber, but it was interpreted by the Trial Chamber as showing a "degree of influence" which could be "attributable to the guards' fear of an intimidating and morally delinquent individual" rather than as unambiguous evidence of superior authority. The Appeals Chamber considers that this interpretation of this piece of evidence was open to the Trial Chamber, who, it must be remembered, heard the witnesses and the totality of the evidence itself. There was certainly nothing submitted by the Prosecution which would demonstrate that this conclusion was so unreasonable that no reasonable tribunal of fact could have reached it.

309. The Prosecution also referred to evidence that Delic had ordered the beating of detainees on certain occasions. As the Prosecution itself acknowledges, the

Trial Chamber did not find beyond reasonable doubt that Delic did in fact order guards to conduct the series of beatings which was the subject of the evidence referred to in paragraph 804 of the Trial Judgement. The Trial Chamber referred to the evidence of certain witnesses and concluded that the evidence "*suggests* that Mr. Delic conducted a vindictive beating of the people from Bradina on one particular day and then told at least one other guard, Mr. Landzo to continue this beating.

However, it is *not proven* that the beatings that followed from that day or [*sic*] were 'ordered' by Mr. Delic". In relation to the second occasion referred to in paragraph 805 of the Judgement, the Trial Chamber only referred to the Prosecution allegation of Delic ordering a beating and stated:

> Witness F and Mirko Dordic testified to this incident and indicated that Delic "ordered" or was "commanding" the guards in this collective beating.

The Trial Chamber did not state whether it accepted this evidence, and it made no finding as to whether Delic actually ordered the beating or not. Despite the Prosecution's apparent suggestion that it is enough that "the Trial Chamber made no finding that this evidence was unreliable", this is not a sufficient basis for the Appeals Chamber to take it as a finding by the Trial Chamber that the ordering of the beating was proved beyond reasonable doubt. The Appeals Chamber therefore cannot identify from the matters referred to by the Prosecution any unambiguous findings that it was proven beyond reasonable doubt that Delic ordered guards to mistreat detainees.

310. The Prosecution also refers to the finding that Delic "was tasked with assisting Zdravko Mucic by organising and arranging for the daily activities in the camp." A finding as to such a responsibility for organising and arranging activities in the camp, while potentially demonstrating that Delic had some seniority within the camp, actually provides no information at all as to whether he had authority or effective control over the guards within the camp who were the perpetrators of the offences for which it is sought to make Delic responsible. The Appeals Chamber therefore agrees with the Trial Chamber that it was open to regard this evidence as inconclusive.

311. Finally, the Prosecution refers to evidence given by Delic's co-accused Landzo that he "carried out all of [Delic's] orders out of fear and also because I believed I had to carry [*sic*] execute them". While the Trial Chamber certainly considered this evidence, it did not accept it, as it found that Landzo was not a credible witness and that his evidence could not be relied on unless supported by other evidence. It did not identify any other evidence which it regarded as constituting such support.

312. There were therefore a number of problems with the relevance of the findings or the quality of the underlying evidence relied on by the Prosecution. The weakness of such evidence as the foundation of any finding *beyond reasonable doubt* that Delic exercised superior authority was recognised by the Trial Chamber, which concluded that all this evidence was "indicative of a degree of influence Hazim Delic had in the Celebici prison-camp on some occasions, in the criminal mistreatment of detainees", but that it "is not, on the facts before this Trial Chamber, of itself indicative of the superior authority of Delic sufficient to attribute superior responsibility to him". The Appeals Chamber does not see anything in this conclusion which suggests it is unreasonable, and certainly not that it is so unreasonable that no reasonable tribunal of fact could reach it.

313. Although this conclusion effectively disposes of this ground of appeal, it is necessary to make an observation in relation to one final issue. The Prosecution submitted that, should it be accepted that the Trial Chamber should have found that Delic did in fact exercise superior authority over the guards in the camp, it would then be possible to reverse his acquittals on the basis of the findings in the Trial Judgement. In particular, it submits that it is established that Delic knew or had reason to know on the following basis:

> It cannot seriously be disputed that Delic knew of the crimes being committed in the camp generally. The Trial Chamber said that "The crimes committed in the Celebici prison-camp were so frequent and notorious that there is no way that *Mr. Mucic* could not have known or heard about them." There is also no way that Delic could not have known about them, given that he was himself convicted for directly participating in them, and was involved in the operation of the camp on a daily basis.

It must first be observed that, contrary to this submission, there was *no* finding that Delic directly participated in all of the crimes for which he is sought to be made responsible. Secondly, it cannot be accepted that a finding by the Trial Chamber that a co-accused who was commander of the camp must have known of the crimes committed in the camp can be taken, by some kind of imputation, as a finding beyond reasonable doubt that *Delic* knew or had reason to know of the crimes for which the Prosecution seeks to have convictions entered. The Trial Judgement contains no findings as to Delic's state of knowledge in relation to many

of the crimes for which the Prosecution seek a reversal of the acquittal. It is undisputed that command responsibility does not impose strict liability on a superior for the offences of subordinates. Thus, had the Appeals Chamber accepted that the only reasonable conclusion on the evidence was that Delic was a superior, the question of whether he knew or had reason to know of the relevant offences would have remained unresolved, and it would in theory have been necessary to remit the matter to a Trial Chamber for consideration.

314. For the foregoing reasons, the Appeals Chamber dismisses this ground of appeal.

V. UNLAWFUL CONFINEMENT OF CIVILIANS

A. Introduction

315. Count 48 of the Indictment charged Mucic, Delic and Delalic with individual participation in, and superior responsibility for, the unlawful confinement of numerous civilians in the Celebici camp. The offence of unlawful confinement of civilians is punishable under Article 2(g) of the Statute as a grave breach of the Geneva Conventions. Count 48 provided:

> Between May and October 1992, Zejnil DELALIC, Zdravko MUCIC, and Hazim DELIC participated in the unlawful confinement of numerous civilians at Celebici camp. Zejnil DELALIC, Zdravko MUCIC, and Hazim DELIC also knew or had reason to know that persons in positions of subordinate authority to them were about to commit those acts resulting in the unlawful confinement of civilians, or had already committed those acts, and failed either to take the necessary and reasonable steps to prevent those acts or to punish the perpetrators after the acts had been committed. By their acts and omissions, Zejnil DELALIC, Zdravko MUCIC, and Hazim DELIC are responsible for:
>
> Count 48. A Grave Breach punishable under Article 2(g) (unlawful confinement of civilians) of the Statute of the Tribunal.

316. The Trial Chamber found Mucic guilty of unlawful confinement of civilians as charged in count 48 under both Articles 7(1) and 7(3) of the Statute. It found Delalic and Delic not guilty under this count. The Prosecution appeals against these acquittals. The Prosecution contends in its third ground of appeal that:

> The Trial Chamber erred when it decided in paragraphs 1124-1144 that Zejnil Delalic was not guilty of the unlawful confinement of civilians as charged in count 48 of the Indictment.

The Prosecution's sixth ground of appeal is that:

> The Trial Chamber erred when it decided in paragraphs 1125-1144 that Hazim Delic was not guilty of the unlawful confinement of civilians as charged in count 48 of the Indictment.

317. The Prosecution contends that the Trial Chamber applied the wrong legal principle to determine the responsibility of Delalic and Delic for the unlawful confinement of the civilians in the Celebici camp. In the case of Delalic, the Prosecution contends that the Trial Chamber also failed to apply correctly the law relating to aiding and abetting.

318. Mucic appeals against his conviction. He contends in his twelfth ground of appeal that:

> The Trial Chamber erred in fact and law in finding that the detainees, or any of them, within the Celebici camp were unlawfully detained [...]

Mucic also challenges the Trial Chamber's findings that he had the requisite *mens rea* for the offence and that any acts or omissions by him were sufficient to constitute the *actus reus* for the offence.

319. These grounds of appeal, although dealing with different matters, touch on a number of issues which are common to each ground. It is convenient to discuss two of these common legal issues before turning to the specific issues raised discretely by each ground of appeal:

> (i)the legal standard for determining what constitutes the unlawful confinement of civilians; and
>
> (ii)whether the Trial Chamber was correct in its conclusion that some of the civilians in the Celebici camp were unlawfully detained.

(i) The unlawful confinement of civilians 320. The offence of unlawful confinement of a civilian, a grave breach of the Geneva Conventions which is recognised under Article 2(g) of the Statute of the Tribunal, is not further defined in the Statute. As found by the Trial Chamber, however, clear guidance can be found in the provisions of Geneva Convention IV. The Trial Chamber found that the confinement of civilians during armed conflict may be permissible in limited cases, but will be unlawful if the detaining party does not comply with the provisions of Article 42 of Geneva Convention IV, which states:

> The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary. If any person, acting through the representatives of the Protecting Power, voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be.

Thus the involuntary confinement of a civilian where the security of the Detaining Power does not

make this absolutely necessary will be unlawful. Further, an initially lawful internment clearly becomes unlawful if the detaining party does not respect the basic procedural rights of the detained persons and does not establish an appropriate court or administrative board as prescribed in Article 43 of Geneva Convention IV. That article provides:

> Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit.
>
> Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

321. In its consideration of the law relating to the offence of unlawful confinement, the Trial Chamber also referred to Article 5 of Geneva Convention IV, which imposes certain restrictions on the protections which may be enjoyed by certain individuals under the Convention. It provides, in relevant part:

> Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is *definitely suspected of or engaged in activities hostile to the security of the State*, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.
>
> [...]
>
> In each case, such persons shall nevertheless be treated with humanity, and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

This provision reinforces the principle behind Article 42, that restrictions on the rights of civilian protected persons, such as deprivation of their liberty by confinement, are permissible only where there are reasonable grounds to believe that the security of the State is at risk.

322. The Appeals Chamber agrees with the Trial Chamber that the exceptional measure of confinement of a civilian will be lawful only in the conditions prescribed by Article 42, and where the provisions of Article 43 are complied with. Thus the detention or confinement of civilians will be unlawful in the following two circumstances:

> (i)when a civilian or civilians have been detained in contravention of Article 42 of Geneva Convention IV, *i.e.* they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary; and
>
> (ii)where the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where their initial detention may have been justified.

(ii) Was the confinement of the Celebici camp detainees unlawful? 323. As stated above, the Trial Chamber found that the persons detained in the Celebici camp were civilian protected persons for the purposes of Article 4 of Geneva Convention IV. The Trial Chamber accepted evidence that indicated that a number of the civilians in the camp were in possession of weapons at the time of their capture, but refrained from making any finding as to whether the detaining power could legitimately have formed the view that the detention of this category of persons was necessary for the security of that power. However, the Trial Chamber also found that the confinement of a significant number of civilians in the camp could not be justified by any means. Even taking into account the measure of discretion which should be afforded to the detaining power in assessing what may be detrimental to its own security, several of the detained civilians could not reasonably have been considered to pose any sufficiently serious danger as to warrant their detention. The Trial Chamber specifically accepted the evidence of a number of witnesses who had testified that they had not participated in any military activity or even been politically active, including a 42-year old mother of two children. It concluded that at least this category of people were detained in the camp although there existed no serious and legitimate reason to conclude that they seriously prejudiced the security of the detaining party, which indicated that the detention was a collective measure aimed at a specific group of persons, based mainly on their ethnic background.

324. Mucic argues in relation to his ground of appeal, and Delic and Delalic argue in response to the Prosecution's ground of appeal, that the Prosecution failed to prove beyond reasonable doubt that the persons confined in the Celebici camp were unlawfully detained. They reiterate their submission that the detainees were not in fact protected persons, a submission which the Appeals Chamber is rejecting in relation to the ground of appeal based on that argument.

325. The Prosecution responds that the findings of the Trial Chamber that the victims were unlawfully detained must stand unless the accused show that those findings were unreasonable in the sense that no reasonable person could have reached them.

326. Delalic contends that since "the Trial Chamber, in determining that they [the civilians] were protected persons, found that they were not loyal to [...] Bosnia and Herzegovina, then they are virtually *ipso facto* security risks to the Government in that they are supporting the rebel forces". He explains the detention of persons who may not have borne arms on the basis that "if not engaged in actual fighting, then they are certainly in a position to provide food, clothing, shelter and information to those who are".

327. In the Appeals Chamber's view, there is no necessary inconsistency between the Trial Chamber's finding that the Bosnian Serbs were regarded by the Bosnian authorities as belonging to the opposing party in an armed conflict and the finding that some of them could not reasonably be regarded as presenting a threat to the detaining power's security. To hold the contrary would suggest that, whenever the armed forces of a State are engaged in armed conflict, the *entire* civilian population of that State is necessarily a threat to security and therefore may be detained. It is perfectly clear from the provisions of Geneva Convention IV referred to above that there is no such blanket power to detain the entire civilian population of a party to the conflict in such circumstances, but that there must be an assessment that each civilian taken into detention poses a *particular risk* to the security of the State. This is reflected in the ICRC Commentary to Article 42 of Geneva Convention IV:

> [...] the mere fact that a person is a subject of an enemy Power cannot be considered as threatening the security of the country where he is living; it is not therefore a valid reason for interning him or placing him in assigned residence.

Thus the Appeals Chamber agrees with the conclusion reached by the Trial Chamber that "the mere fact that a person is a national of, or aligned with, an enemy party cannot be considered as threatening the security of the opposing party where he is living, and is not, therefore, a valid reason for interning him."

328. It was contended by Delic that detention in the present case was justified under international law because "[t]he government is clearly entitled to some reasonable time to determine which of the detainees is a danger to the State's security". Although the Appeals Chamber accepts this proposition, it does not share the view apparently taken by Delic as to what is a "reasonable time" for this purpose. The reasonableness of this period is *not* a matter solely to be assessed by the detaining power. The Appeals Chamber recalls that Article 43 of Geneva Convention IV provides that the decision to take measures of detention against civilians must be "reconsidered *as soon as possible* by an appropriate court or administrative board."520 Read in this light, the reasonable time which is to be afforded to a detaining power to ascertain whether detained civilians pose a security risk must be the *minimum* time necessary to make enquiries to determine whether a view that they pose a security risk has any objective foundation such that it would found a "definite suspicion" of the nature referred to in Article 5 of Geneva Convention IV. Although the Trial Chamber made no express finding upon this issue, the Appeals Chamber is satisfied that the only reasonable finding upon the evidence is that the civilians detained in the Celebici camp had been detained for longer than such a minimum time.

329. The Trial Chamber found that a Military Investigative Commission for the crimes allegedly committed by the persons confined in the Celebici camp was established, but that this Commission did not meet the requirements of Article 43 of Geneva Convention IV as it did not have the necessary power to decide finally on the release of prisoners whose detention could not be considered as justified for any serious reason. There is therefore nothing in the activities of the Commission which could justify the continued detention of detainees in respect of whom there was no reason to categorise as a security risk. Indeed, it appears to have recommended the release of several of the Celebici camp detainees, albeit without result. Delic submits that "the government had the right to continue the confinement until it determined that the State's security would not be harmed by release of the detainees." This submission, which carries the implication that civilian detainees may be considered a risk to security which makes their detention absolutely necessary until proved otherwise, completely reverses the onus of justifying detention of civilians. It is upon the detaining power to establish that the particular civilian does pose such a risk to its security that he must be detained, and the obligation lies on it to release the civilian if there is inadequate foundation for such a view.

330. The Trial Chamber, as the trier of facts, is in the best position to assess and weigh the evidence before it, and the Appeals Chamber gives a margin of deference to a Trial Chamber's evaluation of the evidence and findings of facts. Nothing put to the Appeals Chamber indicates that there is anything unreasonable in the relevant sense in the Trial Chamber's findings as to the unlawful nature of the confinement of a number of civilians in the Celebici camp. As observed in the ICRC Commentary, the measure of confinement of civilians is an "exceptionally severe" measure, and it is for that reason that the threshold for its imposition is high — it must, on the express terms of Article 42, be "absolutely necessary". It was open to the Trial Chamber to accept the evidence of a number of witnesses that they had not borne arms, nor been active in political or any other activity which would give rise to a legitimate concern that they posed a security risk. The Appeals Chamber is also not satisfied that the Trial Chamber erred in its conclusion that, even if it were to accept that the initial confinement of the individuals detained in the Celebici prison-camp was lawful, the continuing confinement of these civilians was in violation of international humanitarian law, as the detainees were not granted the procedural rights required by article 43 of Geneva Convention IV.

B. The Prosecution appeals

331. As stated above, the Prosecution claims that the Trial Chamber erred in acquitting Delalic of both direct responsibility under Article 7(1) and superior responsibility under Article 7(3) for the offence of unlawful confinement.

