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Never Again?

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Abstract

This article argues that the international community must learn from the genocide in Bosnia and Herzegovina in order to prevent history from repeating itself. It highlights that firm action must be taken to punish the perpetrators of genocide as soon as it is discovered and urges the establishment of a permanent international criminal court. Next it exposes the weaknesses of the ICTY in its inability to apprehend those that were indicted. Finally, it recommends measures that individual nations should implement at a domestic level.

ESSAYS

NEVER AGAIN?

*Sven Alkalaj**

Genocide shaped the founding of the United Nations. The men and women who drafted our Charter did not yet know the terror of possible nuclear holocaust. They did know of the actual Holocaust of Jews and others perpetrated by the Nazi regime. Indeed, the full revelation of that horror, in the spring of 1945, formed the backdrop to the work of the San Francisco Conference [that established the United Nations]. It gave added urgency to the task of building an institution intended not only to preserve world peace but above all to protect human dignity. Ensuring that genocide could never be repeated became, in many people's eyes, the new world Organization's most important mission.¹

—Kofi Annan, Message on the Fiftieth Anniversary of the Convention on the Prevention and Punishment of Genocide,² (or “Genocide Convention”) on December 9, 1998.

We seem to agree that if genocide had not happened, there would never have been a United Nations. *Ipso facto*, since there is now a U.N. Organization, genocide should have ceased to occur. It did not. Unfortunately, the United Nations has not always been successful in its most important mission—ensuring that genocide was not repeated.

My ancestors came to Bosnia from Spain at the end of the fifteenth century, after the 1492 expulsions that sent a multi-

* Ambassador of Bosnia and Herzegovina to the United States. He is the first person to serve in this position. Born in 1948, Mr. Alkalaj is a descendant of a well-known Jewish family in Sarajevo that traces its ancestry to Spain's “Golden Age” of Sephardic Jewry.

1. United Nations Secretary-General Kofi Annan, Address Commemorating the Occasion of the Fiftieth Anniversary of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1998) <<http://www.un.org/Docs/SG/quotable/6822.htm>> (on file with the *Fordham International Law Journal*).

2. Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, 78 U.N.T.S. 277.

tude—estimates vary from 50,000 to 250,000—of Spain's Jews scattered in all directions.³ My father is a Holocaust survivor. I was born two years after World War II ended, a life built upon the ashes of the Holocaust. The Genocide Convention was adopted by the United Nations as an instrument of international law that would prevent genocide from happening ever again. I was not supposed to witness genocide in my country. Yet, I did.

Although I do not wish to equate the genocide in Bosnia and Herzegovina with the Holocaust, the sheer number of Bosnian civilians affected by atrocities committed during the 1992-1995 war make the drawing of some parallels possible: over 200,000 people dead or missing, over 220,000 people wounded, and over two million displaced people expelled from their homes. Serb gunmen who surrounded Sarajevo, the country's capital, for almost four years killed over 10,000 individuals, including 1700 children. The majority of victims were Bosniaks or Bosnian Muslims. The suffering of other ethnic communities in Bosnia and Herzegovina notwithstanding, it was the Bosniaks who were the target of what, by any accepted legal and moral measure, can be termed genocide. We all well remember the slaughter of Srebrenica in July 1995 when an estimated 8000 Bosniak men were killed by Serb nationalist militias that overran this city while under the protection of the United Nations. The killings, tortures, rapes, and deportations that occurred were often carried out in a strikingly gruesome manner, on a scale not seen in Europe since World War II. But what made the genocide in Bosnia and Herzegovina so disturbing was not only its gruesome nature, but also the fact that it was a practice that the West believed it had put firmly behind, vowing that genocide would happen "never again!"

How could anyone participate in, approve of, or ignore such a human tragedy with the memory of the Holocaust etched in people's minds and both the Universal Declaration of Human Rights⁴ and the Genocide Convention adopted? It was the hesitation of the international community to act in accordance with the values and principles proclaimed in these and other interna-

3. HOWARD M. SACHAR, *DIASPORA* 229 (Harper & Row, 1985).

4. Universal Declaration of Human Rights, December 10, 1948, General Assembly Resolution 217 A (III).

tional conventions that entailed failure to prevent or halt the genocide in Bosnia-Herzegovina and later Rwanda.

