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## GLOBALIZATION AND GENOCIDALISM: Fictional Discourse Without Borders (For Fun and Profit)

*In this essay we explore the relationship between globalization and genocidalism. “Globalization” is understood as “freedom and ability of individuals and firms to initiate voluntary economic transactions with residents of other countries,” while “genocidalism” is defined as “(i) the purposeful neglect to attribute responsibility for genocide in cases when overwhelming evidence exists, and as (ii) the energetic attributions of “genocide” in less than clear cases without considering available and convincing opposing evidence and argumentation.”*

*The hypothesis that we defend here as explanatory of globalization’s “surprising” failure to live up to its often repeated theoretical promise that it is not a “zero-sum game,” is that this apparent failure is a result of the impact of the sole super-power’s global politics. These policies are manifested through an open onslaught on the notion of state sovereignty (impacting the sovereignty of virtually all countries except that of the U.S.), and an aggressive promotion of all kinds of interventionism, in particular armed (“humanitarian”) intervention. The nexus between the two is to a significant degree provided by the social phenomenon (characteristic only of the West, since, for example, Mozambique does not go on talking about alleged genocide in, say, Northern Ireland) we call “genocidalism”. Genocidalism manifests itself as a tool of globalization that is ever more morphing into a sort of imperialism and neo-colonialism, and is indeed becoming something of a remarkably effective judicial Trojan horse.*

*It looks to us that globalization is the globalization of US sovereignty, i.e., its extension over as much foreign territory as possible. Interestingly, genocidalism is a means to that end, and one that is more effective than, say, weapons of mass destruction, or even “terrorism” as a tool. Genocidalism is so effective that it bars the inherent right to self-defense against aggression, and obviates the sovereignty of the targeted state. Genocidalism can even be employed to actually make states vanish, in what can only be called republicide. Such was the fate of Yugoslavia. The other historical example we use to illustrate our points consist of the events in Rwanda of 1994.*

*KEY WORDS: Globalization, genocide, genocidalism, aggression, international law, criminal international tribunals, Yugoslavia, Rwanda.*

The hypothesis that we wish to propose as explanatory of globalization’s “surprising” failure to live up to its often repeated theoretical promise that it is not a “zero-sum game,” is that this apparent failure is a result of the impact of the sole super-power’s global politics on the global economy. These policies are manifested

through an open onslaught on the notion of state sovereignty (impacting the sovereignty of virtually all countries except that of the U.S.), and an aggressive promotion of all kinds of interventionism, in particular armed (“humanitarian”) intervention. The nexus between the two is to a significant degree provided by the social phenomenon (characteristic of the West) we call “genocidalism”. Genocidalism manifests itself as a tool of globalization (increased openness, or as we shall see, “openness,” and decreased state sovereignty) that is ever more morphing into a sort of imperialism and neo-colonialism, and is indeed becoming something of a remarkably effective judicial Trojan horse.

### 1. Globalization

We are urging that globalization and genocidalism be considered together. As the effects of globalization are not exclusively economic in nature, so, too, are genocidalism’s effects not restricted to the realm of sociology or academia. Both phenomena have real consequences—many of which are debilitating for vulnerable groups—and both heavily rely on a discourse of faith and belief, and seem impervious to epistemological requirements, while portraying themselves, paradoxically, as highly serious, and essentially moral endeavors. In both cases, it appears that the intensity of the faith in the high morality of the actions carried out—towards foreigners, in foreign countries, and practically always, in the prevailing discourse, for foreign interests, and therefore not (or so little) in the interests of the practitioners—insulates the practice from well-deserved scrutiny, and indeed, serious critique.<sup>1</sup>

Let us introduce the concept of genocidalism. “Genocidalism” is (stipulatively) defined as follows: (i) The purposeful neglect to attribute responsibility for genocide in cases when overwhelming evidence exists, and as (ii) the energetic attributions of “genocide” in less than clear cases without considering available and convincing opposing evidence and argumentation. We may call the first manifestation “genocidalism of omission,” while the second represents the genocidal use of the word “genocide” or “genocidalism of commission.”<sup>2</sup> If we were to explore the relationship between the two manifestations of genocidalism we would find out that the latter often functions in the way that strengthens the former. Namely, the outcome of a genocidal use of “genocide” may lead to omission of attributing appropriate responsibility for genocide in some related cases. However, in this paper we want to focus on clarifying as much as possible the connection between the genocidal use of “genocide” and the process of globalization. The former enables, justifies, and in some cases forcefully advocates various forms of intervention,

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<sup>1</sup> For an argument that in favor of such scrutiny in the form of constructing an ethics of international activism, see Aleksandar Jokic “Activism, Language, and International Law,” *International Journal for the Semiotic of Law* 15 (2002): 107-120.

<sup>2</sup> A detailed analysis of the concept of genocidalism and the associated social phenomenon is offered in Aleksandar Jokic, “Genocidalism,” *The Journal of Ethics* 8, No. 3 (2004): 251-297

including military, while the latter can spread faster if all kinds of interventionism are maximally facilitated.