332. The Prosecution requests the Appeals Chamber to reverse the Trial Chamber's acquittal of Delalic and Mucic on count 48, and substitute a verdict of guilty for this count. Delalic and Delic respond that their acquittals on this count were correct in law and should not be disturbed.

1. Article 7(3) Liability 333. The Prosecution argues as part of the third ground of appeal that the Trial Chamber erred in finding that it was not proved that Delalic had superior authority in connection with the unlawful confinement of civilians, and relies for support on its arguments submitted in relation to its second ground of appeal, without more. In relation to the sixth ground of appeal, the Prosecution contends that the Trial Chamber erred in finding that Delic did not have superior responsibility for the unlawful confinement of civilians.

334. The Trial Chamber found that:

> Zejnil Delalic and Hazim Delic have respectively been found not to have exercised superior authority over the Celebici prison-camp. For this reason, the Trial Chamber finds that these two accused cannot be held criminally liable as superiors, pursuant to Article 7(3) of the Statute, for the unlawful confinement of civilians in the Celebici prison-camp.

The resolution of this aspect of these grounds therefore rests upon the resolution of the Prosecution's second and fifth grounds of appeal, which challenged the Trial Chamber's finding that Delalic and Delic did not exercise superior authority under Article 7(3) of the Statute. The Appeals Chamber has dismissed those grounds of appeal, with the result that the Trial Chamber's determination that Delalic and Delic were not superiors for the purposes of Article 7(3) of the Statute remains. The present grounds of appeal therefore cannot succeed insofar as they relate to Delalic and Delic's liability for the unlawful confinement of civilians pursuant to Article 7(3) of the Statute.

2. Article 7(1) Liability 335. The Prosecution contends that the Trial Chamber erred in law in the principles it applied in considering when an accused can be held responsible under Article 7 (1) for unlawful confinement of civilians. The Prosecution argues that, had the Trial Chamber applied the correct legal principles in regard to Article 7(1) to the facts it had found, Delalic and Delic would have been liable under Article 7(1) for aiding and abetting in the commission of the unlawful confinement of civilians. It is submitted that the Trial Chamber's findings demonstrate that Delalic and Delic knew that civilians were unlawfully confined in the camp and consciously participated in their continued detention, and that this is sufficient to found their personal liability for the offence.

336. As discussed above, the Trial Chamber found that civilians are unlawfully confined where they are detained in contravention of Articles 42 and 43 of Geneva Convention IV. In relation to the nature of the individual participation in the unlawful confinement which will render an individual personally liable for the offence of unlawful confinement of civilians under Article 2(g) of the Statute, the Trial Chamber, having found that Delalic and Delic did not exercise superior responsibility over the camp, held:

> *Furthermore, on the basis of these findings, the Trial Chamber must conclude that the Prosecution has failed to demonstrate that Zejnil Delalic and Hazim Delic were in a position to affect the continued detention of civilians in the Celebici prison-camp.* In these circumstances, Zejnil Delalic and Hazim Delic cannot be deemed to have participated in this offence. Accordingly, the Trial Chamber finds that Zejnil Delalic and Hazim Delic are not guilty of the un-

lawful confinement of civilians, as charged in count 48 of the Indictment.

337. On the basis of the italicised portion of the above passage, the Prosecution interprets the Trial Chamber as having applied a test which requires proof of the exercise of superior authority under Article 7(3) of the Statute before an individual could be held responsible under Article 7(1) of the Statute for the offence of unlawful confinement. More generally, the Prosecution submits that the Trial Chamber erred in finding that, as a matter of law, an accused cannot be criminally liable under Article 7(1) for the unlawful confinement of civilians unless that person was "in a position to affect the continued detention of civilians". The Prosecution observes that individual criminal liability extends to any person who committed an offence in the terms of Article 7(1).

338. In relation to the contention that the Trial Chamber found that an accused can be liable under Article 7(1) for the offence of unlawful confinement only if it is proved that he exercises superior authority under Article 7(3), there is some question as to whether the Trial Chamber in fact made such a legal finding. The Trial Chamber's statement that, "on the basis of" its findings that Delalic and Delic could not be held criminally liable under Article 7(3) of the Statute, it "must conclude" that there had been a failure to prove that they had been in a position to affect the continued detention of the civilians in the camp could be interpreted as suggesting that the Trial Chamber believed that, as a *legal* matter, there could be no liability for unlawful confinement under Article 7(1) without superior responsibility under Article 7(3) being established. Such a legal interpretation is clearly incorrect, as it entwines two types of liability, liability under Article 7(1) and liability under Article 7(3). As emphasised by the Secretary-General's Report, the two liabilities are different in nature. Liability under Article 7(1) applies to direct perpetrators of crimes and to accomplices. Article 7(3) applies to persons exercising command or superior responsibility. As has already been acknowledged by the Appeals Chamber in another context, these principles are quite separate and neither is dependent in law upon the other. In the *Aleksovski* Appeal Judgement, the Appeals Chamber rejected a Trial Chamber statement, made in relation to the offence of outrages of personal dignity consisting of the use of detainees for forced labour and as human shields, that the accused "cannot be held responsible under Article 7(1) in circumstances where he does not have direct authority over the main perpetrators of the crimes". There is no reason to believe that, in the context of the offence of unlawful confinement, there would be any special requirement that a position of superior authority be proved before liability under Article 7(1) could be recognised.

339. However, the Appeals Chamber is not satisfied that this is what the Trial Chamber in fact held. The reference to its findings on the issue of superior authority when concluding that, "[i]n these circumstances, Zejnil Delalic and Hazim Delic cannot be deemed to have participated in this offence" suggests that the Trial Chamber was referring not to its *legal* conclusion that the two accused were not superiors for the purposes of Article 7(3), but to the previous *factual findings* that it had made in that context, which were also relevant to the issue of their individual responsibility for the offence of unlawful confinement. Whether the Trial Chamber was unreasonable in relying on those findings to conclude that Delalic and Delic should be acquitted of the offence under Article 7(1) is a separate issue which is discussed below.

340. The Prosecution also challenges the Trial Chamber's apparent conclusion that, to be responsible for this offence under Article 7(1), the perpetrator must be "in a position to affect the continued detention" of the relevant civilians. Responsibility may be attributed if the accused falls within the terms of Article 7(1) of the Statute, which provides that:

> A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

341. It is submitted that an accused can be liable under Article 7(1) for committing the crime of unlawful confinement of civilians even if the accused was not the person who could determine which victim would be detained, and whether particular victims would be released. The Prosecution proposes that, in order to establish criminal responsibility for *committing* the offence of unlawful confinement of civilians it is sufficient to prove (i) that civilians were unlawfully confined, (ii) knowledge that the civilians were being unlawfully confined and (iii) participation in the confinement of those persons. The Prosecution submits that, in relation to guards in a prison, the third matter "will be satisfied by showing that the duties of the guard were in themselves in execution or administration of the illegal system."

342. The Appeals Chamber is of the view that to establish that an individual has *committed* the offence of unlawful confinement, something more must be proved than mere knowing "participation" in a general system or operation pursuant to which civilians are confined. In the Appeals Chamber's view, the fact alone

of a role in some capacity, however junior, in maintaining a prison in which civilians are unlawfully detained is an inadequate basis on which to find primary criminal responsibility of the nature which is denoted by a finding that someone has *committed* a crime. Such responsibility is more properly allocated to those who are responsible for the detention in a more direct or complete sense, such as those who actually place an accused in detention without reasonable grounds to believe that he constitutes a security risk; or who, having some powers over the place of detention, accepts a civilian into detention without knowing that such grounds exist; or who, having power or authority to release detainees, fails to do so despite knowledge that no reasonable grounds for their detention exist, or that any such reasons have ceased to exist. In the case of prison guards who are employed or conscripted to supervise detainees, and have no role in the determination of who is detained or released, the Prosecution submits that the presence alone of the camp guards was the "most immediate obstacle to each detainee's liberty" and that the guard's presence in the camp in that capacity alone would therefore constitute commission by them of the crime of unlawful confinement. This, however, poses the question of what such a guard is expected to do under such circumstances. The implication from the Prosecution submissions is that such a guard must release the prisoners. The Appeals Chamber, however, does not accept that a guard's omission to take unauthorised steps to release prisoners will suffice to constitute the commission of the crime of unlawful confinement. The Appeals Chamber also finds it difficult to accept that such a guard must cease to supervise those detained in the camp to avoid such liability, particularly in light of the fact that among the detainees there may be persons who are lawfully confined because they genuinely do pose a threat to the security of the State.

343. It is not necessary for present purposes for the Appeals Chamber to attempt an exhaustive definition of the circumstances which will establish that the offence is *committed*, but it suffices to observe that such liability is reserved for persons responsible in a more direct or complete sense for the civilian's unlawful detention. Lesser degrees of directness of participation obviously remain relevant to liability as an accomplice or a participant in a joint criminal enterprise, which concepts are best understood by reference first to what will establish primary liability for an offence.

344. In relation to accomplice liability, the Prosecution contends that, "[i]n the case of the crime of unlawful confinement of civilians under Article 2(g) of the Statute, a person who, for instance, *instigates* or *aids and abets* may not ever be in a position to affect the continued detention of the civilians concerned." The Prosecution also observes that many of the crimes within the Tribunal's jurisdiction may in practice be committed jointly by a number of persons if they have the requisite *mens rea* and that the crime of unlawful confinement is a clear example of this as "it was the various camp guards and administrators, acting jointly, who collectively ran the camp and kept the victims confined within it."

345. Although it did not explicitly discuss as a discrete legal matter the exact principles by which individuals will be held individually criminally responsible for the unlawful confinement of civilians, the Trial Chamber did, earlier in its Judgement, discuss the general principles relating to criminal responsibility under Article 7(1) of the Statute. It cited the following statement from the Trial Chamber in the *Tadic* Judgement which the *Celebici* Trial Chamber considered to state accurately "the scope of individual criminal responsibility under Article 7(1)":

> [...] the accused will be found criminally culpable for any conduct where it is determined that he knowingly participated in the commission of an offence that violates international humanitarian law and his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident. He will also be responsible for all that naturally results from the commission of the act in question.

This statement, from its context in the *Tadic* Trial Judgement, although broadly expressed, appears to have been intended to refer to liability for aiding and abetting or all forms of accomplice liability rather than all forms of individual criminal responsibility under Article 7(1) including primary or direct responsibility. In the case of primary or direct responsibility, where the accused himself commits the relevant act or omission, the qualification that his participation must "directly and substantially affect the commission of the offence" is an unnecessary one. The Trial Chamber, in referring to the ability to "affect the continued detention" of the civilians, appears to have been providing a criterion to enable the identification of the person who could have a "direct and substantial effect" on the commission of unlawful confinement of civilians in the sense of the *Tadic* statement.

346. It may have been clearer had the Trial Chamber set out expressly its understanding of the relevant principles in relation to the establishment of primary or direct responsibility for the offence of unlawful confinement of civilians, in relation to which the general

principles of accomplice liability set out earlier in its Judgement would also be applied. However, the Appeals Chamber does not consider that these submissions establish that the Trial Chamber erred in stating that an accused must be in a position to affect the continued detention of the civilians if this is understood, as the Appeals Chamber does, to mean that they must have participated in some significant way in the continued detention of the civilians, whether to a degree which would establish primary responsibility, or to a degree necessary to establish liability as an accomplice or pursuant to a common plan. The particular submissions the Prosecution makes in support of its contention that Delalic and Delic should have been convicted under Article 7(1) for the offence are now considered.

(a) Delalic 347. The Prosecution alleges that Delalic should have been found guilty for aiding and abetting the offence of unlawful confinement. Delalic argues that the Indictment did not charge him with aiding and abetting in Count 48 and that, even if it were to be accepted that he was so charged, the evidence did not show beyond a reasonable doubt that he was guilty as an aider and abettor.

348. The Prosecution responds that Delalic was charged with aiding and abetting in Count 48 of the Indictment by the use of the word "participation". Delalic contends however that "when the Prosecutor intends to charge aiding and abetting it is done so specifically", and he advances some examples of other indictments before the Tribunal that charge aiding and abetting for the offence of unlawful confinement. Delalic refers to Articles 18(4) and 21(4)(a) of the Statute which require that the indictment contain "a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute" and that an accused must be informed of the nature and cause of the charge against him.

349. The Appeals Chamber notes that the alleged offence of unlawful confinement is charged in count 48 of the Indictment as follows:

> Between May and October 1992, Zejnil DELALIC, Zdravko MUCIC, and Hazim DELIC *participated in* the unlawful confinement of numerous civilians at Celebici camp. Zejnil DELALIC, Zrdavko MUCIC, and Hazim DELIC also knew or had reason to know that persons in positions of subordinate authority to them were about to commit those acts resulting in the unlawful confinement of civilians, or had already committed those acts, and failed either to take the necessary and reasonable steps to prevent those acts or to punish the perpetrators after the acts had been committed. By their acts and omissions, Zejnil DELALIC, Zdravko MUCIC, and Hazim DELIC are responsible for:
>
> Count 48. A Grave Breach punishable under Article 2(g) (unlawful confinement of civilians) of the Statute of the Tribunal.

Article 7 (1) does not contain the wording used in the Indictment of "participating", but the Prosecution contends that it is evident that a person can participate in a crime through any of the types of conduct referred to in that provision.

350. The Appeals Chamber notes that the language used in Count 48 could (and should) have been expressed with greater precision. Although the accused are clearly charged under both Article 7(1) and Article 7(3) of the Statute, no particular head of Article 7(1) is indicated. The Appeals Chamber has already referred to the difficulties which arise from the failure of the Prosecution to identify exactly the type of responsibility alleged against an accused, and has recommended that the Prosecution "indicate in relation to each individual count precisely and expressly the particular nature of the responsibility alleged". However, it was also accepted in that case that the general reference to the terms of Article 7(1) was, in that context, an adequate basis on which to find that the accused had been charged with aiding and abetting.

351. In relation to use of the word "participate" to describe forms of responsibility, the Appeals Chamber notes that the Report of the Secretary-General mentions the word "participate" in the context of individual criminal responsibility:

> The Secretary-General believes that all persons who participate in the planning, preparation or execution of serious violations of international humanitarian law in the former Yugoslavia contribute to the commission of the violation and are, therefore, individually responsible.

It is clear that Article 7 (1) of the Statute encompasses various modes of participation, some more direct than other. The word "participation" here is a broad enough term to encompass all forms of responsibility which are included within Article 7(1) of the Statute. Although greater specificity in drafting indictments is desirable, failure to identify expressly the exact mode of participation is not necessarily fatal to an indictment if it nevertheless makes clear to the accused the "nature and cause of the charge against him". There has been no suggestion that a complaint was made prior to the trial that Delalic did not know the case that he had to meet. It is too late to make the complaint now on appeal that the Indictment was inadequate to advise the accused that all such forms of re-

sponsibility were alleged. The use of the word "participate" is poor drafting, but it should have been understood here as including all forms of participation referred to in Article 7(1) given that superior responsibility was expressed to be an additional form of responsibility.

352. The Trial Chamber therefore correctly interpreted Count 48 of the Indictment and the supporting paragraph as charging the three accused generally with participation in the unlawful confinement of civilians pursuant to Article 7(1) of the Statute, as well as with responsibility as superiors pursuant to Article 7(3) of the Statute. The Trial Chamber had earlier defined aiding and abetting as:

> [including] all acts of assistance that lend encouragement or support to the perpetration of an offence and which are accompanied by the requisite *mens rea*. Subject to the caveat that it be found to have contributed to, or have had an effect on, the commission of the crime, the relevant act of assistance may be removed both in time and place from the actual commission of the offence.

The Prosecution does not challenge that definition. Subject to the observation that the acts of assistance, encouragement or support must have a substantial effect on the perpetration of the crime, the Appeals Chamber also accepts the statement as accurate.

353. As noted above, in its conclusions in relation to the liability of Delalic and Delic under Article 7(1) for the offence of unlawful confinement, the Trial Chamber referred to its earlier findings made in the context of its consideration of their liability as superiors pursuant to Article 7(3) of the Statute. Although those findings were being made for the primary purpose of determining whether superior responsibility was being exercised, it is clear that they involved a broad consideration by the Trial Chamber of the nature of the involvement of the two accused in the affairs of the Celebici camp. The Prosecution indeed contends that the findings made by the Trial Chamber provided an adequate basis on which to determine Delalic's liability for aiding and abetting.

354. The Trial Chamber considered the evidence in relation to the placing of civilians in detention at the camp, but it made no finding that Delalic participated in their arrest or in placing them in detention in the camp. The Prosecution advances no argument that the Trial Chamber erred in this respect.

