

HUMAN RIGHTS: North American “Game Plans” and the Convention on Genocide

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Both the U.S. and Canada have strong laws against the crime of genocide, as required by the U.N. Convention on the Prevention and Punishment of the Crime of Genocide, of 1948. Despite ongoing threats to surviving Indigenous peoples and a genocide against the peoples of Iraq, the Convention is not invoked, and in North America laws against genocide aren't applied to our own societies. [1](#)

In Canada, principles of international law are etched into Canada's Crimes Against Humanity and War Crimes Act. The empowerment of a Conservative government reveals a flaw inherent in the legal system. Canada officially supports laws against torture and genocide with this reservation: under this Act, permission of the Attorney General is required to proceed with charges and prosecution.[2](#)

In practice the same mechanism is required for the law against genocide or the law against torture, to have effect. The Attorney General's permission is required for the prosecution of any crime against humanity, and may also be required to press charges against anyone who isn't a Canadian citizen.[3](#)

In several attempts to charge George W. Bush with torture which is a crime under Canadian law, a war crime, and a crime against humanity, the law was simply not applied: at the Bush visit last October, the Attorney General didn't give permission to proceed with charges, and in a case brought under the *Criminal Code*, is reported to have actively interceded.[4](#) With that painfully clear the extent to which developed countries will go to further their interests by ignoring laws, is unknown. In Canada prosecution of the worst crimes known to humankind are left to the government's discretion.

If one considers the genocide in Cambodia faced with massive starvation as a result of U.S. bombing raids and their destruction of the country's food production: Pol Pot responded with a sacrifice of portions of the population he considered expendable – political opposition, intellectuals, the professional class, etc. It was recognized by the world as an unacceptable, terrible, crime. While North America considers entirely different groups of less value, would a Canadian Attorney General apply the laws against genocide in a parallel circumstance, or is this triage of entire population groups already apparent in the statistics of First Nations ?

The Attorney General is also the Minister of Justice, and a member of the Prime Minister's Cabinet, and a member of Parliament representing his district. Under a Conservative government there have been no prosecutions resulting from policies of complicity in torture (the cases of Omar Khadr and rendition of Afghani prisoners to Afghani and U.S. military). Whether to apply the law against torture or not, could be interpreted as a political choice.

Reports on Canada by organizations at the United Nations Committee against Torture, 48th

Session, meeting May 21st, recognize a failure in the law. Presentations by *Center for Constitutional Rights, Canadian Centre for International Justice, Lawyers against the War, International Civil Liberties Monitoring Group, Lawyers Rights Watch Canada*⁵ suggest Canadian law be changed with respect to application of the laws against torture. None addresses implications for the Convention on Genocide, which is historically a subsequent step in atrocities.

With application of the law at the discretion of the Attorney General, the government of a political party in power may control the decision of whether the Convention on Genocide exists or not.⁶ On a philosophic level the law as written becomes the construct of a group which can do no wrong if it refuses to recognize the obvious. And the difficulty is that historically, it's often the State which initiates the crime of genocide against a people. Often it's an entire political party which leads its constituency toward sanctioning or committing criminal acts. The dangers are there as well in a program of the press, political agendas, "security" agendas or an economic policy. All could express an agreement of the majority and yet be criminal.

The laws against genocide are primary. If a majority wishes to rid itself of a minority, it is a crime and more enduringly profound than legal codes, an affront to humanity. Between the demands of primary law and the needs of a political party to retain power, there is an abyss. Canada's ability to avoid application of the Convention on Genocide doesn't conform to the requirement of the Convention that signatories "give effect to the provisions of the present Convention..." (*Article V*). The refusal to provide sure application under law rather than at the discretion of an empowered, may present a derogation from the Convention.⁷

Canada's particular contravention of the Convention on Genocide was made in the writing of Canada's means of application. The loophole which could allow genocide to occur unnoticed by the law, is accomplished more openly by the U.S..

U.S. *Declarations and Reservations*, at signing, require U.S. consent to bring any case against genocide involving the U.S.⁸ This effectively removes the likelihood of the U.S. government prosecuting itself on charges of genocide.⁹ Under the U.S. Criminal Code the writing of the law against genocide offers its own loophole. In the case against Bertram Sacks and others of *Voices in the Wilderness* who broke sanctions to take medical supplies to children in Iraq¹⁰, the judge found the Convention on Genocide inapplicable under U.S. Law. Applying to *Section 1091*, the law against genocide, *Section 1092* providing "Exclusive remedies," the judge ruled against enforcement of the Convention,¹¹ bringing the U.S. in violation of Convention rules for effective application. The decision was largely ignored by national media and academic authorities.