Interestingly, genocidalism and globalization are co-occurring phenomena. Both are spreading at a faster pace in the post-Cold War period. However, while genocidalism is quintessentially a Western phenomenon (e.g., Mozambique does not go on talking about alleged genocide in, say, Northern Ireland) globalization in the economic sense of the word affects virtually all countries. Where genocidalism and globalization coincide is in their effect on diminishing sovereignty in general and that of weak and poor countries in particular.<sup>3</sup> It is often argued, referring to international trade theory, that globalization is not a zero sum game; that is everyone benefits from the spread of globalization. Also, openness and foreign direct investment (FDI) should theoretically make income distribution more equal in poor or less developed countries (LDC) and less equal in rich or developed countries (DC).<sup>4</sup> The empirical figures show, however, that benefits are grossly unequally distributed: the rich and powerful benefit an enormous amount from the process while the weak and poor benefit (if at all) negligently by comparison (though these findings don't go uncontested by economists who do research residing in the Western world). The fact that genocidalism (as an instrument of globalization) appears to be a tool for weakening sovereignty, spreading interventionism, and increase of the obscene disparity in distribution of benefits globally, may fuel concerns, for many, that globalization is nothing more than simply neo-colonialism gone rampant.

The official World Bank definition of globalization is: "Freedom and ability of individuals and firms to initiate voluntary economic transactions with residents of other countries." In real life globalization translates into greater mobility of the factors of production (capital and labor) and greater world integration through increased trade and foreign investments. The degree of mobility of labor and capi-

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<sup>3</sup> This is why we would agree with the converse claim in Omar Dahbour "Three Models of Global Community," *The Journal of Ethics* 9, no. 1-2 (2005): 201-24. Dahbour argues that only self-sustaining communities that embody some robust notion of sovereignty can adequately protect communities facing the threats posed by the globalizing tendencies of capital.

<sup>4</sup> For arguments and discussion of why, in theory, globalization should have the effect of bringing down the income inequality within the LCDs see, for example, Richard B. Freeman, "Are your Wages Set in Beijing?" *Journal of Economic Perspectives*, vol. 9 (Summer 1995), No.3, pp. 15-32; Adrian Wood, *North-South Trade, Employment and Inequality: Changing Fortunes in a Skill-Driven World* (Oxford: Clarendon Press 1994); and Adrian Wood, "How trade Hurt Unskilled Workers," *Journal of Economic Perspectives*, vol. 9 (Summer 1995), No. 3, pp 57-80. Roughly, the theoretical reason for this expectation is as follows. The DCs have an advantage in skill-intensive products and tend to export these while LDCs tend to export low-skill intensive products (because low-skill labor is their abundant factor and its price will therefore be low). Given the low price foreign investors will tend to invest in low-skill intensive processes. This should make income distribution in DCs more unequal while the income inequality in LDCs should go down. Empirical findings, however, do not reflect these theoretical expectations.

tal depends on the openness of the countries around the globe (i.e., openness, while it often diminishes state sovereignty, is a necessary condition for this mobility, which is the essence of globalization). In fact, globalization is reflected in two variables: openness—share of combined exports and imports in GDP—and the share of FDI in GDP of the recipient country. In order for globalization, therefore, to be judged positively (to be called “globally good” in some meaningful way) we should be able to ascertain two facts from the perspective of LDCs: (i) the income inequality within the LDCs should go down, and (ii) the relationship between FDI and economic growth within the recipient country should be positive. Taken together the condition (i), which we may call “greater income equality principle,” and (ii), which we may call “FDI recipient positive growth principle” add up to something not unlike John Rawls’s second principle of his *criterion of justice* if attempted to be applied globally<sup>5</sup>:

*Second Principle*: “Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity [the *opportunity principle*]; and second, they are to be to the greatest benefit of the least advantaged members of society [the *difference principle*]”<sup>6</sup>

However, there is evidence, though still a matter of controversy, that neither of our conditions is satisfied. While, theoretically, the increased trade and foreign investment (openness) should make income distribution more equal in poor countries and less equal in rich countries empirical findings prove otherwise. The evidence suggests that at very low average income level, it is the rich who benefit from openness. In fact, openness (combined share of exports and imports in country’s GDP) in very poor countries might increase inequality by helping those with basic education, and leaving even further behind those with no education.<sup>7</sup> Thus, the effect of globalization (openness) on a country’s income distribution depends on country’s initial income level; that is, before income level rises for many LDCs openness cannot translate into a more equitable income distribution. But, how will the increase in income level be achieved? Perhaps it can increase through FDI?

So what is the relationship between FDI and economic growth? As with the impact of openness on income distribution the answer to this question remains controversial, though the question has received a great deal of attention from econo-

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<sup>5</sup> We are hereby not suggesting that this should be done. In fact, we find objectionable the pet project of conceptualizing global economic justice, often carried out in terms of some notion of “human rights,” that is so dear to many upholders of “cosmopolitanism.” See, for example, Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979); Thomas Pogge, *Realizing Rawls* (Ithaca: Cornell University Press, 1989); Ian Shapiro and Lea Brilmayer (eds.), *Global Justice* (New York: New York University Press, 1999); Thomas Pogge, *World Poverty and Human rights* (Cambridge: Polity Press, 2002); and Peter Singer, *One World: The Ethics of Globalization* (New Haven: Yale University Press, 2002).

<sup>6</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press 1993), p. 6.

