The first human rights treaty ever adopted by the United Nations was the Convention on the Prevention and the Punishment of the Crime of Genocide, on December 9, 1948.

The Convention addresses both preventing and punishing this crime. Why is it so important to punish the perpetrators?

The Convention was written right after the Holocaust, when the unimaginable horrors of the Nazis and their supporters became visible through documents, film recordings, mass graves, and horrific sights at concentration camps throughout Europe.

The Allies (the US, UK, USSR, and France) believed that punishment for torturing and exterminating millions of people would prevent future mass atrocities.

Impunity

In 1904, Germany carried out a genocide against the Herero and Nama people in the region known today as Namibia. There was complete impunity; not one person was ever punished for the near-annihilation of the indigenous peoples.

A decade later, there was almost complete impunity for the Ottoman perpetrators of the Armenian genocide.

We want to think that the perpetrators of World War II were harshly punished, but this is not true. It is estimated that only 5 percent of those who were guilty were ever brought to justice despite trials on several continents over many decades. Of those sentenced to prison, most ultimately were set free and lived out their lives with no penalties.

What went wrong?

The Allies held a joint International Military Tribunal (IMT) in Nuremberg that prosecuted 24 of the worst perpetrators. Of the 22 who ultimately stood trial, 7 were sentenced to prison, 12 were sentenced to death, and 3 were found not guilty.

Brig. Gen. Telford Taylor headed twelve more proceedings for the US. The accused were doctors; lawyers and judges; industrialists; members of the Einsatzgruppen, the mobile killing squads; and leaders of Nazi military and administrative organizations.

Taylor originally planned to hold 36 trials, not twelve, and believed he could convict between 2,000 and 20,000 defendants, not just the 177 who were put on trial. But as Michael Bazyler writes in Holocaust, Genocide, and the Law, the world was a different place in 1949 than it was in 1946. The Cold War meant that “the Germans were now our friends and the Russians our enemy. American politicians stateside and elites in Germany began a campaign to free those convicted by the American courts.”

This issue explores efforts to end impunity.
NUREMBERG. In 1946, Julius Streicher was hanged, one of 24 people prosecuted at the Nuremberg war crimes trials. Streicher had never been a member of the Nazi Party, never killed anyone, never worked at a concentration camp. But he wrote and published Der Stürmer, a hate-filled weekly tabloid newspaper read by 480,000 people throughout Germany.

His conviction established a precedent: incitement to commit genocide became a crime under international law.

RWANDA. Fifty years later, the International Criminal Tribunal for Rwanda indicted three Rwandan men for incitement to commit genocide. Like Streicher, they didn’t kill anyone, but they spread hate on the radio and through a tabloid. They were each sentenced to more than thirty years in prison.

FACEBOOK AND MYANMAR. In 2010, the internet in Myanmar meant ‘Facebook,’ the only connection most people had with the electronic world.

What happened was genocide by social media.

Members of Myanmar’s military began a systematic Facebook campaign to target the Rohingya, Myanmar’s small Muslim population. They incited murders, rapes, and the largest forced human migration in recent history – 750,000 Rohingya fled the army’s violence for safety in neighboring Bangladesh.

Facebook admitted that it was used to incite ‘offline violence.’ The UN determined in 2018 that Facebook played a “determining role” in violence against the Rohingya.

Facebook is now on trial in the US and the UK.

Two cases were filed on December 6, 2021. Facebook is being sued in London’s High Court on behalf of Rohingya everywhere in the world outside of America.

The American complaint, filed in California, is on behalf of all Rohingya in the US. The case seeks $150 billion in compensation for “wrongful death, personal injury, pain and suffering, and loss of property.”

The judges in the Rwandan media trial said, “The power of the media to create and destroy fundamental human values comes with great responsibility. Those who control the media are accountable for its consequences.”

Facebook will face consequences.

