



## **Never Say Never Again?**

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The Genocide Convention's sixtieth anniversary year was full of sober reminders that its primary goal -- prevention of genocide -- has remained out of reach. Thousands of innocents were slaughtered in Darfur; hatemongers, such as Iranian president Mahmoud Ahmadinejad kept up their calls for mass murder with impunity; and genocidal fugitives such as Ratko Mladic and Mengistu Haile Mariam were able to celebrate another year of evading justice. But not all hope was lost. Another one of the Convention's core goals -- punishment -- was at least partially realized. Genocide was prosecuted and roundly condemned and sanctioned in courts across the globe, including (at long last) Cambodia (even if the official charge may not have been "genocide"). And while some of the most notorious *génocidaires* remained at large, others were apprehended (notably Radovan Karadzic), indicted and stood trial. So even if the events of 2008 may not have convinced anyone that the "never again" pledge was close to being redeemed, the international legal community could at least take some solace knowing that the fight against genocidal impunity was still being fought with great vigor and some success.

The year started off auspiciously. To honor the Genocide Convention's sixtieth birthday, the United Nations Human Rights Council in March unanimously adopted Resolution 7/25 entitled "Prevention of Genocide."<sup>1</sup> The Resolution reaffirmed the significance of the Genocide Convention;<sup>2</sup> called upon states that have not yet ratified the Convention to do so;<sup>3</sup> re-emphasized state responsibility to prevent and protect its population from genocide;<sup>4</sup> and recognized the role of the Secretary-General in dealing with early warning or prevention cases.<sup>5</sup> In her first address to the Human Rights Council in September 2008, new High Commissioner for Human Rights Navi Pillay informed the Council that she would be acting upon its March request and that her office would plan a seminar on the prevention of genocide.<sup>6</sup>

### ***International Justice***

It was at the end of the year, however, that the world received perhaps the most powerfully symbolic genocide legal news of 2008. On December 18th, the International Criminal Tribunal for Rwanda (ICTR) convicted Rwandan genocide architect Théoneste Bagosora for his role in the 1994 massacres.<sup>7</sup> As cabinet director of the Rwandan Defense Ministry, Colonel Bagosora stormed out of peace talks in Tanzania with Tutsi rebel group the Rwandan Patriotic Front (RPF) vowing to return to Rwanda to "prepare for the apocalypse."<sup>8</sup> The Tribunal had heard evidence that Bagosora was in charge of the troops and *Interahamwe* Hutu militia who butchered about 800,000 minority Tutsis

and moderate Hutus in 100 days after President Juvenal Habyarimana's plane was shot down on April 6, 1994.<sup>9</sup> In convicting him on charges of genocide (and other crimes), the Tribunal sentenced Bagosora to life in prison.<sup>10</sup> As part of the same "Military I" trial, fellow former officers Colonel Anatole Nsengiyumva and Major Aloys Ntabakuze were also sentenced to life for genocide (and other crimes).<sup>11</sup>

However Bagosora's co-defendant General Gratién Kabiligi was acquitted of genocide charges, having advanced a successful alibi defense and raised reasonable doubt regarding his alleged operational authority and targeting of civilians.<sup>12</sup> The acquittal was an important reminder that international genocide trials are not mere rubber stamps of verdicts issued in the court of public opinion.

Also significant in 2008 was the arrest of Bosnian-Serb master ethnic-cleanser Radovan Karadzic. On the lam for nearly thirteen years (since the signing of the Dayton Accords in December 1995 that ended the civil war in the former Yugoslavia), Karadzic was finally captured in disguise near Belgrade on July 22, 2008.<sup>13</sup> As the wartime president of the Bosnian-Serb rump state *Republika Srpska*, Karadzic is considered responsible for the infamous 1992-1995 siege of Sarajevo, where tens of thousands of innocent civilians were killed or wounded by sniper fire and shelling.<sup>14</sup> He is also accused of orchestrating the murder of at least 7,500 Muslim men and boys from Srebrenica in July 1995 -- the worst case of genocide in Europe since World War II.<sup>15</sup> For this and other crimes, he was charged in 1995 by the International Criminal Tribunal for the former Yugoslavia (ICTY) with two counts of genocide and is currently standing trial (on other atrocity charges as well).<sup>16</sup> Karadzic was jointly indicted in 1995 along with the Bosnian Serb military leader, General Ratko Mladic, who supervised Serb atrocities in the field during the 1992-95 war and directly oversaw and commanded the genocidal Srebrenica massacre. Unfortunately, as of this writing, Mladic remains a fugitive.<sup>17</sup>