<sup>7</sup> See again Wood (1994).

mists in recent decades. Foreign direct investment (FDI) is described by the World Bank as “investment made to acquire a lasting management interest in an enterprise operating in a country other than that of the investor.” Typically, FDIs are made by large multinational corporations through mergers or acquisition, or through the construction of a new facility. There is no question that since the debtors’ crisis of the early 1980s, when a number of developing countries defaulted on their loans, FDI became a popular (and more apparently viable) option through which LDCs could attract capital through policies and incentives such as tax breaks. But what does increase in FDI mean for a country’s growth? If it doesn’t mean much, that is, if FDI has no effect on growth in the recipient countries or FDI clearly benefits only the country from which FDI originates, then there is no justifiable reason specific government policies should aim to attract FDI as a source of capital for LDCs. Let us not underestimate the impact of FDI in the last two decades when FDI has become the largest capital flow to LDCs, surpassing by far portfolio equity investment, private loans, and official “development assistance”.<sup>8</sup> But who benefits? Economists are all over on this one in their interpretation of data; while some see the data as indicating that FDI is a significant factor in economic growth<sup>9</sup> others find that FDI benefits the country from which FDI originates, not the recipient country<sup>10</sup>. Given the nature of the agents that are the primary sources of FDI, namely the multinational companies, we would not be surprised that the latter is in fact the case. Be that as it may, we cannot here ascertain that there is positive relationship between FDI and economic growth within the recipient country. Therefore, our condition (ii) isn’t satisfied either.

We have observed here a surprising double failure. Neither is it the case, under the conditions of rapidly expanding globalization (openness) that (i) the income inequality within the LDCs goes down, nor that (ii) the relationship between FDI and economic growth within the recipient country is positive. This is surprising given, on the one hand, the theory based expectation that greater openness should foster more equitable income distribution in LDCs, and given the practice of governments in LDCs actively courting FDI through tax and other incentives, on the other. Assuming that it stands to reason that empirical data should really be in line with theoretical expectation and specific governments’ practices we may want to ask what could be the factors that are responsible for thwarting these natural theoretical expectations and governmental practices. This is where we come to our

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<sup>8</sup> See Dwight Perkins, *Economics of Development* (New York: W.W. Norton & Company, 2001); and World Bank, *Global Development Finance* (Washington, D. C.: World Bank, 2002).

<sup>9</sup> See for example, De Gregorio E. Borensztein, J. and J-W. Lee, “How Does Foreign Direct Investment Affect Economic Growth?” *Journal of International Economics* 45 (1998), 115-135.

<sup>10</sup> De la Potterie B. Van Pottellsberghe, “Does Foreign Direct Investment Transfer Technology Across Borders?” *Review of Economics and Statistics* 83 (2001), 490-497.

second topic in this paper: genocidalism.<sup>11</sup>

## 2. Genocidalism

### 2.1 *Genocidalism as a social phenomenon*

The genocidal use of “genocide” is a more widespread phenomenon in the contemporary discourse on international affairs than one might initially think. The parties guilty of genocidalism can be found in a broad range of partakers in this discourse among journalists, human rights activists, celebrities, politicians, international law experts, and other academics such as psychologists, historians or political scientists. While genocide is undoubtedly the highest crime of which humans are capable, quite a bit of harm can be achieved by morally irresponsible uses of the word “genocide”.

In this respect perhaps the saddest and possibly most dangerous form of genocidalist activity resides in (what poses as) academic scholarship. For, academics are by way of their training uniquely positioned to provide credence to this malignant intellectual attitude and pursuits that genocidalism represents. Academics have the skills and prestige needed to successfully package propaganda to appear as scholarship, emotions as good reasons, dogmatic belief as well supported claims, and prejudice, bigotry, and even racism as respectable viewpoints. They can turn lies into truth (or “truth”), fiction into fact, sick imagination into historical events, total ideological blindness into insights of a visionary, and, last but not least, they can turn apologia into veritable art form. However, academics are just one group in the larger community of genocidalism peddlers. In fact, in order for it to be effective this practice cannot be done in isolation. We must, therefore, learn to appreciate the importance of the point that in order for genocidalism to manifest itself as a social force, and inflict real damage on its targets, a relatively tightly knit network of players supporting each other’s endeavors is needed.

### 2.2 *Genocidalism as a deliberate epistemic failure*

The key to understanding genocidalism—and indeed, many other forms of fanaticism—is the identification of an inherent ingredient of the discourse, that may be called the attitude of ideologically based epistemic arrogance (for short, ideological arrogance). This epistemic failure, while easy to detect and reject when

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<sup>11</sup> This essay is a result of extensive revision and substantial expansion of the article by Aleksandar Jokic “Globalizing World and Genocidalism” prepared for the 8<sup>th</sup> International Roundtables for the Semiotics of Law: “Signs of the World: Interculturality and Globalization,” held in Lyon, France, non July 7-12, 2004. This coauthored essay also draws, in section 2, on Aleksandar Jokic, “Genocidalism” *The Journal of Ethics* 8 (2004), pp.251-297; and, in section 3.3, in part on Tiphaine Dickson and Aleksandar Jokic, “Hear No Evil, See No Evil, Speak No Evil: The Unsightly Milosevic Case” forthcoming in the *International Journal for the Semiotics of Law* Vol. 19 (2006).

analyzing issues at home, seems to function with effortless impunity when it is applied to events abroad. Foreign markets, in particular in poor or developing regions of the world, attract predatory financial and economic practices; similarly, in the marketplace of ideas, these far-flung locales are the frequent settings for bafflingly effective displays of mendacity and contortions of logic. We shall introduce this phenomenon by way of an example.

