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Human Rights - International Law - and the Armenian Genocide

by Alfred de Zayas, JD, PhD

The most fundamental right of the human being is the right to life. Long before its codification in the Universal Declaration of Human Rights of 1948, in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, and in the International Covenant on Civil and Political Rights, the right to life was the paramount human right -based on reason and metaphysical necessity.

Another fundamental human right is the right to one's homeland¹, a collective and individual right, which is a condition *sine qua non* for the exercise of many other human rights². Indeed, the right to one's homeland is logically more important than the right to self-determination, logically prior to the right to democratic participation, because these ancillary rights can only be exercised by a people who is not subjected to expulsion, massacred or otherwise denied their right to live on their native soil. The crime of ethnic cleansing is a drastic denial of the right to one's homeland. Slobodan Milosevic is standing trial in The Hague before the International Criminal Tribunal for the Former Yugoslavia, precisely because of a gross violation of this right.

Throughout history the right to life and the right to the homeland have been violated by countless aggressions³, wars of conquest and subjugation, state terrorism, by the demonization of adversaries, discrimination of ethnic and religious minorities, and ultimately by their extermination. .

Yet another human right that is indispensable in the search for truth and justice is the right to seek and impart information. This right, proclaimed in article 19 of the Universal Declaration of Human Rights and in article 19 of the International Covenant on Civil and Political Right, is under attack in many parts of the world. For instance, pursuant to article 305 of its new Penal Code, Turkey criminalizes the expression of the Armenian genocide. Official negationism of this kind clearly entails a violation of the right to seek and impart information.

Because of the political misuse and abuse of history, some victims are denied recognition. This is a widespread phenomenon, and this morning I would like to speak about some of the "unsung victims" of history.

As a lawyer, I would like to build on the premise of an overarching principle of human rights - namely, the principle of equality. Since all human beings share the same human dignity, there cannot be politically correct victims and those whom one can safely ignore. All victims of injustice, including the survivors of the Armenian genocide and their descendants, are entitled to recognition of their status as victims. They deserve our respect and compassion.

World history knows of many massacres. Many more have gone untold. The victims remain unpitied and unknown. In the documentary and book *Manufacturing Consent*, Noam Chomsky reminds us of many victims of massacres and gross violations of human rights that our political leaders have chosen to hide or minimize, particularly the genocide of the first Nations of the North and South American continent, the genocide against the Ibos of Nigeria,

¹ Alfred de Zayas, « The Right to One's Homeland, Ethnic Cleansing, and the International Criminal Tribunal for the Former Yugoslavia» *Criminal Law Forum*, Vol. 6, 1995, pp. 257-314.

² Ono Kimminich, *Das Recht auf die Heimat*, Bonn, 1989, p. 20 I. Jose Ayala Lasso, United Nations High Commissioner for Human Rights, in his opening statement of 17 February 1997 to the Expert seminar held in Geneva, convened by the Office of the High Commissioner for Human Rights in the context of the preparation of the final report of the Special Rapporteur Awn Shawkat Al Khasawneh on the Human Rights Dimensions of Population Transfers, UN Doc. E/CN.4/Sub.2/1997/23. Full text of the Ayala statement reproduced in A. de Zayas, *Heimatrecht ist Menschenrecht*, Universitas, MUnchen, 200 I, pp. 278-281.

³ Alfred de Zayas« Aggression » in Dinah Shelton (ed.) *Encyclopedia of Genocide and Crimes Against Humanity*, Macmillan 2004,

and more recently the genocide carried out by America's ally Indonesia on the hapless population of East Timor⁴, now Timor Leste.

It is time to take a new look at history, to place events in perspective, to remind ourselves that every single human life is important, that injustice breeds injustice. Whereas some victims of violations of their human rights are instrumentalized for political purposes, others are ignored or negated, also for political reasons.

As members of the human family we must keep in mind article 1 of the Universal Declaration of Human Rights:

"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."

Who are the "unsung victims"?

Among the many forgotten victims in the history of mankind, let us remember the indigenous populations of the Western Hemisphere⁵, the men and women that the European colonizers met when they "discovered" the new continent. Recent estimates place the numbers of indigenous peoples at around 10 million North of the Rio Grande (the territory of today's United States and Canada)⁶ and maybe as many as 70 million in Central and South America.