The week before Karadzic's capture, Sudan's President Omar Hassan al-Bashir became the first head of state to be indicted by the International Criminal Court (ICC).<sup>18</sup> Among other charges, Bashir was indicted on three counts of genocide based on command of mass atrocity operations conducted against black African civilians in Sudan's western Darfur region.<sup>19</sup> Since 2003, Sudanese government forces, with assistance from local Arab Janjaweed militias, have systematically killed close to a half million Darfuris and forced another 2.5 million to flee their homes. Bashir joined former Minister of State for the Interior, Ahmed Haroun and Janjaweed leader Ali Kushayb (both charged only with crimes against humanity and war crimes) as the defendants in the ICC's Darfur prosecution, the result of a 2005 Security Council referral.<sup>20</sup>

International courts brought other significant genocide news in 2008. The ICTR decision in the case of Rwandan singer Simon Bikindi is of note given incitement charges based on anti-Tutsi hate songs, such as *Nanga Abahutu* ("I Hate These Hutu").<sup>21</sup> Bikindi was acquitted of those charges because the Tribunal found he had written the songs before the genocide and was not responsible for their dissemination during the massacres.<sup>22</sup> Nevertheless, the Tribunal found him guilty of incitement based on his traveling in an *Interahamwe* car from one town to another where killing was taking place.<sup>23</sup> While in the car, Bikindi used a loudspeaker during his outbound trip to encourage militias to kill

Tutsi.<sup>24</sup> On the way back, he used the loudspeaker to ask them if they had killed the "snakes."<sup>25</sup>

On one hand, the opinion is disappointing because it failed to conduct a systematic analysis of the elements of incitement laid out in previous cases (most importantly whether the speech was sufficiently "direct" and whether it was permissible free speech or criminal advocacy -- which requires examination of the text, context, purpose and relationship between speaker and subject). On the other hand, it impliedly introduced "temporality" and "instrumentality" requirements -- *i.e.*, the speech must be contemporaneous with its dissemination and should be disseminated by the speaker himself. This represents incorporation of important collateral speech-protection elements. The decision also makes clear that use of euphemisms (referring to Tutsis as "snakes") and indirect urging (asking questions) can constitute incitement.

Another ICTR genocide development of note in 2008 was the conviction of defendant Siméon Nchamihigo -- a Rwandan prosecutor in Cyangugu Prefecture at the time the Rwandan genocide began in 1994.<sup>26</sup> Evidence at trial established that Nchamihigo helped plan massacres at a prefecture Security Council meeting and told *Interahamwe* militias to seek out and kill Cyangugu's Tutsi civilians.<sup>27</sup> In sentencing him to life in prison, the Tribunal considered as very significant that he committed his genocidal crimes while serving as a prosecutor, a position of public trust in which he would be expected to uphold the rule of law.<sup>28</sup>

The ICTR also convicted Protais Zigiranyirazo, the brother-in-law of former Rwandan President Juvenal Habyarimana (therefore a member of "Akazu" -- literally the "small house" -- a term used to designate the presidential entourage) and considered responsible for the 1985 murder of *Gorillas in the Mist* anthropologist Dian Fossey.<sup>29</sup> The Tribunal found Zigiranyirazo guilty of participating in a joint criminal enterprise with the common purpose of committing genocide and extermination of Tutsi in Gisenyi prefecture<sup>30</sup>, as well as aiding and abetting genocide at a roadblock in Kigali.<sup>31</sup> He was sentenced to 20 years in prison.<sup>32</sup>