Consider a report entitled “Journalist admits lying to the viewers” published by a web-based news outlet *theaustralian.news.com* on February 28, 2002. The story is about a veteran 60 Minutes reporter, Richard Carleton, who admitted he had misled, and lied to viewers by showing footage from another massacre site to illustrate a story about the alleged massacre of Srebrenica in Bosnia and Herzegovina. Despite this admission, however, Mr. Carleton denied he had behaved unethically as a journalist and said, “the footage had enhanced viewers’ understanding of the 1995 massacre of Muslim residents by Bosnian Serbs.” One may wonder at this point how lies can serve the purpose of enhancing anybody’s understanding of anything. But more importantly, we could ask what exactly *is* this understanding? It is the conviction that one “got it right,” and in this case it is Mr. Carleton’s conviction that the Serbs are the villains as far as the conflict in Bosnia and Herzegovina was concerned, and spreading that conviction by any means possible must be just fine. The Carleton-like attitude that the job is “enhancement of understanding” or “education of the audience” that is accompanied with utter disregard for true representation fails the epistemic reliability requirement for owing respect to a position held by such persons.<sup>12</sup> All we have here is evidence that a journalist has taken the role of advocating in favor of a side in a conflict, we do not even know whether he sincerely believes the position he has chosen to proliferate, and we see preparedness to use any means possible to accomplish this. So, we may wonder, why stop there? Why not fully engage the whole spectrum of one’s own imagination and play it out,<sup>13</sup> particularly if there is not only no cost to oneself but even prospects for (professional) glory.<sup>14</sup>

<sup>12</sup> On the subject of respect for a person’s views see Edward Langerak, “Disagreement: Appreciating the Dark Side of Tolerance,” in *Philosophy, Religion, and the Question of Intolerance*, Mehdi Amin Razavi and David Ambuel (eds.) (Albany: State University of New York Press, 1997), see particularly pages 118-20.

<sup>13</sup> And, sure enough, as far as the Serbs’ “crimes” go, imagine they did. Witness, for instance, the German defense minister Rudolf Scharping at work on 16 April, 1999: “it is recounted that the fetus was cut out of the body of a dead pregnant woman in order to roast it and then put it back in the cut-open belly...that limbs and heads are systematically cut off, that sometimes they play football with heads...” Quoted in Diana Johnstone, *Fool’s Crusade: Yugoslavia, NATO and Western Delusions* (New York: Monthly Review Press, 2002), p. 252. But there was no material evidence, then or now, for stories of this sort.

<sup>14</sup> Consider, for example, Roy Gutman (*Newsday* reporter) the author of many excellent examples of this sort of narrative including *A Witness to Genocide* that not only got him a Pulitzer Prize, but also landed him a pseudo-governmental job as Senior Fellow at the U.S. Institute of Peace. And there were others, John Burns (*New York Times*), David Rohde (*Chris-*



Those engaged in the genocidalism of commission are on a similar mission of proliferating blame for genocide through “education,” and cannot afford to be choosy as to what they will present as evidence in their exciting endeavor to “enhance understanding” about what “really” transpired in some far away place. So, the question arises about what is the proper way to present historical episodes of genocide.

### *2.3 Avoiding genocidalism by presenting all dimensions of a genocide*

When it comes to determining what would count as a proper discourse about an episode of alleged genocide one must pay attention to all four dimensions of genocide:

- (i) Historical time and place of the pertinent events;
- (ii) Perpetrators;
- (iii) Victims; and
- (iv) The number of people killed.

There is an ambiguity here in the notion of “number” invoked in the dimension (iv). The number may mean the absolute number of people killed in an episode of genocide; it may mean a percentage of the population lost as part of the total number of people prior to the episode; or it may indicate the number that was deemed sufficient to endanger collective survival of a group. The last notion, if sufficiently fine-grained, and taking into account genocidal intent, should prove most relevant for determinations of whether genocide occurred in the context of a violent episode. So, such difficult questions would have to be entertained concerning whether a loss of, say, 20% of pre-war population is equally bad for a nation of hundred million or for a nation of just seven million. What about a much smaller percentage and absolute number of killed for a population that has become significantly impaired in the prospects of long-term survival? Since genocide—in its broadly understood meaning, synonymous with extermination—is accomplished and absolutely clear only when 100% of a given population is killed everything else is attempted genocide, the question arises, “At what point can this attempt be said to start?” These and similar vexing questions aside, what is clear is that the number of people killed in a violent episode—whatever its proper understanding—represents a very important dimension of genocide.