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**WAR CRIMES in Afghanistan and in Israel**

War crimes include torture, mutilation, corporal punishment, hostage taking, and acts of terrorism. This category also covers violations of human dignity such as rape and forced prostitution, looting, and execution without trial. War crimes, unlike crimes against humanity or genocide, are always committed in times of war.

The International Criminal Court’s jurisdiction covers genocide, crimes against humanity, and war crimes. Fully 123 nations in the world are parties to the Court; the US is not. Since the Court’s inception in 2002, the U.S. relationship to the Court has varied from cool to outright hostile. **The US is unwilling to have American troops and actions abroad fall under international sanctions and scrutiny.**

The Court has now opened investigations into two highly controversial cases: Afghanistan and Palestine.

**Afghanistan.** In 2003, the ICC (or the Court) opened a preliminary investigation into war crimes and crimes against humanity in Afghanistan. In 2020, the chief prosecutor announced that the case would go forward – and the Court would investigate atrocities perpetrated by both the US and the Afghan government. The Trump administration was furious and ordered diplomatic and economic sanctions against ICC officials in an unprecedented attempt to intimidate an international court.

Shortly thereafter, the Afghan government requested that the ICC investigation be deferred, saying the crimes would be handled internally. The Court approved the request.

In September 2021, the situation had changed. There was a new ICC chief prosecutor; the Taliban controlled the Afghan government; and nothing had been done in Afghan courts.

The ICC announced a resumption of the case – but to examine only those atrocities perpetrated by the Taliban and by ISIS, NOT by the US. Human rights organizations have expressed outrage, but the chief prosecutor claims that this is the most realistic approach given the Court’s limited resources.

**Israel.** The Court has announced an investigation into war crimes and crimes against humanity committed in Palestine and Israel since June 2014. The U.S. State Department has issued a strong statement opposing the investigation. The basis for opposition is that Israel is not a state party to the Court – and Palestine is not a state. The US does not want Israel to be scrutinized. These jurisdictional issues are clearly addressed – and dismissed - in the chief prosecutor’s statements about the investigation.

These two cases will test continued U.S. impunity on a global scale and the U.S. relationship to the world’s most important court.
The Genocide Convention was passed by the UN in 1948 amidst global promises of ‘never again,’ yet genocides persist around the world.

In response, the 2005 UN mandate of Responsibility to Protect affirms that when a state is unable or unwilling to protect people within its own borders, the global community must intervene.

An example of an effort to end impunity through retributive justice is punishment for the genocide of the Rohingya, an ethno-religious minority in Myanmar. The Rohingya, called by the UN ‘the most persecuted people on earth,” have been denied citizenship for almost half a century; endure forcible detention in barbed-wire-encircled settlements; and are victims of torture, rapes, and murder by the Myanmar military.

These atrocities have been named as genocide by the U.S. Holocaust Memorial Museum, the U.S. Congress, the European Union, the UN, and other agencies and entities.

Cases are now underway in three courts.


Canada and The Netherlands entered the case with The Gambia, committing to “pay special attention to crimes related to sexual and gender-based violence, including rape.”

The case included a unique step called ‘provisional measures,’ requesting the Court to require Myanmar to stop all violence and to cease destroying evidence. In January 2020 the Court approved the provisional measure. The genocide charges may take years to conclude, but an end to impunity has begun.

International Criminal Court. The ICC (or the Court) prosecutes individuals for genocide, war crimes, crimes against humanity, and the crime of aggression. A case has opened at the ICC, which is also in The Hague, Netherlands, to hold individual leaders of Myanmar's military accountable for violence against the Rohingya.

Argentina. A third case against individuals for crimes against the Rohingya uses universal jurisdiction in the federal courts of Argentina. Universal jurisdiction allows a national court to prosecute individuals for genocide, war crimes, crimes against humanity, and torture, wherever the crimes occur, because the crimes are so egregious that they harm the entire world order.

