



## 7. In the Shadow of the Holocaust



*On 17 November 1993, the first session of the International Tribunal on War Crimes in Former Yugoslavia opened in The Hague (Netherlands). Carl-August Fleischhauer (behind podium at left), Under-Secretary-General for Legal Affairs, opened the meeting. The Tribunal's 11 judges are seated behind the far table.*

UN Photo



Photo: UN Photo/Evan Schneider

## Francis Deng

Francis Deng (Sudan) is the Special Adviser of the United Nations Secretary-General on the Prevention of Genocide. He began his work at the United Nations as a Human Rights Officer from 1967 to 1972, after which he served as his country's Ambassador to the Nordic countries, Canada and the United States, as well as Minister of State for Foreign Affairs. From 1992 to 2004, Mr. Deng resumed his work with the United Nations as Representative of the Secretary-General on Internally Displaced Persons. Mr. Deng also founded and directed the Sudan Peace Support Project based at the United States Institute of Peace. As a scholar, he held the posts of Research Professor at the Johns Hopkins University's School of Advanced International Studies, Wilhelm Fellow at the Center for International Studies at the Massachusetts Institute of Technology, and Distinguished Visiting Scholar at the John Kluge Center of the Library of Congress. Mr. Deng was also a senior fellow at Brookings Institution, where he founded and directed the Africa Project for 12 years. He has taught at several universities, including the Graduate Center of the City University of New York, New York University, Yale Law School and Columbia Law School. In addition, he has authored and edited over 30 books on human rights, history and politics, and has received numerous awards for his fight for peace.

# In the Shadow of the Holocaust

by Francis Deng

Special Adviser to the United Nations Secretary-General on the Prevention of Genocide

## 1. Setting the context of genocidal conflicts

Genocide is the worst manifestation of human brutality against fellow human beings. And the Holocaust has become the most horrific demonstration of that brutality. Several reasons account for its uniqueness in the annals of genocide.

First, it is linked to a deep-rooted history of prejudice against the Jews, fuelled by the belief, which, until recently, prevailed in the Christian world, that they are cursed for having caused the crucifixion and death of Jesus Christ. The wrongful death of a man who had come to reform the religious and moral values and practices of his own people became paradoxically the rationale for the indiscriminate condemnation and persecution of his people for nearly two thousand years.

The second reason the Holocaust stands out as the gravest case of genocide was the scale at which it was perpetrated, leading to the extermination of some 5 million to 6 million innocent men, women and children.

The third reason the Holocaust has a unique place in the history of genocide is that it became eventually linked to the most destructive war the world had ever experienced.

These reasons account for the outcry of “Never again”, which has tragically been echoed again and again. However, recurrent genocides have made a mockery of “Never again”.

The world said “Never again” after the Cambodian genocide<sup>1</sup> of the 1970s, then again in the aftermath of the Rwanda genocide in 1994, and yet again after the massacre of Srebrenica in Bosnia. The world is now witnessing a tragic situation in the Darfur region of the Sudan, which some have called genocide and others have given alternative labels that are ironically considered not less heinous than genocide.

In this brief discussion paper, I want to make several points: First, I argue that while the Holocaust has unique characteristics, genocide is a common human tragedy that has occurred far too many times in the past and, if the root causes are not well understood and addressed comprehensively, is almost certain to occur again in the future.

Second, I am concerned about overemphasis on narrow legalistic, definitional labels that only generate controversy, deflect constructive dialogue, and undermine effective response.

Third, I argue that there is a potential Hitler in all human situations and that unless we address what produces a Hitler, we will not be able to eradicate him within us.

Fourth and finally, I see the zero-sum genocidal conflict of identities as rooted in flawed perceptions of identities that distort the shared elements and need to be reconsidered and restructured to forge a common ground of inclusivity and mutual acceptance of differences.

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1 The United Nations General Assembly resolution 57/228 A of 18 December 2002 mentions that the Assembly is “Desiring that the international community continue to respond positively in assisting efforts to investigate the tragic history of Cambodia, including responsibility for past international crimes such as acts of genocide and crimes against humanity committed during the regime of Democratic Kampuchea”.

## **2. The Holocaust as an extreme version of universal affliction**

My first point is self-evident and does not need elaboration. If references to Cambodia, Rwanda, Srebrenica, and the many proliferating tragedies of modern times are not sufficient to make the point, the cases which Professor Ben Kiernan mentions in his paper,<sup>2</sup> citing Hitler's admiration of historical models of genocide, might add deeper historical roots. According to Kiernan, Hitler praised Arminius [Hermann] for annihilating ancient Roman legions, and "the aggressive" medieval monarch, Charlemagne, "as one of the greatest men in world history". Hitler also admired Rome's genocide of Carthage and the Spartans, whom he considered a model of how a state should "limit the number allowed to live".