Also in 2008, genocide was conspicuous by its absence in the first indictment issued by the Extraordinary Chambers in the Courts of Cambodia (ECCC), set up to try Khmer Rouge crimes committed between 1975 and 1979.<sup>33</sup> Prison commandant Kaing Guek Eav, known as "Duch," was charged, *inter alia*, with crimes against humanity and grave breaches of the Geneva Conventions in connection with crimes committed while he was chief of the notorious S-21 camp, also known as Toul Sleng, where thousands of Cambodians were unlawfully detained, tortured and executed during the Khmer Rouge reign of terror.<sup>34</sup> That there was no charge of genocide is noteworthy, given the common perception that operation of the Khmer Rouge's "Killing Fields" constituted genocide. However, as noted by former ECCC Principal Defender Rupert Skilbeck: "There is a very strong legal argument to say that genocide is when you kill people because of their ethnicity, whereas the vast majority of the [Khmer Rouge] purges were not for ethnic reasons, but were for political reasons."<sup>35</sup> Apparently, this influenced the ECCC's decision not to try Duch for the crime of genocide.

There was also international court news for 2008 related to genocide in the civil arena. On November 18, the International Court of Justice (ICJ) rejected Serbia's preliminary objections and found that it had jurisdiction, on the basis of Article IX of the Genocide Convention, to entertain the *Case Concerning Croatia's Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*.<sup>36</sup> The case was initially filed in 1999 and is based on allegations of Serb atrocities committed in connection with the 1991 Serbia-Croatia war.<sup>37</sup> The ICJ's decision means that the Court will yet again have occasion to interpret the Genocide Convention.

The 2007 ICJ decision in the *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* had applied a relatively narrow and strict construction of the definition of the crime of genocide.<sup>38</sup> Under that interpretation, the Court found that genocide had not been committed in the 1992-1995 Serbia-Bosnia war, with the exception of the Srebrenica massacre of mid-July 1995.<sup>39</sup> But the Court did not find Serbia responsible for the genocide -- genocide was committed but there was no *génocidaire* as it were.<sup>40</sup>

The 2007 ICJ decision came in for harsh criticism in 2008 from two articles appearing in the FORDHAM INTERNATIONAL LAW JOURNAL. In *Adjudicating Genocide: Is the International Court of Justice Capable of Judging State Criminal Responsibility?* Professor Dermot Groome complained that the ICJ's methodology, as set out in its Statute, was designed to resolve interstate disputes and remains ill suited to explore issues of individual criminal culpability -- which it was called on to do in the *Bosnia v. Serbia* case.<sup>41</sup> In *Proving State Responsibility for Genocide: The ICJ in Bosnia v. Serbia and the International Commission of Inquiry for Darfur*, Ademola Abass, criticized the decision on the grounds that the ICJ used improper and inconsistent methodologies to determine that Serbia was not responsible for genocide (Ademola further faulted the International Commission of Inquiry for Darfur for similar reasons regarding its conclusion that Sudan was not committing genocide in Darfur).<sup>42</sup>

### **Domestic Jurisdictions**

There were also important genocide legal developments in domestic jurisdictions. Staying within the former Yugoslavia, the Bosnian War Crimes Chamber issued its first genocide verdict in July 2008.<sup>43</sup> Brano Dzinic, a special police force officer of the 2nd Special Police Sekovici Squad of the Republika Srpska, was convicted of genocide related to his unit's capturing Bosnian men trying to flee the Srebrenica massacres and then participating in the murder of the Bosnians himself.<sup>44</sup>

In Rwanda, conventional courts were still trying so-called "Category I" genocide cases (those in which the defendant exercised a leadership role or engaged in particularly egregious conduct) but in 2008 the government shifted thousands of the most serious genocide cases from conventional courts to community-based *gacaca* courts.<sup>45</sup> Created in 2001, *gacaca* courts are semi-traditional tribunals seeking to combine restorative and punitive justice in streamlined procedures meant to handle the millions of backlogged 1994 genocide cases.<sup>46</sup> Statistical information made available by the