All European colonizers employed various forms of violence on the indigenous populations, resulting in the destruction of perhaps 50 percent of the indigenous populations in Central and South America and 95 percent of the native populations of North America. Many succumbed to European diseases such as smallpox and typhus, but many others succumbed to enslavement, forced transfers to arid territory, to the deliberate destruction of their crops and the nearly total slaughter of their food sources, the buffalo, to the destruction of indigenous settlements, including the massacres of St. Francis (1759), Horseshoe Bend (1814), Bad Axe (1823), Blue Water (1854), Sand Creek (1864), Marias River (1870), Camp Robinson (1878) and Wounded Knee (1890), to name only the worst slaughters in what is today the United States of America.

The Spanish Conquistadores also committed genocidal crimes on the indigenous peoples of Hispaniola, Mexico and Peru. We know this from Spanish contemporary chronicles and from the writings of the Dominican priest Bartolome de las Casas (1484-1566)⁷. And yet, we scarcely talk

⁴ Mark Achbar (ed.), *Manufacturing Consent. Noall Chomsky and the Media*, Black Rose Books, Montreal, 1994, pp. 98-99.

⁵ Russell Thornton, « Population: Precontact to the Present », in Frederick E. Hoxie (ed). *Encyclopedia of North American Indians*, Houghton Mifflin, Boston, pp. 500-502. Russell Thornton, *A Population History Since 1492* (1987). A. L. Kroeber, *Cultural and Natural Areas of Native North America*, University of California Publications in American Archeology and Ethnology, 1939. H.F. Dobyns. *Their Numbers Become Thinned: Native American Population Dynamics in Eastern North America*, 1983. (giving the figure of 18 million native population in 1492 north of the Rio Grande). W.M. Denevan (ed.), *The Native Population of the Americas in 1492*, 1976. Henry F. Dobyns, "Estimating Aboriginal Population" in *Current Anthropology*, 1966 (giving a range of 10 to 12 million north of the Rio Grande, and 90 to 112 million for the Western Hemisphere). David Stannard, *American Holocaust: Columbus and the Conquest of the New World*, Oxford University Press, New York 1992. Russell Thornton, *American Indian Holocaust and Survival, A Population History Since 1492* (1987). Ward Churchill, *A Little Matter of Genocide: Holocaust and Denial in the Americas, 1492 to the Present*, City Lights Books, San Francisco 1997.

⁶ Stacie E. Martin, "Native Americans", in Dinah Schelton (ed.) *op. cit.*, vol. 2, pp. 740-46.

⁷ Bartolome de las Casas, *Brevisima Relacion de la Destruccion de las Indias*, 1552. (English: *The Devastation of the Indies: A Brief Account*, translated by Herma Briffault, Johns Hopkins University Press, Baltimore, 1992).

about this genocide, as if the extinction of many indigenous tribes had been a natural disaster. Let us also not forget the aboriginal populations of Australia, Tasmania, New Zealand, the millions of victims of the slave trade, the degradation of the human being to what was termed "chattel property".

Some may demur because these events happened very long ago. Unfortunately, the history of genocide has continued in the twentieth century. Thus the Christian minorities in the Ottoman Empire, who had suffered persecution and massacres in the nineteenth century⁸ were subjected to genocide under the cover of the First World War, culminating in the murder of some 1.5 million Armenians⁹, and the ethnic cleansing of the Greek and Assyrian communities of Anatolia. Already in 1915 the Turkish massacres against the Armenians were described by the British and French Governments as "crimes against humanity" Article 230 of the Treaty of Sevres stipulated that the Turkish officials responsible for the massacres would be handed over to the Allies to be tried by an international criminal tribunal. Article 144 stipulated that the confiscated property should be returned. Unfortunately, although Turkey signed the Treaty of Sevres, it never ratified it. And the new Kemalist government succeeded in negotiating a different Peace Agreement with the Allies, the Treaty of Lausanne of 1923, which did not stipulate punishment of war criminals or restitution of stolen property..