The message is clear: there is no impunity for perpetrators of this genocide.
Reparations. The International Criminal Court in 2004 created the Trust Fund for Victims (TFV). Its mission is to support and implement programs that address harms resulting from genocide, crimes against humanity, war crimes, and aggression. To achieve this mission, the TFV implements Court-ordered reparations and provides physical, psychological, and material support to victims and their families as a step towards sustainable peace.

At present, TFV is implementing four Court-ordered programs: in Democratic Republic of the Congo, Uganda, Ivory Coast, and Central African Republic. Reparations in Georgia, Kenya, and Mali begin in 2022.

Restitution. The Nazi looting of art is one of the most infamous examples of theft during war and conflict. There are currently cases in 18 countries where efforts to return stolen art are underway. At least 30,000 pieces are still missing of more than 650,000 items that were stolen.

In a shocking case in 2014, the FBI recovered more than 42,000 unlawfully obtained artifacts, including 500 sets of human remains, in an Indiana home. Items came from North and South America, Asia, the Caribbean, and Papua New Guinea. Thousands of these items were stolen from Native American gravesites and other sacred spaces. The FBI is working to repatriate the objects to their rightful owners and communities.

Memorializations. During World War II, more than 200,000 Korean ‘comfort women’ endured sexual slavery in Japanese military-run brothels. The women, often just teen-agers, were seized from villages in Korea.

There are memorials to these women throughout the world and efforts are made to raise awareness of the women’s stories. But Japan denies that there was any forced sexual slavery, has used political and economic pressure to try to block or remove comfort women memorials around the globe, and has excluded the history of the use and abuse of comfort women from Japanese textbooks.

This type of denialism occurs after every conflict, everywhere.
A 1998 UN report on sexual violence and armed conflict notes that historically, armies considered rape to be a legitimate spoil of war. During World War II, all sides in the conflict were accused of mass rapes, yet neither of the two main tribunals, Nuremberg and Tokyo, prosecuted crimes of sexual violence.

Most casualties in today’s wars are among civilians, mostly women and children. Women face devastating forms of sexual violence that are often deployed for military or political objectives.

Rape is used to terrorize the population, break up families, destroy communities, prevent child-bearing, and sometimes to change the ethnic make-up of future generations.

- In Rwanda, as many as 250,000 women were raped during the 1994 genocide.
- More than 60,000 women were raped during Sierra Leone’s civil war (1991-2002).
- More than 40,000 women were raped in Liberia (1989-2003), up to 60,000 in former Yugoslavia (1992-1995), and at least 200,000 in the Democratic Republic of the Congo since 1998.

The United Nations Security Council in 2008 determined that ‘rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide.’

A major shift

During the war in former Yugoslavia, the UN Security Council declared the “massive, organized and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina” as an international crime to be addressed. Subsequently, in 2001, the International Criminal Tribunal for former Yugoslavia (ICTY) became the first international court to find an accused person guilty of rape as a crime against humanity.

The International Criminal Tribunal for Rwanda (ICTR) became the first international court to find an accused person guilty of rape as a crime of genocide.

The Rome Statute of the International Criminal Court, 2002, includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or “any other form of sexual violence of comparable gravity” as a crime against humanity when committed in a widespread way. Arrest warrants issued by the ICC include rape as both a war crime and a crime against humanity.

The UN notes that, although changing international and national laws are major steps towards punishing and ending sexual violence, they will not be successful without a fundamental change in people’s attitudes towards the sexual abuse of women.

Transitional Justice: Rebuilding for a Better Future

The end of violence is not the beginning of justice, nor is it the start of peace. The end of violence is only the end of violence.

People in post-conflict settings face a tortuous process to rebuild a society that was torn apart. The process, called transitional justice, is perhaps a misnomer. It suggests an end point, an arrival at a place where ‘justice’ is found.

There is never ‘justice’ for the loss of life and the destruction of a way of life. There is never ‘healing’ or ‘closure.’ There are only steps that will go on forever, generation after generation bearing the legacy of trauma and seeking ways to adapt to losses and change.