Rwandan government indicates that as of September 2008, 1,127,706 genocide cases had passed through *gacaca* courts and among those only 4,679 remained untried.<sup>47</sup> Despite this impressive volume, Human Rights Watch has reported *gacaca* problems related to faulty procedure, judicial corruption, and false accusations.<sup>48</sup> And in an article appearing in the CREIGHTON LAW REVIEW, *Bare Justice: A Feminist Theory of Justice and Its Potential Application to Crimes of Sexual Violence in Post-Genocide Rwanda*, Megan Carpenter found that a lack of sensitivity to cultural context makes *gacaca* courts an inappropriate forum for crimes of sexual violence and may result in an overall justice deficit for female victims.<sup>49</sup>

In Ethiopia, Mengistu Haile Mariam, the country's former military dictator responsible for the infamous "Red Terror" massacres in the 1970s, was sentenced to death on genocide charges by the Ethiopian Supreme Court.<sup>50</sup> The same sentence was issued to seventeen former officials of his government.<sup>51</sup> The decision overturned sentences of life in prison.<sup>52</sup> In December 2006, a federal high court had convicted Mengistu and his codefendants in absentia on 211 counts of genocide, homicide, illegal imprisonment and illegal property seizure.<sup>53</sup> The genocide charges stem from the Red Terror in which more than a million people were tortured and killed by the brutal Marxist regime (also known as the "Derg").<sup>54</sup> Since he was removed from power in 1991, Mengistu has lived in comfortable exile as the guest of Zimbabwe's dictator Robert Mugabe.<sup>55</sup>

Focusing on the Middle East, the death sentence of the infamous "Chemical Ali" (Ali Hassan al-Majid), the cousin of Saddam Hussein and former Iraqi Interior Minister, was approved by the Iraqi presidential council in February 2008.<sup>56</sup> Al-Majid was convicted of genocide in 2007 for his leadership role in the "al-Anfal campaign," which used chemical weapons and other inhumane methods to slaughter thousands of Iraqi Kurds in the 1980s.<sup>57</sup> (The execution has not been carried out yet because the executions of two of his codefendants have not been approved.)<sup>58</sup>

Genocide was also the subject of numerous extradition requests during 2008. In June, an English Magistrate's court ordered four men accused of taking part in the Rwandan genocide to be extradited to Rwanda to face charges (although that order was overturned by a higher court in 2009).<sup>59</sup> But a French appeals court refused to extradite two Rwandan genocide suspects to their homeland, as did a German court.<sup>60</sup> More than a dozen Rwandan *génocidaire* extradition requests were pending in other European countries in 2008, including Finland, Norway, Italy, and the Netherlands.<sup>61</sup>

Domestic courts in 2008 also dealt with genocide charges contemplated for trial in their own countries. A Spanish judge in February issued arrest warrants on genocide charges for 40 Rwandan Defense Force officers (former RPF) for offenses committed against Rwandan and Congolese citizens in retaliation for the 1994 genocide.<sup>62</sup> The prosecution is based on universal jurisdiction, a doctrine which permits national courts to prosecute atrocity crimes committed outside its borders by anyone (including non-nationals).<sup>63</sup>

In May, the attempt of federal prosecutors and private *parties civiles* in Belgium to have Rwandan atrocity suspect Ephrem Nkezabera prosecuted for genocide failed when the

Brussels "*Chambre des mises en accusation*" decided to send the case to the *Cour d'Assises* on war crimes charges only.<sup>64</sup> The Chamber based its decision on the principle of non-retroactivity of substantive criminal law.<sup>65</sup>

In August 2008, Rwanda published a report charging French involvement in the genocide and announced possible prosecution of French citizens.<sup>66</sup> But the previous month, a Dutch court dismissed that portion of a civil lawsuit filed by thousands of plaintiffs against the UN based on Dutch UN peacekeepers' failure to protect their relatives in the 1995 Srebrenica genocide.<sup>67</sup> The Hague District Court held that the U.N.'s immunity means that it cannot be held liable in any country's national court.<sup>68</sup>

Finally, the U.S. House of Representatives attempted to pass Resolution 106, which would have declared as a genocide the mass killing of Armenians in Turkey during World War I.<sup>69</sup> But because it would have placed considerable strain on U.S.-Turkish relations, as well as Turkish-Armenian relations, the Resolution sadly went down to defeat.<sup>70</sup> Nevertheless, the creation of an interagency "Atrocities Prevention Committee," to analyze and respond to possible genocide threats, was proposed by President-elect Barack Obama.<sup>71</sup> It remains to be seen, however, whether this proposal will come to fruition in 2009.

