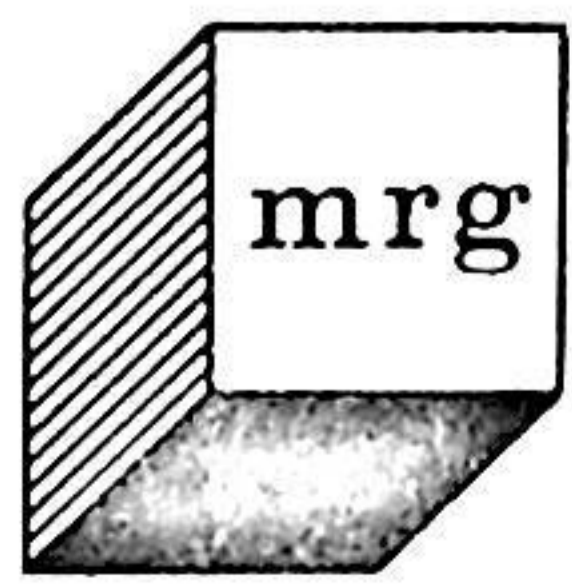
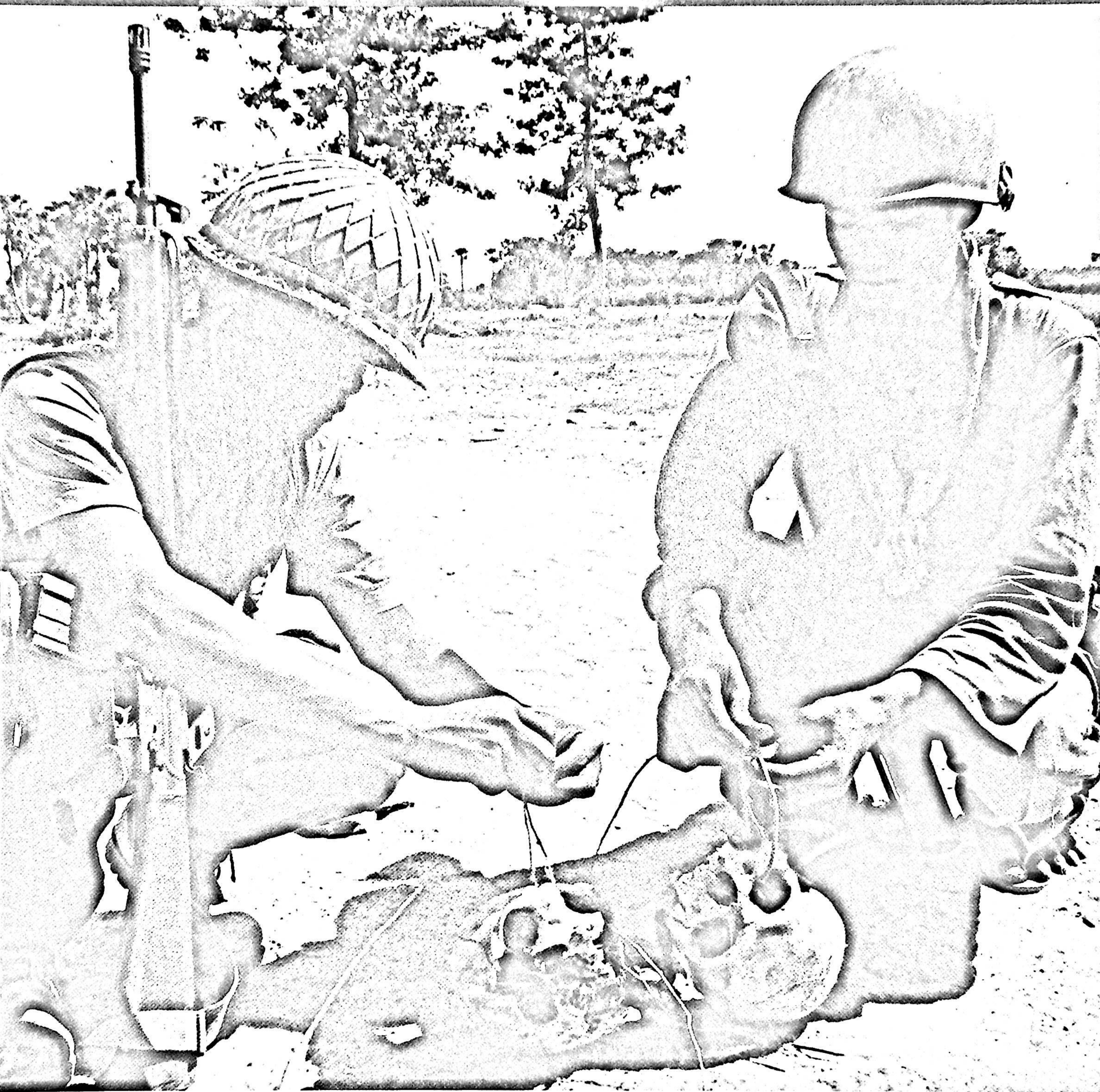


INTERNATIONAL ACTION AGAINST GENOCIDE



Report No. 53

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MINORITY
RIGHTS
GROUP

The **MINORITY RIGHTS GROUP LTD.** is an international research and information unit registered in Britain as an educational trust under the Charities Act of 1960. Its principal aims are —

- To secure justice for minority or majority groups suffering discrimination, by investigating their situation and publicising the facts as widely as possible, to educate and alert public opinion throughout the world.
- To help prevent, through publicity about violations of human rights, such problems from developing into dangerous and destructive conflicts which, when polarised, are very difficult to resolve; and
- To foster, by its research findings, international understanding of the factors which create prejudiced treatment and group tensions, thus helping to promote the growth of a world conscience regarding human rights.

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INTERNATIONAL ACTION AGAINST GENOCIDE

by Prof. Leo Kuper

CONTENTS

Part I	The Genocide Convention	3
Part II	Types of Genocide	5
Part III	Mass Murder of Political Groups	7
Part IV	International Action	9
Part V	Conclusions	11
Part VI	Proposals for Action	12
	Footnotes	15
	Brief Bibliography	17



Text of the U.N. Genocide Convention

The Contracting Parties having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (1) 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

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

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

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

ARTICLE III: The following acts shall be punishable:

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

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

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

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

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

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

ARTICLE VIII: Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

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

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

ARTICLE XI: 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 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.

ARTICLE XII: 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 territory for the conduct of whose foreign relations that Contracting Party is responsible.

ARTICLE XIII: On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *procès-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 XI.

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.

ARTICLE XIV: 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.

ARTICLE XV: 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.

ARTICLE XVI: 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.

ARTICLE XVII: The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accession received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

ARTICLE XVIII: 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 XI.

ARTICLE XIX: The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

INTERNATIONAL ACTION AGAINST GENOCIDE*

by Prof. Leo Kuper

Part I: THE GENOCIDE CONVENTION

The preamble to the Convention on Genocide, unanimously adopted by the General Assembly of the United Nations on 9 December 1948, describes genocide as an odious scourge, which has inflicted great losses on humanity in all periods of history.

It is indeed a crime with a long history. It is recorded in ancient times in the chronicles of Greek and Roman historians and in the Bible. It continued into the Middle Ages, in the wars of religion, with genocide sanctioned by Holy Writ. In later periods, it took the form of the annihilation of many indigenous peoples in the course of colonization. Then decolonization, and its aftermath of struggles for power, gave further impetus to genocidal conflict. Meanwhile Nazi doctrine legitimized the bureaucratic, industrialized and mechanized genocides by the German Government on a continental scale, while total warfare, and the pattern, and atomic, bombing of cities initiated a new phase in the genocides of international warfare.

Today, it is economic 'progress' which threatens the extinction of small surviving indigenous peoples. Conflicts of faith persist as a source of genocidal massacre, but more often in the form of political ideology rather than religious belief. Societies divided by pervasive cleavages between different peoples and religions within a single sovereign state, provide a major arena for 'domestic' genocide, particularly under conditions of rapid population growth and increasing competition for available resources. And technological developments, and nuclear armament, represent a preparedness for carefully calculated genocides on a vast scale. The need for international protection against genocide is more urgent than ever.

Definitions

Though the crime of genocide is so ancient, the word itself is quite recent. It was coined by the jurist Raphael Lemkin, who initiated a one-man crusade for a genocide convention. In a detailed study of *Axis Rule in Occupied Europe*, published in 1944, he described genocide as a new word, denoting an old practice in its modern development, made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing). This is the common usage of the term.

Helen Fein, in a recent study of the Holocaust, distinguishes, as a type of genocide, the 'modern premeditated genocide', and she emphasizes in her definition that to grasp its origins 'we must first recognize it as organized state murder'.¹ So too, Irving Horowitz adds to the United Nations' definition, the conception of genocide as 'a structural and systematic destruction of innocent people by a state bureaucratic apparatus'.² This emphasis on the role of the State is important. There are genocides which have not been investigated by governments, as for example, some of the genocides

by settlers against indigenous groups; but in these cases, governments often have knowledge of the massacres, and condone them, or fail to take protective action. There have also been genocidal massacres carried out by armed bands in time of war, or by mobs, as in India on partition. But for the most part, genocide is a crime of governments.

This was the point of view taken by the French delegate in the debates on the genocide convention. In support of a proposed amendment to the definition of genocide, so as to include the conception that genocide is a crime committed, encouraged or tolerated by the Heads of a State, the French representative argued that

The theoreticians of nazism and fascism, who had taught the doctrine of the superiority of certain races, could not have committed their crimes if they had not had the support of their rulers; similarly, pogroms had occurred frequently only in countries where no severe legal measures were taken against the perpetrators. Thus the experience of history showed the way; it was inconceivable that human groups should be exterminated while the Government remained indifferent; it was inadmissible that the central authority should be powerless to put a stop to mass assassination when homicide was the first of punishable crimes. When the crime of genocide was committed, it was committed either directly by the Governments themselves or at their behest; alternatively, they remained indifferent and failed to use the power which every Government should have in order to ensure public order. Thus, whether as perpetrator or as accomplice, the Government's responsibility was in all cases implicated.³

The proposed amendment was rejected by the Legal Committee, and the final definition contains no reference to State responsibility. Since I am interested in the problem of international protection against genocide, I will follow the definition in the Genocide Convention.

The debates on the Convention raised many controversial issues, including the problem of protection under the Convention for *political groups*, provision against *cultural genocide*, the nature of the *intent* required to constitute the crime, and the machinery for *implementation*.

The original United Nations' Resolution (No. 96-1), which declared genocide to be an international crime, was passed unanimously by the General Assembly on 11 December 1946. It was the almost universal horror at the devastation of the peoples of Europe by the Nazis during the brief period of their rule, which elicited this remarkable unanimity. The resolution described the crime as 'the destruction, entirely or in part, of racial, religious, political and other groups'.

In the debates on the draft Convention to give effect to the resolution, the Soviet representatives led an attack against the inclusion of political groups, primarily on the theoretical ground that genocide was essentially bound up with fascist and nazi ideologies, and similar racial theories that spread national and racial hatred and aimed at the domination of the so-called 'superior' races and the extermination of the so-called 'inferior' races. Other representatives supported the Soviet argument on a variety of grounds (such as the instability of political groupings, and the voluntary nature of political affiliation). Counter arguments rejected the conception of genocide as linked only to fascism-nazism, and hence to the destruction of racial and national groups, but not of political groups. The French representative commented that 'whereas in the past crimes of genocide had been committed on racial or religious grounds, it was clear that in the future they would be committed mainly on political grounds' and this view received strong support from other representatives.⁴ In the result, political groups were eliminated, not because there was agreement on the merits of the argument, but in order to ensure ratification of the Convention, and acceptance of a proposal for an international criminal tribunal. The definition of genocide now reads:

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.