This dimension is crucially important not only for the purpose of appreciating the impact of genocide as a practice, but also when it comes to understanding what genocide really is, as well as for discerning where genocidalism of commission goes wrong. Namely, without giving proper attention to this fourth dimension of

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*tian Science Monitor*), and most recently Samantha Power [*A Problem from Hell: America and the Age of Genocide* (New York: Basic Books, 2002)] got the Pulitzer for their works similarly premised.

genocide any claim that genocide took place in some social context amounts to unequivocally attributing *a specific* intention to a group (or individual) on insufficient grounds, and constitutes irresponsible use of language. Furthermore, it stands to reason that the ratio of people killed among those who *count* as victims, and those who *count* as perpetrators in an episode of genocide must be such that the former considerably outnumber the latter. (Without this one-sidedness we would have an entirely new category of “crime,” which we may even call “mutual genocide,” however, it would be one with its own, very different, logic of normative assessment than what we encounter when we consider genocide.) Of course, we face again a similar puzzle over what should count as “considerable” in this context. We can take it as clear, however, that if the sides in a conflict suffer roughly the same casualties, or the side that *counts* perpetrators suffers more killed than the side that *counts* as victims in a pronounced episode of “genocide,” then this criterion for genocide is not met and in the former case there cannot be talk of any victims of genocide on one side while on the other there are the perpetrators while obviously something has gone terribly wrong in the latter case.<sup>15</sup>

Let us consider on two examples (that we will come back to again later)—former Yugoslavia and Rwanda—of how things, indeed, can go terribly wrong. The standard figure that was widely used in the 1990s discourse on casualties regarding the conflict in the former Yugoslav Socialist Republic of Bosnia and Herzegovina was the number of 200,000 Bosnian Muslim victims. However, the only thorough study available in the 1990s suggests the range of 25,000 to 60,000 fatalities on all sides to the conflict.<sup>16</sup> Robert Hayden makes an interesting point about fatalities in Bosnia. He cites the estimates by “Bosnia’s State Health Protection Office,” an organ of Bosnian Muslim government, that 278,000 people were killed or went missing in the period 1992-95: 140,800 Bosniaks (that is Muslims), 97,300 Serbs, and 28,400 Croats. If we took these numbers as the correct estimates of the fatalities Hayden calculates that this would mean that the “ratio of casualties to the prewar populations in Bosnia and Herzegovina of Muslims and Serbs are almost the same: 7.4 percent of Muslims, 7.1 percent of Serbs.” He concludes, rightly in our opinion: “This similarity of ratios would make it very hard to argue that what took place in Bosnia was “genocide,” unless there were two genocides there.” We take his invocation of “two genocides” as in fact a *reductio ad absurdum* of the claim that genocide took place in Bosnia and Herzegovina.<sup>17</sup>

<sup>15</sup> In Frank Chalk’s proposal for a redefinition of “genocide” the occurrence of the phrase “one-sided mass killing” suggests agreement with this insight. He defines genocide as “a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator.” See Frank Chalk, “Redefining Genocide” in George Andreopoulos, *Genocide: Conceptual and Historical Dimensions* (Philadelphia: University of Pennsylvania Press, 1994), p. 52.

<sup>16</sup> See George Kenny, “The Bosnian Calculation,” *New York Times*, Sunday, 23 April 1995, Section 6, Magazine, p. 42.

<sup>17</sup> See Robert M. Hayden, “Shindler’s Fate: Genocide, Ethnic Cleansing, and Population

PRÉFECTURE (PROVINCE)	POPULATION IN 1994	NUMBER OF PEOPLE KILLED All ethnic groups From 1990 à 1995	PERCENTAGE OF THE POPULATION KILLED
Byumba	845.000	470.000	56
Kigali	1.250.000	360.000	29
Kibungo	700.000	349.000	50
Butare	830.000	330.000	40
Other prefectures	4.125.000	961.000	23
All prefectures	7.750.000	2.470.000	32

Things are much worse in the case of Rwanda. The standard figure given in the Western media about Rwanda is that some 800,000 Tutsi and “moderate Hutu” died at the hands of “extremist” Hutu. However, more serious studies of the distribution of casualties among conflicting groups during this episode of violence paint a very different picture.<sup>18</sup> After assembling available data and testimonies, James K. Gasana<sup>19</sup> estimates the number of victims of the Rwandan conflict (which began in October 1990, with a war of aggression carried out from Uganda by the Rwandan Patriotic Front, now in power) to close to 2.5 million, broken down as follows (see table above).

The total of 2, 470, 000 dead includes approximately 600, 000 Tutsi, killed by civilians, and common law criminals of all kinds.<sup>20</sup> The difference (2, 470.000-

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Transfers,” *Slavic Review*, 55 (1996), pp. 746-7, note 65. It is worth mentioning here another study commissioned by the Demographic Unit, Office of the Prosecutor International Criminal Tribunal of the former Yugoslavia, Ewa Tabeau and Jakub Bijak, “Casualties of the 1990s War in Bosnia-Herzegovina: A Critique of Previous Estimates and the Latest Results,” *European Journal of Population* (forthcoming). This latest study further confirms the point we are advocating here by estimating the number of casualties to be the total of 102,622 persons, of which 55,261 were civilians and 47,360 militaries at the time of death.

