

Note for the Members of the Uyghur Tribunal

Some reflections on genocide

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1. Conceptualizations of genocide and the idea of ‘intent’

The term and concept ‘genocide’ was originally coined by the Polish lawyer Raphael Lemkin and first introduced in his *Axis Rule in Occupied Europe*.¹ In this book, published in 1944, he proposed a fairly broad conceptualization of ‘genocide’:

‘Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killing of all the members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups (...) The objectives of such a plan would be the disintegration of the political and social institutions of culture, language, national feelings, religion, [and] economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups’ (Lemkin, 1944: 79).

Lemkin did not consider genocide a typically modern phenomenon, in his view it was an old and recurrent phenomenon in human history, which had occurred in different parts of the world and within various major civilizations. He saw genocides as complex historical processes of persecution and destruction, with differences and similarities, and emphasized that genocides vary in form and intensity from case to case, depending on political and other circumstances.

It will be clear that with this conceptualization Lemkin offered in principle a theoretical concept of genocide which could be used by historians, sociologists and other scholars to investigate and compare specific cases. That was already a considerable achievement, but Lemkin was not satisfied with formulating a promising and potentially fruitful scientific concept. Simultaneously, he saw genocide as a great evil and was convinced that it should be considered worldwide as a major crime, which should be punishable under international criminal law. He hoped that if that could be achieved, genocide could be eradicated. At the time his views were largely new, and no such international criminal law existed. From the end of WWII he worked frantically to attain his aims. His conviction and his hope were (partly) fulfilled when the General Assembly of the United Nations accepted in 1948 the ‘Convention on the Prevention and Punishment of the Crime of Genocide’.² Although the Convention was not strictly binding for the contracting parties (states) and largely remained a dead letter in the decades to come, mostly due to the Cold War, it may be seen as the first step in a still ongoing process of legal codification and jurisprudence with regard to genocide as an international crime. Important new impulses to

¹ Raphael Lemkin, *Axis Rule in Occupied Europe. Laws of Occupation. Analysis of Government. Proposals for Redress* (Washington, 1944). See for background and an analysis of Lemkin’s work Philippe Sands, *East West Street. On the Origins of ‘Genocide’ and ‘Crimes Against Humanity’* (London, 2016).

² Samantha Power, *A Problem from Hell. America and the Age of Genocide* (New York, 2002); Karen E. Smith, *Genocide and the Europeans* (Cambridge, 2010).

this process were given by the International Criminal Tribunals for the former Yugoslavia and Rwanda in the nineties of the last century.³

In the Convention 'genocide' is conceptualized, or rather legally defined, in Article II and Article III. There it means any of five acts 'committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such'. In Article II the five acts are summed up: '(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 is still the main legal basis today on which individuals suspected of active involvement with genocide may be prosecuted.

Although there are some points of overlap with Lemkin's original concept, the legal definition clearly diverges from his view, and also from later conceptualizations which have been developed in historical-sociological studies of particular genocidal processes and in the wider field of genocide studies over the past forty years.⁴ From a comparative point of view it may be argued that the legal definition is less complex, more fragmentary, and far more narrowed down.

The idea of 'intent', i.e. genocidal intent, deserves some special attention. It is emphasized in the Convention and related legal texts, and therefore also plays a role in actual legal proceedings and trials.⁵ In the legal profession intent or intention is often seen as a conscious, more or less well-considered, and decisive condition for human behaviour. Lawyers and others seem to think that much behaviour is driven by intentions, and that uncovering an individual intention can explain what happened later. Maybe this has to do with the character of the discipline: looking at things from a primarily normative perspective (laws, rules etc.), deciding whether deviations from these rules constitute 'crimes', and finally to establish 'guilt'. Naturally, such an approach may be quite sensible, as for instance in trying to differentiate in individual cases between premeditated murder and manslaughter. But this way of thinking has been transposed far too easily into the accent laid in the Convention on 'intent', and onto the collective behaviour in cases of mass atrocities and genocide.

In contrast, in historical-sociological studies of genocides questions of guilt are not leading, the effort is primarily focused on non-normative questions of 'what, how, and why'. Such studies have shown time and again that collective behaviour of perpetrators in processes of genocide is different and far more complicated than in cases of individual violence, and cannot be explained sufficiently by recourse to (individual) intent. Collective violence in genocidal processes is systematic and organized and includes many different participants, who usually have their own and various reasons to participate. Genocidal campaigns involve different levels of authority, which are more or less arranged in an hierarchy, and they typically are carried out by multiple organizations with different chains of command. Intentions must often be 'deduced' from 'what happens on the ground'. Furthermore, intentions are not fixed givens, but they tend to evolve and develop through time. In the case of the murder of the Jews by the German national-socialists it took more than seven years and the outbreak of WWII before their antisemitism culminated in the decision that Jews should be killed. In the Ottoman Empire and nascent

³ See for an overview of relevant developments Geoffrey Robertson, *Crimes against Humanity. The Struggle for Global Justice* (London, 2012, fourth edition).