355. However, the Prosecution argues that Delalic participated in the continued detention of civilians as an aider and abettor. The Trial Chamber found that there was "no evidence that the Celebici prison-camp came under Delalic's authority by virtue of his appointment as co-ordinator". The Trial Chamber found that the primary responsibility of Delalic in his position as co-ordinator was to provide logistical support for the various formations of the armed forces; that these consisted of, inter alia, supplies of material, equipment, food, communications equipment, railroad access, transportation of refugees and the linking up of electricity grids.

These findings as to the scope of Delalic's role obviously supported its later conclusion that he was not in a position to affect the continued detention of the civilians at the Celebici camp.

356. The Prosecution, however, refers to two specific matters which it says constituted aiding and abetting by Delalic: his role in "publicly justifying and defending the purpose and legality of the camp", and his "participation in the classification and releasing of prisoners".

357. The Prosecution contends that the evidence before the Trial Chamber showed that Delalic was involved in the release of Doctor Gruba~ and Witness P in July 1992, and that he signed orders on 24 and 28 August 1992 for the classification of detainees and their release. However, the Trial Chamber explicitly found that:

> As co-ordinator, Zejnil Delalic had no authority to release prisoners.

The Trial Chamber found that the orders referred to by the Prosecution were not signed in Delalic's capacity as "co-ordinator", as all documents were signed "for" the Head of the Investigating Body of the War Presidency. He had no independent authority to do so.

358. The Appeals Chamber considers that this conclusion has not been shown to be so unreasonable that no reasonable trier of fact could have reached it. The Trial Chamber interpreted those orders explicitly as not constituting evidence that he exercised superior responsibility in relation to the camp. The Trial Chamber appears to have interpreted the orders as being, although indicative of some degree of involvement in the continuing detention or release of detainees, inadequate to establish a degree of participation that would be sufficient to constitute a substantial effect on the continuing detention which would be adequate for the purposes of aiding and abetting. The Appeals Chamber considers that this interpretation of the significance of the orders was open to the Trial Chamber.

359. The Prosecution's submission that the Trial Chamber erred in failing to find that Delalic aided and abetted the commission of the offence of unlawful confinement by publicly justifying and defending the pur-

pose of the camp must be rejected for similar reasons. The Trial Chamber referred to the evidence that Delalic had contacts with the ICRC, and that he had been interviewed by journalists in relation to the camp. Even if it could be accepted that this reference alone constituted a finding by the Trial Chamber that these contacts and interviews occurred, it was open to the Trial Chamber to find that any supportive effect that this had in relation to the detention of civilians in the camp was inadequate to be characterised as having a substantial effect on the commission of the crime.

360. The Prosecution has not referred to any other evidence before the Trial Chamber which would indicate that a finding of guilt for Delalic on this count was the *only reasonable* conclusion to be drawn, a matter which must be established before an acquittal would be overturned on appeal. The Prosecution's third ground of appeal must therefore be dismissed in its entirety.

(b) Delic 361. The Prosecution submits that Delic should have been found guilty under Article 7(1), although its written or oral submissions again emphasise the concept of "participation" and do not clearly identify exactly what mode of participation it contends the Trial Chamber should have found had been established.

362. The Trial Chamber found no evidence which demonstrated beyond reasonable doubt that Delic had any role in the creation of the camp, in the arrest and placing in detention of the civilians. Delic argues that it has not been established that he exercised any role in the decision to detain or release prisoners.

363. Although Delic belonged to the military police of the joint command of the TO and HVO, which the Trial Chamber found had been involved in the creation of the camp, there was no finding by the Trial Chamber that Delic in his position had authority to detain or release civilians or even that as a practical matter he could affect who should be detained or released. The Prosecution does not refer to any evidence which would have established such a finding beyond reasonable doubt. The Trial Chamber did find that the evidence established that Delic was "tasked with assisting Zdravko Mucic by organising and arranging for the daily activities in the Celebici prison-camp."

364. Although the Prosecution appears to contend that the evidence established Delic's primary responsibility for commission of the offence of unlawful confinement of civilians, it does not refer to any evidence which establishes more than that he was aware of the unlawfulness of the detention of at least some of the detainees, and that he, as a guard and deputy commander of the camp, thereby participated in the detention of the civilians held there. The Prosecution makes the general submission that:

> Clearly, any detainee who had attempted to leave the Celebici camp would have been physically prevented from so doing, not by the person in command of the camp, but by one of the camp guards. The most immediate cause of each detainee's confinement, and the most immediate obstacle to each detainee's liberty, was thus the camp guards. Provided that he or she had the requisite *mens rea*, each camp guard who participated in the confinement of civilians in the camp, and prevented them from leaving it, will thus be criminally liable on the basis of Article 7(1) for the unlawful confinement of civilians, whether or not the particular guard, under the regime in force in the camp, had any responsibility for determining who would be detained and who would be released.

Insofar as this may suggest that any prison guard who is aware that there are detainees within the camp who were detained without reasonable grounds to suspect that they were a security risk is, without more, responsible for the crime of unlawful confinement, the Appeals Chamber does not accept this submission. As already indicated above, the Appeals Chamber has concluded that a greater degree of involvement in the confinement of an individual is required to establish primary responsibility, and that, even in relation to aiding and abetting, it must be established that the accused's assistance to the principal must have a substantial effect on the commission of the crime. What will satisfy these requirements will depend on the circumstances of the particular case, but the Appeals Chamber would not accept that the circumstance alone of holding a position as a guard somewhere within a camp in which civilians are unlawfully detained suffices to render that guard responsible for the crime of unlawful confinement of civilians. The Prosecution has not referred to particular evidence which would place Delic's involvement in the confinement of the civilians at the Celebici camp at a level higher than the holding of the offices of guard and deputy-commander.

365. It appears from certain other submissions of the Prosecution that, although is does not put its case in this way, it in fact considers that the doctrine of common criminal purpose or joint criminal enterprise is the most apposite form of responsibility to apply to Delic. However it does not identify any findings of the Trial Chamber on the evidence which would establish the necessary elements of criminal liability through participation in a joint criminal enterprise.

366. Although it may be accepted that the only reasonable finding on the evidence, particularly in relation

to the nature of some of the detainees at the camp, including elderly persons, must have been that Delic was aware that, in respect of at least some of the detainees, there existed no reasonable grounds to believe that they constituted a security risk, this is not the only matter which must be established in relation to an allegation of participation in a common criminal design. The existence of a common concerted plan, design or purpose between the various participants in the enterprise (including the accused) must also be proved. It is also necessary to establish a specific *mens rea*, being a shared intent to further the planned crime, an intent to further the common concerted system of ill-treatment, or an intention to participate in and further the joint criminal enterprise, depending on the circumstances of the case. The Prosecution has not pointed to any evidence before the Trial Chamber which would have made the conclusion that these elements had been proved beyond reasonable doubt the *only reasonable* conclusion on the evidence.

367. As to Delic's relationship to the work of the Military Investigative Commission in charge of granting procedural guarantees to detainees, the Trial Chamber concluded that the role of Delic was to assist Mucic by organising and arranging for detainees to be brought to interrogations. The Trial Chamber made no finding that Delic had participated in the work of the Commission. It also made no finding that Delic himself had either responsibility for ensuring that the procedural review was conducted, or authority or power to release detainees, a power which should have been exercised when the appropriate reviews were not conducted.

368. The Appeals Chamber is satisfied that it was open to the Trial Chamber to assess the evidence before it as not proving beyond reasonable doubt that Delic's acts and omissions constituted any adequate form of "participation" in the offence of unlawful confinement for the purpose of ascribing criminal responsibility under Article 7(1).

369. The Appeals Chamber therefore finds that the Prosecution has not established that the Trial Chamber's conclusion that Delic was not guilty under Article 7 (1) for the offence of unlawful confinement was unreasonable.

C. Mucic's Appeal

370. Mucic, in support of this ground of appeal, adopted "as a substantive appeal against conviction on Count 48" the closing submissions made on behalf of Delalic at trial and made only a limited number of his own submissions on this ground. The Prosecution submits that, as these "incorporated" arguments were filed before the Trial Chamber's Judgement was rendered, they should not be considered.

371. The task of the Appeals Chamber, as defined by Article 25 of the Statute, is to hear appeals from the decisions of Trial Chambers on the grounds of an error on a question of law invalidating the decision or of an error of fact which has occasioned a miscarriage of justice. An appellant must show how the Trial Chamber erred in law or in fact, and the Appeals Chamber expects their submissions to be directed to that end. The submissions "incorporated" by Mucic provide no assistance on the aspects of his ground of appeal which allege an error of fact. However, to the extent that the submissions are relevant to the questions of law raised by Mucic's ground of appeal, the Appeals Chamber has considered them in addition to the submissions made by counsel for Mucic at the hearing of the appeal.

372. Mucic challenges his conviction for the offence of illegal detention or unlawful confinement first with the argument that the detainees of the camp were *lawfully* confined because of suspicion of inciting armed rebellion against the State of Bosnia and Herzegovina. The Appeals Chamber has already considered the submission that the Trial Chamber erred in finding that at least some of the detainees were unlawfully confined, and has rejected it.

373. Mucic then submits that it was not proved that he had the requisite *mens rea* because:

> Given that it is not remotely suggested that the Appellant has, or had, any expert or other knowledge of International Law, it would be a counsel of impossible perfection to conclude that in 1992 he could have known, or did know, that there was a possibility that the confinement of persons at Celebici could, or would be, construed as illegal under an interpretation of an admixture of the Geneva Conventions and Article 2(g) of the Statute of the Tribunal, a Statute not then in existence.

374. The Prosecution notes that it is unclear whether Mucic contends that the knowledge of the law is an element of the crime or whether Mucic is raising a defence of error of law. In either of those cases, the Prosecution argues that there is no general principle of criminal law that knowledge of the law is an element of the *mens rea* of a crime and that no defence of mistake of law is available under international humanitarian law. These submissions miss the real issue raised by Mucic's submission — that he could not have been expected to know that the detention of the Celebici detainees would become illegal at some future time. Mucic's submission has no merit because it is clear from the provisions cited above from Geneva Convention IV that the detention of those persons was illegal at the very time of their detention.

375. Mucic also argued that it was not his function as "prison administrator" to know whether the detention of the victims was unlawful. At the hearing of the appeal, counsel for Mucic placed greater emphasis on the argument that Mucic did not in fact have the requisite *mens rea* for a conviction under Article 7(1) of the Statute, and that the Trial Chamber relied upon evidence which established only that he "had reason to know" as a basis for a positive finding that he did in fact have the requisite knowledge that the detainees were unlawfully detained. The Prosecution argues that, because Mucic knew of the types of people detained in the camp and the circumstances of their arrest, he had the *mens rea* for the commission of the offence.

376. The Trial Chamber found that Mucic, by virtue of his position of command, was the individual with primary responsibility for, and had the ability to affect, the continued detention of civilians in the camp. Mucic submits in this regard that the determination of the legality of the detention is not a function or duty of prison administrators but rather of those who authorize arrests and the placing of arrestees into detention. The Appeals Chamber accepts that it is not open simply to conclude that, because of a position of superior authority somewhere in relation to a prison camp, an accused is also *directly* responsible under Article 7(1) for the offence of unlawful confinement committed anywhere in that camp. The particular circumstances entailing liability under Article 7 (1) have to be specifically established before liability could be imposed. This depends on the particular organisation of duties within a camp, and it is a matter to be determined on the evidence.

377. The Trial Chamber found that some detainees were possibly legally detained ab initio but found that some other detainees were not. The Trial Chamber made no finding that Mucic ordered, instigated, planned or otherwise aided and abetted the process of the arrest and placement of civilians in detention in the camp. However, as observed above, there is a second means by which the offence of unlawful confinement can be committed. The detention of detainees without granting the procedural guarantees required by Article 43 of Geneva Convention IV also constitutes the offence of unlawful confinement, whether the civilians were originally lawfully detained or not. It was this aspect of the offence that the Trial Chamber was relying on when it held:

> Specifically, Zdravko Mucic, in this position, [*i.e.* of superior authority over the camp] had the authority to release detainees. By omitting to ensure that a proper enquiry was undertaken into the status of the detainees, and that those civilians who could not lawfully be detained were immediately released, Zdravko Mucic participated in the unlawful confinement of civilians in the Celebici prison-camp.

Thus the Trial Chamber appears to have found Mucic guilty on the basis of the denial of procedural guarantees under the second "category" of this offence, and the Appeals Chamber's consideration will be limited to his liability in that context. The Appeals Chamber first notes that, although Mucic contests whether it was his responsibility as camp commander to know whether the detainees were lawfully detained or not, he does not contest on appeal the Trial Chamber's finding that he had the authority to release prisoners. In any case, the Appeals Chamber notes that the Trial Chamber made reference to a variety of evidence in support of this finding. The Appeals Chamber therefore proceeds on the basis that this finding was open to the Trial Chamber and that it is the relevant one.

378. As is evident from the earlier discussion of the law relating to unlawful confinement, the Appeals Chamber considers that a person in the position of Mucic commits the offence of unlawful confinement of civilians where he has the authority to release civilian detainees and fails to exercise that power, where

> (i)he has no reasonable grounds to believe that the detainees do not pose a real risk to the security of the state; or
>
> (ii)he knows that they have not been afforded the requisite procedural guarantees (or is reckless as to whether those guarantees have been afforded or not).

379. Where a person who has authority to release detainees knows that persons in continued detention have a right to review of their detention and that they have not been afforded that right, he has a duty to release them. Therefore, failure by a person with such authority to exercise the power to release detainees, whom he knows have not been afforded the procedural rights to which they are entitled, commits the offence of unlawful confinement of civilians, even if he is not responsible himself for the failure to have their procedural rights respected.

380. The Trial Chamber expressly found that the detainees were not afforded the necessary procedural guarantees. It also found that Mucic did in fact have the power to release detainees at the camp. The only remaining question raised by Mucic's ground of appeal is therefore whether the Trial Chamber had found (although it did not refer to it explicitly) that Mucic had the relevant *mens rea*, *i.e.*,he knew that the detainees had a right to review of their detention but had not been afforded this review or was reckless as to whether

they had been afforded it or not. It is not strictly necessary, in relation to an allegation that the offence of unlawful confinement has been committed through non-compliance with the obligation to afford procedural guarantees, to establish that there was also knowledge that the initial detention of the relevant detainees had been unlawful. This is because the obligation to afford procedural guarantees applies to all detainees whether initially lawfully detained or not. However, as is apparent from the discussion below, the Trial Chamber's findings also suggest that it had concluded that Mucic was also aware that no reasonable ground existed for the detention of at least some of the detainees.

381. The Trial Chamber concluded in relation to Mucic that "[b]y *omitting to ensure that a proper enquiry was undertaken into the status of the detainees* and that those civilians who could not lawfully be detained were immediately released, Zdravko Mucic participated in the unlawful confinement of civilians in the Celebici prison-camp." It is implicit in this finding that Mucic knew that a review of the detainees' detention was required but had not been conducted. There are a number of findings of the Trial Chamber on the evidence before it which support this conclusion.

382. Relevant to Mucic's knowledge of the unlawful nature of the confinement of certain of the detainees (both because of absence of review of detention and, in some cases, of the absence of grounds for the initial detention) is his knowledge of the work of the Military Investigative Commission. As noted above, the Trial Chamber found that a Military Investigative Commission was established by the Konjic Joint Command following a decision by the War Presidency of Konjic to investigate crimes allegedly committed by the detainees prior to their arrival at the Celebici camp, and that the Commission did not have the power to finally decide on the release of wrongfully detained prisoners.

383. The Trial Chamber found that the Commission consisted of five members, one of which was Witness D. The Trial Chamber referred to Witness D's testimony that he worked closely with Mucic in the classification of the detainees in the Celebici camp, and that Mucic had a complete list of the detainees which he brought out for members of the Commission. It is apparent from the context of the Trial Chamber's reference that it accepted that evidence. Witness D also testified that Mucic was present early in June when members of the Commission met to discuss how they would go about their work of the classification of the detainees and consideration for their continued detention or release. It is implicit in these findings as to Mucic's awareness of the work of the Commission, and even of its existence as an independent body with a review function over the camp, that Mucic must have known that such a review was legally required.