### ***Genocide Allegations and Realities***

2008 also reminded the world that the legal concept of "genocide" can be politicized, devalued or simply misapplied. In September, Bolivian president Evo Morales announced the arrest of a provincial governor and political opponent on "genocide" charges in connection with the deaths of several Morales supporters during political demonstrations the previous week.<sup>72</sup> Similarly, Russia claimed that Georgia committed genocide based on its August 2008 attacks in South Ossetia against pro-Russian rebel factions.<sup>73</sup> Research conducted by Human Rights Watch indicates that while Georgian forces may have violated international humanitarian law, they clearly did not commit the crime of genocide.<sup>74</sup> And in Kenya, in the wake of post-election violence, President Mwai Kibaki accused opposition leader Raila Odinga's party of "unleashing genocide."<sup>75</sup> Although the violence, which left more than 1,300 people dead and 350,000 displaced, could be perceived as ethnic and systematic in nature, it did not appear to involve the intent to eliminate (in whole or in part) an ethnic group so it likely fails to rise to the level of genocide.

Similarly, large-scale violence and death in Zimbabwe and the Democratic Republic of the Congo prompted allegations of genocide in 2008.<sup>76</sup> But neither the murderous political oppression of Robert Mugabe nor the brutal territorial/resource battles among rebel groups and the government in eastern Congo seemingly implicates an intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such.

In the meantime, the actual crime of genocide was still being perpetrated in 2008. The genocide in Darfur, in its sixth excruciating year, continued to result in the murder and displacement of thousands of non-Arab Darfuris by the Sudanese government and Arab Janjaweed militia. In fact, UN officials reported that between 2006 and 2008, 300,000 people died owing to the violence in Darfur and 2.5 million have been displaced. To

those who would argue that the mass killing in Darfur is not genocide (because the Sudanese government lacks the necessary special intent), Jennifer Trahan in her 2008 article *Why the Killing in Darfur is Genocide* (FORDHAM INTERNATIONAL LAW JOURNAL), points to, *inter alia*, the enormous numbers of non-Arabs murdered, consistent patterns of discriminatory killing, ethnically charged utterances by the perpetrators during the crimes, and destruction of cultural property as evidence of the requisite genocidal intent.<sup>77</sup>

And certain legal experts believe that in 2008 the crime of incitement to genocide was committed by Iranian president Mahmoud Ahmadinejad against the people of Israel. They point out that, starting in 2005, when he called for Israel to be "wiped off the map," and continuing to the present, Ahmadinejad has regularly urged and prophesied the elimination of the Israeli people and has variously referred to them as animals, barbarians and mass murderers. 2008 was no different. In February, for example, he told the French newspaper *Le Monde* that "these false people, these fabricated people [the Israeli people] cannot continue to exist . . ." As Israel celebrated its sixtieth anniversary he railed that the festivities were an attempt to forestall its "annihilation." And at one point he described Israeli Jews to supporters at a rally as a "filthy bacteria," a "wild beast," and a "scarecrow."