*This account is derived appreciably from my book *Genocide* (Penguin Books, 1981), but the argument is greatly extended, and concerns primarily the problem of international protection against genocide. I would like to express my appreciation for support from the Senate Research Committee of the University of California, Los Angeles, the University's Council of Comparative and International Studies and the Ford Foundation. I would also like to thank the following for their comments on the problem: the Rt. Hon. Peter Archer, QC, MP, Dr. Theo. C. van Boven, Director of the UN Division of Human Rights, his special assistant, Dr. B.G. Ramcharan, Mr. Jakob Th. Möller, Chief, Communications Unit of the Division of Human Rights, Dr. Frances d'Souza of the International Disaster Institute, Mr. Peter Benenson, Founder of Amnesty International, Professor Roger Clark, Lord Colville, QC, United Kingdom representative on the Commission on Human Rights, Mr. Murray Dickson, Sir Vincent Evans, United Kingdom member of the Human Rights Committee, Professor James Fawcett, Mr. Richard Hauser of the Institute for Social Research, my wife Hilda Kuper, Mrs. Leah Levin of the Anti-Slavery Society, Mr. Evan Luard, Mr. Niall MacDermot of the International Commission of Jurists, Professor Roland Oliver, Mr Nigel Rodley of Amnesty International, Mr Paul Sieghart, QC, Mrs. Prudence Smith, BBC, Mr David Stephen of the Minority Rights Group, Mr Ben Whitaker, of the Minority Rights Group and the United Kingdom member of the UN Human Rights Sub-Commission, the Rt. Hon. Lord Wilberforce, and Lord Young of the Institute of Community Studies.

¹ For footnotes see page 15

The effect, then, is that the slaughter of political groups (such as communists in Indonesia in October 1965, or political opponents in Kampuchea, or in Germany under the Nazis, or in Stalinist Russia), does not fall within the concept of genocide. This is often forgotten in discussions of genocide, as in the curious term of 'auto-genocide', applied by the UN rapporteur to the killings in Kampuchea, and meaning the mass murder of members of one's own group. (It should be noted that the crime is not defined as aimed only at the total annihilation of a group, but as committed with the intent to destroy, *in whole or in part*, a national, ethnical, racial or religious group. This, of course, introduces ambiguity.)

The debate on *intent* proved equally controversial. The draft of the *ad hoc* committee had offered a complex formulation of intent in its definition of genocide as 'any of the following *deliberate* acts committed with the *intent* to destroy a national, racial, religious or political group, *on grounds of the national or racial origin, religious belief, or political opinion of its members*'. This stimulated a complex debate. The inclusion of intent in the definition of genocide introduces a subjective element, which would often prove difficult to establish. An attempt to substitute an objective measure proved unsuccessful, and in the result 'intent' was retained, the word 'deliberate' being deleted as redundant. There still remained the question of further intent, or of motive, represented by the phrase 'on grounds of national or racial origin, religious belief, or political opinion of its members'. This limited the grounds which would be necessary to constitute genocide, so that the destruction of a group for profit or because of rivalry between ethnic groups, could not be charged as genocide. To these examples, which were given in the debate, one might add that presumably the annihilation of indigenous peoples in the interests of colonization, or the destruction of a group in order to create a brave new world, would also not have fallen within the concept of genocide.

The Soviet delegation, consistent with its earlier stand for the exclusion of political groups from the list of protected groups, wished to delete from the enumerated grounds the words 'or political opinion of its members'. The effect of this would have been equally bizarre – the United Nations would then be declaring that the destruction of an ethnic group because of its political beliefs (say Hutu in Burundi) would not be considered genocide. In this impasse, the Committee adopted a compromise solution proposed by the Venezuelan representative, namely, the substitution of the words *as such* for the enumeration of grounds. This introduces an ambiguity, which was apparent to members of the Legal Committee, and they seriously considered a proposal to appoint a working group to consider the problem raised by the passing of the amendment. The nature of the problem was that in voting on the amendment, members of the Committee had three different interpretations of its meaning in mind. Some thought that it included reference to motives, others that such reference was excluded, and there was a third view that the phrase emphasized a special intent, but without enumeration of motives.⁵

In criticism of an earlier draft of this paper, Mr. Niall MacDermot, Secretary-General of the International Commission of Jurists, commented that he could see no ambiguity in the phrase *as such*.

'The clear meaning, which I am sure you will find spelt out in the "travaux préparatoires" is that the intention to destroy the group in whole or in part etc. must be an intention to destroy them because they are members of that group and not for some extraneous reason.'

In further comment, he referred to the intentional killing of people 'as members' of the group, and he also quoted the Venezuelan explanation that the group must be destroyed '*qua* group'. Though I still consider the phrase in the context of the debates to be quite ambiguous, I have decided to follow Mr. MacDermot's interpretation. I would certainly accept that the crime is to be defined as the intention to destroy a group *qua* group, or to kill its members as *members of the group*. However, in regard to the specific reference to motive, *because they are members of the group*, I cannot see how this differs materially from the original formulation. In any event, it is important to stress that there are generally mixed motives in human action, and that this is certainly the case where large numbers of actors are involved. I think, then, that one should treat the phrase *because they are members of the group* as referring to a constituent element in the motivation to genocide, and not as an exclusive and all-embracing motivation.

The scope of genocide under the Convention is defined not only by the number of 'protected groups', but also by the range of actions

qualified as genocide. The original draft of the Secretariat included cultural genocide. This became an issue of controversy, but not sharply ideological, though the colonial powers were somewhat on the defensive, and there was anxiety among other powers over the possible implications of the Secretariat's draft for assimilationist policies toward minorities. In the result, cultural genocide was eliminated from the Convention, though vestiges remain in the reference to the forcible transfer of children from one group to another, and the inclusion of ethnic groups.⁶

Many cultures of surviving indigenous peoples are now threatened with extinction by economic development. The protection of these peoples against cultural genocide must be sought under other UN documents. The crime itself may be defined as the commission of specified acts

'with intent to extinguish, utterly or in substantial part, a culture. Among such ethnocidal acts are the deprivations of opportunity to use a language, practise a religion, create art in customary ways, maintain basic social institutions, preserve memories and traditions, work in cooperation toward social goals.'⁷

Enforcement of Prevention and Discrimination

The Convention is described as a Convention on the Prevention and Punishment of the Crime of Genocide. On this issue, there are two preliminary observations to be made. First, the Convention contains only two perfunctory references to prevention. Agreement on a policy of prevention would have called for a measure of unanimity on a theory of genocide. But there was strong disagreement on theories of genocide, and the Convention is concerned essentially with punishment, and not prevention, save insofar as the fear of punishment might act as a deterrent. Presumably the model was that of the trials, in Nuremberg after the Second World War, of German war criminals, charged, *inter alia*, with having 'conducted deliberate and systematic genocide, viz., the extermination of national and racial 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, and others.'

The judgment of the Nuremberg Tribunal dealt at great length with the substance of the charge of genocide, without however using the term or referring to the conception.⁸

A second observation is that a major obstacle to effective enforcement arose from the unwillingness to accept any limitation ('infringement') of national sovereignty, or diminution in the scope of domestic jurisdiction, as well as from fear of outside interference in domestic affairs, and no doubt in many cases a feeling of vulnerability.

The first draft by the Secretariat incorporated the principle of universal enforcement, permitting the state whose authorities had arrested those charged with the crime, to exercise jurisdiction, regardless of the nationality of the accused or of the place where the offence was committed. There was also a provision that the contracting parties might call on the competent organs of the UN to take measures for the prevention and suppression of the crime in any part of the world, in which case the parties would do everything in their power to give full effect to the intervention of the UN. This latter provision was retained in the final text, but the principle of universal jurisdiction was eliminated, save to the extent that the UN may take action within its general competence.

The Secretariat's draft also imposed on the parties the obligation to provide in their municipal (national) laws for acts of genocide and their punishment, and to commit all persons 'guilty' of genocide for trial by an international court, when (1) they are themselves unwilling to try such offenders or to grant extradition to another country, (2) if the acts of genocide were committed by individuals acting as organs of the State. It was particularly the provision in regard to an international penal court, which aroused a storm of protest, and the Legal Committee resolved to delete reference to the competence of an international tribunal to try the crime of genocide. The resolution was closely contested, the Socialist countries voting in favour of the deletion, while the Western Democracies and the Third World countries were divided on the issue.⁹ Later, when political groups were denied the protection of the Convention, it became feasible to reinstate the jurisdiction of an international penal tribunal, though in an optional and conditional form. The Convention now provides for trial 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.'¹⁰

No international penal court has as yet been established. In the General Assembly, discussion of a Revised Draft Statute for an international tribunal 'was made contingent upon satisfactory drafting of the Code of Offences against the Peace and Security of Mankind, which in turn was made contingent upon a satisfactory definition of "aggression", which problem was assigned to a Special Committee in 1954, and to a further Committee of 35 States in 1967, which has met repeatedly since that time. . . .'¹¹ A definition of aggression was finally arrived at in 1974, but the project for an international penal tribunal to try charges of genocide still remains in abeyance.

In examining the problem of the enforceability of the Convention, it is necessary also to take account of reservations made by signatories when ratifying the Convention as, for example, reservations regarding submissions to the International Court of Justice of disputes concerning interpretation, application or fulfilment of the Covenant. These may have the effect of further weakening its provisions. Acting in the opposite direction is the impact of the Convention on national legislation incorporating the crime of genocide in penal codes or laws.¹²

It should be noted that genocide is a crime under international law, but the Convention itself is binding only on Contracting Parties, and could not have been invoked in some of the cases mentioned below. Among the Member States which had ratified the Convention are the following: Burundi, Equatorial Guinea, Nigeria, Paraguay, South Africa, the Sudan, Uganda, and the USA.

Part II: TYPES OF GENOCIDE

Up to the present, I have written as if genocide was an undifferentiated crime. The Convention itself makes no distinction between types of genocide, but differentiates only the means. Genocide however takes many forms, which raise different problems of prevention.

A first distinction to be made is that between 'domestic' genocides, that is to say, genocides arising from internal divisions within a society, and genocides arising in the course of international warfare. The following types of 'domestic' genocide can be specified:

(1) Genocide against indigenous peoples

In the course of conquest, or of later pacification, these genocides were all too frequent in the colonization of the Americas, Australia and Africa. Now, it is mostly small surviving groups of hunters and gatherers who face the threat of extinction. These are the so-called 'victims of progress', victims, that is to say, of predatory economic development. Two recent cases have aroused international 'concern'.

In March 1974, the International League for the Rights of Man, joined by the Inter-American Association for Democracy and Freedom, charged the government of Paraguay with complicity in genocide against the Aché (Guayaki) Indians. In a protest to the United Nations Secretary General, the organizations alleged the following violations, leading to the wholesale disappearance of the Guayaki (Aché) ethnic group, namely:

- (1) enslavement, torture, and killing of the Guayaki Indians in reservations in eastern Paraguay;
- (2) withholding of food and medicine from them resulting in their death by starvation and disease;
- (3) massacre of their members outside the reservations by hunters and slave traders with the toleration and even encouragement of members of the government and with the aid of the armed forces;
- (4) splitting up of families and selling into slavery of children, in particular girls for prostitution; and
- (5) denial and destruction of Guayaki cultural traditions, including use of their language, traditional music, and religious practices.