384. The Trial Chamber also found that the Commission had prepared a report in June 1992 detailing the "conditions in the prison-camp, including the mistreatment of detainees and the continued incarceration of persons who were peaceful civilians", and the fact that they were unable to correct them. The Trial Chamber cited from the report, which stated, *inter alia*:

> Detainees were maltreated and physically abused by certain guards from the moment they were brought in until the time their statement was taken *i.e.* until their interview was conducted. Under such circumstances, Commission members were unable to learn from a large number of detainees all the facts relevant for each detainee and the area from which he had been brought in and where he had been captured. [...] Commission members also interviewed persons arrested outside the combat zone; the Commission did not ascertain the reason for these arrests, but these detainees were subjected to the same treatment [...] Persons who had been arrested under such circumstances stayed in detention even after it had been established that they had been detained for no reason and received the same treatment as persons captured in the combat zone [...] Because self-appointed judges have appeared, any further investigation is pointless until these problems are solved.

385. It is obvious from this report, which the Trial Chamber accepted, that there were persons in the camp in respect of whom no reasons existed to justify their detention and that the Commission was not able to perform the necessary review of the detention of the Celebici camp detainees. The Trial Chamber found that, after working for about one month at the prison-camp, the Commission was in fact disbanded at the instigation of its members as early as the end of June 1992. Although the Trial Chamber made no finding that Mucic had read the Commission's report, in view of its findings that Mucic worked closely with the Commission, it is implicit in the findings taken as a whole that Mucic was aware of the matters that the Commission discussed in the report, including the fact that there were civilians there who had been detained without justification, and that the detainees generally had not had their detention properly reviewed. This knowledge can only have been reinforced by the presence in the camp, of which Mucic must have been aware, of detainees of a kind which would have appeared so unlikely to pose a security risk that it must have raised doubts as to whether any reasonable grounds had ever existed for their initial detention. This included elderly persons

and persons such as Grozdana Cecez, a 42 year old mother of two children.

386. The Appeals Chamber finds that it was open to the Trial Chamber, from its primary findings (which have not been shown to be unreasonable), to conclude that Mucic, by not using his authority to release detainees whom he knew had not had their detention reviewed and had therefore not received the necessary procedural guarantees, committed the offence of unlawful confinement of civilians and was therefore guilty of the offence pursuant to Article 7(1) of the Statute.

387. The Appeals Chamber therefore dismisses this ground of appeal.

D. Conclusion

388. For the foregoing reasons, the Appeals Chamber dismisses the twelfth ground of appeal of Mucic, and the third and sixth grounds of appeal of the Prosecution.

X. SELECTIVE PROSECUTION

596. Landzo alleges that he was the subject of a selective prosecution policy conducted by the Prosecution. He defines a selective prosecution as one "in which the criteria for selecting persons for prosecution are based, not on considerations of apparent criminal responsibility alone, but on extraneous policy reasons, such as ethnicity, gender, or administrative convenience." Specifically, he alleges that he, a young Muslim camp guard, was selected for prosecution, while indictments "against all other Defendants without military rank", who were all "non-Muslims of Serbian ethnicity", were withdrawn by the Prosecution on the ground of changed prosecutorial strategies.

597. The factual background to this contention is that the Prosecutor decided in 1998 to seek the withdrawal of the indictments against fourteen accused who at that stage had neither been arrested nor surrendered to the Tribunal. This application was granted by Judges of the Tribunal in early May 1998. At that stage, the trial in the present proceedings had been underway for a period of over twelve months. The Prosecutor's decision and the grant of leave to withdraw the indictment was announced in a Press Release, which explained the motivation for the decision in the following terms:

> Over recent months there has been a steady increase in the number of accused who have either been arrested or who have surrendered voluntarily to the jurisdiction of the Tribunal.
>
> [...].
>
> The arrest and surrender process has been unavoidably piecemeal and sporadic and it appears that this is likely to continue. One result of this situation is that accused, who have been jointly indicted, must be tried separately, thereby committing the Tribunal to a much larger than anticipated number of trials.
>
> In light of that situation, I have re-evaluated all outstanding indictments *vis-a-vis* the overall investigative and prosecutorial strategies of my Office. Consistent with those strategies, which involve maintaining an investigative focus on persons holding higher levels of responsibility, or on those who have been personally responsible for the [sic] exceptionally brutal or otherwise extremely serious offences, I decided that it was appropriate to withdraw the charges against a number of accused in what have become known as the Omarska and Keraterm indictments, which were confirmed in February 1995 and July 1995 respectively.

Although counsel for Landzo submitted that the Prosecution sought and obtained the withdrawal of indictments against *sixteen* accused, "some of whom were already in custody" of the Tribunal at the relevant time, this was not the case. Although three people were released from the custody of the Tribunal on 19 December 1997 pursuant to a decision granting the Prosecutor's request to withdraw their indictment, the withdrawal of those indictments was based on the quite different consideration of insufficiency of evidence. Landzo does not appear to have intended to refer to the withdrawal of any indictments other than those referred to in the Press Release, and the submissions proceeded upon that basis.

598. Landzo accordingly submitted, first at trial and now on appeal, that, because the indictment against him was not also withdrawn, he was singled out for prosecution for an impermissible motive and that this selective prosecution contravened his right to a fair trial as guaranteed by Article 21 of the Statute. Citing a decision of the United States of America's Supreme Court, *Yick Wo v Hopkins*, and Article 21(3) of the Rome Statute of the International Criminal Court, Landzo submits that the guarantee of a fair trial under Article 21(1) of the Statute incorporates the principle of equality and that prohibition of selective prosecution is a general principle of customary international criminal law.

599. The Trial Chamber, in its sentencing considerations, referred to Landzo's argument that, because he was an ordinary soldier rather than a person of authority, he should not be subject to the Tribunal's jurisdiction, and then stated:

> [The Trial Chamber] does, however, note that the statement issued in May this year (1998) by the

> Tribunal Prosecutor concerning the withdrawal of charges against several indicted persons, quoted by the Defence, indicates that an exception to the new policy of maintaining the investigation and indictment only of persons in positions of some military or political authority, is made for those responsible for exceptionally brutal or otherwise extremely serious offences. From the facts established and the findings of guilt made in the present case, the conduct of Esad Landzo would appear to fall within this exception.

600. The Prosecution argues that the Prosecutor has a broad discretion in deciding which cases should be investigated and which persons should be indicted. In exercising this discretion, the Prosecutor may have regard to a wide range of criteria. It is impossible, it is said, to prosecute all persons placed in the same position and, because of this, the jurisdiction of the International Tribunal is made concurrent with the jurisdiction of national courts by Article 9 of the Statute.

601. Article 16 of the Statute entrusts the responsibility for the conduct of investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991 to the Prosecutor. Once a decision has been made to prosecute, subject to the requirement that the Prosecutor be satisfied that a prima facie case exists, Article 18 and 19 of the Statute require that an indictment be prepared and transmitted to a Judge of a Trial Chamber for review and confirmation if satisfied that a prima facie case has been established by the Prosecutor. Once an indictment is confirmed, the Prosecutor can withdraw it prior to the initial appearance of the accused only with the leave of the Judge who confirmed it, and after the initial appearance only with the leave of the Trial Chamber.

602. In the present context, indeed in many criminal justice systems, the entity responsible for prosecutions has finite financial and human resources and cannot realistically be expected to prosecute every offender which may fall within the strict terms of its jurisdiction. It must of necessity make decisions as to the nature of the crimes and the offenders to be prosecuted. It is beyond question that the Prosecutor has a broad discretion in relation to the initiation of investigations and in the preparation of indictments. This is acknowledged in Article 18(1) of the Statute, which provides:

> The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and *decide whether there is sufficient basis to proceed.*

It is also clear that a discretion of this nature is not unlimited. A number of limitations on the discretion entrusted to the Prosecutor are evident in the Tribunal's Statute and Rules of Procedure and Evidence.

603. The Prosecutor is required by Article 16(2) of the Statute to "act independently as a separate organ of the International Tribunal", and is prevented from seeking or receiving instructions from any government or any other source. Prosecutorial discretion must therefore be exercised entirely independently, within the limitations imposed by the Tribunal's Statute and Rules. Rule 37(A) provides that the Prosecutor "shall perform all the functions provided by the Statute in accordance with the Rules and such Regulations, consistent with the Statute and the Rules, as may be framed by the Prosecutor."

604. The discretion of the Prosecutor at all times is circumscribed in a more general way by the nature of her position as an official vested with specific duties imposed by the Statute of the Tribunal. The Prosecutor is committed to discharge those duties with full respect of the law. In this regard, the Secretary-General's Report stressed that the Tribunal, which encompasses all of its organs, including the Office of the Prosecutor, must abide by the recognised principles of human rights.

605. One such principle is explicitly referred to in Article 21(1) of the Statute, which provides:

> All persons shall be equal before the International Tribunal.

This provision reflects the corresponding guarantee of equality before the law found in many international instruments, including the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the Additional Protocol I to the Geneva Conventions, and the Rome Statute of the International Criminal Court. All these instruments provide for a right to equality before the law, which is central to the principle of the due process of law. The provisions reflect a firmly established principle of international law of equality before the law, which encompasses the requirement that there should be no discrimination in the enforcement or application of the law. Thus Article 21 and the principle it embodies prohibits discrimination in the application of the law based on impermissible motives such as, *inter alia*, race, colour, religion, opinion, national or ethnic origin. The Prosecutor, in exercising her discretion under the Statute in the investigation and indictment of accused before the Tribunal, is subject to the princi-

ple of equality before the law and to this requirement of non-discrimination.

606. This reflects principles which apply to prosecutorial discretion in certain national systems. In the United Kingdom, the limits on prosecutorial discretion arise from the more general principle, applying to the exercise of administrative discretion generally, that the discretion is to be exercised in good faith for the purpose for which it was conferred and not for some ulterior, extraneous or improper purpose. In the United States, where the guarantee of equal protection under the law is a constitutional one, the court may intervene where the accused demonstrates that the administration of a criminal law is "directed so exclusively against a particular class of persons [...] with a mind so unequal and oppressive" that the prosecutorial system amounts to "a practical denial" of the equal protection of the law.

607. The burden of the proof rests on Landzo, as an appellant alleging that the Prosecutor has improperly exercised prosecutorial discretion, to demonstrate that the discretion was improperly exercised in relation to him. Landzo must therefore demonstrate that the decision to prosecute him or to continue his prosecution was based on impermissible motives, such as race or religion, and that the Prosecution failed to prosecute similarly situated defendants.

608. The Prosecution submits that, in order to demonstrate a selective prosecution, Landzo must show that he had been singled out for an impermissible motive, so that the mere existence of similar unprosecuted acts is not enough to meet the required threshold.

609. Landzo submits that a test drawn from United States case-law, and in particular the case *United States of America* v *Armstrong*, provides the required threshold for selective prosecution claims. Pursuant to this test, the complainant must prove first that he was singled out for prosecution for an improper motive, and secondly, that the Prosecutor elected not to prosecute other similarly situated defendants. There is therefore no significant difference between the applicable standards identified by Landzo and by the Prosecution.

610. As observed by the Prosecution, the test relied on by Landzo in *United States of America* v *Armstrong*, puts a heavy burden on an appellant. To satisfy this test, Landzo must demonstrate clear evidence of the intent of the Prosecutor to discriminate on improper motives, and that other similarly situated persons were not prosecuted. Other jurisdictions which recognise an ability for judicial review of a prosecutorial discretion also indicate that the threshold is a very high one.

611. It is unnecessary to select between such domestic standards, as it is not appropriate for the Appeals Chamber simply to rely on the jurisprudence of any one jurisdiction in determining the applicable legal principles. The provisions of the Statute referred to above and the relevant principles of international law provide adequate guidance in the present case. The breadth of the discretion of the Prosecutor, and the fact of her statutory independence, imply a presumption that the prosecutorial functions under the Statute are exercised regularly. This presumption may be rebutted by an appellant who can bring evidence to establish that the discretion has in fact not been exercised in accordance with the Statute; here, for example, in contravention of the principle of equality before the law in Article 21. This would require evidence from which a clear inference can be drawn that the Prosecutor was motivated in that case by a factor inconsistent with that principle. Because the principle is one of *equality* of persons before the law, it involves a comparison with the legal treatment of other persons who must be similarly situated for such a comparison to be a meaningful one. This essentially reflects the two-pronged test advocated by Landzo and by the Prosecution of (i) establishing an unlawful or improper (including discriminatory) motive for the prosecution and (ii) establishing that other similarly situated persons were not prosecuted.

612. Landzo argues that he was the only Bosnian Muslim accused without military rank or command responsibility held by the Tribunal, and he contends that he was singled out for prosecution "simply because he was the only person the Prosecutor's office could find to 'represent' the Bosnian Muslims". He was, it is said, prosecuted to give an appearance of "evenhandedness" to the Prosecutor's policy. Landzo alleges that the Prosecutor's decision to seek the withdrawal of indictments against the accused identified in the Press Release, without seeking the discontinuation of the proceedings against Landzo, was evidence of a discriminatory purpose. Landzo rejects the justification given by the Prosecutor in the Press Release of a revaluation of indictments according to changed strategies "in light of the decision to except the one Muslim defendant without military rank or command responsibility from the otherwise complete dismissal of charges against Defendants having that status."

613. The Prosecution argues that a change of prosecutorial tactics, in view of the need to reassign available resources of the Prosecution, cannot be considered as being significative of discriminatory intent. Furthermore, the evidence of discriminatory intent must be coupled with the evidence that the Prosecutor's policy had a discriminatory effect, so that other *similarly-*

situated individuals of other ethnic or religious backgrounds were not prosecuted. The Prosecution observes that those against whom charges were withdrawn had not yet been arrested or surrendered to the Tribunal, whereas Land'o was in custody and his case already mid-trial. The Prosecution adds that even if it was to be considered that the continuation of Landzo's trial resulted in him being singled out, it was in any event for the commission of exceptionally brutal or otherwise serious offences.

614. The crimes of which Landzo was convicted are described both in the Trial Judgement and in the present judgement at paragraphs 565-570. The Appeals Chamber considers that, in light of the unquestionably violent and extreme nature of these crimes, it is quite clear that the decision to continue the trial against Landzo was consistent with the stated policy of the Prosecutor to "focus on persons holding higher levels of responsibility, or on those who have been *personally responsible for the exceptionally brutal or otherwise extremely serious offences*." A decision, made in the context of a need to concentrate prosecutorial resources, to identify a person for prosecution on the basis that they are believed to have committed exceptionally brutal offences can in no way be described as a discriminatory or otherwise impermissible motive.

615. Given the failure of Landzo to adduce any evidence to establish that the Prosecution had a discriminatory or otherwise unlawful or improper motive in indicting or continuing to prosecute him, it is not strictly necessary to have reference to the additional question of whether there were other similarly situated persons who were not prosecuted or against whom prosecutions were discontinued. However, the facts in relation to this question support the conclusion already drawn that Landzo was not the subject of a discriminatory selective prosecution.

616. All of the fourteen accused against whom charges were withdrawn pursuant to the Prosecutor's change of policy, unlike Landzo, had not been arrested and were not in the custody of the Tribunal. None of the fourteen persons identified in the Press Release as the subject of the withdrawn indictments had been arrested or surrendered to the Tribunal so were not in the Tribunal's custody.

617. At the time at which the decision was taken to withdraw the indictments on the basis of changed prosecutorial strategy, the trial of Landzo and his co-accused had been underway for over twelve months. None of the persons in respect of whom the indictments were withdrawn were facing trial at the time. These practical considerations alone, which demonstrate an important difference in the situation of Landzo and the persons against whom indictments were withdrawn, also provide the rational justification for the Prosecutor's decisions at the time. The Appeals Chamber notes that the Prosecutor explicitly stated that accused against whom charges were withdrawn could still be tried at a later stage by the Tribunal or by national courts by virtue of the principle of concurrent jurisdiction. Had Landzo been released with the leave of the Trial Chamber, he would have been subject to trial upon the same or similar charges in Bosnia and Herzegovina.

618. Finally, even if in the hypothetical case that those against whom the indictments were withdrawn were identically situated to Landzo, the Appeals Chamber cannot accept that the appropriate remedy would be to reverse the convictions of Landzo for the serious offences with which he had been found guilty. Such a remedy would be an entirely disproportionate response to such a procedural breach. As noted by the Trial Chamber, it cannot be accepted that "unless all potential indictees who are similarly situated are brought to justice, there should be no justice done in relation to a person who has been indicted and brought to trial".

619. This ground of appeal is therefore dismissed.

Eichmann

SOURCE The Online Casebook. "The Eichmann Case." Available from http://www.his.com/~clight/eichmann.htm.