⁴ See for instance Donald Bloxham, A. Dirk Moses (eds.), *The Oxford Handbook of Genocide Studies* (Oxford/New York, 2010) and Dan Stone (ed.), *The Historiography of Genocide* (London/New York, 2008).

⁵ William Schabas, 'The Law and Genocide', in: Bloxham, Moses (eds.), op.cit., 2010: 123-141, and id. 'Prosecuting Genocide', in: Stone (ed.), op.cit., 2008: 253-270.

Turkish nationalism the idea of massive deportation and killing of the Armenians and other minorities had been brewing for at least two decades before WWI, during which it happened under a radical Turkish nationalist regime, installed by a coup d'état in 1913.

A few last points in this section. 'Intentions' are usually hard to prove, may easily be denied, and are denied so very often by perpetrators. Maybe also because they were given impunity for their genocidal activities beforehand. Central decisions at the highest level to launch genocidal campaigns are usually taken verbally and in secret by a few of the most important leaders of the political regime in power. Such decisions are rarely recorded on paper, they leave no trace. When paper-trails develop later on during the genocidal process, they may be easily destroyed before they are found. If relevant documents are retrieved, they are often fragmentary and difficult to interpret, also because they are usually written in veiled language and coded words. And in the present digital age it is even easier to delete potentially incriminating messages and orders. Genocidal activities are nearly always cloaked in secrecy, and they are routinely denied by the regimes involved. Through propagandistic means such regimes may even actively mislead and deceive the larger public, which happened for instance with the infamous filmed inspection-visit of members of the International Red Cross to the special German concentration camp at Theresienstadt. And there are many similar examples from the Holodomor (literally: 'death through hunger') in Ukraine in the early thirties to the genocidal regime of Pol Pot in Cambodia in the seventies.

It may be concluded that contrary to opinions that a clear paper-trail or even 'a smoking gun' is required as decisive proof of genocidal activities, this is seldom or never possible. For the reasons outlined a strong focus on 'intentions' is therefore often not very fruitful, although it is always necessary and useful to gather as much evidence about them as possible.

2. Past genocides: ideology and power

In a general sense, genocide might be seen as an organized process of systematic persecution and destruction of a considerable group or category of people by other people, under the auspices of a state or political regime. Who belongs to the target group is defined by the persecutors, and the persecuted are not persecuted for who they individually are, think, do or have done, but exclusively because in the eyes of hostile others they are members of the target group which is to be destroyed. As such, genocides are primarily a consequence of ideological convictions and the power of ruthless political regimes.

It should be noted first that in the past a variety of liberal/conservative regimes in the West (in Europe and the US – hardly democracies at the time) have shown themselves quite able to carry out genocidal activities in the context of their colonial expansion, often directly connected to warfare and alleged 'insurrections'. Examples are the genocide of the Herero and the Nama by the German army in southwest Africa (Namibia), several genocidal colonial wars by the Dutch in the Indonesian archipelago, the early period of Belgian rule in the Congo, the so-called Indian wars in the USA, and the wars of conquest and violent repressive campaigns by the French and the British in various parts of Asia and Africa.

But the most well-known, large-scale and vicious genocides of the past century have been the result of three 'families' of political ideology: communism; national-socialism and fascism; and radical ethnic nationalism. To be sure, there are substantial differences between these ideologies and the regimes which espoused them, but they share what I have called elsewhere a 'genocidal infrastructure' of leading ideas, i.e. where such a cluster of ideas is dominant and

determines the outlook and policies of the political elite at the helm of the state the chances that mass atrocities and genocidal activities will ensue are high.⁶

These ideologies embody, firstly, anti-individualism, anti-egalitarianism, and anti-intellectualism. They reject openness, equality, diversity and plurality, and prefer collectivism, hierarchy, and conformity. Secondly, they are strongly anti-liberal and anti-democratic. They loath political freedom, freedom of expression and association, civil rights, human rights and the rule of law, preferring instead dictatorship and authoritarian rule, the police state, and the will of the Leader, sometimes disguised in a populist way as ‘the will of the people’. Thirdly – and very important – they tend to view violence as a proper, desired and often glorified means to attain political aims. Violence is not seen as an *ultima ratio*, a last resort to solve disputes and conflicts within a state-society when all other means have failed, but as a preferred political instrument to be used internally and externally. It is tempting to summarize the core of all these ideas as ‘deep disdain for other human beings and contempt for human life itself’.