This was followed by an attack in the United States Senate supported by intellectuals and churchmen in Paraguay. To these protestations, the Defence Minister replied quite simply that there

was no intention to destroy the Guayaki. 'Although there are victims and victimizer, there is not the third element necessary to establish the crime of genocide - that is "intent". Therefore, as there is no "intent", one cannot speak of "genocide".'¹³

A similar issue arose in relation to charges of genocide against Indians in the Amazon River region of Brazil, to which the Permanent Representative of Brazil replied that '... the crime committed against the Brazilian indigenous population cannot be characterized as genocide, since the criminal parties involved never eliminated the Indians as an ethnic or cultural group. Hence there was lacking the special malice or motivation necessary to characterize the occurrence of genocide. The crimes in question were committed for exclusively economical reasons, the perpetrators having acted solely to take possession of the lands of their victims.'¹⁴

In both cases, the defence raised was that of intent - its absence in the Paraguay case, and in the Brazilian case, the absence of the *specific* intent required to constitute the crime of genocide, a reliance, that is to say, on the ambiguity of the phrase *as such*. There is also the denial of governmental responsibility for the crime. We should note that in many cases, there may be a genocidal process involved, rather than a deliberate decision to annihilate.¹⁵

(2) Genocide following upon decolonization of a two-tier structure of domination

e.g., Tutsi domination over Hutu in the territories of Rwanda and Burundi under Belgian mandate.

The massacres of Hutu in Burundi were on a large scale and extended over some years. The Tutsi were a minority of some 14% in a population of perhaps three and a half million. Their relationship to the Hutu was relatively fluid, in contrast to the situation in Rwanda. There were decisions within both the Tutsi and Hutu groups, derived from regional differences, and differences in wealth, power and status, which offered many social bases, and the stimulus of varied interests, for the transcending of ethnic exclusiveness. And initially, in the movement to decolonization, political division did not flow along ethnic lines. But very rapidly the society became ethnically polarized, as Tutsi elite sought to eliminate their Hutu opponents by terrorism and assassination, and Hutu responded by counter-terrorism.

Within three years of independence, ethnic conflict had escalated to genocidal massacre. In 1965, on the failure of a Hutu attempted coup, and in reaction also to massacres of Tutsi in the countryside, the army, assisted by civilian defence groups, and the government acting through a Council of War, killed some 2,500 to 5,000 Hutu, virtually liquidating Hutu leadership. This was a precursor, as it were, to the genocide of 1972, which re-enacted, on a vastly destructive scale, the events of 1965. In the southern provinces of Burundi, Hutu rebels, with some assistance by rebels from Zaire, slaughtered and mutilated every Tutsi they could find and of whatever age or sex, as well as the few Hutu who refused to join them. In the reprisals in which some 100,000 Hutu were slaughtered, the employed and the educated and the semi-educated were the special targets for revenge, which was also directed indiscriminately against Hutu. Nor did 1972 see the end of these massacres, which continued into 1973 with intermittent killings thereafter.

In Rwanda, the traditional lines of Tutsi domination over Hutu remained sharply defined under Belgian mandate. Following reforms introduced by the Belgian Government, including a progressive system of electoral representation, political parties consolidated on mainly ethnic lines. The society rapidly polarized, and in March 1962, some murders by Tutsi bands set off massacres, in which between 1,000 and 2,000 Tutsi men, women and children were massacred. In December of 1963, following a minor, but threatening, invasion by Tutsi, over 5,000 Tutsi were massacred in one area, and perhaps another 5,000 to 9,000 in other areas. The massacres of Hutu in Burundi took many more casualties. Estimates range from well over 100,000 to 300,000.¹⁶

(3) Genocide in the process of struggles for power by ethnic or racial or religious groups, or struggles for greater autonomy or for secession, for example the genocide in Bangladesh, in 1971

Unity in the state of Pakistan, established in the partition of India, was based on common religious faith and on fear of Hindu domination. But the initial political and spiritual exhilaration of a new nationalism was beset from the earliest days by the divisive

forces of ethnic pluralism. The main division was between the Bengali-speaking people of East Pakistan, and the Punjabi, Baluchi, Pathan and Sindhi populations of West Pakistan, with Urdu as their official language. Not only were the two sections separated by over 1,000 miles, but there were great differences between them in culture, geography and economy. Moreover, the East included in its population of about 75,000,000, some 10,000,000 to 12,000,000 Hindus, as well as Urdu-speaking Muslims, immigrants, known as Biharis.

Long periods of military dictatorship and of martial law give some measure of the difficulties in arriving at a constitutional accommodation. Tensions were heightened by a relationship between the West and the East, which the Bengalis saw as colonialism, and which indeed bore many of the marks of colonial domination. Finally, in the course of struggles for greater autonomy, and while negotiations were taking place, the West struck with devastating force against East Pakistan in March 1971, and engaged in large-scale massacres, directed against civilians, including women and children, political activists, students, professionals and business men, and against the Hindu population. The International Commission of Jurists expressed the view that there was 'a strong *prima facie* case that the crime of genocide was committed against the group comprising the Hindu population of East Bengal'. It viewed the army atrocities as part of a deliberate policy by a disciplined force. As to the killing of non-Bengalis by Bengalis, the Commission found 'it difficult to accept that spontaneous and frenzied mob violence against a particular section of the community from whom the mob senses danger and hostility is to be regarded as possessing the necessary element of conscious intent to constitute the crime of genocide'.¹⁷

There was mounting resistance by the Bengalis, and the civil war was finally ended in December 1971, as a result of the intervention of the Indian army. This sealed the successful secession of the now independent state of Bangladesh. Estimates of Bengalis killed vary greatly, with an upper limit of perhaps 3,000,000. In addition, some ten million had taken refuge in India.¹⁸

There have been other highly destructive conflicts of this type, though not genocidal; for example the civil war in Nigeria between the Federal Government and the Eastern Region, which was set off by massacres of Ibo in Northern Nigeria in 1966 (massacres which seem to me to fall within the UN definition of genocide). During the civil war itself, between 600,000 and 1,000,000 Easterners were killed in battle in the course of the war, or died of famine or disease. In the civil war in the Sudan between the dominant North (largely Muslim, peopled by Arabs and non-Arab Islamicized groups) and the subordinate South (Africans, mostly animist, but with appreciable numbers of Christians and a small number of Muslims), the deaths of Southerners as a result of warfare, massacres of civilians, reprisals against suspected collaborators, and famine and disease, are estimated at 500,000 or more (though these figures are controversial). In these three highly destructive conflicts, the crucial issue was that of self-determination.¹⁹

(4) Genocide against hostage or scapegoat groups

The major most recent cases of this form of genocide, prior to the Genocide Convention, are the Turkish genocide against the Armenians in the Ottoman Empire and the German genocide against Jews and Gypsies.

The twentieth century is sometimes viewed as initiating a new process in genocide. Toynbee writes²⁰ that its distinguishing marks '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'. He describes the massacres at the instigation of the Sultan Abdul-Hamid II at the end of the nineteenth century as amateurish and ineffective compared with the largely successful attempt to exterminate the Ottoman Armenians during the First World War, and the latter in turn as less effective than the German genocide of the European Jews, 'since the general level of technological and organizational efficiency in Germany during the dozen years of the Nazi regime was considerably higher than it had been in Turkey during the ten years of the C.U.P. (Committee of Union and Progress) regime'. Arlen writes²¹ to similar effect that the entire production of the Armenian genocide (of 1915) was based on the imperfectly utilized but definitely perceived capacities

of the modern state for politically restructuring itself, which were made possible by the engines of technology. In due course, 'Hitler's Germany was to perfect the process of railway deportation and to develop the gas chamber and the crematoria, and Lenin's and Stalin's Russia was to evolve further the institutions of the concentration camp and secret surveillance. . . . But in virtually every modern instance of mass murder, beginning, it appears, with the Armenians, the key element . . . which has raised the numerical and psychic levels of the deed above the classic terms of massacre— has been the alliance of technology and communications.'

The genocide by the Turks against the Armenians had been preceded by earlier conflicts, as Armenians protested against their treatment in the Ottoman Empire and struggled for a measure of greater autonomy. The massacres of between one hundred and two hundred thousand Armenians in 1895 - 1896 were a sort of ambassadorial note by the Sultan to the European powers to refrain from intervention in the domestic affairs of Turkey, and a most bloody warning to the Armenians themselves against seeking the intercession of these powers on their behalf or aspiring to autonomy. The First World War provided the opportunity, however, for a Final 'Solution' to the Armenian Question, as the Turks faced the threat of the dissolution of their Empire, and as anxiety lest the Armenians revolt became the conviction that they were disloyal, and the warrant for genocide.

The first step was to eliminate the possibility of effective resistance. This was initiated by the disarming of Armenian soldiers serving in the Turkish army, and the disarming of the civilian population. Armenian soldiers were reduced to road labourers, and indeed to pack-animals, or they were killed outright. The process was completed by the arrest and deportation of Armenian leaders, leaving the population a defenceless and easy prey for the next stage. In some areas, this took the form of outright annihilation; in others, the genocide proceeded under the guise of deportation. There were variations in the pattern of these deportations — in the treatment of the men, massacre or deportation, in the possibility, or denial, of conversion for the women, and in the fate reserved for the children. As for the deportations, they were death caravans, whether on foot or in cattle trucks; and the final destination was the desolate wasteland of the Syrian desert and the Mesopotamian valley, where the surviving remnant was subjected to the ultimate torment of slow death by exposure and starvation.

There is controversy over the number of deaths, but perhaps as many as 800,000 or more — about half the Armenian population — died in the course of, and in the immediate aftermath, of the massacres and deportations.²² Though the successor Turkish Government instituted trials of some of those responsible for the massacres, and found them guilty, its present position is a denial that the genocide took place, and it is assisted in this denial by some scholars, both inside and outside of Turkey. The evidence of eyewitness accounts, however, is overwhelmingly conclusive.

The German genocide against Jews in the Second World War re-enacted many of the procedures of the centrally organized genocide against the Armenians, but on a much vaster scale, and with elaborate bureaucratic regulation and industrial efficiency. The genocide was world-wide in ultimate intention. It was directed not only against Jews in Germany and throughout Europe, but Nazi doctrine was exported to, or imported by, countries in other continents. Spearheaded by an anti-Christian Nazi movement, the genocide was nevertheless deeply rooted in the history of Christian anti-semitism, reaching back to the pogroms during the Crusades. This ensured the active participation of other European peoples in the European genocides, though with most notable and courageous exceptions, and a complicity or indifference in the outside world, so that death seemed to guard all exits.