<sup>18</sup> “Our research strongly suggests that a majority of the victims were Hutus - there weren't enough Tutsis in Rwanda at the time to account for all the reported deaths,” Professor Davenport said, who worked with an associate, Allan Stam, from Dartmouth College.” See “Rwanda 1994 killings weren't 'genocide': US study” as reported on March 4, 2004 by the Australian Broadcasting Corporation at:

<http://www.abc.net.au/cgi-bin/common/printfriendly.pl?http://www.abc.net.au/news/news-items/s1080562.htm>.

<sup>19</sup> James K. Gasana, “La Violence politique au Rwanda 1991-1993,” (1998), Association NOUER, Geneva/Brussels, 1998.

<sup>20</sup> See “Genodynamics”, a study offered under the title “Mass Killing and the Oases of Humanity: Understanding Rwandan Genocide and Resistance,” available at:

<http://www.bsos.umd.edu/gvpt/davenport/genodynamics/research.htm>.

600,000)= 1,870,000 represents Hutu victims of the conflict, many of whom were murdered by RPF combatants.

These numbers suggest that the casualty rates between those who in the customary narratives count as victims and perpetrators are roughly equal in the case of the conflict in Bosnia and Herzegovina while, absurdly, the killed among the “perpetrators” outnumber by three times those of the “victims” in Rwanda. Yet, we continue to hear just the old numbers. The continued uncritical use of the old numbers about conflicts in former Yugoslavia and Rwanda, clearly, represent an attempt at a “nazification” of the Serbs and Hutu as peoples. But the real outcome, albeit perhaps unintended, may in fact be the “de-nazification” of the Nazi. What is more, however, to the extent that genocidalists through their narratives in effect “de-Nazify” the Nazi, they in fact ultimately “Nazify” themselves!<sup>21</sup> A cynic might observe that even in this day and age one *can* be essentially like a Nazi and enjoy it, but only when the ideological targeting is properly directed under the cover of geopolitically guided “political correctness.”

### 3. International Criminal Law and Genocidalism

#### 3.1 *Genocide*

According to Article II of the Genocide Convention, “genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (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.”

Consequently, for a situation to fit the definition of genocide, three essential elements are necessary: (i) an identifiable national, ethnic, racial or religious group; (ii) the intent to destroy such a group in whole or in part (*mens rea*); and (iii) the commission of any of the listed acts, (a)-(e), in conjunction with the identifiable group (*actus reus*).

For a situation to be considered an instance of genocide there is no minimum number of fatalities required. However, the *intent* to destroy a particular group in whole or in part is probably accessible epistemically only when intent is associated with mass crimes. Discussing whether the U.S. were guilty of genocide in Vietnam, Jean-Paul Sartre correctly points out that the Genocide Convention “was tacitly

<sup>21</sup> This dialectic *salto mortale* is delightfully captured by Milan Brdar in his “Humanitarian Intervention and the (De)Nazification Thesis as a Functional Simulacrum,” in Aleksandar Jokic (ed.) *Lessons of Kosovo: The Dangers of Humanitarian Intervention* (Calgary: Broadview Press, 2003), pp. 153-71.

referring to memories which were still fresh,” that is to Adolf Hitler’s “*proclaimed*...intent to exterminate the Jews.”<sup>22</sup> Sartre asserted the obvious, that not all governments would be as stupid as Adolf Hitler’s and *proclaim* such intentions as to eliminate a people. The question then is, if the intent is not explicitly *proclaimed* how is it *discovered*? Our contention would be that this process of discovery would have something to do with the scale of killing and massive disproportion (one-sidedness) of fatalities between the parties involved.

### 3.2 *The impossibility of the primacy of international law over domestic law*

Genocidalism can, and indeed does, pose the greatest danger when deployed in the legal arena. The consequences are real, as is arrest, “transfer,” detention, conviction, and the stigma attached to charges—even unproven—of genocide, whether against an individual, or against a collective. While it could be expected that subjection of a litigious issue to competing advocates to establish legal and factual truth<sup>23</sup> would guarantee an objective and reliable process of discovery, this expectation is only valid if the legal process in which the question is examined is *itself* valid, that is, legally constituted, independent, impartial, and respectful of evidentiary and procedural norms. The Security Council of the United Nations has established two *ad hoc* bodies (in 1993 for the “former” Yugoslavia<sup>24</sup>, bearing the acronym ICTY, and in 1994 for Rwanda, known as the ICTR) to which it has afforded jurisdiction over the crime of genocide. Although we will not debate in detail here the legality of the Security Council’s resolution, there is one element that we think has great philosophical significance. It relates to the fact that while the Tribunals remain subordinate to the Security Council, their statutes provide them with *primacy* over national courts (including the authority to demand the surrender of the accused). There is a paradox here, and it comes out quite clearly when we generalize the question to “How is it possible that international law could have primacy over national or domestic law?”

A complaint, not uncommon any more, that a *specific* domestic law of some

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<sup>22</sup> Discovering intent is not an easy matter, as the discussion, extensive investigation, and analysis of the U.S. involvement in Vietnam shows. The so-called Russell Tribunal (the International War Crimes Tribunal), which conducted its “trial” in the 1966-1967 in Stockholm and Copenhagen, unanimously found the U.S. guilty of genocide in Vietnam. Others looked at governmental statements (which, of course, never contained any admission of genocidal intent), and even population statistics and health standards of the Vietnamese population, only to find the allegation of genocide “grotesque” [See Guenter Lewy, *America in Vietnam* New York: Oxford University Press, (1978), pp. 301-04 (emphasis provided)].