### **Writings on Genocide**

In my 2008 article *From Incitement to Indictment? Prosecuting Iran's President for Advocating Israel's Destruction and Piecing Together Incitement Law's Emerging Analytical Framework* (Northwestern University's JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY), relying on principles announced in the ICTR incitement prosecutions, I argued that Ahmadinejad's statements, anchored as they are to other direct calls for the destruction of Israel and part of an entire body of inflammatory statements made in the context of nuclear weapons development, constitute the crime of direct and public incitement to commit genocide.<sup>78</sup> However, given incitement law's track record to date, with prosecutions occurring only post-genocide, I conceded that the odds of the crime being prosecuted (through a Security Council referral to the ICC) are long.<sup>79</sup> As a result, I proposed that incitement law shift its focus from punishment to deterrence and that euphemisms employed to disguise incitement, such as "predictions" of destruction, when anchored to direct calls for violence, should be considered acts of direct incitement.<sup>80</sup>

Other significant genocide incitement scholarship in 2008 included an outstanding article by Susan Benesch disagreeing with my Ahmadinejad article legal conclusions. In *Vile Crime or Inalienable Right: Defining Incitement to Genocide* (VIRGINIA JOURNAL OF INTERNATIONAL LAW), Benesch claimed that the Rwandan cases have resulted in an ill-defined offense and called for a new six-prong incitement test that would inquire, *inter alia*, whether the speaker has authority or influence over the audience and whether the audience has the capacity to commit genocide.<sup>81</sup> But Audrey Golden's WAKE FOREST LAW REVIEW comment, *Monkey Read, Monkey Do: Why the First Amendment Should Not Protect the Printed Speech of an International Genocide Inciter*, contended that the American First Amendment, which she believes likely prevents any United States

domestic prosecution of incitement, should be interpreted so as not to apply to members of a totalitarian society sponsoring genocide.<sup>82</sup>

In contrast to the United States, in countries such as Canada and France, free speech values are tempered by laws that prevent promotion of hatred (including Holocaust denial). Two significant articles appearing in the Spring 2008 CARDOZO JOURNAL OF CONFLICT RESOLUTION addressed this issue (the product of a genocide denial symposium). In their articles *A Constitutional "Right" to Deny and Promote Genocide? Preempting the Usurpation of Human Rights Discourse towards Incitement from a Canadian Perspective* and *Taking Denial Seriously: Genocide Denial and Freedom of Speech in the French Law*, Karen Eltis and Sevane Garibian cited to Canadian and French law in arguing for restrictions on free speech in the case of at least certain types of genocide denial, based, among other things, on the responsibilities that accompany freedom of speech and the damage to democracy of genocide denial.<sup>83</sup>

As part of the same JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY issue in which my Ahmadinejad article appeared (a symposium issue on international criminal law), Daniel Greenfield argued in *The Crime of Complicity in Genocide: How the International Criminal Tribunals for Rwanda and Yugoslavia Got It Wrong, and Why It Matters* that complicity in genocide (as distinct from "aiding and abetting" genocide) should be a stand-alone crime and this distinction would better serve the purpose of the Genocide Convention and the *ad hoc* tribunals.<sup>84</sup> Greenfield's conclusion was echoed by Grant Dawson and Rachel Boynton in their HARVARD HUMAN RIGHTS JOURNAL article *Reconciling Complicity in Genocide and Aiding and Abetting Genocide in the Jurisprudence of the United Nations Ad Hoc Tribunals*.<sup>85</sup>

In the meantime, Case Western Reserve University of Law organized a symposium titled "To Prevent and To Punish: A Conference Commemorating the Sixtieth Anniversary of the Genocide Convention," that yielded much excellent scholarship (which appeared in the school's JOURNAL OF INTERNATIONAL LAW). Nuremberg prosecutors Henry King, Benjamin Ferencz and Whitney Harris<sup>86</sup>, along with genocide expert William Schabas<sup>87</sup>, contributed pieces on the development of the concept of genocide and the history of the Genocide Convention. Paul Williams, Meghan Stewart<sup>88</sup>, and Juan Mendez<sup>89</sup> wrote about prevention through humanitarian intervention, finding the need to implement early warning and action but noting, in light of various geopolitical forces, the failure to develop legal authority for such intervention. Related to this, Michael Kelly described the legal significance and intervention obligations of labeling a situation "genocide."<sup>90</sup> Christine Chung connected this topic to the ICC by pointing out that while the Court has fulfilled certain of its Genocide Convention obligations, it can do more to strengthen the political will of states to intervene.<sup>91</sup>