The bureaucracies of the State, of the Nazi party, of military and big business co-operated in the execution of the genocide. Hilberg, in a major work on *The Destruction of the European Jews*, writes that the civil service infused the other hierarchies with its sure-footed planning and bureaucratic thoroughness. From the army, the machinery of destruction acquired its military precision, discipline and callousness. Industry's influence was felt in the great emphasis upon accounting, penny-saving, and salvage, as well as in the factory-like efficiency of the killing centres. Finally, the party contributed to the entire apparatus an 'idealism', a sense of 'mission', and a notion of 'history-making'.²³

The major steps in the genocidal process included the definition of Jews and their identification by conspicuous symbols, their expulsion from the civil service, the professions, responsible positions in business and industry, and the expropriation of their property. This expropriation extended ultimately to the last wretched possessions of the victims in the killing centres. But even in the absence of the killing centres, Jews would have been annihilated by the extreme exploitation of Jewish workers, with the minimum of wages for the maximum of work, and by discrimination in food rationing. Social and physical isolation of Jews accompanied the whole process. They were subjected to the most vicious campaigns of vilification, they were excluded from community with their countrymen by a series of laws and regulations, and they were relegated to a pariah status.²⁴ All these steps are so intimately related to the final mass murders, that they appear in retrospect to have been part of an initial overall plan for genocide. But the order for the annihilation of European Jewry was only given in about July 1941, the initial policy being to bring about a vast emigration of Jews.²⁵

The death camps were established after a brief period of experimenting with mobile killing squads. Organized on the model of modern industrial plants, the killing centres processed their victims for slaughter, as if on a conveyor belt; they eliminated waste; they gathered in, with careful inventory, their few possessions, their clothes, gold teeth, womens' hair, and they regulated the distribution of these relics. And some of the killing centres were combined with slave camps, in which the exploitation of labour was carried to the extreme of expendability, with such leading German firms as I.G. Farben and Krupp, for example, establishing branches in the vicinity of the gas chambers and crematoria of Auschwitz.

The killing centres served the whole of Europe, the level of participation by other European Governments depending on a variety of factors – the extent of German domination in the country concerned, the reactions of the local population and their rulers, the role of the Churches, the structure of the Jewish communities, and the course of the military campaigns.²⁶ The Jewish dead are estimated at about 6 million out of a total population of 8.3 million who remained in German-occupied Europe after 1939.²⁷ Other groups also suffered massacres on a vast scale. Perhaps as many as 16 million Poles and Russians were slaughtered in captivity, or killed by starvation and exposure in the concentration and labour camps. But the genocide against Jews was pursued with a relentless determination and persistence. Initially, persecution of the Jews had brought political gains in the support of an appealing doctrine, and material gains in the expropriation of Jewish possessions and the evacuation of areas for German settlement in Poland. But in the course of the destruction process, genocide became an overriding end in itself, to which economic priorities were sacrificed (as in the slaughter of Jewish workers) and even military priorities (as in the clogging of lines of retreat for the defeated German armies by the deportations from Hungary in 1944). And the annihilation of the Jews continued to the very last, in the frenzied slaughter of Hungarian Jews, and the deportations from Italy, Greece and Slovakia, and the last minute death marches. The annihilation of Jews was a most complete realization of the annihilation of a people *as such*.

The German genocide against the Gypsies shared this same quality of the intent to destroy a people *as such*. There were no material advantages to be gained, no conceivable political or strategic gains. The massacres of the Gypsies seem to have been motivated by pure genocidal malevolence. Like the Jews, they were hostages to the fortunes of the host society, deemed expendable in time of crisis.

Analysis

Reviewing these types of domestic genocide, one notes the following:

- (i) In many cases there are differences of religion between the aggressors and the victims. This is not to suggest that these genocidal conflicts are about religious beliefs, but rather that differences in religion readily shape an alienation from, and a dehumanization of, the victims.
- (ii) The catalyst is often a situation of change and of threat.
- (iii) The crime is committed mostly by governments, though not exclusively by them.
- (iv) It is a phenomenon of 'plural societies', using the concept along the lines developed by J.S. Furnivall, to describe

societies characterized by deep and pervasive cleavages between ethnic, racial and/or religious groups.

- (v) Many of the highly destructive conflicts involve struggles for greater autonomy or for secession, and arise from the denial of the right to self-determination.

I have drawn a distinction between domestic genocides and those arising in the course of international warfare. The line between the domestic and the international is not always clear. There is often, perhaps almost invariably, an international involvement in the domestic conflicts. This may take the form of training, and the provision of arms and advisers, for one of the combatants, or it may take the form of direct military engagement, as in the intervention by the USA in support of the Government of South Vietnam. The destruction inflicted by this army on the Vietnamese people and their country was so massive, as to give rise to charges of genocide.²⁸

In any event, international warfare, whether between 'tribal' groups or city states, or other sovereign states and nations, has been a perennial source of genocide. Indeed there were periods in which total genocide against the vanquished enemy, or the slaughter of the men, and the enslavement or other incorporation of women and children, were accepted practice.²⁹ Protection accorded to non-combatants under the Geneva Conventions, should have served as a restraint on genocide in warfare, but this protection was denied in the Second World War by Nazi ideology, or by the invocation of military necessity in the pattern bombing of civilian populations engaged in war production, or resort to the doctrine of the lesser evil, as in the atomic destruction of Hiroshima and Nagasaki. With the present development of nuclear armament and other technology for mass destruction, and the precedents of the last war, it is difficult to know the current position regarding the rules for the regulation of international warfare.

Part III: MASS MURDER OF POLITICAL GROUPS

There remain the political mass murders. I am treating these as a special category, since they are excluded by the definition in the Genocide Convention. But logically and theoretically, they do not constitute a distinctive category. The ethnic and racial conflicts are for the most part also political, and under certain conditions (e.g., communists in Indonesian villages, or political opponents in the labour camps in Kampuchea, or in Nazi Germany or in Stalinist Russia), political affiliation can be as distinctive and as immutable as ethnic or even racial origin. Moreover, political mass murder is often accompanied by massacres of ethnic or religious groups.

In Stalinist Russia, there were the deportations of whole national groups. Khrushchev, in his denunciation of Stalin at the Twentieth Congress of the Communist Party of the Soviet Union in February 1956, referred to mass deportations, 'not dictated by any military considerations', in which whole nations were moved from their native lands – the Karachai in 1943; the entire population of the Autonomous Kalmyk Republic in the same year; the Chechen and Ingush peoples in March 1944, with liquidation of their autonomous republic; and all Balkars in April 1944, their name being expunged from the Kabardino-Balkar Autonomous Republic. 'Not only a Marxist-Leninist', he declared, 'but also no man of common sense can grasp how it is possible to make whole nations responsible for inimical activity, including women, children, old people, Communists and Komsomols, to use mass repression against them, and to expose them to misery and suffering for the hostile acts of individual persons or groups of persons.'³⁰

Solshenitsyn described the third wave of deportations from 1944-1946, 'when they dumped whole *nations* down the sewer pipes, not to mention millions and millions of others who (because of us!) had been prisoners of war, or carried off to Germany and subsequently repatriated'.³¹ This wave extends over a longer period, going back to the 1930s with the mass arrest of Koreans from the Far East, and to 1939, when 30,000 Czechs were sent off to the northern camps. It included the 'social prophylaxis' of occupied territories, the nationalities which had transgressed or had been designated as treacherous (Kalmyks, Chechens, Ingush, Karachai, Balkars, Kurds, Crimean Tatars and finally Caucasian Greeks). Solshenitsyn's list of exiled nations is more extensive than that given by Khrushchev. There were other deportations too, for example the

deportation of the Volga Germans in 1941-1942, and this quite apart from the liquidation of national leaders in the Baltic States and the Western Ukraine.

The deportations of the 'transgressing' nations were carried out under conditions reminiscent of the German deportations. Many of the exiles died even before arriving at their destinations, and the survivors were subjected, in terms of the United Nations' definition of genocide, to conditions of life calculated to bring about their physical destruction in whole or in part. Nekrich³² offers the following minimum estimates of losses to 1959 – Chechens 22%, Kalmyks 14.8%, Ingush 9%, Karachai 30% and Balkars 26.5%. This represents an average loss of over 20% or almost one quarter of a million people. Medvedev³³ gives a higher estimate of as many as 40% of the deported Chechens, Ingush, Crimean Tatars, Kalmyks, Volga Germans and others perishing from hunger, cold and epidemics in the uninhabited places in the east to which they were shipped by the trainload. These peoples have now been politically rehabilitated, but the Crimean Tatars, Soviet Germans and Meskhetians are still not allowed to return to their former homes.³⁴

These mass murders fall within the scope of the Genocide Convention, but in addition, there were the mass murders of economic strata and political groups. The liquidation of economic classes, the bourgeoisie to be sure, but also the kulaks, and the liquidation of political groups and opponents, were on an immeasurably greater scale. The kulaks (loosely defined to include the rich, middle and even poor peasants, and all those who opposed collectivization, or incurred the enmity of the local activists), were mercilessly uprooted and dispossessed, and condemned to lethal conditions of transportation and resettlement. Solzhenitsyn writes that whole families were uprooted, whole nests burnt out; 'and they watched jealously to be sure that none of the children – fourteen, ten, even six years old – got away: to the last scrapings, all had to go down the same road, to the same common destruction'. They were banished 'to the haunt of wild beasts into the wilderness, to man's primitive condition. . . . Only the peasants were deported so ferociously, to such desolate places, with such frankly murderous intent; no one had been exiled in this way before, and no one would be in the future'.³⁵ Estimates of the numbers who perished range from 5 million to 15 million, and this is without taking into account the many millions of peasants who starved to death in the artificially induced man-made famine of 1932-1933. Then there were the continuous purges of political groups, with victims including also Communist Party and State cadres, and purges of all manner of political opponents, real or fancied, in the consolidation of despotic power. Medvedev, in an attempt to convey some of the enormity of the Great Purge between 1936 and 1939, compared it to the murders by past tyrants. The scale of the Stalinist terror, however, was immeasurably greater. 'In 1936-9, on the most cautious estimates, four to five million people were subjected to repression for political reasons. At least four to five hundred thousand of them – above all the high officials – were summarily shot; the rest were given long terms of confinement. In 1937-8 there were days when up to a thousand people were shot in Moscow alone. These were not streams, these were rivers of blood, the blood of honest Soviet people. The simple truth must be stated: not one of the tyrants and despots of the past persecuted and destroyed so many of his compatriots.'³⁶

In Indonesia, it was the Communists who were massacred in large numbers, following an attempted coup in October 1965. There is controversy on the question of whether the Indonesian Communist Party was involved in the planning of the coup, and if so, in what measure. The events themselves had all the appearance of a revolt by middle-ranking officers against the military supreme command, that is to say, of an internal army conflict. In any event, the Indonesian Communist Party was compromised in a number of ways, and the army, in repressing the coup, imposed its own judgement of Communist Party guilt.

The background to the massacres was largely a struggle for power between the Communist Party and the army. There was also conflict between the Communists and a powerful religious group, religious and ideological opposition being interwoven with class conflict. The army engaged actively in the massacres of Communists, participating directly in them, or indirectly by organizing and arming civilian killers. Communists were sufficiently stable and sufficiently identifiable to serve as the target for slaughter. They were readily identified from party lists of members, and, particularly

in the villages, by intimate knowledge of political affiliation. Of course, the massacres extended beyond known affiliation, and gave the opportunity to settle private scores, and to draw in other categories, as in the killing of Chinese merchants and their families in North Sumatra. Estimates of the number of Communists and affiliates slaughtered range from 200,000 to over 1,000,000. In addition there were great waves of arrest, and detention for many years without trial.³⁷

In Cambodia (Democratic Kampuchea), the country had been devastated by many years of civil war, and by massive American bombing, designed to root out Vietcong bases. When the revolutionary forces of the Khmer Rouge finally prevailed in April 1975, they faced a desperate food crisis, and great uncertainty in the consolidation of their power, and they proceeded ruthlessly with the liquidation of selected social strata, and with a most radical restructuring of the society. They immediately evacuated the capital Phnom Penh, which had been swollen by refugees to perhaps as many as 3 million. Its inhabitants and those of other towns were driven out in a gigantic mass migration, and exposed, with much loss of life, to extreme hardship, accompanied by summary executions, in the journey to their new work sites.