In hesitating to apply the principles of international law established in the aftermath of the World War II, the international community perpetuated the sixteenth-century concept enunciated by the maxim *cuius regio eius religio*,⁵ which was later expanded, with the rise of the nation-state in Europe, to include *eius nacio*.⁶ This situation led to the misinterpretation that the Bosnian genocide (for which the Serbs first invented the euphemism “ethnic cleansing,” later regrettably accepted by general public) was an unintentional and unfortunate by-product of civil war. This statement was not so; rather, it was a rational choice and the direct and planned consequence of conscious policy decisions taken by those who are now being indicted by the International War Crime Tribunal for Former Yugoslavia⁷ (or “ICTY”) in The Hague. But apart from the establishment of this tribunal by the Security Council in 1993, there was little else the great powers agreed to do to stop the war crimes from being carried out in that part of the world.

In hindsight, it is clear that the world of the early and mid-1990s was still the world in which the foreign policies of the great powers were based principally on a calculation of political, economic, and military interest. Though the major western powers could not summon the will to intervene on the behalf of the victims of genocide in Bosnia and Rwanda, their public constantly reminded them, through protests and other expressions of public discontent, that a foreign policy based solely on economic and political interests would not be supported. The public required a foreign policy that combined interests with values protected by the Universal Declaration of Human Rights and the Genocide Convention.

Thanks to the Internet and the omnipresence of the media, ordinary people realized that there is no conflict in the modern world that can be described as “a quarrel in a far away country

5. “Those who live in a country should adopt the religion of its ruler.” This maxim originally applied to the right of princes in the Holy Roman Empire to impose a religion on their subjects.

6. “*Eius nacio*” embodies the concept of a national religion.

7. *Statute for the International Criminal Tribunal for the Former Yugoslavia*, S.C. Res 827, U.N. SCOR, 48th Sess., 3217th mtg, U.N. Doc. S/RES/827 (1993).

between people of whom we know nothing," as Neville Chamberlain said of Czechoslovakia in 1938.

Backed by the modern media, a host of nongovernmental organizations, notably Amnesty International, Human Rights Watch, and Doctors Without Borders started to advance the principles of human rights in the international politics. The latter organization was just recently awarded the Nobel Prize for Peace for its effort in that domain. As Karl Meyer rightly notes, it was primarily due to these nongovernmental organizations that the Universal Declaration of Human Rights, adopted by the United Nations in 1948, has assumed 'a robust second life'⁸ in the late 1990s. Due to pressure from those organizations, as well as the general public, the international community finally realized that it should change its support for the Universal Declaration of Human Rights and the Genocide Convention from declaratory to contractual.

Having learned from its experience in Bosnia and Herzegovina that the postponement of military intervention against "ethnic cleansing" can result only in more victims and greater expenditure for the international community, in 1999, the Western powers opted for a robust and relatively fast and successful intervention in Kosovo in order to stop the mass killing and expulsion of Kosovo's Albanian community by the Serbian military and police. The North Atlantic Treaty Organization's ("NATO") intervention in Kosovo will go down in history as the first intervention of the great powers that was not triggered by political or economic concerns, but purely humanitarian interests.

Now that the world's collective conscience has finally reached the point where human rights violations in every corner of the Earth can generate global attention and, as in the cases of Kosovo and East Timor, trigger intervention, it is time to speed up the creation of a permanent international criminal court to try crimes against humanity. Further building of the international legal order based on universal human rights will be impossible without an international criminal court. *Ad hoc* war crimes tribunals like the International War Crimes Tribunal for Former Yugoslavia in The Hague have not been efficient enough in preventing the war crimes and apprehending the war criminals.

8. See Karl E. Meyer, *Enforcing Human Rights*, *WORLD POL'Y J.*, Oct. 1, 1999, at 45 cited in 1999 WL 17305202.

May I remind you that two top political and military leaders of Bosnian Serbs, Radovan Karadzic and Ratko Mladic, twice indicted by the ICTY for genocide and crimes against humanity, are still at large?