Transitional justice includes many mechanisms and processes. Most people think only of punishment, retribution, a way to punish and avenge the acts of the perpetrators. The Nuremberg trials and trials for perpetrators of the genocides in Rwanda, former Yugoslavia, and Cambodia were retributive justice.

But retributive justice doesn’t repair a community spirit or atone for massive social upheaval. It does, however, send the message that crimes will be punished, removes the harm-doers from committing more violence, and reinforces the just rule of law.

Other forms of transitional justice focus on repairing the community and rebuilding for the future, essential steps for sustainable peace.

Reparations means paying in some way for the damage, either to individuals or to the harmed group. Reparations can never restore what once was, but acknowledging harm moves towards rebuilding a positive future.

Thefts of artifacts, buildings, land, and precious jewels occur during all genocides. Restitution gives back or restores what was stolen, such as art stolen by the Nazis, land taken from indigenous peoples, or Herero skulls that remain in German and American museums.

Telling the history for future generations provides dignity and honor to the survivors, witnesses, and those who perished. Memorialization through museums, art and music, written testimonies, and other forms legitimate the events of the past to endure without denial for the future.

Finally, truth commissions bring many stories forward. Analyzing the violence provides strategies to prevent recurrences.

Retribution, reparations, restitution, memorialization – these are processes that communities take in rebuilding for the future.
Mass Graves: From Exhumations to Justice in Bosnia and Florida
Sunday, January 23, 2022, 1:00-3:00 pm CT, Webinar

- Nihaud Brankovic, Senior Manager, International Commission on Missing Persons, will discuss ICMP investigations around the globe to locate mass graves and identify the victims.
- Dr. Erin Kimmerle, University of South Florida forensic anthropologist, will speak about her work on exhumations in Bosnia and Kosovo and at the Arthur Dozier School for Boys in Florida.

Reservations by January 22 at www.worldwithoutgenocide.org/missing

China: Politics, Human Rights, and the Law
Wednesday, February 23, 2022, 7:00-9:00 pm CT, Webinar

- Tom Hanson, Diplomat in Residence, Alworth Institute for International Affairs, University of Minnesota – Duluth, served in the U.S. Foreign Service; on Senate and House Foreign Relations Committees; and director for NATO and European Affairs, Atlantic Council, will provide an overview of China's global political strategy.
- Ellen J. Kennedy, Ph.D., Executive Director, World Without Genocide, and adjunct professor at Mitchell Hamline School of Law, will discuss China’s human rights abuses against Uyghurs and Tibetans in China and other ethno-religious minorities, and efforts to hold perpetrators accountable.

Reservations by February 22 at www.worldwithoutgenocide.org/china

Forced Sterilization and Incarceration: Controlling Women and their Bodies in the US
Monday, March 21, 2022, 7:00-9:00 pm CT, Webinar

- Cynthia Chandler, J.D., spent 10 years documenting California’s illegal policy of coercive sterilization of women in prison. She will speak about successfully overturning that policy.
- Ellie Krug, J.D., will discuss ‘forced sterilization’ of transgender people as a requirement for gender identity changes on official documents, and the incarceration of transgender women in men’s prisons.
- Scott W. Stern, J.D., award-winning author of The Trials of Nina McCaig: Sex, Surveillance, and the Decades-Long Government Plan to Imprison “Promiscuous” Women, will discuss the ‘American Plan’ that incarcerated tens of thousands of women, most of them poor, uneducated, and women of color, from the 1910s through the 1950s.

Reservations by March 20 at www.worldwithoutgenocide.org/women

Webinars are open to the public: $10 general public, $5 students and seniors, $25 for Minnesota lawyers seeking CLE credits; free for Mitchell Hamline students. ‘Clock hours’ are available for teachers, nurses, and social workers.

For information email admin@worldwithoutgenocide.org or call 952-693-5206.

Thank you.

Knowledge is not power. Knowledge plus ACTION is power.
You step up to support policies and legislation for human rights.