Persons associated with the previous regime were special targets for liquidation. In many cases, the executions included wives and children. There were summary executions too of intellectuals, such as doctors, engineers, professors, teachers and students, leaving the country denuded of professional skills. Vietnamese in Cambodia, and Cambodians trained in Vietnam as revolutionaries, also came under attack.

The revolution itself was most radical in its objectives. On 2 November 1978, *Izvestia*, in a full-scale attack on Kampuchea, charged that a special course, aimed at the construction of a historically unprecedented society, had been proclaimed – a society without cities, without property, without commodity-money relations, without markets and without money, without families. Those who were dissatisfied with the new regime were being 'eradicated', along with their families, by disembowelment, by beating to death with hoes, by hammering nails into the backs of their heads and by other cruel means of economizing on bullets. Responsibility for this 'monstrous situation', according to *Izvestia*, and for a cultural revolution which had destroyed the old intelligentsia and the student class, eliminated doctors and technical specialists, and completely wrecked the educational system, stemmed from the importation of the wild ideas of Mao Tse-tung.³⁸

The whole country had indeed been turned into an agricultural work-site, in which the people laboured ceaselessly on irrigation works, on the cultivation of rice and on other agricultural pursuits. Here their rulers subjected them to what the Sub-Commission on Prevention of Discrimination described as 'draconian discipline' in both work and private life. Sentimental ties were dissolved in the separation of families, the indoctrination of children, the continuous surveillance, and the ubiquitous presence of spies in a system of collectivized labour and communal living. Exhaustion, from the extremely arduous work, malnutrition from minimal diets, starvation and disease took a heavy toll of lives; and to this must be added the ravages of the revolutionary terror, with its purges of prescribed categories, and later its purges of party cadres, and with the easy resort to executions, carried out most brutally, for slight infringements of discipline, or for complaints or criticism. This was a regimented setting in which it was nearly impossible to escape the 'guilt' of social origins or past affiliations.

There are no reliable statistics of the deaths. Perhaps as many as two million or more of a population of seven million may have died as a result of starvation, disease and massacre, during the rule of the Khmer Rouge from 1974 to 1979, when the Government was overthrown by an invading Vietnamese army and rebel Cambodian troops.³⁹

In Uganda, a murderous regime was establishing itself at about the same time as the massacres in Burundi. The killings started immediately after a successful coup by Amin in January 1971, but did not become internationally notorious for a few years. The first issue which evoked international involvement was the decision by Amin, in August 1972, to expel the Ugandan Asians on 90 days' notice. They numbered some 75,000, of whom a third were Ugandan citizens. Some exemption was accorded the citizens, who might choose between expulsion or banishment to remote and arid areas, where they could occupy themselves as farmers. The

expulsion took their course, uninhibited by outside concern. The victims were brutally treated, a few were killed, and they were systematically stripped of their possessions, which were distributed to, or seized as booty by, soldiers and other supporters of the regime.

In the meantime, the slaughter of Ugandans by a military usurper was becoming more widely known. It was carried out mainly in the consolidation of despotic power, and it extended to almost every conceivable category of victim – ethnic, as in the massacre of Acholi and Lango soldiers in the Ugandan army; political, in the annihilation of the supporters of the ousted president, and of political opponents in general; the educated elite; religious leaders, and their followers too, notably Catholic; and much indiscriminate killing, random, whimsical, impulsive, with massacres also of entire villages. The killers came from sections of the army, and from security forces, consisting mostly of Southern Sudanese mercenaries, of members of Amin's own ethnic group, the Kakwa, and generally of Nubians inside Uganda. Godfrey Lule, who had been Minister of Justice under Amin, described the Nubians and the newly recruited Sudanese as exercising 'a foreign tyranny more vicious than anything dreamed of by European imperialists or modern white minority governments in Africa'.⁴⁰ Amin's murderous regime continued until he invaded Tanzania, and was overthrown in a counter-invasion.⁴¹

There are many other contemporary cases of massive murder and torture as routine instruments of despotic power – e.g., Argentina, Chile, El Salvador, Guatemala, and Equatorial Guinea under the dictator Macias – but not falling within the scope of the Genocide Convention.⁴²

Part IV: INTERNATIONAL ACTION

Earlier, I referred to the many defects of the Genocide Convention, which affect its implementation. There are the ambiguities in the definition, the narrowing of its scope to exclude cultural genocide and the massive slaughter of political groups, the emphasis on punishment of the crime, but at the same time, the failure to establish an international penal tribunal, and the general watering down of the provisions for enforcement. In these circumstances, it is clear that implementation of the Convention must depend on the commitment of member states of the United Nations to the eradication of the crime, and their willingness to invoke the available machinery for its suppression. But up to the present, the record has been discouraging, and I think it fair to say, that the Convention is almost a dead letter; or worse still, that it has become a weapon in political warfare, not an instrument to liberate mankind from what the Convention describes as 'an odious scourge'.

The bodies seized with initial jurisdiction on complaints of violations of human rights, including genocide, are the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. For many years, the Commission took a quite inactive role on violations of human rights, concerning itself with promotion (for example, the framing of new international standard-setting documents), rather than with protection. In the 1960s this position began to change under pressure from the decolonized member states, and in 1967, by Resolution 1235 (XLII), the Economic and Social Council authorized the Commission on Human Rights to make a thorough study of situations which reveal a consistent pattern of violations of human rights, as exemplified by the policy of *apartheid* as practised in the Republic of South Africa . . . and racial discrimination as practised notably in Southern Rhodesia, and report, with recommendations thereon, to the Economic and Social Council. From 1967, the Committee carried out 'a series of operational fact-finding activities which reflected the political and human rights preoccupations with the situations in Southern Africa, the occupied territories in the Middle East, and, in more recent years, the situation in Chile'.⁴³

These enquiries are carried out openly and with full publicity. In 1970, 'the Economic and Social Council approved, in Resolution 1503 (XLVIII), a procedure whereby a complex machinery was set up for the screening of communications and the further examination of those communications which "appear to reveal a consistent pattern of gross and reliably attested violations of human rights and

fundamental freedoms"'. The resolution provides for a multi-stage procedure, in which a working group of the Sub-Commission on Prevention of Discrimination, the Sub-Commission itself, the Commission on Human Rights and eventually (theoretically) an *ad hoc* investigatory committee appointed by the Commission serve successively as organs of implementation'.⁴⁴

Complaints (communications) of genocide under the 1503 procedure would generally be made by individuals and organizations. The complaints are sent to the governments concerned for comment; and they are referred, together with the replies, to the 1503 working group of the Sub-Commission, which meets, however, only once a year. These communications are handled under confidential procedures. If action is recommended, the nature of the action is not disclosed, nor do the confidential communications become available for public scrutiny. Information surfaces, however, in a variety of ways. The complaints may be referred to in parliamentary debate or in congressional reports, or there may be leakages by representatives. But it is necessary to bear in mind that one is dealing with what are in many ways secret procedures, and that one cannot hope for full information.

In addition to the confidential procedures, complaints may be made occasionally in open session by members of the Commission and Sub-Commission, and by observers. Where the genocidal massacres pose a threat to peace (as in the case of Bangladesh), the issue is properly raised in the Security Council. Furthermore, there is provision, under Article IX of the Convention, for the submission to the International Court of Justice, of disputes between Contracting Parties, relating to the interpretation, application or fulfilment of the Convention, and including also responsibility of a State for genocide.

I would expect that United Nations' action in response to charges of genocide against vulnerable indigenous groups would generally take the form of confidential intercessions by the Secretary-General. The intercessions are probably ineffective for the most part, but more information is needed on the extent and the results of this form of action. The physical extinction of these groups, or of their way of life, appears to be an ongoing process in most parts of the world, and widely accepted as an inevitable consequence of the march of history (or progress). In the case of the Aché Indians, Arens⁴⁵ reports that the complaint filed for the Aché Indians by the International League for the Rights of Man resulted in a light flurry of verbal interest among some human-rights-oriented 'experts' and delegates in United Nations corridors, but that no formal action was taken; and that the pleas by the Anti-Slavery Society of Great Britain in August of 1974 did not succeed in securing a recommendation for even an investigation of conditions in Paraguay. But reactions were by no means totally negative. Some years later, in closed meeting during its thirty-fourth session (February/March 1978), the United Nations Commission on Human Rights did decide on action in respect of a number of countries, including Paraguay. While the nature of the action was not disclosed, it appears from a report of the United States Government to have been a recommendation for intercession with the Government of Paraguay by the Secretary-General. Moreover, the Inter-American Human Rights Commission of the Organization of American States had adopted a resolution in May 1977 calling attention to reports of serious abuses and requesting the Government of Paraguay to take measures to protect the rights of the Aché Indians. There has been some response by the Government of Paraguay to these expressions of international concern.⁴⁶ I understand that the Government proposed a settlement plan for the Aché Indians, which raised a number of issues. Were the Aché consulted? What would be the consequences of the settlement plan for a nomadic people hunting and fishing over a wide area? And since the proposed settlement was on the borders of Brazil, were the Aché to be a buffer against Brazilian expansion?

The second category of genocides, listed above, are the genocides arising in the course, or in the aftermath, of decolonization in a two-tier structure of domination. The major case to which I referred was the genocide of Tutsi against Hutu in Burundi in 1972. The massacres were immediately known in the outside world. In May 1972, the Belgian Prime Minister referred to a veritable genocide in Burundi. The French National Assembly urged action. The USA engaged in humanitarian relief, and it made diplomatic representations, as did other members of the Diplomatic Corps in Burundi. The Secretary-General of the United Nations reported that the UN

humanitarian mission had confirmed the enormous suffering, with different sources estimating the numbers of the dead as between 80,000 and 200,000. But apart from the active concern of the Secretary-General, the various diplomatic approaches, and the provision of humanitarian relief, no serious steps were taken to halt the massacres in either 1972 or 1973.

At its meetings in 1973, the Sub-Commission on Prevention of Discrimination and Protection of Minorities forwarded to the Commission on Human Rights a complaint against Burundi of gross violations of human rights. But when the Commission met in 1974, it effectively shelved the matter by appointing a new working party to communicate with the Government of Burundi, and to report back to the next annual meeting of the Commission.

A major preliminary obstacle was presented by the Organization of African Unity, given the policy of the United Nations and of western diplomats that this body should be primarily responsible for mediating in the conflict, and for initiating appropriate action. Whatever representations may have been made privately by members of the organization, its official releases were supportive of the Burundi regime. According to a US report,⁴⁷ there was more active concern by a few African heads of state following the ethnic violence in April-May 1973, and this may have restrained in some small measure, the fury of genocidal massacre.

The genocides in decolonizing societies with a two-tier structure of domination are a special case of genocides arising in the course of struggles for power between racial, ethnic or religious groups. These latter genocides account for the great majority of deaths in the domestic genocides. The Bangladesh massacres were especially destructive of human life and pursued a relatively uninhibited course, until invasion by a foreign power, with supporting local forces. The massacres, starting in March 1971, took place under the full gaze of the outside world, with observer reports, and charges of genocide, filtering through to the world press. Yet the UN General Assembly and Security Council were only 'seized' of the matter, and then from a quite different aspect, in December 1971 following the escalating of the conflict between India and Pakistan into open warfare, and the invasion of Bangladesh by India. As for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, meeting in August 1971, it speedily disposed of a written request by 22 international non-governmental organizations that the Sub-Commission examine the available information and recommend measures for the protection of human rights in East Pakistan. A plea presented in person by the representative of the International Commission of Jurists similarly fell on deaf ears. Only one member is reported as having argued that the Sub-Commission should not remain silent. Concern and efforts by the Secretary-General proved ineffective, save in one important respect, the mounting of a massive programme of humanitarian relief.