INTRODUCTION Adolf Eichmann was an important Nazi bureaucrat who oversaw much of the Final Solution. He escaped capture as a war criminal, and eventually fled to Argentina where he lived an obscure life under an alias. Eichmann was eventually tracked down by Israeli intelligence agents. Because of doubts that Argentina would cooperate in his extradition, in 1960 Eichmann was kidnapped and taken secretly to Israel for prosecution. The Eichmann trial heard scores of witnesses about the Nazi atrocities, and was a defining moment in Israel's history. Eichmann unsuccessfully argued that the courts of Israel had no jurisdiction, that the judges were biased, and that he was being punished under retroactive criminal law. Eichmann's conviction was upheld on appeal to the Supreme Court. Appeals to Prime Minister Ben Gurion that he not be executed were rejected. Eichmann was cremated and his ashes scattered on the Mediterranean so as not to create a shrine for his perverse admirers.

The Trial Court Decision

The Supreme Court Decision

Background

Adolf Eichmann was a high ranking SS officer who played a central role in the planning and implementa-

tion of the persecution of Jews in Germany, Poland, Hungary and several other countries before and during World War II. At the end of the war he escaped to Argentina where he lived and worked under an alias until May, 1960 when he was kidnapped by Israeli agents. Argentina complained to the Security Council about this clear violation of Argentine sovereignty. The Security Council, while making it clear that it did not condone Eichmann's crimes, declared that "acts such as that under consideration [the kidnapping of Eichmann] which affect the sovereignty of a Member State and therefore cause international friction, may, if repeated, endanger international peace and security." The Security Council requested the Government of Israel "to make appropriate reparation in accordance with the Charter of the United Nations and the rules of international law." Argentina did not demand the return of Eichmann, and in August, 1960. the Argentine and Israeli governments resolved in a joint communique "to regard as closed the incident which arose out of the action taken by citizens of Israel, which infringed the fundamental rights of the State of Argentina." Eichmann was then tried in Israel under Israel's Nazi Collaborators Law (a law enacted after Israel became a state in 1948). He was found guilty and the conviction was subsequently upheld by the Supreme Court of Israel. On May 31, 1962 Eichmann went to the gallows, the only person ever formally executed by the State of Israel.

ATTORNEY GENERAL OF ISRAEL v. EICHMANN:
Trial Court Decision
36 Intl. L. Rep. 5 (Israel, Dist. Ct. Jerusalem 1961)

Learned defence counsel . . . submits:

(a) that the Israel Law, by imposing punishment for acts done outside the boundaries of the State and before its establishment, against persons who were not Israel citizens, and by a person who acted in the course of duty on behalf of a foreign country ("Act of State"), conflicts with international law and exceeds the powers of the Israel Legislature;

(b) that the prosecution of the accused in Israel following his abduction from a foreign country conflicts with international law and exceeds the jurisdiction of the Court. . . . [The Court ruled that national law would prevail over international law in an Israel court. Nonetheless, it offered a lengthy analysis of the international law questions.]

From the point of view of international law, the power of the State of Israel to enact the Law in question or Israel's "right to punish" is based, with respect to the offences in question, on a dual foundation: the universal character of the crimes in question and their specific character as intended to exterminate the Jewish people.

12. The abhorrent crimes defined in this Law are not crimes under Israel law alone. These crimes, which struck at the whole of mankind and shocked the conscience of nations, are grave offenses against the law of nations itself (delicta jurit gentium). Therefore, so far from international law negating or limiting the jurisdiction of countries with respect to such crimes, international law is, in the absence of an International Court, in need of the judicial and legislative organs of every country to give effect to its criminal interdictions and to bring the criminals to trial. The jurisdiction to try crimes under international law is universal.

[Here the Court discussed piracy, and instances of universality jurisdiction over war crimes. It also referred to "genocide" as having become a crime under customary international law prior to the Genocide Convention; but held that the limitation in the Genocide Convention, Article 6, to trial before the court of the territory, was a treaty rule only, applicable only to offences committed after the Genocide Convention entered into force in 1951.]

26. It is superfluous to add that the "crime against the Jewish people", which constitutes the crime of "genocide", is nothing but the gravest type of "crime against humanity" (and all the more so because both under Israel law and under the Convention a special intention is requisite for its commission, an intention that is not required for the commission of a "crime against humanity"). Therefore, all that has been said in the Nuremberg principles about "crimes against humanity" applies a fortiori to "crime against the Jewish people". . .

27. It is indeed difficult to find a more convincing instance of a just retroactive law than the legislation providing for the punishment of war criminals and perpetrators of crimes against humanity and against the Jewish people, and all the reasons justifying the Nuremberg judgments justify eo ipse the retroactive legislation of the Israel legislator. . . . The accused in this case is charged with the implementation of the plan for the "final solution of the problem of the Jews". Can anyone in his right mind doubt the absolute criminality of such acts? . . .

28. The contention of learned counsel for the defence that it is not the accused but the State on whose behalf he had acted, who is responsible for his criminal acts is only true as to its second part. It is true that under international law Germany bears not only moral, but also legal, responsibility for all the crimes that were committed as its own "acts of State," including the

crimes attributed to the accused. But that responsibility does not detract one iota from the personal responsibility of the accused for his acts.

The repudiation of the argument of "act of State" is one of the principles of international law that were acknowledged by the Charter and judgment of the Nuremberg Tribunal and were unanimously affirmed by the United Nations Assembly in its Resolution of December 11, 1946.

30. We have discussed at length the international character of the crimes in question because this offers the broadest possible, though not the only, basis for Israel's jurisdiction according to the law of nations. No less important from the point of view of international law is the special connection which the State of Israel has with such crimes, since the people of Israel (Am Israel), the Jewish people constituted the target and the victim of most of the said crimes. The State of Israel's "right to punish" the accused derives, in our view, from two cumulative sources: a universal source (pertaining to the whole of mankind), which vests the right to prosecute and punish crimes of this order in every State within the family of nations; and a specific or national source, which gives the victim nation the right to try any who assault its existence.

This second foundation of criminal jurisdiction conforms, according to accepted terminology, to the protective principle.

34. The connection between the State of Israel and the Jewish people needs no explanation. The State of Israel was established and recognized as the State of the Jews.

In view of the recognition by the United Nations of the right of the Jewish people to establish their State, and in the light of the recognition of the established Jewish State by the family of nations, the connection between the Jewish people and the State of Israel constitutes an integral part of the law of nations.

The massacre of millions of Jews by the Nazi criminals that very nearly led to the extinction of the Jewish people in Europe was one of the major causes for the establishment of the State of the survivors. The State cannot be cut off from its roots, which lie deep also in the catastrophe which befell European Jewry.

Half the citizens of the State have immigrated from Europe in recent years, some before and some after the Nazi massacre. There is hardly one of them who has not lost parents, brothers and sisters, and many their spouses and their offspring in the Nazi inferno.

In these circumstances, unprecedented in the annals of any other nation, can there be anyone who would contend that there are not sufficient "linking points" between the crime of the extermination of the Jews of Europe and the State of Israel?

35. Indeed, this crime very deeply concerns the "vital interests" of the State of Israel, and under the "protective principle" this State has the right to punish the criminals.

41. It is an established rule of law that a person being tried for an offence against the laws of a State may not oppose his trial by reason of the illegality of his arrest or of the means whereby he was brought within the jurisdiction of that State. The courts in England, the United States and Israel have constantly held that the circumstances of the arrest and the mode of bringing the accused into the territory of the State have no relevance to his trial, and they have consistently refused in all instances to enter upon an examination of these circumstances.

50. Indeed, there is no escaping the conclusion that the question of the violation of international law by the manner in which the accused was brought into the territory of a country arises at the international level, namely, the relations between the two countries concerned alone, and must find its solution at such level.

52. According to the existing rule of law there is no immunity for a fugitive offender save in the one and only case where he has been extradited by the asylum State to the requesting State for a specific offence, which is not the offence for which he was being tried. The accused was not surrendered to Israel by Argentina, and the State of Israel is not bound by any agreement with Argentina to try the accused for any other specific offence, or not to try him for the offences being tried in the present case. The rights of asylum and immunity belong to the country of asylum and not to the offender, and the accused cannot compel a foreign sovereign State to give him protection against its will. The accused was a wanted war criminal when he escaped to Argentina by concealing his true identity. Only after he was kidnapped and brought to Israel was his identity revealed. After negotiations between the two Governments, the Government of Argentina waved its demand for his return and declared that it viewed the incident as closed. The Government of Argentina thereby refused conclusively to grant the accused any sort of protection. The accused has been brought to trial before the Court of a State which charges him with grave offences against its laws. The accused has no immunity against this trial and must stand trial in accordance with the indictment.

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Supreme Court of Israel (1962) 136 I.L.R. 277

Judgment Per Curiam:

' [As to the argument for the appellant that. in the event of a conflict between local legislation and intentional law.] it is imperative to give reference to the principles of international law, we do not agree with this view. According to the law of Israel, which is identical on this point with English law, the relationship between municipal and intentional law is governed by the following rules:

> (1) The principle in question becomes incorporated into the municipal law and a part of that law only after it has achieved general international recognition . . .
>
> (2) This, however, only applies where there is no conflict between the provisions of municipal law and a rule of international law. But where such a conflict does exist, it is the duty of the Court to give preference to and apply the laws of the local legislature. True. the presumption must be that the legislature strives to adjust the laws to the principles of international law which have received general recognition. But where a contrary intention clearly emerges from the statute itself, that presumption loses its force and the Court is enjoined to disregard it.
>
> (3) On the other hand, a local statutory provision, which is open to equivocal construction and whose content does not demand another construction, must be construed in accordance with the rules of public international law. . . .

. . . [Concerning the retroactivity argument,] the principle nullum crimen sine lege, nulla poena sine lege, in so far as it negates penal legislation with retroactive effect, has not yet become a rule of customary international law.

It is true that in many countries [it] has been embodied in the Constitution of the State or in its criminal code, because of the considerable moral value inherent in it, and in such countries the Court may not depart from it by one iota. . . . But this state of affairs is not universal. Thus, in the United Kingdom . . . there is no constitutional limitation of the power of the legislature to enact its criminal laws with retrospective effect, and should it do so the court will have no power to invalidate them. . . . [I]n those countries . . . the moral value in the principle . . . has become legally effective only to the extent that the maxim constitutes a rule of the interpretation of statutes — where there is doubt as to the intention of the legislature the court is directed not to construe the criminal statute under its consideration as to include within its purview an act that was committed prior to its enactment. 4

Therefore, if it is [contended] that we must apply intentional law as it is, and not as it ought to be from the moral point of view, then we must reply that precisely from a legal point of view there is no such provision in it; it follows automatically that the principle cannot be deemed to be part of the Israel municipal law by virtue of international law, but that the extent of its application in this country is the same as in England.

. . . [As to the moral significance of the maxim, the Court considered that it would be a greater affront to moral principles if the type of crime of which the appellant bad been found guilty went unpunished.]

. . . The contention . . . that (since] the State of Israel had not existed at the time of the commission of the offences . . . its competence to impose punishment therefore is limited to its own citizens is equally unfounded. . . . This argument too must be rejected on the basis that the lower court had to apply local legislation.]

. . . [As) to the contention [that] the enactment of a criminal law applicable to an act committed in a foreign country by a foreign national conflicts with the principle of territorial sovereignty, here too we must hold that there is no such rule in international customary law. . . . This is established by the Judgment of the [World) Court in the Lotus case. . . . It was held . . . that the principle of territorial sovereignty merely requires that the State exercise its power to punish within its own borders, not outside them —. That subject to this restriction every State may exercise a wide discretion as to the application of its laws and the jurisdiction of its courts in respect of acts committed outside the State; and that only in so far as it is possible to point to a specific rule prohibiting the exercise of this discretion . . . is a State prevented from exercising it.

> That view was based on the following two grounds:
>
> (1) It is precisely the conception of State sovereignty which demands the preclusion of any presumption that there is a restriction on its independence;
>
> (2) Even if it is true that the principle of the territorial character of criminal law is firmly established in various States, it is no less true that in almost all of such States criminal jurisdiction has been extended . . . so as to embrace offences committed outside its territory.

. . . [O]n the question of the jurisdiction of a State to punish persons who are not its nationals for acts committed beyond its borders, there is as yet no intentional accord.

It follows that in the absence of general agreement as to the existence of [such a] rule of international law, . . . there is, again, no escape from the conclusion that it cannot be deemed to be embodied in Israel municipal law, and therefore on that ground, too. the contention fails.

[E]ven if Counsel . . . were right in his view that intentional law prohibits a State from trying a foreign national for an act committed outside its borders, even this would not [help]. The reason for this is that according to the theory of international law, in the absence of an international treaty which vests rights in an individual, that law only recognises the rights of a State; in other words, assuming that there is such a prohibition in intentional law, the violation of it is deemed to be a violation of the rights of the State to which the accused belongs, and not a violation of his own rights.

. . . There was no prohibition whatever by international law of the enactment of the Law of 1950, either because it created ex post facto offences or because such offences are of an extraterritorial character. . . . [But] these contentions are unjustifiable even from a positive approach, namely, that when enacting the Law the Knesset [legislature] only sought to apply the principle of international law and to realise its objectives.

The crimes created by the Law and of which the appellant was convicted must be deemed today to have always borne the stamps of intentional crimes, banned by intentional law and entailing individual criminal liability. It is the particular universal character of these crimes that vests in each State the power to try and punish any who assisted in their commission. [Reference the Genocide Convention and the Nuremberg judgement]. . . . As is well known, the rules of the law of nations are not derived solely from intentional treaties and crystallised international usage. In the absence of a supreme legislative authority and international codes the process of its evolution resembles that of the common law;... its rules are established from case to case, by analogy with the rules embodied in treaties and in intentional custom, on the basis of the " 'general' principles of law recognised by civilised nations," and in the light of the vital international needs that impel an immediate solution. A principle which constitutes a common denominator for the judicial systems of numerous countries must clearly be regarded as a "general principle of law recognised by civilised nations." [C]ustomary international law is never stagnant, but is rather in a process of constant growth.

. . . [As to] the features which identify crimes that have long been recognised by customary international law[,]. . . they constitute acts which damage vital international interests... they impair the foundations and security of the international community; they violate universal moral values and humanitarian principles which are at the root of the systems of criminal law adopted by civilised nations. The underlying principle in intentional law that governs such crimes is that the individual who has committed any of them and who, at the time of his act, may be presumed to have had a thorough understanding of its heinous nature must account in law for his behaviour. It is true that intentional law does not establish explicit and graduated criminal sanctions; that there is not as yet in existence either an intentional Criminal Court, or intentional machinery for the imposition of punishment. But, for the time being, intentional law surmounts these difficulties . . . by authorising the countries of the world to mete out punishment for the violation of its provisions. This they do by enforcing these provisions either directly or by virtue of the municipal legislation which has adopted and integrated them.

The classic example of a "customary" international crime . . . is that of piracy jure gentium. [Another] example . . . is that of a "war crime" in the conventional sense . . . the group of acts committed by members of the armed forces of the enemy which are contrary to the "laws and customs of war." individual criminal responsibility because they undermine the foundations of intentional society and are repugnant to the conscience of civilised nations. When the belligerent State punishes for such acts, it does so not only because persons who were its nationals . . . suffered bodily harm or material damage. but also, and principally, because they involve the perpetration of an intentional crime in the avoidance of which all the nations of the world are interested.

In view of the characteristic traits of intentional crimes and the organic development of the law of nations — a development that advances from case to case under the impact of the humane sentiments common to civilised nations, and under the pressure of the needs that are vital for the survival of mankind and for ensuring the stability of the world order it definitely cannot be said that when the Charter of the Nuremburg International Military Tribunal was signed and the categories of "war crimes" and "crimes against humanity" were defined in it, this merely amounted to an act of legislation by the victorious countries.

. . . [The interest in preventing and imposing punishment for acts comprised in the category in question especially when they are perpetrated on a very large scale — must necessarily extend beyond the borders of the State to which the perpetrators belong and which evinced tolerance or encouragement of their outrages; for such acts can undermine the foundations of the in-

ternational community as a whole and impair its very stability. . . .

If we are to regard customary international law as a developing progressive system, the criticism becomes devoid of value . . . [E]ver since the Nuremberg Tribunal decided this question, that very decision must be seen as a judicial act which establishes a "precedent" defining the rule of international law. In any event, it would be unseemly for any other court to disregard such a rule and not to follow it.

If there was any doubt as to this appraisal of the "Nuremberg Principles" as principles that have formed part of customary international law 64 since time immemorial, "such doubt" has been removed by . . . the United Nations Resolution on the Affirmation of the Principles of International Law Recognised by the Charter and Judgment of the Nuremberg Tribunal and that affirming that Genocide is a crime under intentional law . . . and as [is seen] in the advisory opinion of 1951 . . . the principles inherent in the [Genocide] Convention — as distinct from the contractual obligations embodied therein — had already been part of customary intentional law at the time of the shocking crimes which led to the. Resolution and the Convention.