Political regimes which are more or less under the spell of such ideologies invariably create strong oppositions between their own ‘we-group’, variously defined and demarcated depending on place, time, and other circumstances, and internal and external ‘they-groups’. The latter are then not seen as fellow human beings, co-citizens, neighbours, or members of minority groups, with a right to protection by the state, but are considered to be ‘enemies’, who should be attacked and subjugated, and in the most extreme cases destroyed, if circumstances permit. These regimes tend to develop a largely paranoid and often highly unrealistic outlook on their own societies and the larger world. And they may act on their beliefs: persecution of other political groups and various minorities, mass murders, and genocides may then be the result.

As we all know, this fateful combination of destructive ideologies and powerful regimes has *actually happened* in the past century. From the killing of the Armenians and Assyrians, the persecution and murder of the European Jews, Sinti, Roma, and many others, and the extremely violent rule of Stalin in the Soviet Union, to the similarly violent rule of Mao in China, the mass killing of people suspected of communism in Indonesia, the genocidal regime in Cambodia, the genocides in Burundi and Rwanda, and the mass killings during the Yugoslav wars, to name but a few.

3. A few remarks on China

Although enormous changes in nearly all respects have taken place in China over the last fortyfive years, after the death of Mao in 1976, it may be argued that many of the ideological and political characteristics generally sketched in the previous section, which were prominent during Mao’s rule from 1949 to 1976, still linger on.⁷ In the past half century China has successfully made the Great Transformation from a largely agrarian society to a highly developed urban industrial state-society, and it is clearly on its way to become the second superpower next to the USA. In many respects it already is.

⁶ Ton Zwaan, ‘Menselijke Catastrofes. Genocide in vergelijkend perspectief’, 8^e NIOD Jaarlezing voor Holocaust- en Genocidestudies, Amsterdam, 2011. (‘Human Catastrophes. Genocide in comparative perspective’. 8th NIOD Annual Lecture for Holocaust- and Genocidestudies, 2011. NIOD is the Netherlands Institute for War-, Holocaust- and Genocidestudies.)

⁷ See f.i. Jean-Louis Margolin, ‘Mao’s China: The Worst Non-Genocidal Regime?’, in Stone (ed.), op.cit., 2008: 438-467.

The political scientist Fareed Zakaria recently summed up the main political aims of the present Chinese regime: assertive expansion of its economic and political influence and power worldwide; expanding the power and tightening the grip of the party-state internally on the economy, society and culture; and strengthening the personal power of its present president Xi Jinping.⁸

The first development has also been characterized as ‘new Chinese imperialism’, and the three developments together as ‘China’s third revolution’, compared to Mao’s first communist revolution, and Deng Xiaoping’s turn to (state-)capitalism, markets, and America. Although the first two ‘revolutions’ are gradually fading from memory, it is important to remember that especially Mao’s long rule has been a very harsh time for many Chinese, with high levels of urban and rural poverty, repression, violence and overall instability and insecurity. The violence mainly inflicted by the state on its own population, the internal ‘class wars’, the endless campaigns of political mobilization and infighting, and reckless, large-scale policies as the Great Leap Forward and the Cultural Revolution, have left deep and lasting scars. The numbers of victims are absolutely staggering: specialists have estimated the number of unnatural deaths as somewhere between 44 and 72 million people, if one includes the mass starvation which was a consequence of the Great Leap Forward.⁹ And this horrible recent past, for which the Chinese Communist Party bears a large share of responsibility, has never been dealt with or psychologically processed publicly in any extensive way. It is largely repressed, and the CCP is still in power.

The recently renewed political repression by the party and the state, which set in roughly from 2012, is in various ways tragic for many Han Chinese, including the population of Hong Kong, who increasingly feel the grip from above tightening under the new, so-called ‘National Security Law’. It also shows the slightly paranoid fear of the regime and the president for ‘hostile foreign powers’, which are suspected of conspiring against China, maybe in conjunction with ‘dark internal forces’. But the turn to repression is more than tragic for the in majority Islamic inhabitants from other ethnicities of the border region of Xinjiang, it is outright dangerous. Like in Tibet before, considered as another border region, the aim of the authorities seems to be to deprive the indigenous population of their own way of life (language, religion, social organization, culture) – thereby depriving them of their identity, dignity, and meaning – and transform them into (second-rate) obedient citizens, or rather ‘subjects’, of the Chinese state.