The hostage and scapegoat genocides I discussed earlier, preceded the Genocide Convention, with the German genocide stimulating the resolve to eradicate the crime, and the Nuremberg Trials providing a model for its prevention and punishment. The massacres of the Ibo in Northern Nigeria in 1966, have some of the characteristics of the hostage genocide, and these characteristics are also to be found in the expulsions of peoples under hazardous conditions into an outside world unwilling to receive them. The expulsion of Asians from Uganda resulted in the destruction of the way of life of these Asian communities, but not in their physical destruction. In this way, the contribution of the Sub-Commission for Prevention of Discrimination and Protection of Minorities was to transform an immediate concrete issue of survival into an abstract issue of normative regulation. The Sub-Commission rejected a proposal to send a telegram of concern to the President of Uganda. This was indeed outside their powers, but they evaded the specific issue and recommended instead that the Commission on Human Rights consider the applicability to non-citizens of the present international legal protection of human rights.

It should be clear that the line I have drawn between massacres arising out of struggles for power between racial, ethnic or religious groups, and the political massacres, is often quite arbitrary. The conflict in Burundi was essentially a political conflict, in which the social base for mobilization and slaughter was the ethnic group; and conflicts which would seem to be based on purely political division, often have some ethnic, or racial, or religious component. In any event, whether or not the political massacres are classified as genocide, they are equally with the ethnic and religious massacres,

a major contemporary source of the massive destruction of human life.

In two of the recent cases discussed above, Uganda and Kampuchea, specific charges of genocide were made. Early in 1973, the former Minister of Education, who had served for two years under Amin, sent a long memorandum to African heads of state and government of the Organization of African Unity, giving details of the atrocities of mass murder, and concluding with the complaint that too many nations regarded what was happening in Uganda as an internal matter. 'Is systematic genocide', he asked, 'an internal matter or a matter for all mankind?'⁴⁸ In May 1973, the ousted President of Uganda wrote to the OAU at Addis Ababa, charging that the nature of the outrage on humanity, practised by Amin and his agents, was in fact genocide. Later, in 1974, there appeared David Martin's full-scale study of the regime, and in May 1974, the International Commission of Jurists submitted a report to the Secretary-General of the United Nations on Violations of Human Rights and the Rule of Law in Uganda, in which they charged the suspension or violation of most of the fundamental human rights, the breakdown of the rule of law, the placing in abeyance of basic freedoms, the arrest, detention, torture and killing of thousands of civilians, and the establishment of a reign of terror. The submissions included an indictment by a former Ugandan Foreign Minister. Between 1974 and 1976, the Commission submitted, in all, five complaints of human rights violations to the Secretary-General of the United Nations, and in January 1977, Amnesty International submitted to the Commission on Human Rights similar charges of grave violations.

The Secretary-General of the UN did call on Amin to conduct an investigation, but as for the Commission on Human Rights, it successfully parried the charges against the Ugandan regime. At its meetings in 1977, the need for action became even more critical, since its Sub-Commission on Discrimination had recommended that the Commission institute an enquiry under open procedure into the violations of human rights in Uganda. However, on the urging of the Ugandan member,⁴⁹ the Commission decided to keep the matter under review, that is to say, it decided to defer consideration to its meetings in the following year. It seems that it was only as the result of a *démarche* by the five Nordic Governments, that the Commission finally decided, in March 1978, on some form of action, but the nature of the action was not disclosed, in conformity with the rules governing proceedings *in camera*. However, the British Foreign Secretary announced in Parliament that the Commission had decided to undertake an investigation. As for the Organization of African Unity, it was even more reticent and protective, though there were dissenting members. For all practical purposes, however, Amin continued under the protection of the Organization and of the Commission, until he was overthrown by external intervention.

In the Cambodian case, almost three years after the evacuation of Phnom Penh and the first massacres, the Commission on Human Rights did initiate action of a most innocuous nature, but that only under great pressure. There had been submissions by the Governments of Canada, Norway, the UK, the USA, and Australia, with supporting documentation, including a unanimous resolution by the Canadian Parliament, expressing horror at the genocide committed by the Government of Democratic Kampuchea. This could not easily be dismissed. Nevertheless, the majority rejected a resolution proposed by the UK representative, that a study of the human rights situation in Democratic Kampuchea should be made with the co-operation of the government of that country. Instead, it decided to invite comment by the Government in response to the documents submitted, that is to say, to defer consideration of the ongoing massacres for a whole year.⁵⁰

In March 1979, during the annual meetings of the Commission, Mr. Boudhiba, Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, presented a report on Kampuchea which the Commission had requested. He concluded that the situation constituted 'nothing less than autogenocide', and that the events described in the documents were 'the most serious that had occurred anywhere in the world since nazism'. The representatives of Australia, Canada, Sweden and the UK tabled a motion, which in its revised form, would record the Commission's view that, on the basis of the evidence available, gross and flagrant violations of human rights had occurred in Democratic Kampuchea, and which would note the Commission's decision to keep the situation under review at its next meeting (in 1980) as a matter of priority.

Neither the original nor the revised resolution, though deliberately moderate in tone, were debated. Yugoslavia, acting on behalf of the sponsors (Benin, Egypt, Pakistan, Senegal, Syria and Yugoslavia) tabled a draft decision to postpone consideration of the report on Kampuchea to the next session in 1980. This was carried by a large majority. As for the revised resolution, which carefully refrained from reference to the Sub-Commission's report, it was guillotined on a motion by the Chairman of the Commission, carried by an overwhelming majority, that the Commission should decide not to vote on the resolution. Only Australia, Austria, Canada, France, West Germany, Sweden and the USA opposed this motion.⁵¹

The issue was not controversy over the facts. There seemed to be fairly general agreement that the Government of Democratic Kampuchea had committed gross violations of human rights. The issue was rather one of *realpolitik* connected with the invasion of Kampuchea by Vietnam. It was left to the successor Cambodian regime, installed by the Vietnamese, to initiate action. In August 1979, the new Government instituted criminal proceedings against the former Prime Minister, Pol Pot, and the Deputy Prime Minister – *in absentia* – on charges of genocide, and the accused were found guilty of the crime by a People's Revolutionary Tribunal.

But the crimes of the regime proved no barrier to continued participation in the General Assembly of the United Nations. In September 1979, a majority of 71 (against 35, with 34 abstentions), voted to continue the assignment of the Cambodian seat to the ousted government. Among nations supporting the resolution were governments that had previously denounced the regime before the Commission on Human Rights – Australia, the UK and the USA.

Part V: CONCLUSIONS

I turn now to the conclusions which can be drawn from the above analysis and the suggestions to be derived for international action against genocide.

Implementation of the Convention

(1) There are many reasons for the failure of the UN to provide protection against the crime of genocide in terms of the Convention. The provisions for enforcement were greatly watered down; the Convention emphasizes punishment of the crime, but this is somewhat meaningless at the internal level in the absence of an International Penal Tribunal. Hence, it is only the governments of States in the territories of which the crime was committed, that can institute proceedings for its punishment. However, in the case of the 'domestic' genocides, these are generally committed by governments, with the bizarre consequence that the governments would be required to prosecute themselves. In actual practice, the mass murderers are protected by their own governments, save in exceptional cases, where these governments have been overthrown. Thus in Equatorial Guinea, the despot Macias was found guilty of a number of crimes, including genocide, and executed.⁵² In Kampuchea, however, Pol Pot is still at large, protected by his own army, and presumably also in some measure, by the continued international recognition of his regime. Uganda could doubtless apply for the extradition of Amin – from Saudi Arabia, where he now enjoys sanctuary. In some cases, government action is conceivable, as for example where vulnerable indigenous groups are being annihilated by invading economic forces, but in these cases, too, there is generally government involvement or condonation. At the level of international warfare, extradition might be feasible in certain circumstances, but one can hardly imagine the Vietnamese government, for example, applying to the government of the USA for the extradition of those of its political leaders, who were actively involved in the planning or execution of the strategies employed in the civil war.

The absence of effective procedures for enforcement is the most serious of the defects, but there are also other serious shortcomings – the omission of the important category of large-scale political massacres, and the presence of ambiguities, encouraging righteous or legalistic evasions of responsibility. However, attempts to amend the Convention must certainly be ruled out at present given the large number of ratifications of the Convention, the absence of meaningful consensus, and the seemingly weak commitment to the eradication of genocide. But the addition of a Protocol or Supplementary Convention may become feasible at a later date.

(2) Now it is clear from United Nations performance on charges of genocide, that the reasons for the failure in international protection go far beyond defects in the Convention. They are deeply embedded in the structure and ideologies of the UN. The UN is an organization of governments, and the crime of genocide, as already emphasized, is largely a governmental crime. As an organization of governments, the UN represents governmental interests, or at any rate the interests of the majority of governments. Hence, the respect for state sovereignty, domestic jurisdiction and territorial integrity can, and does, readily take precedence over concern for protection against genocide. In these circumstances, there is a need for some process, or for institutions, relatively independent of the deliberations of the delegations of member states, such as an International Penal Court, a High Commissioner for Human Rights and/or some form of organized action outside of the UN, as represented, for example, by the international non-governmental organizations.

(3) This account has so far concentrated on the failure of the UN to take up charges of genocide. But the record is certainly not totally negative. The UN may have contributed in some cases to the prevention of genocidal massacres by its maintenance of peace-keeping forces in troubled areas; and in the case of South Africa, its continuous surveillance has certainly acted as a restraint on the government's use of admonitory or repressive massacres.⁵³ Some of the confidential intercessions by the Secretary-General may also have served as a restraining factor. And the UN can generally be relied upon to provide humanitarian relief for the refugees and survivors.

(4) In three of the cases discussed above, murderous regimes were overthrown by outside intervention – in Pakistan by India, in Uganda by Tanzania, and in Cambodia by Vietnam. All three cases *could* have been defended as humanitarian intervention. The Indian Government's policy fluctuated over the crisis period from March to December 1971, but at the May meetings of the Economic and Social Council, the Indian Ambassador urged the UN to couple relief and rescue measures with a call to the Government of Pakistan to restore human rights to its people and to abide by the Declarations, Resolutions and Conventions on Human Rights;⁵⁴ and the Indian Government consistently emphasized, in its memoranda to the Secretary-General and in the debates, the humanitarian aspects of the situation. In the Security Council debate on the Vietnamese occupation of Kampuchea, the representative of Soviet Russia raised, in defence of the action of its Vietnamese ally, the charge of genocide by the Khmer Rouge. Tanzania's intervention followed the invasion of its own territory by the Ugandan army, but it *could* have been defended as a humanitarian intervention. I am in no position to comment on the current status of this controversial doctrine in international law.⁵⁵ I have discussed the matter with a number of experts, whose immediate reactions were of rejection on the ground of the historical experience that these interventions are invariably, or almost invariably, contaminated or driven by other motives. But given the many failures of the UN to act against regimes engaging in continuous massacres of their subjects, it seems to me that there is a great need for individual nations, or preferably groups of nations, to reassert, under carefully defined conditions, the right of humanitarian intervention against genocide, and other gross, consistent and murderous violations of human rights.