. . . [T]he crimes established in the Law of 1950 . . . must be seen today as acts that have always been forbidden by customary international law — acts which are of a "universal" criminal character and entail individual criminal responsibility. . . . [T]he enactment of the Law was not, from the point of view of international law, a legislative act that conflicted with the principle nulla poena or the operation of which was retroactive, but rather one by which the Knesset gave effect to intentional law and its objectives.

. . . [I]t is the universal character of the crimes in question which vests in every State the power to try those who participated in the preparation of such crimes, and to punish them therefore. . . .

One of the principles whereby States assume, in one degree or another, the power to try and punish a person for an offence he has committed is the principle of universality. Its meaning is, in essence, that that power is vested in every State regardless of the fact that the offence was committed outside its territory by a person who did not belong to it, provided he is in its custody at the time he is brought to trial. This principle has wide support and is universally acknowledged with respect to the offence of piracy jure gentium. . . . [One view] holds that it cannot be applied to any other offence, lest this entail excessive interference with the competence of the State in which the offence was committed.

A second school . . . agrees . . . to the extension of the principle to all manner of extraterritorial offences committed by foreign nationals. . . . It is not more than an auxiliary principle to be applied in circumstances in which no resort can be had to the principle of territorial sovereignty or to the nationality principle, both of which are universally agreed to. [Holders of this view] impose various restrictions on the applications of the principle of universal jurisdiction, which are designed to obviate opposition by those States that find themselves competent to punish the offender according to either of the other two principles. [One of these reservations is that the extradition of the offender should be offered to the State where his offence was committed.].

A third school. . . . holds that the rule of universal jurisdiction, which is valid in cases of piracy, logically applies also to all such criminal acts or omissions which constitute offences under the law of nations (delicta juris gentium) without any reservation whatever or, at most, subject to a reservation of the kind Oust] mentioned. . . . This view has been opposed in the past because of the difficulty in securing general agreement as to the offences to be included.

. . . Notwithstanding the differences . . . there is full justification for applying here the principle of universal jurisdiction since the intentional character of the "crimes against humanity" (in the wide meaning of the term) is, in this case, not in doubt, and the unprecedented extent of their injurious and murderous effect is not open to dispute at the present day. In other words, the basic reason for which international law recognises the right of each State to exercise such jurisdiction in piracy offences . . . applies with all the greater force.

[I]t was not the recognition of the universal jurisdiction to try and punish the person who committed "piracy" that justified the viewing of such an act as an international crime sui generis, but it was the agreed vital interest of the international community that justified the exercise of the jurisdiction in question. . . .

It follows that the State which prosecutes and punishes a person for that offence acts solely as the organ and agent of the intentional community, and metes out punishment to the offender for his breach of the prohibition imposed by the law of nations.

. . . We have also taken into consideration the possible desire of other countries to try the appellant in so far as the crimes. . . . were committed in those countries or their evil effects were felt there . . . But . . . we have not heard of a single protest by any of these countries against conducting the trial in Israel. . . . What is more, it is precisely the fact that the crimes . . . and their ef-

fects have extended to numerous countries that empties the territorial principle of its content in the present case, and justifies Israel in assuming criminal jurisdiction by virtue of the "universal" principle.

[It is argued by counsel that Article 6 of the Genocide Convention provides that] a person accused of this crime shall be tried by a court of competent jurisdiction of the State in which it was committed . . . Article 6 imposes upon the parties contractual obligations with future effect. . . . obligations which bind them to prosecute for crimes of "genocide" which will be committed within their territories in the future. The obligation. however, has nothing to do with the universal power vested in every State to prosecute for crimes of this type committed in the past — a power which is based on customary international law.

. . . The State of Israel was entitled, pursuant to the principle of universal jurisdiction and acting in the capacity of guardian of international law and agent for its enforcement, to try the appellant. This being so, it is immaterial that the State of Israel did not exist at the time the offences were committed. . . .

[The Tribunal drew attention to Israel's connection to the Jewish people and the Jewish National Home in Palestine.] If we . . . have concentrated on the international and universal character of the crimes for which the appellant has been convicted, one of our reasons for doing so was that some of them were directed against non-Jewish groups. . . .

[As to the circumstances of Eichmann's capture, the Court cited a long list of local, British. American and Continental precedents and reached the following conclusions:]

> (a) In the absence of an extradition agreement between the State to which a "fugitive offender" has been brought for trial and the country of "asylum" . . . and even if there existed such an agreement . . . ut the offender was not extradited . . . in accordance therewith — the Court will not investigate, the circumstances in which he was detained and brought to the area of jurisdiction.
>
> (b) This also applies if the offender's contention be that the abduction was carried out by the agents of the State prosecuting him, since in such a case the right violated is not that of the offender, but the sovereign right of the State aggrieved. . . . The issue must therefore find its solution on the intentional level, and is not justiciable before the Court into whose area of jurisdiction the offender has been brought.
>
> (c) From the point of view of international law the aggrieved State may condone the violation of its sovereignty and waive its claims, including the claim for the return of the offender to its territory, and such waiver may be explicit or by acquiescence.
>
> (d) Only in one eventuality has a fugitive offender a right of immunity when he has been extradited by the country of asylum to the country requesting his extradition for a specific offence, which is not the offence for which he is tried. . . .
>
> (g) The right of asylum and immunity belong to the country of asylum, not to the offender . . . .

. . . The appellant is a "fugitive from justice" from the point of view of the law of nations, since the crimes that were attributed to him are of an international character and have been condemned publicly by the civilised world . . . ; therefore, by virtue of the principle of universal jurisdiction, every country has the right to try him. This jurisdiction was automatically vested in the State of Israel on its establishment in 1948 as a sovereign State. Therefore, in bringing the appellant to trial, it functioned as an organ of intentional law and acted to enforce the provisions thereof through its own law. Consequently, it is immaterial that the crimes in question were committed . . . when the State of Israel did not exist, and outside its territory. . . . The moment it is admitted that the State of Israel possesses criminal jurisdiction both according to local I an according to the law of nations. it must also be conceded that the Court is not bound to investigate the manner and legality of the . . . detention. . . . [The Court then turned to the issues of Acts of State, and of superior orders]

. . .Appeal dismissed

Filartiga

INTRODUCTION In 1980 a U.S. Appeals Court breathed new life into an ancient statute, the Alien Tort Statute, originally adopted in 1789. According to the Court, the Statute authorized private lawsuits by victims of human rights abuses under customary international law, such as torture, when directed against defendants who were not United States citizens. The Statute had been almost forgotten when it was invoked by the family of a torture victim to sue the torturer in New York. The case opened the court house door to many human rights victims who found the perpetrators of their abuse living in or visiting the United States. It was subsequently followed by other federal courts in cases against those who committed genocide or crimes against humanity in Rwanda, Ethiopia, Argentina, and parts of the former Yugoslavia.

Dolly M. E. FILARTIGA and Joel Filartiga, Plaintiffs-Appellants,
v.
Americo Norberto PENA-IRALA, Defendant-Appellee.
No. 191, Docket 79–6090.
United States Court of Appeals, Second Circuit.
Argued Oct. 16, 1979. Decided June 30, 1980.

Citizens of the Republic of Paraguay, who had applied for permanent political asylum in the United States, brought action against one also a citizen of Paraguay; who was in United States on a visitor's visa, for wrongfully causing the death of their son allegedly by the use of torture. The United States District Court for the Eastern District of New York, Eugene H. Nickerson, J., dismissed the action for want of subject matter jurisdiction and appeal was taken. The Court of Appeals, Irving R. Kaufman, Circuit Judge, held that deliberate torture perpetrated under the color of official authority violates universally accepted norms of international law of human rights regardless of the nationality of the parties, and, thus, whenever an alleged torturer is found and served with process by an alien within the borders of the United States, the Alien Tort Statute provides federal jurisdiction.

Reversed.

Before FEINBERG, Chief Judge, KAUFMAN and KEARSE, Circuit Judges.

IRVING R. KAUFMAN, Circuit Judge:

Upon ratification of the Constitution, the thirteen former colonies were fused into a single nation, one which, in its relations with foreign states, is bound both to ob. serve and construe the accepted norms of international law, formerly known as the law of nations. Under the Articles of Confederation, the several states had interpreted and applied this body of doctrine as part of their common law, but with the founding of the "more perfect Union" of 1789, the law of nations became preeminently a federal concern.

Implementing the constitutional mandate for national control over foreign relations, the First Congress established original district court jurisdiction over "all causes where an alien sues for a tort only [committed] in violation of the *law* of nations." Judiciary Act of 1789, ch. 20, ¤ 9(b), 1 Stat.73, 77 (1789), *codified* at 28 U.S.C. ¤ 1350.

Construing this rarely-invoked provision, we hold that deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties. Thus, whenever an alleged torturer is found and served with process by an alien within our borders, ¤ 1350 provides federal jurisdiction. Accordingly, we reverse the judgment of the district court dismissing the complaint for want of federal jurisdiction.

I

The appellants, plaintiffs below, are citizens of the Republic of Paraguay. Dr. Joel Filartiga, a physician, describes himself as a longstanding opponent of the government of President Alfredo Stroessner, which has held power in Paraguay since 1954. His daughter, Dolly Filartiga, arrived in the United States in 1978 under a visitor's visa, and has since applied for permanent political asylum. The Filartigas brought this action in the Eastern District of New York against Americo Norberto Pena-Irala (Pena), also a citizen of Paraguay, for wrongfully causing the death of Dr. Filartiga's seventeen-year old son, Joelito. Because the district court dismissed the action for want of subject matter jurisdiction; we must accept as true the allegations contained in the Filartigas' complaint and affidavits for purposes of this appeal.

The appellants contend that on March 29, 1976, Joelito Filartiga was kidnapped and tortured to death by Pena, who was then Inspector General of Police in Asuncion, Paraguay. Later that day, the police brought Dolly Filartiga to Pena's home where she was confronted with the body of her brother, which evidenced marks of severe torture. As she fled, horrified, from the house, Pena followed after her shouting, "Here you have what you have been looking for for so long and what you deserve. Now shut up." The Filartigas claim that Joelito was tortured and killed in retaliation for his father's political activities and beliefs.

Shortly thereafter, Dr. Filartiga commenced a criminal action in the Paraguayan courts against Pena and the police for the murder of his son. As a result, Dr. Filartiga's attorney was arrested and brought to police headquarters where, shackled to a wall, Pena threatened him with death. This attorney, it is alleged, has since been disbarred without just cause.

During the course of the Paraguayan criminal proceeding, which is apparently still pending after four years, another man, Hugo Duarte, confessed to the murder. Duarte, who was a member of the Pena household, claimed that he had discovered his wife and Joelito in flagrante *delicto,* and that the crime was one of passion. The Filartigas have submitted a photograph of Joelito's corpse showing injuries they believe refute this claim. Dolly Filartiga, moreover, has stated that she will offer evidence of three independent autopsies demonstrating that her brother's death "was the result of pro-

fessional methods of torture." Despite his confession, Duarte, we are told, has never been convicted or sentenced in connection with the crime.

In July of 1978, Pena sold his house in Paraguay and entered the United States under a visitor's visa. He was accompanied by Juana Bautista Fernandez Villalba, who had lived with him in Paraguay. The couple remained in the United States beyond the term of their visas, and were living in Brooklyn, New York, when Dolly Filartiga, who was then living in Washington, D.C., learned of their presence. Acting on information provided by Dolly the Immigration and Naturalization Service arrested Pena and his companion, both of whom were subsequently ordered deported on April 5, 1979 following a hearing. They had then resided in the United States for more than nine months.

Almost immediately, Dolly caused Pena to be served with. a summons and civil complaint at the Brooklyn Navy Yard, where he was being held pending deportation. The complaint alleged that Pena had wrongfully caused Joelito's death by torture and sought compensatory and punitive damages of $10,000,000. The Filartigas also sought to enjoin Pena's deportation to ensure his availability for testimony at trial. The cause of action is stated as arising under "wrongful death statutes; the U. N. Charter; the Universal Declaration on Human Rights; the U. N. Declaration Against Torture; the American Declaration of the Rights and Duties of Man; and other pertinent declarations, documents and practices constituting the customary international law of human rights and the law of nations," as well as 28 U.S.C. ¤ 1350, Article II, sec. 2 and the Supremacy Clause of the U. S. Constitution. Jurisdiction is claimed under the general federal question provision, 28 U.S.C. ¤ 1331 and, principally on this appeal, under the Alien Tort Statute, 28 U.S.C. ¤ 1350.

II

[1] Appellants rest their principal argument in support of federal jurisdiction upon the Alien Tort Statute, 8 U.S.C. ¤ 1350, which provides: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the, law of nations or a treaty of the United States." Since appellants do not contend that their action arises directly under a treaty of the United States, a threshold question on the jurisdictional issue is whether the conduct alleged violates the law of nations. In light of the universal condemnation of torture in numerous international agreements and the renunciation of torture as an instrument of official policy by virtually all of the nations of the world (in principle if not in practice), we find that an act of torture committed by a state official against one held in detention violates established norms of the international law of human rights, and hence the law of nations.

[2] The Supreme Court has enumerated the appropriate sources of international law. The law of nations "may be ascertained by consulting the works of jurists, writing professedly on, public law; or by the general usage and practice of nations; or by judicial decisions recognizing and enforcing that law." *United States v. Smith,* 18 U.S. (5 Wheat.) 158, 160–61, 5 L.Ed. 57 (1820); *Lopes v. Reederei Richard Schroder,* 225 F.Supp. 292, 295 (E.D.Pa.1963). In *Smith,* a statute proscribing "the crime of piracy [on the high seas] as defined by the law of nations," 3 Stat. 510(a) (1819), was held sufficiently determinate in meaning to afford the basis for a death sentence. The *Smith* Court discovered among the works of Lord Bacon, Grotius, Bochard and other commentators a genuine consensus that rendered the crime "sufficiently and constitutionally defined." *Smith, supra,* 18 U.S. (5 Wheat.) at 162, 5 L.Ed. 57.

The Paquete Habana, 175 U.S. 677, 20 S.Ct. 290, 44 L.Ed. 320 (1900), reaffirmed that

> where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.

Id. at 700, 20 S.Ct. at 299. Modern international sources confirm the propriety of this approach.

[3] Habana is particularly instructive for present purposes, for it held that the traditional prohibition against seizure of an enemy's coastal fishing vessels during wartime, a standard that began as one of comity only, had ripened over the preceding century into "a settled rule of international law" by "the general assent of civilized nations." *id.* at 694, 20 S.Ct. at 297; *accord, id.* at 686, 20 S.Ct. at 297. Thus it is clear that courts must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today. *See Ware v. Hylton,* 3 U.S. (3 Dall.) 198, 1 L.Ed. 568 (1796) (distinguishing between "ancient" and "modern" law of nations).

The requirement that a rule command the "general assent of civilized nations" to become binding upon them all is a stringent one. Were this riot so, the courts of one nation might feel free to impose idiosyncratic

legal rules upon others, in the name of applying international law. Thus, in *Banco National de Cuba v. Sabbatino,* 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964), the Court declined to pass on the validity of the Cuban government's expropriation of a foreign-owned corporation's assets, noting the sharply conflicting views on the issue propounded by the capital-exporting, capital-importing, socialist and capitalist nations. *Id.* at 428–30, 84 S.Ct. at 940–41.

The case at bar presents us with a situation diametrically opposed to the conflicted state of law that confronted the *Sabbatino* Court. Indeed, to paraphrase that Court's statement, *id.* at 428, 84 S.Ct. at 940, there are few, if any, issues in international law today on which opinion seems to be so united as the limitations on. a state's power to torture persons held in its custody.

The United Nations Charter (a treaty of the United States, *see* 59 Stat. 1033 (1945)) makes it clear that in this modern age a state's treatment of its own citizens is a matter of international concern. It provides:

> With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations . . . the United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinctions as to race, sex, language or religion.
>
> *id.* Art. 55. And further:
>
> All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes' set forth in Article 55.
>
> *id.* Art. 56.

While this broad mandate has been held not to be wholly self-executing, *Hitai v. Immigration and Naturalization* Service, 343 F.2d 466, 468 (2d Cir. 1965), this observation alone does not end our inquiry. For although there is no universal agreement as to the precise extent of the "human rights and fundamental freedoms" guaranteed to all by the Charter, there is at present no dissent from the view that the guaranties include, at a bare minimum, the right to be free from torture. This prohibition has become part of customary international law, as evidenced and defined by the Universal Declaration of Human Rights, General Assembly Resolution 217 (III)(A) (Dec. 10, 1948) which states, in the plainest of terms, "no one shall be subjected to torture." The General Assembly hass declared that the Charter precepts embodied in this Universal Declaration "constitute basic principles of international law." G.A.Res. 2625 (XXV) (Oct. 24, 1970).