The main weakness of the ICTY—its inability to apprehend those indicted due to the lack of constabulary—would most certainly continue to plague a permanent international criminal court as well. That is why this court alone can never act as a substitute for political and military intervention. In order to dissuade ethnic chauvinists from perpetrating ethnic cleansing of other ethnic groups and using different forms of terror to achieve their ends, there is the need for an overwhelming military force in the hands of the international community. As the cases in Bosnia and Kosovo clearly show, neither U.N. resolutions and declarations, nor the Genocide Convention mean anything in the absence of the unrelenting threat of force by a superpower determined to stop aggression and genocide. Only force combined with convictions makes a powerful weapon for keeping modern forms of barbarism in check and secure that those who commit crimes against humanity will not go unpunished. This powerful combination also makes sure that historical truth has been established, preventing distortion and falsification of historical facts.

For example, myths about Chetniks (Serbian nationalist militias during World War II) as “foes of the Nazis, Fascists and Communists,” harbored by the West for years, enabled men like Momcilo Djujic to live openly in the United States for fifty years⁹ despite the fact that the government of Communist Yugoslavia asked for his extradition based on charges of crimes against civilians and allegations of his collaboration with fascists during the World War II. Little did the West want to know about the role Djujic played as a ‘godfather’ to Serbian ultranationalist politician and the founder of the Serbian Radical Party, Vojislav Seselj, whose paramilitary group committed numerous atrocities against civilians during the aggressions against Croatia and Bosnia-Herzegovina, and who later became a senior member of Milosevic’s government.

On May 22, 1999, Yugoslav President Slobodan Milosevic fi-

9. Benjamin Wittes, *For an Accused War Criminal, A 50-Year Haven in America*, WASH. POST, September 20, 1999 at A15.

nally became the first sitting head of state in history to be indicted by an international tribunal for committing war crimes and crimes against humanity in Kosovo. The indictment was accompanied by an international arrest warrant. Even though the international community has shown no sign of any real effort to bring Milosevic to trial, there is no doubt that he will eventually face it. Effective political and military intervention in Kosovo has already proved to Milosevic and others that they cannot hide their crimes against humanity behind the sanctity of state sovereignty.

True, the diffusion of global human rights consciousness has not managed to halt the horror of human rights violations in Bosnia, Kosovo, East Timor, and now Chechnya. The existence of war crime tribunals has offered no guarantees that the perpetrators would be brought promptly to justice. Still, no one can deny that an international order, based on universal human rights norms and international laws, has already begun to emerge. The most recent proof of this system's undeniable existence is the arrest of Chilean general Augusto Pinochet in Britain and the arrest of Vichy's minister Maurice Papon in Switzerland. These arrests exemplify that the apprehension of persons indicted for war crimes and crimes against humanity, never falls under a statute of limitations. They also enable us to predict with greater certainty that genocide, the most horrifying human practice of this millennium, will indeed *never again* happen in the next one.

If genocide and crimes against humanity can still happen on the threshold of the twenty-first century and countries can harbor war criminals in order to escape justice, then we must ask ourselves what we should do to ensure that "never again" really means never again. Anticipation and prevention of horrible events can move the world in that direction. Experience gained in the course of the bloody conflicts in Bosnia and Herzegovina could lead to the development of a realistic and manageable strategy to prevent and respond to mass atrocities; the more timely and effective response to atrocities in Kosovo offers strong proof of this strategy. We need, therefore, to establish national frameworks for early warnings, mitigation, and the curtailing of campaigns of atrocities inside any state. As we have seen, seemingly minor or small-scale atrocities can evolve into broader, bloodier campaigns. In Yugoslavia in 1989, the regime in Bel-

grade revoked the autonomy of Kosovo and Vojvodina, and then launched threats and other pressures, including atrocities. In 1991, it attacked Slovenia and Croatia. These actions were followed by aggression and genocide in Bosnia and Herzegovina, and then with the full-scale aggression and genocide against Kosovo last year.

There should be no excuses of so-called pragmatism or realpolitik. The moment that the causes and perpetrator regimes or groups have been identified, firm action must be taken.