For sixty years the Convention on Genocide has been suppressed by U.S. Courts which have refused to accept a *Nuremberg Defense* whenever it was raised by anti-nuclear protesters or antiwar campaigns. A recent exception to this was the trial of anti-drone activists, the "Hancock 38" where in November 2011 a judge in Syracuse NY overturned a previous ruling and upheld the *Nuremberg Principles*,¹² though still found the defendants guilty.¹³

The governments of both the U.S. and Canada are failing in their application of the

law to those crimes all humanity finds unacceptable. One holds back here a discussion of cases of genocide brought against NATO countries by the Democratic Republic of Yugoslavia, or of a case against the genocide in Iraq which has found no venue, or the contentions of genocide concerning Palestine, Afghanistan, or Libya. North American governments are still unable to consider the ongoing destruction of Indigenous peoples within a context of the Convention. The atrocities of torture are more manageable. Since torture doesn't acquire valid information, its primary use may be to terrorize the greater

numbers of innocents, a civilian population, and distract it from crimes more widespread and more lethal to safety.

For this reason the use of torture surfaces as an issue under right-wing governments supporting corporate agendas which are annihilating entire peoples. The faults of non-application of primary human rights law are apparent in the Conservative Canada's lack of respect for the laws against torture. The *Lawyers Against the War* "Briefing to the UN Committee against Torture, 48th Session," makes clear how, as George W. Bush visited Canada, the authorities avoided applying the laws against torture found in Canada's criminal code, several Geneva Conventions, and other international treaties. And the government did nothing for Omar Khadr, recognized as a torture victim by the Canadian court. Difficulties of the Conservative government with regards to the rendition to torture of Afghani prisoners remain without resolution.

The need to avoid the perspective of the Convention can be traced back to the history of the Americas. In Canada, despite programs and practices which place aboriginal tribes in a special relationship to the State, which endangers them, the law against genocide isn't an available tool of social justice. Politically consigned to silence, the Convention isn't a tool of prevention, nor protection of the environment against mining interests, nor against the nuclear industry among those forces removing respect for life in habitable land. Faced with the *United Nations Declaration on the Rights of Indigenous Peoples* the government delayed its endorsement until November 12, 2010. MP Irwin Cottler has noted (*Calgary Herald*¹⁴) that the law budget to enforce the law under the Crimes against Humanity and War Crimes Act hasn't changed since 1998. A Conservative agenda is gradually removing the people from the protection of the law.

The first defense against genocide relies on the health of communities, as the governments themselves represent the corporate interests they serve to maintain economies which serve a portion of the people only. For this reason what are basically corporate agendas target communities throughout the world with divisiveness.

What is commonly referred to as the Convention on Genocide, in the hands of the people will be more clearly the Convention against Genocide.

Notes

¹ In November 2011, George W. Bush and Tony Blair were found guilty of genocide among other crimes against humanity before the *Kuala Lumpur War Crimes Tribunal*, an international peoples court meeting in Malaysia.

² "Procedures and Offences" 9. (3, 4)., *Crimes Against Humanity and War Crimes Act* (S.C. 2000, c.24).

³ Section 7 (7) according to Crown Counsel p.10, "The Case of George W. Bush and Canada's Violation of its obligations under the Convention against Torture," *Center for Constitutional Rights and Canadian Centre for International Justice, UN Committee against Torture*.

⁴ "Canada Briefing to the Committee against Torture, 48th Session May 2012: Canada's failure to bar or prosecute George W. Bush for torture from Lawyers against the War" [access:< <http://www2.ohchr.org/english/bodies/cat/cats48.htm> >], UN Committee against Torture. "The Case of George W. Bush and Canada's Violation of its obligations under the Convention against Torture," Center for Constitutional Rights and Canadian Centre for International Justice, UN Committee against Torture.

⁵ United Nations Committee against Torture, 48th Session.

6 During the investigation of U.S. President Nixon's Watergate crimes, the U.S. Attorney General Elliott Richardson was ordered to fire the chief investigator Archibald Cox. When Richardson refused Nixon fired them both.

7 In signing and ratifying the *Convention for the Prevention and Punishment of the Crime of Genocide*, Canada subscribed to Article V of the Convention which states "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 of any of the other acts enumerated in Article III."

8 *Reservations #1.*

9 I have made this point previously. "Foreword" by J.B. Gerald, *Common Rights & Expectations*, UN Texts, Ottawa, Gerald and Maas, 1996.

1 0 Ref. [access:< <http://www.nightslantern.ca/2011buletin.htm#jan15> >].

1 1 *Sacks vs OFAC, USDT, et al* (CO4-108JLR).

1 2 *Nightslantern*, Nov.8, 2011 [access:< <http://www.nightslantern.ca/2011bulletin.htm#nov8sy> >].

1 3 *Nightslantern*, Dec. 5, 2011 [access:< <http://www.nightslantern.ca/2011bulletin.htm#dec5> >].

1 4 "War Criminals aren't being brought to justice," Irwin Cottler, May 9, 2012, *The Calgary Herald*.

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