<sup>23</sup> See Susan Haack, “Truth, truths, “truth”, and “truths” in the law”, *The Journal of Philosophy, Science and Law*, Volume 3, 2003.

<sup>24</sup> The ICTY asserted jurisdiction over alleged offences committed on Yugoslav territory—namely, Kosovo, a province of Serbia—while Yugoslavia was not yet a “former” nation.

country is *inconsistent* with international law (especially human rights law) is often taken to render that domestic law somehow invalid (or morally unjustifiable). This implies a view that might be expressed in the statement that international law, strictly speaking, enjoys a primacy over domestic law. What sense could be made of this? It follows that consistency with international law is a *condition* of validity for domestic laws. Now this idea is either plainly mistaken or in need of clarification (in order to imply anything of real relevance in the world). It is mistaken in the sense that per assumption domestic law has a clear source of validity, which determines its relevance in a precise manner: it is a decision of some collective about its own matters. It is in need of clarification, however, in the sense that it is obscure how could something with a clear source of validity depend in any way on something that is not clear what it is or whether it even exists. Hence, the assumption that the relevancy of domestic laws is *conditional* on their consistency with international law does not appear at all *legally* applicable.

On the contrary, international law, whatever its final shape, must start from the assumption that all applicable (domestic) laws have their relevance; that they express certain social facts that are simply there. For, if the relevancy of *specific* domestic laws were to be measured by their consistency with international law (or whatever other supra-national basis), then this would be tantamount to treating *all* domestic laws as irrelevant. Conditionality of the binding force of domestic law on consistency with international law, which is something that cannot be known in advance, would mean a question mark for *every* domestic law whether it is institutionally binding or not. Therefore, the enforcement of *any* domestic law *may ex post facto* turn out to be, strictly speaking, illegal activity. Thus, the primacy of international law, explicated along this lines, rendering it as the only law with relevancy would, of course, be quite undesirable and dangerous. We doubt, however, that it is even possible to express this view in a coherent way because it appears to be an absurdity. What *is* possible, however, is for a powerful state to take the doctrine of the primacy of international law “seriously” as a ground for pronouncing at will various laws in other countries as (domestically) non-binding. There is great practical danger in this doctrine, for he whose judgment of (in)consistency counts, has the power over others. This same problem plagues the newly established International Criminal Court (ICC), for the court theoretically would take action only when national courts fail to fulfill their legal responsibilities. But who determines a domestic system’s “ineffectiveness”?

### *3.3 Problems with the ICTY indicating that it dispenses genocidalism*

When Slobodan Milosevic was asked to plead to the indictment filed against him, after being whisked off to The Hague as a result of a transfer whose legality bore more resemblance to kidnapping for ransom than to extradition, his response

to the ICTY Chamber was not the typical “Not guilty.” Milosevic instead said: “That is not my problem, that is your problem.”

And, indeed, the ICTY’s problem it became. When the prosecution rested its case after the resignation of the Trial Chamber’s President, Richard May, in spring 2004, many in the media bemoaned the failure to prove genocide, and others were unimpressed by the picture of confusion left by weak witnesses, deflated in cross-examination by a defendant who consistently stated the ICTY was not a legal, or judicial, institution. Voices rose to express increasingly strident concern that the trial was going off the rails. Expectations appeared not to have been met.

As the defence approached, and Milosevic announced that he would secure the attendance of 1600 witnesses to support the case he announced he would make from the beginning—namely that the “Balkan Wars” had in fact been one war, against Yugoslavia, planned and carried out by Western powers, whose gruesome apotheosis was NATO’s 78-day bombing campaign in 1999—the ICTY’s most prestigious supporters zeroed in on the upcoming defence, arguing that Milosevic’s right to represent himself had been granted “long enough.”

The media onslaught was, and remains, significant and raises an obvious question: what is it about the present stage of the hearings that requires such collective effort to defeat?

The consistent, apparently genocidalist offensive seemed triggered by fear, and not only challenged—and continues to challenge—the internationally mandated right to self-representation (and the resulting freedom to present a true defence), but was further calculated to prevent Milosevic from demonstrating the ICTY’s illegality, and functions. Genocide apparently trumps fairness, and in particular the rights of the accused, when the exercise of those rights challenges the genocide narrative. President Milosevic has indeed consistently argued that the ICTY serves up apologia for the destruction of Yugoslavia, provides justification for aggression, and rewrites history. Hence, the seemingly endless references, not to Milosevic’s health, but to his deleterious impact on the “Court’s reputation,” “credibility” and “legitimacy.”