(5) I mentioned earlier the emphasis in the Convention on the punishment of the crime, rather than its prevention. It is by no means clear whether the fear of punishment would be an effective deterrent against 'domestic' genocide. One cannot easily transpose assumptions in regard to the effects of the fear of punishment within a society to presumed similar effects in an international setting: those who commit genocide are likely to be protected within the confines of their own societies, unless there is a revolutionary change in government. In the case of domestic genocides, once the genocidal process is under way, the perpetrators are not likely to be accessible to moral or reasoned appeals, or readily deterred by the threat of punishment; and indeed, they may no longer be in control of the forces they have unleashed. But in the early stages, the fear of punishment may very well act as somewhat of a deterrent for the leaders, and with greater effect at all times on subordinates, denied the defence of superior orders.

(6) Punishment after the event does not address the problem of preventing great loss of life. This is a further reason for emphasizing prevention. Perhaps members of the UN may be more willing to take steps for the prevention of genocide than for its punishment, since punishment is a threat to rulers of member States.

Steps to prevent 'domestic' genocide call for knowledge of the social structures and ideologies conducive to genocidal massacres, and the processes by which the situation develops to the point of no return. Dr. B.G. Ramcharan, Special Adviser to the Director of the Division of Human Rights, emphasized, in discussion with me, the need to relate international measures to different stages in the genocidal process – anticipated genocidal conflict, commencement of massacre, and the final stage, when the genocide is in full swing and has developed a momentum of its own. Clearly, the most effective stage for preventive measures is at the first warning signs of impending massacre. There is a pilot project at the Henrietta Szold Institute, Jerusalem, to establish an early warning system, based on a data bank of acts of genocide.

Implementation related to types of genocide

(7) Turning now to the different types of genocide, we have noted above that struggles for power between racial, ethnic and religious groups are a major source of large-scale genocidal massacres. Some of these genocidal massacres arise out of struggles for greater autonomy, and might be regulated by recognition of the right to self-determination. But with the process of decolonization almost complete, this right is greatly diminished in UN practice, though it is one of the rights repeatedly affirmed in Declarations, Resolutions and Covenants. The reinstatement of the right in post-colonial society, the more detailed specification of its different forms (such as the varied types of regional autonomy, and of federative and other association), and the conditions of its exercise in a decolonized world, are an urgent priority in the prevention of genocide.⁵⁶ Many of the member States of the UN are multi-ethnic; understandably, they would refuse to accept any diminution of territory, unless administration of the affected areas had become burdensome. But secession is only one of the forms that self-determination might take. Of course, there can be no illusion that UN recognition of a right is very meaningfully related to the exercise of the right, but it may be a small step in that direction.

(8) Given rapid population growth with mounting pressure on resources, and the contemporary vigorous assertion of nationalism, we must anticipate continued expulsions of hostage groups into an outside world increasingly unwilling to receive them. A disquieting clause (Article 2, Paragraph 3) in the Covenant on Economic, Social and Cultural Rights, seeks to legitimize discrimination against non-nationals. It provides that 'developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals'. There is a curious cynicism in the phrase 'with due regard to human rights', when what is involved is precisely the right to discriminate. The clause is one which can be used readily against long-settled minority groups, such as Chinese in South-East Asia or Indians in Africa. And though the right to discriminate is not an explicit right of expulsion, this step is easily taken either by direct action, or by creating conditions of life which threaten survival.

(9) Pressure on the survival of vulnerable indigenous groups in the interests of economic development will certainly continue. Under conditions of extreme poverty, with high death rates from starvation, malnutrition and readily preventable disease, it is inevitable that primacy should be given to economic development. But these groups are also threatened in such thriving developing countries as Brazil, and for that matter, too, in economically developed societies. In this process, many lives are lost, and many distinctive cultures destroyed, with consequent impoverishment of human society. These groups have little or no voice in the national affairs of the societies in which they live, and are mostly dependent on the active concern of the UN and of non-governmental organizations, for their survival. However, they are now beginning to organize and to represent their own interests in international gatherings.

(10) The large-scale political massacres continue to be a major contemporary source of the destruction of human life. Here the issue relates to implementation of international commitments. If there were a close relationship between acceptance of the Universal Declaration of Human Rights and other Human Rights documents at the normative legal, and recognition of these rights in practice, there would be none of these large-scale political massacres. The problem is not one of establishing norms, but of achieving minimum standards of compliance.

Part VI: PROPOSALS FOR ACTION

(A) Action within the United Nations

The failures in UN implementation of human rights are well known and hardly call for further documentation. But this does not mean that the UN should be written off as irrelevant to the problem, or worse still, as aggravating the problem by the protective shield it extends to offending governments. The UN still represents potentially the most effective channel for action to eradicate genocide. It is in the strongest position to bring international pressure to bear. Nor should we entirely despair of the Commission on Human Rights. It has passed through the initial phase of standard setting, when it disclaimed competence to deal with violations of human rights, and it seems to be moving out of the second phase, when action was concentrated against three scapegoat governments. At any rate, there are now signs of a broader concern for human rights.

Possibilities of action within the UN may be considered under three headings: of standard-setting, of institution-building and of implementation, bearing in mind the distinctive problems raised by the different forms of genocide.

(11) **Standard setting.** The UN already has a plethora of standard-setting declarations, resolutions and covenants for the regulation of human rights; and the continuous mounting of new resolutions, new declarations, new covenants, is eloquent testimony to the failure of the international community to honour its commitments. Indeed, the ceaseless manufacture of normative documents without implementation may be a disservice. It deflects action away from implementation, encouraging abstract formulation as a substitute for practice; and formal adherence to ideal norms may engender a self-righteousness which serves as licence for gross violation of human rights. Thus it is common practice for governments to respond to charges of massacre and other gross violations of human rights, by reference to the provisions of their constitutions and laws; and representatives of governments in the UN seem to experience no qualms (and indeed to the contrary, they seem to experience a moral exaltation), in castigating the very sins in other countries, which their governments freely practise in their own. But in the suggestions which follow, I am assuming that the new declarations and undertakings will be accompanied by some measure of implementation or assist in other ways to promote the survival of threatened groups. The suggestions are based on work already in progress in the UN.

(a) A large-scale scholarly *Study of the Problem of Discrimination Against Indigenous Populations*⁵⁷ is nearing completion. This has been long delayed, but hopefully it will now lead to the framing of guide-lines for the protection of indigenous populations (whose survival is threatened by economic development), and the establishment of a Working Group in the Sub-Commission on Prevention of Discrimination and Protection of Minorities, along the lines of the Working Group on Slavery.

(b) Two reports on the right of self-determination have been prepared under the aegis of the Sub-Commission. The first⁵⁸ deals with the implementation of UN resolutions relating to the right of peoples under colonial and alien domination to self-determination. The second report⁵⁹ is much broader in scope, and analyses the historical and current development of the right on the basis of UN documents. Many of the genocidal, and potentially genocidal, conflicts arise within the 'plural societies' that have succeeded to the former colonial possessions. The contentious issue often concerns the right of internal self-determination by peoples within these societies, and I have suggested that it would be some contribution to the avoidance of highly destructive conflicts, if there were more recognition of the right to internal self-determination in post-colonial 'plural' societies, and a detailed specification of the great variety of possible forms of association, short of secession. I do not mean to exclude the possibility of secession. There is a strongly held view that, in terms of the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, secession is available as a remedy where a State fails to conduct itself in compliance with the principle of equal rights and self-determination of peoples, and is accordingly not possessed of a government representative of the whole people, without distinction on grounds of race, creed and colour.⁶⁰

(c) Two current enquiries may have the effect of extending a measure of protection to *hostage groups*, at any rate at the normative level. The first concerns the mass exodus of populations. On 15 December 1980, the General Assembly, in response to a resolution by the Commission on Human Rights, expressed its concern over the scale and magnitude of the exoduses and displacements of populations, including hundreds and thousands of men, women and children in many regions of the world; and it requested the Commission to submit recommendations for further action.⁶¹ The second enquiry is directed towards the protection of minorities – a surprisingly late development in UN normative action. Both the Commission and the Sub-Commission are working on this issue. The documents include an excellent proposed convention on the Protection of National or Ethnic Groups of Minorities, presented by the Minority Rights Group to the Commission in 1979. This deals *inter alia* with prevention of discrimination, the right of self-determination (specifying some of its different forms, including secession under certain conditions), and protection against mass expulsion.

(d) A major obstacle to effective implementation of international commitments lies in the scale of values. Many of the fundamental principles of the UN are in direct contradiction with each other. In conflicts, the contending parties legitimize their actions under these contradictory principles. In practice, the overriding importance attached in the UN to territorial sovereignty and to non-interference provides a protective barrier for governments engaging in consistent, gross violations of human rights. There are also many other ideological defences, such as the primacy of the need for development, or the primacy of the preservation of law and order, or of territorial integrity, which serve as justification for abrogation of human rights, and for rule under states of emergency. These justifications and defences are continuously subjected to criticism by delegates, and by members of the Division of Human Rights. A most basic need is for an ordering or relating of different values, as was done in the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*. This relates the right of self-determination to respect for territorial integrity and unity of member States in situations of gross violations of human rights.

(12) **New or supplementary institutions.** These are needed to respond to the inadequacies of the existing machinery for the punishment and the prevention of genocide.

(a) The *punishment* of genocide under national laws has been quite ineffective. Since the framing of the Convention, there have been a number of trials of war criminals, that is, for crimes committed prior to the Convention. A special case under this heading was the trial of Adolf Eichmann, in 1961-1962, for crimes against the Jewish people, committed with intent to destroy the Jewish people. Apart from the trials of war criminals, there was the trial of the Prime Minister and Deputy Prime Minister of Kampuchea in 1979, and at about the same time, the trial in Equatorial Guinea of Macias and ten others accused as accessories. In the first trial, that of Eichmann, the accused had been kidnapped in the Argentine, the country in which he had found refuge. The trial in Kampuchea was conducted in the absence of the accused. And as noted above, the validity of the charge of genocide, and the adequacy of proof, in the third trial were questioned by the International Commission of Jurists.

At the international level, though genocide is accepted as an international crime, there is still no international penal court, nor has the initial step of framing a Code of Offences been completed. This hardly suggests a serious commitment to punish, or indeed suppress, genocide. In October 1980, however, the Legal Committee reopened consideration of the Code.

Meanwhile, there is some further reinforcement for the proposal to establish an international penal court, through the Convention on the Suppression and Punishment of the Crime of *apartheid*. Provision for punishment of the crime of *apartheid* is more effective than for genocide. The Commission on Human Rights is empowered to prepare lists of individuals, organizations, institutions and representatives of States alleged to be responsible for the crime, and national courts are given more extended jurisdiction than under the Genocide Convention. It would seem that, in contrast to the crime of genocide, members do not feel threatened by measures against the crime of *apartheid*, which, though defined in general terms, is directed against South Africa.

Under the *Apartheid Convention*, there is also provision for the establishment of an international penal court in almost the same terms as under the Genocide Convention. An *Ad Hoc Working Group of Experts* distinguishes these two provisions, according legislative authority for the establishment of such a court under the *Apartheid Convention*, but not under the Genocide Convention.⁶² I suppose that this interpretation could, conceivably, be valid. In any event, the Group of Experts presented two alternative draft conventions, one for the establishment of an International Penal Tribunal against *apartheid* and *other* international crimes, and the second, for the establishment of a panel of judges, with institutional supports, to adjudicate on, and impose penal sanctions against, *apartheid* only. At its meetings in 1981, the Commission passed a resolution inviting member States to comment on the draft conventions.⁶³ Whatever the results of these efforts, an international penal court is an essential prerequisite for punishment of the crime of *genocide*.