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## **3. The Genocide Convention and the limits of legalism**

My second point builds on the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which defines genocide as any "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" and includes among these acts "killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcefully transferring children of the group to another group". These acts can be said to be broad enough to cover many atrocities associated with the internal conflicts that have proliferated around the world since the end of the cold war. This probably

2 "Hitler, Pol Pot, and Hutu Power: Distinguishing Themes of Genocidal Ideology" by Professor Ben Kiernan is part of the Holocaust and the United Nations Outreach Programme discussion papers series.

explains the frequency with which genocide is often alleged. And yet, the legal determination of genocide has proven far more problematic than its casual use conveys.

There has been intense debate on the Genocide Convention's focus on certain categories and exclusion of others, such as political and ideological groups, for protection. Despite attempts to creatively interpret the Convention, invoking both prior international norms, the General Assembly resolution that set the process of developing the Convention in motion, and the debates in the various fora in the process, to broaden the scope, this remains a controversial area.

The gravity of this omission becomes evident once it is realized that most, if not all, cases of genocide involve some aspect of political and ideological conflict, whatever the composition of the identities of the specific groups in conflict. Although politically motivated massacres are prohibited under other international instruments, the failure to protect political and social groups constitutes what has been called the Genocide Convention's "blind spot".

Genocidal *mens rea* or criminal intent is another area in which the Convention has been a subject of intense debate. It is particularly difficult, indeed virtually impossible, to prove the intent to commit acts of genocide when large numbers of victim members of a group and victimizers are involved. Some scholars have advocated the removal of intentionality from the definition of genocide, as it is increasingly difficult to locate responsibility, given the anonymous and structural forces at work. While they do not dismiss the importance of individuals, these scholars consider it more productive to probe into the social structures that are prone to generating or preventing genocide.

With these problematic criteria, genocide is usually proven after the crime has been committed and well documented. Although prevention is prominent in the title of the Convention, undertaking preventive measures is constrained by both the difficulty of proving

intent and lack of clear enforcement mechanisms. It is, of course, in the nature of prevention that it is not easily verifiable. Success essentially means that the prevented crime and the method of preventing it are invisible. Contemporary experience indicates that even when abundant evidence reveals that genocide may be in the making, the record of action to stop it is dismally poor. That indeed was the experience of Rwanda where human rights observers had warned the world that genocide was in the making.

The Rwandan tragedy poses a series of questions from which lessons can be drawn. Despite the campaign by hate radio and public statements calling for the elimination of the demonized Tutsi population, these questions persist: Who in fact physically killed? Did those who killed intend to eliminate the group in whole or in part? And what about the rulers and officials ordering or condoning the killings, was their intention to eliminate the group or to punish them or coerce them into conforming to a particular political direction? Who then can be charged with the crime of genocide and be proven guilty beyond reasonable doubt, the standard test in criminal liability?

When I visited Rwanda shortly after the genocide in my capacity as Representative of the United Nations Secretary-General on Internally Displaced Persons, I discussed with international lawyers who were conducting preliminary investigation into the responsibility for the genocide. It became obvious to me that there would be a major discrepancy between those who must have committed acts of genocide and those who would be found responsible. My concern, shared by the investigators, was that too much faith was being placed in prosecuting and punishing individuals responsible for the genocide of close to a million members of the Tutsi ethnic group and Hutu moderates associated with them. The result of the investigation, indictments, trials and convictions would almost certainly be disappointing to the Tutsi ethnic group, who expected justice to be done. In the end, the International Criminal Tribunal for Rwanda

held a few individuals symbolically responsible for a genocide that must have involved thousands of perpetrators. From the start, it was feared that the possible outcome of such disappointment might be that the Tutsis would then take justice into their own hands and inflict vengeful atrocities on the Hutus. Although international justice through the International Criminal Tribunal has been paralleled by the national justice system and the traditional Gacaca trials,<sup>3</sup> the

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overall reaction of the Tutsi-dominated government has been criticized as indeed revengeful, whether in terms of massacre of civilian populations or the number of detainees that languished in overcrowded prisons without trials.

One of the criticisms against the Genocide Convention is the absence of an international enforcement mechanism in the form of a criminal tribunal that would punish the perpetrators. The problem is compounded by the fact that

the State, in most cases the perpetrator or condoner of genocide, is charged with the responsibility to prosecute, which makes the Convention virtually unenforceable. Despite the commonly held belief that the determination of genocide imposes an obligation to act under article 8, which provides that any State party to the Convention “may call upon the competent organs of the United Nations to take such action under the Charter [...] as appropriate for the prevention and suppression of acts of genocide”, this does not ensure action. The situation has now been somewhat remedied by the establishment of Special Tribunals and the International Criminal Court (ICC), but the principle of subsidiary gives the state prior jurisdiction and, in many cases, without the cooperation of the

3 The Gacaca trials: A traditional and participatory method of justice rooted in the local community where victims and perpetrators share their stories. The Government of Rwanda began the trials in 2001 in order to address the large number of cases.



state, enforcement by the ICC is not practical when the accused are shielded by their governments.