We also remember the millions of Ukrainian victims of Stalin's imposed famine, the millions of human beings internally displaced, and the millions interned in the Gulags. Mass-murder, of course, may have many motives. Ethnic hatred is one. Religious fanaticism another. Maybe Stalin's murders do not qualify strictu sensu as genocide, since they were not racially-motivated. Perhaps they could be termed democide, the liquidation of the members of a social class or of a political group.

The Second World War further opened the floodgates. Nazis murdered those they considered as Untermenschen. Millions of Jews and gypsies were murdered. Historians have devoted much scholarship to investigating these genocides. But there are other victims that remain unrecognised, other stories that have hardly been told. We think of the millions of rapes committed by the Red Army on all women in the territories they occupied. We think of the fifteen million Germans from East Prussia, Pomerania, Silesia, East Brandenburg, Sudetenland - who were expelled from their 700-year old homelands - two million of whom did not survive this form of ethnic cleansing¹⁰. The curious anomaly is that at the same time as these expulsions and murders against German civilians were taking place, the four victorious Powers were sitting in judgment at Nuremberg, where they had indicted the Nazis for the crime of expulsion and murder of Poles and other nationalities from their homelands, acts which the Nuremberg judges held to be war crimes under Article 6b of the indictment and as crimes against humanity under article 6c¹¹. It is difficult to find a stronger illustration of double-standards.

⁸ Vahakn Dadrian, *The History of the Armenian Genocide*, Berghan Books, Providence, Rhode Island, 1995. Dadrian, "Armenians in Ottoman Turkey and the Armenian Genocide", in Dinah Shelton (ed), *Encyclopedia of Genocide and Crimes Against Humanity*, Macmillan Reference, New York, 2004, Vol. I, pp. 67-76.

⁹ Alfred de Zayas "The Twentieth Century's First Genocide: International Law, Impunity, the Right to Reparations, and the Ethnic Cleansing Against the Armenians 1915-16" in Steven Vardy and Hunt Tooley, *Ethnic Cleansing in Twentieth Century Europe*, Columbia University Press, 2003, pp. 157-180.

¹⁰ Alfred de Zayas, *Nemesis at Potsdam*, 2003, Picton Press, Rockport, Maine. Alfred de Zayas, "A Terrible Revenge" 1994, St. Martin's Press, New York.

¹¹ Alfred de Zayas, « International Law and Mass Population Transfers », *16 Harvard International Law Journal*, pp. 207-258.

We should also remember the one hundred and eighty thousand Cypriots expelled by Turkey from Northern Cyprus in 1974, following the illegal occupation of Northern Cyprus, an occupation that continues to this day, notwithstanding the relevant Resolutions of the United Nations Security Council and of the General Assembly, and notwithstanding judgments of the European Court of Human Rights condemning the occupation and the violation of the human rights of the Greek Cypriots, who were expelled in 1974 and who have been denied compensation and the right to return to their homeland.¹²

Let us also remember the indigenous populations of Aceh Sumatra, who have suffered untold oppression and massacres under the Dutch colonizers and then under successive Indonesian governments, and of Timor Leste, who were similarly decimated under the Portuguese colonizers and then under the Indonesian authorities after 1975.

Implementation of international law and human rights norms

In principle, there are no States above international law and no legal black hole. De jure and de facto, many of these instances of expulsion, ethnic cleansing and outright massacres constituted genocide. The sad reality is that many of the perpetrators of these crimes have remained unpunished to this day, and that most of the victims have not received recognition or compensation. Many victims see themselves denied the recognition of their status as victims.

True, mass murder is a crime and has always been a crime under domestic law and under the law of nations, a crime that gives rise to State responsibility and to personal criminal liability. No statutes of limitations apply with respect to genocide and crimes against humanity. The perpetrator State or any successor State is under an obligation to prosecute and punish the officials responsible for the crime, to grant restitution and make other forms of reparation to the victims and to their descendants.

The Genocide Convention of 1948 and other United Nations Conventions strengthen the claims of genocide victims, including the Greeks, Assyrians and Armenians of Asia Minor, the indigenous peoples of North and South America, and the many other "unsung victims" mentioned above. The Convention did not create their rights, since the Convention was only declarative -- not constitutive of the pre-existing law of nations. The Convention, however, sets up a mechanism that can be useful in the context of the Armenian Genocide.