(b) As for *prevention* of the crime, or mitigation of its most destructive consequences, the appointment of a High Commissioner for Human Rights, with adequate status and support, could be some contribution. As a full-time official, he would be in a position to visit threatened areas at an early stage of genocidal conflict, and to meet with responsible government officials, thus avoiding the interminable delays of the current procedures. If his representations failed, his reports would alert the UN to the imminent threat of mass murder, and thus provide a timely opportunity for instituting preventive or mitigating action.

(c) A High Commissioner would need ground support. In many countries, there are representatives of a great variety of international agencies concerned with such services as development, education, health, child welfare, etc. Some informal structuring of these representatives in threatened areas, as for example a consultative committee, could readily provide a source of information, guidance, and support in official representations to government officials.

(d) These suggestions deal with the control of group conflict. The more basic problems of restructuring group relations are not discussed in this paper.

(13) **Implementation.** Under present conditions, the main channels for implementation of the Genocide Convention are the Commission and Sub-Commission, and the Security Council. Of course, member States can raise complaints of genocide in the General Assembly, and in other bodies, such as the Social and Humanitarian Committee (since genocidal conflict always raises humanitarian issues, calling for immediate action). Article VIII of the Genocide Convention specifically empowers any of the Contracting Parties to call upon the competent organs of the UN to take appropriate action under the Charter for the prevention and suppression of acts of genocide.

(a) A senior UN Human Rights official, in discussion with me, drew attention to the psychological reluctance within the UN to use the term genocide, even when dealing with it. He explained that there were also substantive reasons for this reluctance. Charges of genocide immediately close off the possibility of discourse. If the objective is to arrive at a solution in co-operation with the government concerned, then this is more readily achieved by handling the complaint under the procedures for dealing with gross violations of human rights. So too, if the issue is dealt with under other non-genocidal categories, such as a threat to the peace, or as raising humanitarian considerations, much of the emotive sting is removed.

(b) Under present conditions, and in the light of past experience, there is little to encourage a complainant to make use of the Commission's procedures for the handling of gross violations. These procedures are slow and cumbersome, with their various stages and their annual postponements, whereas the genocidal conflicts call for the most immediately urgent action. And quite apart from the tortuous delays, there is the problem of the protective attitude taken by the Commission, with the majority of its members according primacy to the political concerns for national self-interest, and for regional and ideological alliances. Moreover, the main sanction the Commission can apply is that of public exposure. In the result, the genocidal process pursues its uninhibited course. But perhaps there may be some hope for effective action through the Commission in the future. The sanction of public exposure is not

without effect. Most governments are sensitive to international opprobrium, as shown by the pains they take to defend themselves against complaints of gross violations. The procedural deficiencies can certainly be surmounted, and the Commission has concerned itself with this issue. And finally, given the indications of some change in the Commission's performance towards greater concern for protection of human rights, it seems conceivable that under pressure of international public opinion, the Commission may be moved to a proper sense of its responsibilities, as a UN body, specifically designed for the protection and advancement of human rights.

(c) The most effective sanctions are those within the competence of the Security Council in situations which constitute a threat to the peace, or a breach of the peace. These include the interruption of economic relations and of communications, severance of diplomatic relations, recommendations to the General Assembly for the suspension or expulsion of the offending member State, and the use of armed force. They are clearly available for action against genocides perpetrated in the course of international war. But they could also be available in what would appear to be purely internal 'domestic' genocides. The Division of Human Rights is seeking to establish the perspective that, peace being indivisible, gross violations of human rights internal to a society may reach such an intensity, that they can be seen as constituting a threat to peace.⁶⁴ There are cogent arguments for this point of view. The gross violations of human rights incite external intervention and encourage the rulers in the offending countries to find external diversion for internal misery or chaos, thus increasing the likelihood of international conflict.⁶⁵ Moreover, neighbouring States are almost inevitably involved by reason of their having to provide for refugees, and by reason of their possible involvement in the military operations taken by the offending State against resistance movements mounted in the territories of refuge. In the case of Bangladesh (East Pakistan), it was clear to members of the Security Council at an early date that the internal conflict constituted a threat to peace, but the Security Council was paralyzed by the Superpowers' irresponsible use of the veto, and failed to act. It is difficult to see a solution to the problem. One can only hope that the increasing threat to world peace, and indeed to survival, posed by the Superpowers themselves, may set in motion the search for an effective counterpoise to the abuse of the veto.

(d) There are other possibilities for action within the UN, as for example through the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights. Then there are the organizations within the UN orbit, such as the International Labour Organization, World Health, Children's Fund and various aid programmes, through which specific issues may be raised, such as flow from the genocidal massacres and are relevant to the organization's goals, and through which punitive action may be taken. Action is also possible through inter-regional organization. Thus the Inter-American Commission of Human Rights seems to have been influential in the sudden dramatic decline of 'disappearances' in the Argentine.⁶⁶ The effectiveness of action through inter-regional organizations will of course vary with the organization and the issue. The Organization of American States has not been able to restrain the many regimes of atrocity on that continent. And as for the Organization of African Unity, it has in the past rendered Africans a great disservice by its protective stance towards African governments engaged in mass murder⁶⁷.

(B) Action outside the United Nations

Action outside the UN for the prevention and punishment of genocide must depend on the mobilization of international public opinion, with the objectives (i) of exerting pressure on the UN to take effective measures against genocide and other gross violations, and (ii) of establishing an independent base for action.

(14) We must assume that there will be a continued failure in the UN to provide protection against genocide, at any rate for some years to come. Hence there is a great need for delegations of member States with a strong commitment to human rights, and for non-governmental organizations with consultative status, to continue their efforts to recall the UN to its responsibilities for international protection against genocide and other gross and consistent violations of human rights. These efforts would include the submission of complaints against offending member States, as

at present, and attempts to develop norms for humanitarian intervention, for the exercise of the right of self-determination in a decolonized world, and for the protection of the vulnerable groups of indigenous populations and minorities. There should also be continued effort to establish institutions independent of the Commission on Human Rights, such as an International Penal Court, and a High Commissioner for Human Rights. A further objective should be that of lifting the veil of secrecy which presently protects many of the proceedings of the Commission from public scrutiny.

(15) I would hope that governments individually, but preferably in co-operation, would assert a right of humanitarian intervention when:

- (i) the UN fails to take action under its peace-keeping machinery (where the genocide raises a threat to peace), or by the exercise of other powers in cases of the more purely 'domestic' genocides;
- (ii) a regional inter-governmental organization, with interests in the area, similarly fails to act; and
- (iii) the offending regime is deaf to appeals.

(16) The failure of the UN in the field of human rights has stimulated the growth of a great number of international human rights organizations, struggling to achieve major objectives with minimal resources. It would be a disservice to create another organization. But many non-governmental organizations have a direct concern with the prevention of genocide, and they might be willing to establish a co-ordinating committee, which could serve as a base for mobilizing international opinion against genocide. Such a committee could set up model shadow machinery to demonstrate to the UN how campaigns might be conducted against genocide (as suggested by Mr. Ben Whitaker of the Minority Rights Group and member of the Sub-Commission).

(17) In regard to *punishment* of the crime at some future date, there is the possibility of holding extra-judicial trials on the lines of the Russell Tribunal's investigation of the UN involvement in Vietnam. I believe this first trial made a strong impact on international public opinion. Later trials do not seem to have had the same response. Besides, they carry the disturbing element of a judgement solemnly delivered in the absence of the accused, or without proper defence.

An alternative procedure, suggested by Mr. Peter Benenson, founder of Amnesty International, is that of documenting, with supporting evidence, on a *prima facie* basis, the crimes committed by mass murderers, along the lines of Simon Wiesenthal's documentation against Nazi genocidal criminals. This documentation would be available for future trials, and its existence might perhaps serve in some cases as a deterrent. There is already a precedent within the UN for lists of this type. As commented above, sanctions under the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, empower the Commission on Human Rights to prepare a list of individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crime. Some parallel procedure might be devised within the UN for a list of persons against whom there is *prima facie* evidence of involvement in the crime of genocide. The Commission would not be an appropriate body to carry out this task; it does not have the necessary moral stature. One can readily envisage the atmosphere of *vendetta* and of *protezione* in which the Commission would proceed to carry out the framing of a list. It would seem best that the documentation should be carried out by an independent body, based on non-governmental organizations, many of which would have relevant information from their own research units.

(18) From the point of view of public policy, and of humanitarian considerations, *prevention* of the crime, or action to restrain its destructive course, should be the primary objective, rather than its punishment. And here, following a suggestion from Mrs. Leah Levin, the campaign for prevention or mitigation through non-governmental organizations, might follow the pattern of Amnesty International's campaign for the release of prisoners of conscience. It would be directed to mobilizing international public opinion.

In cases where there appeared to be an impending genocidal conflict, or where there were the first reports of mass murders, action would take the form of an International Alert. Genocidal conflicts, as emphasized above, generally involve governments, either as active agents or as condoning, or failing to take preventive

action. The first step, then, would be that of representations to the offending government. If these should fail, then all possible means of pressure and persuasion would be brought to bear.

These means would include: activating different organs of the UN and related organizations, directly and through national delegations, and making representations to national governments and to inter-regional organizations for active involvement; seeking support of the international press in providing information and commentary; enlisting the aid of other media, and of demonstration, to call public attention to the threat, or actuality, of genocidal massacre; asking religious leaders, in appropriate cases, to intercede, since a surprising aspect of the genocides is that the murderers and the victims are mostly of different religion; and generally, initiating campaigns of appeal by members of the public along the lines of Amnesty International campaigns. Finally, there are the sanctions which can be applied through public support, by means of economic boycotts, the refusal to handle goods to or from offending States, and selective exclusion from participation in international activities and events. Representations would also be made to governments, or campaigns mounted, to enlist their support in the application of sanctions.

Notwithstanding the initial determination of the UN to eradicate genocide, and notwithstanding the many public declarations that it *must not happen again*, genocide continues to be an 'odious scourge' on mankind. In these pages I have offered, to the best of my ability, some suggestions which may contribute to an international movement for the eradication of this most horrifying crime against humanity.

FOOTNOTES

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- ³ A/C. 6/78, p 146.
- ⁴ United Nations Economic and Social Council, 26 August 1948, p 723, and UN Legal Committee, 14 October 1948: Bolivia, p 99, Haiti, p 103, Cuba, p 108.
- ⁵ A/C. 6/78, p 139.
- ⁶ See the discussion of this issue in the *Study of the Prevention and Punishment of the Crime of Genocide*, United Nations Economic and Social Council, E/CN. 4/Sub. 2/416, dated 4 July 1978, at pp 121-128.
- ⁷ Monroe C. Beardsley, 'Reflections on Genocide and Ethnocide', in Richard Arens, *Genocide in Paraguay*, Philadelphia, Temple University Press, 1976, p 86.
- ⁸ *Law Reports of Trials of War Criminals*, London, United Nations War Crimes Commission, HMSO, 1948, Vol. VII, p 8.
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- ⁶³ Resolution 5 (XXXVII), Clause 11.
- ⁶⁴ Information from a senior UN official.
- ⁶⁵ See Stanley Hoffmann's discussion in *Duties Beyond Borders*, Syracuse, Syracuse University Press, 1981, p 111.
- ⁶⁶ Information from Mr Nial MacDermot.
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- No. 52 Haitian refugees in the US
- No. 53 International Action against Genocide