Because of these conceptual and practical difficulties, this paper adopts a broader preventive perspective on the issue of genocide. Rather than look at it from the legalistic perspective of individualized criminal liability with specific intent, it approaches genocide from the perspective of identity conflicts that tend to be zero-sum and therefore inherently genocidal, and advocates the creation of a normative framework for resolving the crisis of identity that underlies these conflicts. It is becoming widely recognized that debates over what constitutes genocide detracts from the focus on causes, consequences, and the needed response to atrocities. It is worth noting that whatever constitutes “genocide”, it is the most extreme aspect of much larger identity conflicts or violence.

#### **4. Denial and scapegoating responsibility**

My final point concerns denial and placing full blame on one evildoer, “a Hitler”, using him as a scapegoat for a responsibility that must have been more broadly shared. When I first visited Germany in 1961, what struck me the most was the extent to which Hitler was universally denied. Some would argue that he was not a German, but an Austrian. He was seen as a unique embodiment of evil, thank God he was gone, and the nation was rid of that evil.

I tried to argue that it was dangerous to deny Hitler altogether, instead of trying to understand what produced a Hitler. On several occasions, people who had overheard the discussion would later approach me confidentially to express their support for my line of argument. One even intimated to me that as a young student who was active in the Youth wing of the party, he thought Hitler was the best thing that ever happened to Germany.

I am aware that this line of argument has the potential of being misunderstood as a justification for the evils of Nazi Germany, but my main point is that without understanding the root causes for the

emergence of a Hitler, that evil within us cannot be eradicated to prevent its recurrence.

## **5. Myth and reality in divisive identification**

To the extent that genocide victimizes national, ethnic, racial or religious groups, it has the nature of zero-sum conflict of identities. The core elements of identity conflicts are: exclusive self-identification and identification of others, and the imposition of one identity to provide a shared framework, which becomes inherently discriminatory. Often, the differences between the identities concerned are not as clearly marked as they are assumed to be. I saw in former Yugoslavia, in Burundi, Rwanda and Darfur that it was not at all easy to distinguish the identities that were in conflict. In Burundi, I would address audiences in which I saw some looking Tutsi, as we have been told they look like, and some looking Hutu, with many in between I could not identify. When I later asked the Foreign Minister whether one could always tell a Tutsi from a Hutu, his response was: "Yes, but with a 35 per cent margin of error." Given the shared elements between many of these communities, hating members of the other groups inevitably involves an element of self-hate.

It should be emphasized that what causes conflict is not the mere differences, but the implications of the differences to the shaping and sharing of power, material resources, social services and development opportunities. Respect for differences and the creation of a framework of equality and dignity for all is the best way to ensure peaceful coexistence between and among groups. Usually, there are two historical memories among the communities involved. One emphasizes a history of peaceful coexistence and cooperation, where the communities intermarried and shared their happy and sad occasions. Another is one of animosities with deep historical roots.

These contradictory memories are not surprising. When people live next to one another, they must inevitably come into conflict, but by the same token, they develop conventional ways of managing

their differences. During moments of conflict, divisive memories surface, while moments of peaceful relations evolve positive memories. But most destructive is the divisive role of self-seeking political entrepreneurs who trade on manipulating group loyalties to build solidarity for their evil objectives. Prevention requires checking the machinations of these individuals before they have marked impact on the situation.

### **Concluding observations**

To conclude, while Nazi Germany's attempt to exterminate the Jews in the country and elsewhere in Europe remains the most extreme case of genocide, it is unique only in degree and perhaps in the technological methods used. Otherwise, given the prevalence of genocidal conflicts that have deep historical roots and extend to modern times, the affliction is global. Investing in name-calling, while a legal requirement, is often futile and needs to be complemented with more practical preventive measures. Denial and scapegoating conceals the real causes and shares responsibility for atrocious crimes. Distorted identities that get manipulated into genocidal conflicts need to be addressed to forge a common ground, a shared humanity, and the dignity of all human beings, whatever their national, ethnic, racial, religious or ideological identity. While remodeling attitudes about self-identification and the shared elements is a long-term project, restructuring the national identity framework to eradicate discrimination and ensure the enjoyment of all the rights of citizenship is constitutionally doable with immediate effect. It is the core of "sovereignty as responsibility" or State "responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity", with accountability at all levels, national, regional and international.

Please see the next page for discussion questions

### Discussion questions

1. Is the Holocaust unique in the history of genocide and, if so, why?
2. What are the limitations of the 1948 Genocide Convention and how can they be remedied?
3. Was Hitler solely responsible for the Holocaust or was responsibility more broadly shared, and how can the emergence of such horror be explained?
4. To what extent are the differences in zero-sum identity conflicts reflective of realities or are they constructed and mythical?
5. What are some of the practical ways in which genocidal conflicts of identities can be prevented, managed or resolved?