Particularly relevant is the Declaration on the Protection of All Persons from Being Subjected to Torture, General Assembly Resolution 3452,30 U.N. GAOR Supp. (No. 34) 91, U.N.Doc. A/1034 (1975). The Declaration expressly prohibits any state from permitting the dastardly and totally inhuman act of torture. Torture, in turn, is defined as any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as . . . intimidating him or other persons." The Declaration goes on to provide that "[w]here it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation, in accordance with national law." This Declaration, like the Declaration of Human Rights before it, was adopted without dissent by the General Assembly. Nayar, "Human Rights: The United Nations and United States Foreign Policy," 19, *Harv.Int'l L.J.* 813, 816 n.18 (1978).

These U.N. declarations are significant because they specify with great precision the obligations of member nations under the Charter. Since their adoption, "[m]embers can no longer contend that they do not know what human rights they promised in the Charter to promote." Sohn, "A Short History of United Nations Documents on Human Rights," in *The United Nations and Human Rights, 18th Report of the Commission* (Commission to Study the Organization of Peace ed. 1968). Moreover, a U.N. Declaration is, according to one authoritative definition, "a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated." 34 U.N. ESCOR, Supp. (No. 8) 15, U.N. Doe. E/cn.4/1/610 (1962) (memorandum of Office of Legal Affairs, U.N. Secretariat). Accordingly, it has been observed that the Universal Declaration of Human Rights "no longer fits into the dichotomy of 'binding treaty' against 'nonbinding. pronouncement,' but is rather an authoritative statement of the international *E. Schwelb, Human Rights and the International Community* 70 (1964).

Thus, a Declaration creates an expectation of adherence, and "insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon the States." 34 U.N. ESCOR, *supra* Indeed, several commentators have concluded that the Universal Declaration has become, in toto, a part of binding, customary international law. Nayar, *supra,* at 816–17; Waldlock, "Human Rights in Contemporary International Law and the Significance of the European Convention," *Int'l & Comp. L.Q.,* Supp. Publ. No. 11, at 15 (1965).

Turning to the act of torture, we have little difficulty discerning its universal.renunciation in the modern

usage and practice of nations. Smith, *supra,* 18 U.S. (5 Wheat.) at 160–61, 5 L.Ed.57. The international consensus surrounding torture has found expression in numerous international treaties and accords. *E. g., American Convention on Human Rights,* Art. 5, OAS Treaty Series No. 36. at 1, OAS Off. Rec. OEA/Ser 4 v/II 23, doc. 21, rev. 2 (English ed., 1975) ("No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment"); International Covenant on Civil and Political Rights, U.N. General Assembly Res. 2200 (XXI)A, U.N. Doc. A/6316 (Dec. 16, 1966) (identical language); European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3, Council of Europe, European Treaty Series No. 5 (1968), 213 U.N. T.S.211 (*semble*). The substance of these international agreements is reflected in modern municipal—i.e. national–law as well. Although torture was once a routine concomitant of criminal interrogations in many nations, during the modern and hopefully more enlightened era it has been universally renounced. According to one survey, torture is prohibited, expressly or implicitly, by the constitutions of over fiftyfive nations, including both the United

States and Paraguay. Our State Department reports a general recognition of this principle:

> There now exists an international consensus that recognizes basic human rights and obligations owed by all governments to their citizens. . . . There is no doubt that these rights are often violated; but virtually all governments acknowledge their validity.

Department of State, *Country Reports on Human Rights for 1979,* published as Joint Comm. Print, House Comm. on Foreign Affairs, and Senate Comm. on Foreign Relations, 96th Cong. 2d Sess. (Feb. 4, 1980), Introduction at 1. We have been directed to no assertion by any contemporary state of a right to torture its own or another nation's citizens. Indeed, United States diplomatic contacts confirm the universal abhorrence with which torture is viewed:

> In exchanges between United States embassies and all foreign states with which the United States maintains relations, it has been the Department of State's general experience that no government has asserted a right to torture its own nationals. Where reports of torture elicit some credence, a state usually responds by denial or, less frequently, by asserting that the conduct was unauthorized or constituted rough treatment short of torture.

Memorandum of the United States as Amicus Curiae at 16 n.34.

[4] Having examined the sources from which customary international law is derived—the usage of nations, judicial opinions and the works of jurists—we conclude that official torture is now prohibited by the law of nations. The prohibition is clear and unambiguous, and admits of no distinction between treatment of aliens and citizens. Accordingly, we must conclude that the dictum in *Dreyfus v. von Finek, supra,* 534 F.2d at 31, to the effect that "violations of international law do not occur when the aggrieved parties are nationals of the acting state," is clearly out of tune with the current usage and practice of international law. The treaties and accords cited above, as well as the express foreign policy of our own government, all make it clear that international law confers fundamental rights upon all people vis-a-vis their own governments. While the ultimate scope of those rights will be a subject for continuing refinement and elaboration, we hold that the right to be free from torture is now among them. We therefore turn to the question whether the other requirements for jurisdiction are met.

III

Appellee submits that even if the tort alleged is a violation of modern international law, federal jurisdiction may not be exercised consistent with the dictates of Article III of the Constitution. The claim is without merit. Common law courts of general jurisdiction regularly adjudicate transitory tort claims between individuals over whom they exercise personal jurisdiction, wherever the tort occurred. Moreover, as part of an articulated scheme of federal control over external affairs, Congress provided, in the first Judiciary Act, ¤ 9(b), 1 Stat. 73, 77 (1789), for federal jurisdiction over suits by aliens where principles of international law tire in issue. The constitutional basis for the Alien Tort Statute is the law of nations, which has always been part of the federal common law.

[5] It is not extraordinary for a court to adjudicate a tort claim arising outside of its territorial jurisdiction. A state or nation has a legitimate interest in the orderly resolution of disputes among those within its borders, and where the *lex loci delicti commissi* is applied, it is an expression of comity to give effect to the laws of the state where the wrong occurred. Thus, Lord Mansfield in *Mostyn v. Fabrigas,* 1 Cowp. 161 (1774), *quoted in McKenna v. Fisk,* 42 U.S. (1 How.) 241, 248, 11 L.Ed. 117 (1843) said:

> [I]f A becomes indebted to B, or commits a tort upon his person or upon his personal property in Paris, an action in either case may be maintained against A in England, if he is there found . . . . [A]s to transitory actions, there is not a colour of doubt but that any action which is transitory may be laid in any county in England, though the matter arises beyond the seas.

Mostyn came into our law as the original basis for state court jurisdiction over out-of-state torts, *McKenna v. Fisk, supra,* 42 U.S. (1 How.) 241, 11 L.Ed. 117 (personal injury suits *held* transitory); *Dennick v. Railroad Co.,* 103 U.S. 11, 26 L.Ed. 439 (1880) (wrongful death action *held* transitory), and it has not lost its force in suits to recover for a wrongful death occurring upon foreign soil, *Slater v. Mexican National Railroad Co.,* 194 U.S. 120, 24 S.Ct. 581, 48 L.Ed. 900 (1904), as long as the conduct complained of was unlawful where performed. *Restatement (Second) of Foreign Relations Law of the United States* ¤ 19

(1965). Here, where in *personam* jurisdiction has been obtained over the defendant, the parties agree that the acts alleged would violate Paraguayan law, and the policies of the forum are consistent with the foreign law, state court jurisdiction would be proper. Indeed, appellees conceded as much at oral argument.

[10] Although the Alien Tort Statute has rarely been the basis.for jurisdiction during its long history, in light of the foregoing discussion, there can be little doubt that this action is properly brought in federal court. This is undeniably an action by an alien, for a tort only, committed in violation of the law of nations. The paucity of suits successfully maintained under the section is readily attributable to the statute's requirement of alleging a "*violation* of the law of nations" (emphasis supplied) at the jurisdictional threshold. Courts have, accordingly, engaged in a more searching preliminary review of the merits than is required,' for example, under the more flexible "arising under" formulation. *Compare O'Reilly de Camara v. Brooke,* 209 U.S. 45, 52, 28 S.Ct. 439, 441, 52 L.Ed. 676 (1907) (question of Alien Tort Statute jurisdiction disposed of "on the merits") (Holmes, J.), with *Bell v. Hood,* 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946) (general federal question jurisdiction not defeated by the possibility that the averments in the complaint may fail to state a cause of action). Thus, the narrowing construction that the Alien Tort Statute has previously received reflects the fact that earlier cases did not involve such well-established, universally recognized norms of international law that are here at issue.

[11] For example, the statute does not confer jurisdiction over an action by a Luxembourgeois international investment trust's suit for fraud, conversion and corporate waste. *IIT v. Vencap*, 519 F.2d 1001, 1015 (1975). In *IIT,* Judge Friendly astutely noted that the mere fact that every nation's municipal law may prohibit theft does not incorporate "the Eighth Commandment, 'Thou Shalt not steal'. . . [into] the law of nations." It is only where the nations of the world have demonstrated that the wrong is of mutual, and not merely several, concern, by means of express international accords, that a wrong generally recognized becomes an international law violation within the meaning of the statute. Other recent ¤ 1350 cases are similarly distinguishable.

In closing, however, we note that the foreign relations implications of this and other issues the district court will be required to adjudicate on remand underscores the wisdom of the First Congress in vesting jurisdiction over such claims in the federal district courts through the Alien Tort Statute. Questions of this nature are fraught with implications for the nation as a whole, and therefore should not be left to the potentially varying adjudications of the courts of the, fifty states.

In the twentieth century the international community has come to recognize the common danger posed by the flagrant disregard of basic human rights and particularly the right to be free of, torture. Spurred first by the Great War, and then the Second, civilized nations have banded together to prescribe acceptable norms of international behavior. From the ashes of the Second World War arose the United Nations Organization, amid hopes that an era of peace and cooperation had at last begun. Though many of these aspirations have remained elusive goals, that circumstance cannot diminish the true progress that has been made. In the modern age, humanitarian and practical considerations have combined to lead the nations of the world to recognize that respect for fundamental human rights is in their individual and collective interest. Among the rights universally proclaimed by all nations, as we have noted, is the right to be free of physical torture. Indeed, for purposes of civil liability, the torturer has become—like the pirate and slave trader before him—*hostis humani generis,* an enemy of all mankind. Our holding today, giving effect to a jurisdictional provision enacted by our First Congress, is a small but important step in the fulfillment of the ageless dream to free all people from brutal violence.

Krstic

INTRODUCTION The greatest mass killing in Europe since the end of World War II occurred at Srebrenica, located in eastern Bosnia close to the border with Serbia. Historically a Muslim enclave, its existence thwarted Serb plans to create a larger Serb entity that would include major parts of Bosnia and Herzegovina. In July 1995 the Bosnian Serb forces, under the command of General Ratko Mladic, ethnically cleansed the women and children from the area, and then proceeded to summarily execute the men. It is believed that 7,000 to 8,000 unarmed prisoners were murdered within the space of a few days. Radislav Krstic was one of the military leaders involved in the Serb actions in and

around Srebrenica. In the first conviction for genocide by the International Criminal Tribunal for the Former Yugoslavia, he was found guilty in August 2001. In April 2004 the Appeals Chamber concluded that Krstic did not intend to exterminate the Muslim population of Srebrenica, but because he assisted Mladic with knowledge of the genocidal plans, he was guilty as an accomplice.

PROSECUTOR v. RADISLAV KRSTIC
(Case No: IT-98-33-A)
JUDGEMENT, 19 April 2004

1. The Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 is seised of two appeals from the written Judgement rendered by the Trial Chamber on 2 August 2001 in the case of *Prosecutor v. Radislav Krstic*, Case No. IT-98-33-T ("Trial Judgement"). Having considered the written and oral submissions of the Prosecution and the Defence, the Appeals Chamber hereby renders its Judgement.

2. Srebrenica is located in eastern Bosnia and Herzegovina. It gave its name to a United Nations so-called safe area, which was intended as an enclave of safety set up to protect its civilian population from the surrounding war. Since July 1995, however, Srebrenica has also lent its name to an event the horrors of which form the background to this case. The depravity, brutality and cruelty with which the Bosnian Serb Army ("VRS") treated the innocent inhabitants of the safe area are now well known and documented. Bosnian women, children and elderly were removed from the enclave, and between 7,000 – 8,000 Bosnian Muslim men were systematically murdered.

3. Srebrenica is located in the area for which the Drina Corps of the VRS was responsible. Radislav Krstic was a General-Major in the VRS and Commander of the Drina Corps at the time the crimes at issue were committed. For his involvement in these events, the Trial Chamber found Radislav Krstic guilty of genocide; persecution through murders, cruel and inhumane treatment, terrorising the civilian population, forcible transfer and destruction of personal property; and murder as a violation of the laws or customs of war. Radislav Krstic was sentenced to forty-six years of imprisonment.

4. For ease of reference, two annexes are appended to this Judgement. Annex A contains a Procedural Background, detailing the progress of this appeal. Annex B contains a Glossary of Terms, which provides references to and definitions of citations and terms used in this Judgement.

II. THE TRIAL CHAMBER'S FINDING THAT GENOCIDE OCCURRED IN SREBRENICA

1. The Defence appeals Radislav Krstic's conviction for genocide committed against Bosnian Muslims in Srebrenica. The Defence argues that the Trial Chamber both misconstrued the legal definition of genocide and erred in applying the definition to the circumstances of this case. With respect to the legal challenge, the Defence's argument is two-fold. First, Krstic contends that the Trial Chamber's definition of the part of the national group he was found to have intended to destroy was unacceptably narrow. Second, the Defence argues that the Trial Chamber erroneously enlarged the term "destroy" in the prohibition of genocide to include the geographical displacement of a community.

A. The Definition of the Part of the Group

2. Article 4 of the Tribunal's Statute, like the Genocide Convention, covers certain acts done with "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." The Indictment in this case alleged, with respect to the count of genocide, that Radislav Krstic "intend[ed] to destroy a part of the Bosnian Muslim people as a national, ethnical, or religious group." The targeted group identified in the Indictment, and accepted by the Trial Chamber, was that of the Bosnian Muslims. The Trial Chamber determined that the Bosnian Muslims were a specific, distinct national group, and therefore covered by Article 4. This conclusion is not challenged in this appeal.

3. As is evident from the Indictment, Krstic was not alleged to have intended to destroy the entire national group of Bosnian Muslims, but only a part of that group. The first question presented in this appeal is whether, in finding that Radislav Krstic had genocidal intent, the Trial Chamber defined the relevant part of the Bosnian Muslim group in a way which comports with the requirements of Article 4 and of the Genocide Convention.

4. It is well established that where a conviction for genocide relies on the intent to destroy a protected group "in part," the part must be a substantial part of that group. The aim of the Genocide Convention is to prevent the intentional destruction of entire human groups, and the part targeted must be significant enough to have an impact on the group as a whole. Although the Appeals Chamber has not yet addressed this issue, two Trial Chambers of this Tribunal have examined it. In *Jelisic*, the first case to confront the question, the Trial Chamber noted that, "[g]iven the goal of the [Genocide] Convention to deal with mass crimes, it is widely acknowledged that the intention to destroy must target at least a *substantial* part of the group." The

same conclusion was reached by the *Sikirica* Trial Chamber: "This part of the definition calls for evidence of an intention to destroy a substantial number relative to the total population of the group." As these Trial Chambers explained, the substantiality requirement both captures genocide's defining character as a crime of massive proportions and reflects the Convention's concern with the impact the destruction of the targeted part will have on the overall survival of the group.

5. The question has also been considered by Trial Chambers of the ICTR, whose Statute contains an identical definition of the crime of genocide. These Chambers arrived at the same conclusion. In Kayishema, the Trial Chamber concluded, after having canvassed the authorities interpreting the Genocide Convention, that the term "'in part' requires the intention to destroy a considerable number of individuals who are part of the group." This definition was accepted and refined by the Trial Chambers in *Bagilishema* and *Semanza*, which stated that the intent to destroy must be, at least, an intent to destroy a substantial part of the group.

