

## THE FORGOTTEN GENOCIDE CONFERENCE

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Present day international law regards mass expulsions, forced resettlements or ethnic cleansing not merely as incompatible with international humanitarian law and human rights norms, but as international crimes susceptible to prosecution before the International Criminal Court at the Hague.

Article 49 of the Geneva Convention of August 12, 1949 relative to the protection of civilians in time of war explicitly forbids forced resettlement. Article 17 of the second additional protocol of 1977 similarly prohibits expulsions or deportations in non-international armed conflicts. In peacetime, expulsions violate numerous provisions of the UN Charter, the Universal Declaration of Human Rights of December 10, 1948, the two Human Rights Covenants of 1966 and the International Convention on the Elimination of All Forms of Racial Discrimination. Likewise they breach the Fourth Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 3 of which stipulates: "No one shall be driven from the sovereign territory of a state in which one is a citizen, neither through individual nor collective measures"; and Article 4 stipulates "collective expulsions of aliens are prohibited." In war and peace expulsion and deportation represent crimes within the purview of international law, in particular grave breaches of the Hague Regulations of 1907 and of the Geneva Conventions of 1949. In accordance with Article 8 of the Statute of the International Criminal Court of 1998 expulsions constitute war crimes, and according to Article 7 they also constitute crimes against humanity. Under certain circumstances as per Article 6 they can also amount to the crime of genocide.

Since this conference is devoted to the “forgotten genocide” of the ethnic Germans in Central and Eastern Europe at the end of and following World War II, it is important to explain under what conditions expulsion and deportation can be considered a form of genocide. According to Article II of The UN Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948, genocide is defined as such acts or actions intended to destroy a national, ethnic, racial or religious group, in whole or in part. It is not necessary that the entire group be annihilated, but rather that the perpetrators of the crime have an intention to target the group, specifically on the basis of ethnic or religious discrimination. Thus the intention to kill members of these groups, or to impose unendurable living conditions or commit such other outrages that accompany mass expulsions already satisfies the requirements of article II of the Genocide Convention. Not the least of these offences is the infliction of mental and spiritual stress on a group, which drives members of the group to suicide or causes traumata that last for a lifetime. This intention to wipe out the ethnic German peoples is provable in the case of both Edvard Benes of Czechoslovakia and Josip Broz Tito of Yugoslavia. The evidence is sufficiently documented in their own speeches and decrees, acts which qualify the expulsion of Germans from these countries as genocide. Of particular importance in these cases is that the expulsions were not predicated on the personal conduct of the victims but exclusively on their belonging to a targeted race. Nor were there any judicial proceedings to demonstrate that the expellees had committed any offences that would justify their expulsion. Their expulsion entailed acts of deliberate racial discrimination and constituted a form of state terrorism. This is also the opinion of prominent teachers of international law including Felix Ermacora<sup>[1]</sup> and Dieter Blumenwitz.<sup>[2]</sup> The General Assembly of the United Nations, in its Resolution 47/121 of December 18, 1992, categorized "ethnic cleansing", which was then taking place in Yugoslavia, as genocide. This Resolution was confirmed and strengthened by many subsequent resolutions.<sup>[3]</sup> Even the International Criminal Tribunal for former Yugoslavia categorized certain aspects of "ethnic cleaning" in the former Yugoslavia as genocide, namely the massacre at Srebrenica in 1995. Moreover, in its judgment in the case of *Bosnia and Herzegovina vs. Federal Republic of Yugoslavia* of February 26, 2007, the International Court of Justice held that the massacre of Srebrenica constituted genocide. On the basis of this judgment it can be asserted that the expulsion of the Germans, accompanied by hundreds of thousands of murders and rapes, necessarily constituted genocide, since the Russian, Polish, Czechoslovak, Hungarian and

Yugoslav politicians and military commanders manifested their intention to destroy, “in whole or in part”, the German ethnic group. Moreover, the manner of implementation of the “population transfer” was considerably more severe and inflicted more casualties than the recent events in the former Yugoslavia. Certainly the killings that accompanied the Brünn Death March, the massacres at Saaz, Postelberg, Aussig and Prerau in addition to the massive number of deaths in the camps at Lamsdorf, Schwientochlowitz, Gakovo, Rudolfsgnad and numerous other camps were manifestations of genocide.

Since the late 1990s the United Nations has recognized the right to Truth<sup>[4]</sup>, which entails the right to historical memory. All victims of violations of human rights have a right to the truth, to their history and to recognition of their status as victims. This is a right they should insist upon. This conference is being held because the German expellees are not only the victims of injustice, but also the victims of enforced silence. Their suffering has been ignored for too long. They have been victims of indifference, victims of denial, victims of defamation and continued discrimination. Some historians and journalists would pretend that some victims are more important than others. You should confront them and ask them what kind of human rights they are actually postulating? Are they not polluting the notion of human rights and denying the very essence of human dignity? When you hear the notion of "uniqueness", ask yourselves what that concept actually entails. If uniqueness means that the elements of a particular genocide are unique, this is frankly rather banal and does not mean much. Obviously the facts and circumstances of the Armenian genocide are unique, the clash of civilizations of the Europeans and First Nations of the Americas and the consequent destruction of the latter are unique, the facts and circumstances of the Holocaust are unique. But this concept of uniqueness would certainly constitute a serious violation of the fundamental norm of human dignity if one were to claim that only one group of unique victims is deserving of our attention, while we are at liberty to ignore all the others. This would constitute a corruption of the concept of victimhood and in itself a separate and distinct violation of human rights, tantamount to a form of negationism. If we allow only one category of victims, are we not demeaning all the other victims? Are we not depriving them of their human dignity, of their identity, of their memory, of their history? Indeed, memory is part of each human being's identity. And Identity is the essence of the human person. Identity is Being. Thus, we owe it to ourselves and to the victims and their descendants to remember their suffering, to make sure that history books reflect the historical events and

respect the principles of inclusivity and equity. We demand that museums incorporate all victims of genocide and ethnic cleansing into their permanent exhibits, that they invite the survivors and their descendants to share with us their experiences. This is indeed part of reconciliation – honouring the memory of the unsung victims. We bow our heads before them.

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<sup>[1]</sup> Felix Ermacora, *Die Sudetendeutschen Fragen*, Langen Müller, Munich 1992.

<sup>[2]</sup> Dieter Blumenwitz, *Rechtsgutachten über die Verbrechen an den Deutschen in Jugoslawien 1944-1948*, Munich 2002.

<sup>[3]</sup> GA Resolutions Nos. 48/143 of December 1993, 49/205 of December 1994, 40/192 of December 1995, 51/115 of March 1997, etc.

<sup>[4]</sup> On April 20, 2005 the pertinent Resolution was adopted by the UN Human Rights Commission, Resolution 2005/66, UN Doc. E/CN.4/2005/66. See also Yasmin Naqvi, "The right to the truth in international law; fact or fiction?" *International Review of the Red Cross*, Vol. 88, June 2006, pp. 245-273. See the Report of the UN High Commissioner for Human Rights, Navi Pillay, 21 August 2009 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-19.pdf>