Specific examples of genocide were also considered at the Case Western symposium. Robert Petit, Stuart Ford and Neha Jain evaluated whether religious genocide had occurred with respect to the situations in Tibet, Iraq and Gujarat, but found that these did not meet genocide's legal elements.<sup>92</sup> Other scholars explored genocide within the context of specific court cases. John Quigley discussed the ICJ's *Bosnia v. Yugoslavia*



decision, criticizing the World Court for failing to rely on ITCY precedent in determining whether Serbia was liable for the crime.<sup>93</sup> Ra'id Juhi al-Saedi offered his unique insights as the former Chief Investigative Judge for the Iraqi High Tribunal on the investigative techniques used in that forum.<sup>94</sup> And Mikhail Wladimiroff described the obstacles he had to overcome (including superior prosecution resources) as defense counsel in cases before the ICTY (Tadic) and ICTR (Musema).<sup>95</sup>

American Ambassador-at-Large for War Crimes Issues Clint Williamson focused on the United States in echoing the concerns of the Case Western symposium participants regarding prevention and punishment of genocide.<sup>96</sup> In *U.S. Efforts to Combat Genocide and War Crimes* (TULANE JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW), Ambassador Williamson identified four areas in which the U.S. government needs to improve: monitoring potential atrocities, implementing preventative measures, responding immediately to ongoing atrocities, and planning for potential accountability mechanisms.<sup>97</sup>

As if responding to this, the "Genocide Prevention Task Force," sponsored by the U.S. Holocaust Memorial Museum, the U.S. Institute for Peace, and the American Academy of Diplomacy, and co-chaired by Madeleine Albright and William Cohen, released its final report on December 8, 2008 -- *Preventing Genocide: A Blueprint for U.S. Policymakers*.<sup>98</sup> It argued that genocide is preventable (but requires leadership and political will) and made the case for why it threatens core American values and national interests.<sup>99</sup> The report provided 34 recommendations, starting with the need for high-level attention, standing institutional mechanisms, and strong international partnerships to respond to potential genocidal situations when they arise.<sup>100</sup> It laid out a comprehensive approach, recommending improved early warning mechanisms, early action to prevent crises, timely diplomatic responses to emerging crises, greater preparedness to employ military options, and action to strengthen global norms and institutions.<sup>101</sup>

2008 also saw the publication of some important books on genocide. New editions of contemporary classics were released. Eminent French Africanist Gérard Prunier's *Darfur: A 21st Century Genocide* (Cornell University Press, Third Edition) demonstrated that for nearly all of its known history, Darfur had not been a binary society of African versus Arab.<sup>102</sup> But events and Sudanese government policies in the 1980s changed this and a racial polarity was constructed where none had previously existed. This eventually led to tragic results in 2003 when the Sudanese government used its provincial "Arab" allies (now dubbed the "Janjaweed") to commit genocide against the "African" population.<sup>103</sup>

Yale's Ben Kiernan, the leading authority on modern Cambodia, published the third edition of his work *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79* (Yale University Press), widely regarded as the definitive history of the Khmer Rouge's "Killing Fields."<sup>104</sup>

*Century of Genocide: Critical Essays and Eyewitness Accounts* edited by Samuel Totten and William Parsons (Routledge, Third Edition), provided accounts from the

leading experts on genocides throughout history, from the Herero and Armenian cases in the early twentieth century to Rwanda and Darfur at the end of last century and the beginning of this one.<sup>105</sup> Similarly, 2008 saw the release of the third edition of *Is the Holocaust Unique: Perspectives on Comparative Genocide* edited by Alan S. Rosenbaum (Westview Press).<sup>106</sup> This volume also presented essays from distinguished scholars analyzing various instances of mass atrocity (such as the mass murder of Gypsies, Armenians, Ukrainians and Native Americans) and juxtaposing them with the Holocaust.<sup>107</sup>