6. This interpretation is supported by scholarly opinion. The early commentators on the Genocide Convention emphasized that the term "in part" contains a substantiality requirement. Raphael Lemkin, a prominent international criminal lawyer who coined the term "genocide" and was instrumental in the drafting of the Genocide Convention, addressed the issue during the 1950 debate in the United States Senate on the ratification of the Convention. Lemkin explained that "the destruction in part must be of a substantial nature so as to affect the entirety." He further suggested that the Senate clarify, in a statement of understanding to accompany the ratification, that "the Convention applies only to actions undertaken on a mass scale." Another noted early commentator, Nehemiah Robinson, echoed this view, explaining that a perpetrator of genocide must possess the intent to destroy a substantial number of individuals constituting the targeted group. In discussing this requirement, Robinson stressed, as did Lemkin, that "the act must be directed toward the destruction of a *group*," this formulation being the aim of the Convention.

7. Recent commentators have adhered to this view. The International Law Commission, charged by the UN General Assembly with the drafting of a comprehensive code of crimes prohibited by international law, stated that "the crime of genocide by its very nature requires the intention to destroy at least a substantial part of a particular group." The same interpretation was adopted earlier by the 1985 report of Benjamin Whitaker, the Special Rapporteur to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.

8. The intent requirement of genocide under Article 4 of the Statute is therefore satisfied where evidence shows that the alleged perpetrator intended to destroy at least a substantial part of the protected group. The determination of when the targeted part is substantial enough to meet this requirement may involve a number of considerations. The numeric size of the targeted part of the group is the necessary and important starting point, though not in all cases the ending point of the inquiry. The number of individuals targeted should be evaluated not only in absolute terms, but also in relation to the overall size of the entire group. In addition to the numeric size of the targeted portion, its prominence within the group can be a useful consideration. If a specific part of the group is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial within the meaning of Article 4.

9. The historical examples of genocide also suggest that the area of the perpetrators' activity and control, as well as the possible extent of their reach, should be considered. Nazi Germany may have intended only to eliminate Jews within Europe alone; that ambition probably did not extend, even at the height of its power, to an undertaking of that enterprise on a global scale. Similarly, the perpetrators of genocide in Rwanda did not seriously contemplate the elimination of the Tutsi population beyond the country's borders. The intent to destroy formed by a perpetrator of genocide will always be limited by the opportunity presented to him. While this factor alone will not indicate whether the targeted group is substantial, it can — in combination with other factors — inform the analysis.

10. These considerations, of course, are neither exhaustive nor dispositive. They are only useful guidelines. The applicability of these factors, as well as their relative weight, will vary depending on the circumstances of a particular case.

11. In this case, having identified the protected group as the national group of Bosnian Muslims, the Trial Chamber concluded that the part the VRS Main Staff and Radislav Krstic targeted was the Bosnian Muslims of Srebrenica, or the Bosnian Muslims of Eastern Bosnia. This conclusion comports with the guidelines outlined above. The size of the Bosnian Muslim population in Srebrenica prior to its capture by the VRS forces in 1995 amounted to approximately forty thousand people. This represented not only the Muslim inhabitants of the Srebrenica municipality but also many Muslim refugees from the surrounding region. Although this population constituted only a small per-

centage of the overall Muslim population of Bosnia and Herzegovina at the time, the importance of the Muslim community of Srebrenica is not captured solely by its size. As the Trial Chamber explained, Srebrenica (and the surrounding Central Podrinje region) were of immense strategic importance to the Bosnian Serb leadership. Without Srebrenica, the ethnically Serb state of Republica Srpska they sought to create would remain divided into two disconnected parts, and its access to Serbia proper would be disrupted. The capture and ethnic purification of Srebrenica would therefore severely undermine the military efforts of the Bosnian Muslim state to ensure its viability, a consequence the Muslim leadership fully realized and strove to prevent. Control over the Srebrenica region was consequently essential to the goal of some Bosnian Serb leaders of forming a viable political entity in Bosnia, as well as to the continued survival of the Bosnian Muslim people. Because most of the Muslim inhabitants of the region had, by 1995, sought refuge within the Srebrenica enclave, the elimination of that enclave would have accomplished the goal of purifying the entire region of its Muslim population.

12. In addition, Srebrenica was important due to its prominence in the eyes of both the Bosnian Muslims and the international community. The town of Srebrenica was the most visible of the "safe areas" established by the UN Security Council in Bosnia. By 1995 it had received significant attention in the international media. In its resolution declaring Srebrenica a safe area, the Security Council announced that it "should be free from armed attack or any other hostile act." This guarantee of protection was re-affirmed by the commander of the UN Protection Force in Bosnia (UNPROFOR) and reinforced with the deployment of UN troops. The elimination of the Muslim population of Srebrenica, despite the assurances given by the international community, would serve as a potent example to all Bosnian Muslims of their vulnerability and defenselessness in the face of Serb military forces. The fate of the Bosnian Muslims of Srebrenica would be emblematic of that of all Bosnian Muslims.

13. Finally, the ambit of the genocidal enterprise in this case was limited to the area of Srebrenica. While the authority of the VRS Main Staff extended throughout Bosnia, the authority of the Bosnian Serb forces charged with the take-over of Srebrenica did not extend beyond the Central Podrinje region. From the perspective of the Bosnian Serb forces alleged to have had genocidal intent in this case, the Muslims of Srebrenica were the only part of the Bosnian Muslim group within their area of control.

14. In fact, the Defence does not argue that the Trial Chamber's characterization of the Bosnian Muslims of Srebrenica as a substantial part of the targeted group contravenes Article 4 of the Tribunal's Statute. Rather, the Defence contends that the Trial Chamber made a further finding, concluding that the part Krstic intended to destroy was the Bosnian Muslim men of military age of Srebrenica. In the Defence's view, the Trial Chamber then engaged in an impermissible sequential reasoning, measuring the latter part of the group against the larger part (the Bosnian Muslims of Srebrenica) to find the substantiality requirement satisfied. The Defence submits that if the correct approach is properly applied, and the military age men are measured against the entire group of Bosnian Muslims, the substantiality requirement would not be met.

15. The Defence misunderstands the Trial Chamber's analysis. The Trial Chamber stated that the part of the group Radislav Krstic intended to destroy was the Bosnian Muslim population of Srebrenica. The men of military age, who formed a further part of that group, were not viewed by the Trial Chamber as a separate, smaller part within the meaning of Article 4. Rather, the Trial Chamber treated the killing of the men of military age as evidence from which to infer that Radislav Krstic and some members of the VRS Main Staff had the requisite intent to destroy all the Bosnian Muslims of Srebrenica, the only part of the protected group relevant to the Article 4 analysis.

16. In support of its argument, the Defence identifies the Trial Chamber's determination that, in the context of this case, "the intent to kill the men (of military age) amounted to an intent to destroy a substantial part of the Bosnian Muslim group." The Trial Chamber's observation was proper. As a specific intent offense, the crime of genocide requires proof of intent to commit the underlying act and proof of intent to destroy the targeted group, in whole or in part. The proof of the mental state with respect to the commission of the underlying act can serve as evidence from which the fact-finder may draw the further inference that the accused possessed the specific intent to destroy.

17. The Trial Chamber determined that Radislav Krstic had the intent to kill the Srebrenica Bosnian Muslim men of military age. This finding is one of intent to commit the requisite genocidal act - in this case, the killing of the members of the protected group, prohibited by Article 4(2)(a) of the Statute. From this intent to kill, the Trial Chamber also drew the further inference that Krstic shared the genocidal intent of some members of the VRS Main Staff to destroy a substantial part of the targeted group, the Bosnian Muslims of Srebrenica.

18. It must be acknowledged that in portions of its Judgement, the Trial Chamber used imprecise language which lends support to the Defence's argument. The Trial Chamber should have expressed its reasoning more carefully. As explained above, however, the Trial Chamber's overall discussion makes clear that it identified the Bosnian Muslims of Srebrenica as the substantial part in this case.

19. The Trial Chamber's determination of the substantial part of the protected group was correct. The Defence's appeal on this issue is dismissed.

B. The Determination of the Intent to Destroy

20. The Defence also argues that the Trial Chamber erred in describing the conduct with which Radislav Krstic is charged as genocide. The Trial Chamber, the Defence submits, impermissibly broadened the definition of genocide by concluding that an effort to displace a community from its traditional residence is sufficient to show that the alleged perpetrator intended to destroy a protected group. By adopting this approach, the Defence argues, the Trial Chamber departed from the established meaning of the term genocide in the Genocide Convention — as applying only to instances of physical or biological destruction of a group — to include geographic displacement.

21. The Genocide Convention, and customary international law in general, prohibit only the physical or biological destruction of a human group. The Trial Chamber expressly acknowledged this limitation, and eschewed any broader definition. The Chamber stated: "(C(ustomary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of the group. (A(n enterprise attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide."

22. Given that the Trial Chamber correctly identified the governing legal principle, the Defence must discharge the burden of persuading the Appeals Chamber that, despite having correctly stated the law, the Trial Chamber erred in applying it. The main evidence underlying the Trial Chamber's conclusion that the VRS forces intended to eliminate all the Bosnian Muslims of Srebrenica was the massacre by the VRS of all men of military age from that community. The Trial Chamber rejected the Defence's argument that the killing of these men was motivated solely by the desire to eliminate them as a potential military threat. The Trial Chamber based this conclusion on a number of factual findings, which must be accepted as long as a reasonable Trial Chamber could have arrived at the same conclusions. The Trial Chamber found that, in executing the captured Bosnian Muslim men, the VRS did not differentiate between men of military status and civilians. Though civilians undoubtedly are capable of bearing arms, they do not constitute the same kind of military threat as professional soldiers. The Trial Chamber was therefore justified in drawing the inference that, by killing the civilian prisoners, the VRS did not intend only to eliminate them as a military danger. The Trial Chamber also found that some of the victims were severely handicapped and, for that reason, unlikely to have been combatants. This evidence further supports the Trial Chamber's conclusion that the extermination of these men was not driven solely by a military rationale.

23. Moreover, as the Trial Chamber emphasized, the term "men of military age" was itself a misnomer, for the group killed by the VRS included boys and elderly men normally considered to be outside that range. Although the younger and older men could still be capable of bearing arms, the Trial Chamber was entitled to conclude that they did not present a serious military threat, and to draw a further inference that the VRS decision to kill them did not stem solely from the intent to eliminate them as a threat. The killing of the military aged men was, assuredly, a physical destruction, and given the scope of the killings the Trial Chamber could legitimately draw the inference that their extermination was motivated by a genocidal intent.

24. The Trial Chamber was also entitled to consider the long-term impact that the elimination of seven to eight thousand men from Srebrenica would have on the survival of that community. In examining these consequences, the Trial Chamber properly focused on the likelihood of the community's physical survival. As the Trial Chamber found, the massacred men amounted to about one fifth of the overall Srebrenica community. The Trial Chamber found that, given the patriarchal character of the Bosnian Muslim society in Srebrenica, the destruction of such a sizeable number of men would "inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica." Evidence introduced at trial supported this finding, by showing that, with the majority of the men killed officially listed as missing, their spouses are unable to remarry and, consequently, to have new children. The physical destruction of the men therefore had severe procreative implications for the Srebrenica Muslim community, potentially consigning the community to extinction.

25. This is the type of physical destruction the Genocide Convention is designed to prevent. The Trial Chamber found that the Bosnian Serb forces were

aware of these consequences when they decided to systematically eliminate the captured Muslim men. The finding that some members of the VRS Main Staff devised the killing of the male prisoners with full knowledge of the detrimental consequences it would have for the physical survival of the Bosnian Muslim community in Srebrenica further supports the Trial Chamber's conclusion that the instigators of that operation had the requisite genocidal intent.

26. The Defence argues that the VRS decision to transfer, rather than to kill, the women and children of Srebrenica in their custody undermines the finding of genocidal intent. This conduct, the Defence submits, is inconsistent with the indiscriminate approach that has characterized all previously recognized instances of modern genocide.

27. The decision by Bosnian Serb forces to transfer the women, children and elderly within their control to other areas of Muslim-controlled Bosnia could be consistent with the Defence argument. This evidence, however, is also susceptible of an alternative interpretation. As the Trial Chamber explained, forcible transfer could be an additional means by which to ensure the physical destruction of the Bosnian Muslim community in Srebrenica. The transfer completed the removal of all Bosnian Muslims from Srebrenica, thereby eliminating even the residual possibility that the Muslim community in the area could reconstitute itself. The decision not to kill the women or children may be explained by the Bosnian Serbs' sensitivity to public opinion. In contrast to the killing of the captured military men, such an action could not easily be kept secret, or disguised as a military operation, and so carried an increased risk of attracting international censure.

28. In determining that genocide occurred at Srebrenica, the cardinal question is whether the intent to commit genocide existed. While this intent must be supported by the factual matrix, the offence of genocide does not require proof that the perpetrator chose the most efficient method to accomplish his objective of destroying the targeted part. Even where the method selected will not implement the perpetrator's intent to the fullest, leaving that destruction incomplete, this ineffectiveness alone does not preclude a finding of genocidal intent. The international attention focused on Srebrenica, combined with the presence of the UN troops in the area, prevented those members of the VRS Main Staff who devised the genocidal plan from putting it into action in the most direct and efficient way. Constrained by the circumstances, they adopted the method which would allow them to implement the genocidal design while minimizing the risk of retribution.

29. The Trial Chamber — as the best assessor of the evidence presented at trial — was entitled to conclude that the evidence of the transfer supported its finding that some members of the VRS Main Staff intended to destroy the Bosnian Muslims in Srebrenica. The fact that the forcible transfer does not constitute in and of itself a genocidal act does not preclude a Trial Chamber from relying on it as evidence of the intentions of members of the VRS Main Staff. The genocidal intent may be inferred, among other facts, from evidence of "other culpable acts systematically directed against the same group."

30. The Defence also argues that the record contains no statements by members of the VRS Main Staff indicating that the killing of the Bosnian Muslim men was motivated by genocidal intent to destroy the Bosnian Muslims of Srebrenica. The absence of such statements is not determinative. Where direct evidence of genocidal intent is absent, the intent may still be inferred from the factual circumstances of the crime. The inference that a particular atrocity was motivated by genocidal intent may be drawn, moreover, even where the individuals to whom the intent is attributable are not precisely identified. If the crime committed satisfies the other requirements of genocide, and if the evidence supports the inference that the crime was motivated by the intent to destroy, in whole or in part, a protected group, a finding that genocide has occurred may be entered.

31. In this case, the factual circumstances, as found by the Trial Chamber, permit the inference that the killing of the Bosnian Muslim men was done with genocidal intent. As already explained, the scale of the killing, combined with the VRS Main Staff's awareness of the detrimental consequences it would have for the Bosnian Muslim community of Srebrenica and with the other actions the Main Staff took to ensure that community's physical demise, is a sufficient factual basis for the finding of specific intent. The Trial Chamber found, and the Appeals Chamber endorses this finding, that the killing was engineered and supervised by some members of the Main Staff of the VRS. The fact that the Trial Chamber did not attribute genocidal intent to a particular official within the Main Staff may have been motivated by a desire not to assign individual culpability to persons not on trial here. This, however, does not undermine the conclusion that Bosnian Serb forces carried out genocide against the Bosnian Muslims.

32. Among the grievous crimes this Tribunal has the duty to punish, the crime of genocide is singled out for special condemnation and opprobrium. The crime is horrific in its scope; its perpetrators identify entire human groups for extinction. Those who devise and

implement genocide seek to deprive humanity of the manifold richness its nationalities, races, ethnicities and religions provide. This is a crime against all of humankind, its harm being felt not only by the group targeted for destruction, but by all of humanity.

33. The gravity of genocide is reflected in the stringent requirements which must be satisfied before this conviction is imposed. These requirements — the demanding proof of specific intent and the showing that the group was targeted for destruction in its entirety or in substantial part — guard against a danger that convictions for this crime will be imposed lightly. Where these requirements are satisfied, however, the law must not shy away from referring to the crime committed by its proper name. By seeking to eliminate a part of the Bosnian Muslims, the Bosnian Serb forces committed genocide. They targeted for extinction the forty thousand Bosnian Muslims living in Srebrenica, a group which was emblematic of the Bosnian Muslims in general. They stripped all the male Muslim prisoners, military and civilian, elderly and young, of their personal belongings and identification, and deliberately and methodically killed them solely on the basis of their identity. The Bosnian Serb forces were aware, when they embarked on this genocidal venture, that the harm they caused would continue to plague the Bosnian Muslims. The Appeals Chamber states unequivocally that the law condemns, in appropriate terms, the deep and lasting injury inflicted, and calls the massacre at Srebrenica by its proper name: genocide. Those responsible will bear this stigma, and it will serve as a warning to those who may in future contemplate the commission of such a heinous act.

34. In concluding that some members of the VRS Main Staff intended to destroy the Bosnian Muslims of Srebrenica, the Trial Chamber did not depart from the legal requirements for genocide. The Defence appeal on this issue is dismissed.