A comparative remark on the structural change in minority politics in the Soviet Union may be helpful in this context. When the Soviet Union was founded around 1920 many national ethnic minorities received a fair degree of political, administrative and cultural autonomy in their own regions. But in the thirties and forties under Stalin, who became more and more a Great Russian nationalist, their relative autonomy was taken away from them, and they were increasingly seen and treated as ‘unreliable’ and potentially ‘treacherous, foreign elements’. From Koreans in the east to Tatars of the Crimea and the indigenous peoples of the Caucasus, to Finns, Poles and (Volga) Germans in the west, people found that the central state treated them with increasing hostility, culminating in large-scale detention and genocidal deportations in the late thirties and forties.¹⁰

⁸ Fareed Zakaria, *Ten Lessons For a Post-Pandemic World* (New York, 2021).

⁹ See Margolin, op.cit., 2008, and more extensively Frank Dikötter, *Mao’s Great Famine. The History of China’s Most Devastating Catastrophe, 1958-62* (London, 2010) and id., *The Cultural Revolution. A People’s History, 1962-1976* (London, 2016). The population of China numbered around 500 million people in 1949 and 900 million in 1976.

¹⁰ Norman M. Naimark, *Stalin’s Genocides* (Princeton, 2010), esp. pp. 80-98; Alexander N. Yakovlev, *A Century of Violence in Soviet Russia* (New Haven, 2002), pp. 183-195; Nicolas Werth, ‘The Crimes of the Stalin Regime: Outline for an Inventory and Classification’, in Stone (ed.), op.cit., 2008: 400-419.

It may be surmised that in the case of the Uyghur minority an exaggerated and largely unfounded fear of 'Islam' and possibly 'terrorism' – also well-known in the West – have been and still are driving forces behind the present policy of repression. The main point is that once a minority is branded collectively as a 'threat' or an 'enemy', anything might be permitted against them.

The Chinese authorities may refrain from genocidal mass killing, but the regime and its security services dispose of many means of what are called 'crushing techniques' – already developed in Mao's time: sharp surveillance, forced 're-education' in 'schools' (detention centers, camps), forced labour, and endless restrictions and harassments. The victims may stay alive, but their freedom of living is nevertheless to a high degree destroyed.

4. A final note on nation-formation

'Nation-formation' – not to be confused with 'nation-building' – is a difficult and slippery concept, like the related concepts of 'nation' and 'nationalism'. But there is broad consensus that in its 'modern' form nation-formation stems from the latter part of the 18th century, starting in Europe, and since spreading all over the world, thereby taking different forms and going through different phases of development.

Seen from a historical-sociological perspective, nation-formation as a long term historical process implies primarily a process of integration of a certain population. Important aspects are the formation and spread of a standardized language and common culture; the development of a national collective identity; of loyalties towards the nation; and, lastly, the formation of a more or less self-aware and self-confident political collectivity. Usually nation-formation is closely connected to the long term process of state-formation. As a dynamic historical process nation-formation is never 'complete' or 'finished'. With each new generation it is continued, although great changes in society and culture may and in modern times always take place.

As a rule people do not choose the nation they are part of, in the modern world they are born into nations. Their identity as individual human beings is then inextricably and in countless ways bound up with the larger identity of the national collectivities they are part of. Their individual fate in life – their education, prosperity, safety and security for instance - depends to a high degree on the fate of their nations. Naturally, people may differ in their awareness of these links, and they also differ in their identifications with their nations, these may be largely latent or more manifest. In general, national feelings and nationalist sentiments and ideas tend to be moderate in times of stability, prosperity, and safety, but they will become more prominent in times of perceived crisis and insecurity, or during rising tensions with other nations and states, as for instance before and during international wars.

A recurrent issue is the question: who belongs to the nation? Nation-formation is not only a dynamic process of inclusion of people, it is also and at the same time an ongoing process of exclusion – while some people 'belong' ('we'), others are excluded ('they'). Nearly all state-societies have known phases in their development in which such questions were deemed very important and were regularly followed up by radical measures – and many still do. An example could be the present excitement about 'foreigners' in England and elsewhere in Europe, about refugees, migrants and asylum-seekers. Countries do their best to keep them out by new laws and regulations, by more control over their borders, and even resort to so-called push-backs and in some cases to concrete fences.

Turning to China, with this perspective on nation-formation in mind, a certain paradox may be observed. The Chinese state is still organized on communist principles, the party still has a virtual monopoly on political power, the public political language is still full of communist words and slogans, but in the society itself communism and its original ideals seem less and less present. Whether many Chinese still believe in communism as an ideology is an open question. And there are many indications of increasing nationalism, even of nationalist mobilization. As happened before in post-communist state-societies elsewhere, communism as an overarching ideology may be replaced in future by nationalism to keep the vast and highly diverse Chinese society together. But whatever course the development of China will take, the near future of its national, ethnic, and religious minorities, especially in border areas, looks bleak.

It is to be hoped that more publicity and public discussion elsewhere, combined with international diplomatic efforts and political pressure, may bring the Chinese regime to change its at present deeply inhumane policies.

(Amsterdam, September 2021)

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