Pursuant to article IX of the Convention, the International Court of Justice in the Hague has jurisdiction over any dispute relating to the interpretation, application or fulfillment of the Convention, including those relating to the responsibility of a State for genocide. Any State party to the Convention, including Armenia, could submit a case under article IX to the ICJ. Moreover, the UN Security Council or the General Assembly could request the ICJ to deliver an advisory opinion concerning the legal consequences today of the Armenian genocide.

The discussion about the non-retroactivity of the Genocide Convention is, of course, a red herring --

¹² Alfred de Zayas, « Ethnic Cleansing: Applicable Norms, Emerging Jurisprudence, Implementable Remedies» Chapter 9 of John Carey (ed.) International Humanitarian Law, Transnational Publishers, Ardsley, New York, 2003, pp. 283-307.

a red herring partly financed by my own country, the United States of America, on behalf of its NATO ally Turkey. The Turkish-Armenian-Reconciliation-Commission appears to participate in this distraction manoeuvre. Of course, everyone in this Conference wants reconciliation. But all reconciliation must be based on truth, and on the principle that all members of the human family have equal dignity and equal rights.

In the case of the Armenian genocide, we can conclude that the international legal norms are reasonably clear. So too are the facts¹³. What is missing is the implementation of the norms, the recognition of the crime, and the granting of justice to the victims. As so frequently in history, where might is taken for right, great crimes go unpunished.

European, American and Australian statesmen have hitherto failed to face up to the historical responsibility of their respective countries for crimes of genocide committed in the course of the colonization and exploitation of North America, South America, Australia, Southeast Asia, Africa. Nor have they accepted responsibility for the crimes associated with the slave trade. This reluctance became abundantly evident at the World Conference Against Racism held in Durban, South Africa in September 2001.

Does this mean that colonialism and slavery were not crimes against humanity, just because no one was punished? Does the fact that Pol Pot was never punished for the mass murders in Cambodia mean that what occurred there was not a crime against humanity? Other great criminals of our day, including Idi Amin Dada of Uganda, have also died in impunity.

All Turkish officials who participated in the Armenian genocide are dead. Thus the punishment of the murderers can no longer be effected. What is possible and necessary today is to settle the historical record, to seek the judgment of the Court of world public opinion. In the name of Human Rights, civil society should propose the convening of a Russell-type tribunal in order to put the Armenian genocide on trial before the eyes of the world.

The 1984 People's Tribunal in Paris, which devoted its session to the Armenian genocide¹⁴, was a good start. A new People's Tribunal with international participation can and should be organized.

It is never too late. Indeed, in July 1998 indigenous groups in Honduras opened a historic trial against Christopher Columbus. He was charged with responsibility for the crimes of the Conquistadores - genocide, slavery, rape and plundering. Similar tribunals were also set up in Bolivia, Guatemala and even in Texas.

The results of such people's tribunals must be given greater visibility. I am persuaded that it is possible to take the Armenians out of the category of the "unsung victims" and to ensure that the Armenian genocide is taught in every high school and in every university - at least in the United States and in Europe..

Ubi jus ibi remedium

¹³ Henry Morgenthau, *Ambassador Morgenthau's Story*, Gomidas Institute, Ann Arbor, Michigan, Taderon Press, 2000. Samantha Power, *A Problem from Hell. America and the Age of Genocide*. Basic Books, New York 2002.

¹⁴ Tribunal Permanent des Peuples, *Le Crime de Silence. Le Genocide des Armeniens*, Flammarion, 1984.

Another important issue that still remains open - is that of restitution and compensation. It is and remains intolerable that a State that committed genocide should still enjoy the fruit of its crime.

Whereas Germany has restituted the stolen Jewish property and paid billions of dollars in compensation to the surviving victims of the Holocaust and to their descendants, Turkey continues to occupy the historical Armenian lands, its churches and monasteries, its houses and cemeteries. Imagine for a moment that the Germans still occupied the Jewish synagogues in Germany and that they still enjoyed the Jewish property they had confiscated. Everyone would consider such a situation outrageous and intolerable.

Somehow the world seems to experience no outrage, when Turkey continues to enjoy the fruits of the first genocide in the 20th century, and when it continues to deny and to manipulate history. In the name of human rights and international law, this situation must change.

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