And a new book with an overview of genocide studies appeared for the first time in 2008. Dan Stone's *The Historiography of Genocide* (Palgrave Macmillan) is a guide to the development of genocide studies and a valuable assessment of the historical literature pertaining to genocides.<sup>108</sup>

Gérard Prunier also put out a new work in 2008, *Africa's World War: Congo, the Rwandan Genocide, and the Making of a Continental Catastrophe* (Oxford University Press), which chronicled the 1996–2002 war in the Democratic Republic of Congo and its relationship with the 1994 genocide in Rwanda.<sup>109</sup> A companion volume pertaining to the Rwandan genocide, Scott Straus's *The Order of Genocide: Race, Power, and War in Rwanda* (Cornell University Press) concludes that conventional wisdom about the causes and course of the Rwandan genocide focuses largely on the actions of the ruling elite but gives short shrift to how and why elite decisions were transformed into widespread exterminatory violence.<sup>110</sup> Straus remedies this deficit by focusing on the local organization of the massacres and profiles the perpetrators themselves in considering what compelled them to commit such unspeakable acts.<sup>111</sup>

Two new Darfur genocide tomes were also published in 2008: *Darfur and the Crime of Genocide* (Cambridge University Press) by John Hagan & Wenona Rymond-Richmond (using eyewitness reports to document and analyze the ongoing atrocities and providing analysis regarding the international community's ineffectual response)<sup>112</sup> and *The Scramble for Africa: Darfur Intervention and the USA* (Black Rose Books) by Kevin Funk & Steven Fake (assessing the conflict and how it fits into the foreign policy of the United States).<sup>113</sup>

Books came out in 2008 about less publicized genocides as well. *Quiet Genocide: Guatemala 1981-1983* (Transaction Publishers), by Etelle Higonnet, reviewed the legal and historical case that genocide occurred in Guatemala in the early 1980s.<sup>114</sup> In *Colonial Genocide and Reparations Claims in the 21st Century: The Socio-Legal Context of Claims Under International Law by the Herero Against Germany for Genocide in Namibia, 1904-1908* (Praeger Security International), Jeremy Sarkin described the 1904-08 massacre of the Herero in South West Africa, often cited as the first genocide of the twentieth century, and explored legal questions concerning reparations to the victims' descendants.<sup>115</sup>

Finally, the man who first conceived of the legal concept of genocide and brought about its international codification, Raphael Lemkin, was featured in a 2008 biography: *Raphael Lemkin and the Struggle for the Genocide Convention* (Palgrave

Macmillan).<sup>116</sup> This is the first complete life of the Genocide Convention's prime mover based on his own papers.<sup>117</sup> And a new edition of Lemkin's classic work *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (The Lawbook Exchange, Ltd.) was also released in 2008.<sup>118</sup> This is the book that coined the term "genocide" and defined it as a subject of international law.<sup>119</sup> Its new edition begins with an excellent introduction by genocide scholar William Schabas that helps contextualize this watershed work.<sup>120</sup>

### **Conclusion**

As this century's first decade draws to a close, genocide, the scourge of the previous century, is regrettably alive and well. Is this a temporary carry-over or will the balance of these hundred years be equally bloody? Our genocide snapshot of 2008 does not provide a definitive answer.

There are grounds for guarded optimism. The apprehension and punishment of certain *génocidaires* and resolutions, reports and scholarly reminders of the world's revulsion, weariness and resolve to eradicate genocide suggest we may be headed in the right direction.

But how do we square this with the murderous brutality inflicted on innocent civilians in Darfur? How do we reconcile the good omens with Iran's repeated calls for Israel's destruction? And what about the mass violence and death, in places such as Congo and Zimbabwe, that technically fails to qualify as genocide but plagues and haunts us nonetheless? Given the realities, as we gaze into the future, it might seem overwhelming to promise that genocide will never happen again. But if each of us makes a small contribution every day, the twenty-first century certainly has the capacity to eliminate this blight on humanity. Let us hope we make more progress in 2009-2010.

*For her invaluable assistance related to this article, Professor Gordon would like to thank his terrific Research Assistant, Amber Hildebrandt.*

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