Writing in the pages of *International Herald Tribune*<sup>25</sup>, David Scheffer, former Ambassador at Large for War Crimes Issues under former U.S. Secretary of State Albright, dehumanized Milosevic, and urged the ICTY to reassert its “authority” over him. Wrote Scheffer: “When he was the presiding judge, the late Richard May deftly handled Milosevic’s exercise of his right to self-representation by giving him enough leash every day to speak his mind and then jerking that leash when he overstepped his bounds.” The metaphor of “leash jerking” was powerfully deployed in light of the painfully recent Abu Ghraib prison atrocities in Iraq, immortalized by the infamous photograph of Pfc. Lynndie England holding a naked human being on a leash. Was Scheffer urging the ICTY to become more like Abu Ghraib,

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<sup>25</sup> David Scheffer, “Enough of Milosevic’s Antics” *International Herald Tribune*, July 13, 2004.

but in the judicial, rather than military theatre of operations? Whatever his intent, in one important respect there is hardly any difference between the physical and metaphorical leash jerking: they are both firmly grounded in the most primitive racist or reifying attitudes toward their targets. And who exactly was the target of David Scheffer's comments? It would appear to be only Mr. Milosevic who is thus rendered inhuman, but there is another, even more crucial objective: the ICTY's judges and prosecutor are implicitly reminded here that they are mere tools (*res*) of the Empire, so they had better deliver.

And what were the goods to be delivered by the ICTY? The process is staggeringly costly, so it follows that a conviction is necessary, and that "justice" mandates the gagging of Milosevic, who is: "charged with crimes of enormous gravity in the Balkans: genocide, crimes against humanity and war crimes. They scream out for accountability. The United Nations and its member states are expending large sums of money on these trials for the purpose of justice, not political diatribes and meandering defences." It is unclear whether this is a legal or political argument. It may be that Scheffer's position—promoting a novel legal approach—is that since Milosevic has been charged with the most serious crimes of all, and that they "scream out for accountability," this very fact *ipso facto* constitutes proof beyond reasonable doubt of his actual guilt. For who could imagine that the ICTY might bring frivolous charges and indict a sitting President in the midst of a war of aggression against his country? Alternatively, Scheffer's words might be expressing a direct political claim: "We paid for this, and we certainly did not pay for this man to jerk us around."

Scheffer advocates the imposition of counsel, to: "ensure the integrity of the process, which may be nearing a breaking point with the international community." The impatience expressed on behalf of the phantom "international community" might in fact be just Scheffer's own and those of his ilk, well connected to the establishment of the ICTY. In any event, the point is that the ICTY has no legal authority beyond the powers granted by the Security Council, and deemed legally valid by its own appeals chamber, i.e., itself. Hence, its authority "must be asserted." The very process, which *is* an abuse, must be protected from "a crippling abuse," that is, from denunciation by Milosevic, and in particular his witnesses: "A massive criminal enterprise of this character deserves a long, carefully developed trial that inevitably will experience delays. That is the nature of the beast. But the time has arrived to reassert the court's mandated authority and prevent a crippling abuse of the process by the likes of Slobodan Milosevic." "Nature of the beast," indeed. It is urgent that this be accomplished since the ICTY, as opposed to judicial bodies the world over, is a "limited engagement," and is attempting to complete investigations, trials, and appeals before a Security Council-mandated deadline—known as the "completion strategy"—in 2010. A conviction must be secured before then. Just as performances must end before the circus can leave town.

Also urgent is that "Serbs," specifically, "respect the court's authority," and presumably this transformation can only take place if Milosevic is gagged, and the



illegality of the body never mentioned again: “Perhaps if the discipline of a competent counsel is brought into the courtroom, Milosevic’s Serb supporters would learn to respect the authority of this tribunal.”

In his conclusion Scheffer fittingly returned, in true genocidalist form, to his tired leash metaphor to reinforce his point that Milosevic must be silenced “permanently” since he is inhuman: “Milosevic has jerked the court around long enough. It is time to permanently pull in Judge May’s well-worn leash.”

And if Scheffer’s abuse of the genocide discourse to dehumanize a defendant and publicly lobby for the violation of human rights wasn’t enough of an illustration of the impunity afforded to genocidalism in the legal arena, Michael Scharf, visiting professor of law at Case Western Reserve University, and instrumental in the creation of the ICTY, followed Scheffer’s opening salvo in the *Washington Post*, and, with bone-chilling clarity, made the case for imposition, employing strikingly political arguments.<sup>26</sup> Drawing on the now-familiar refrain that Slobodan Milosevic is “playing for the home audience,” Scharf was outraged by the idea that the unrepresented defendant would somehow make use of a show trial to gain support in Serbia and Montenegro, when the ICTY was created, he deadpanned, precisely to remove Milosevic from politics, and “educate” Serbs, so that he and his like would be put out of commission forever. That his own argument confirms the political nature of the ICTY and candidly clarifies its objectives as non-judicial does not deter Scharf from the description of the process as an “international war crimes trial” and the institution as a “court of law.”

According to Scharf: “Milosevic’s caustic defence strategy is unlikely to win him acquittal, but it isn’t aimed at the court of law in The Hague. His audience is the court of public opinion back home in Serbia, where the trial is a top-rated TV show and Milosevic’s standing continues to rise. Opinion polls have reported that 75 percent of Serbs do not feel that Milosevic is getting a fair trial, and 67 percent think that he is not responsible for any war crimes. ‘Slobo Hero!’ graffiti is omnipresent on Belgrade buses and buildings. Last December, he easily won a seat in the Serbian parliament in a national election.”

What any of these concerns and political trivia could possibly have to do with international law—if considered as an activity of a judicial nature—is unclear. If, however, playing to an uninformed Western public, the idea is to suggest that by granting basic internationally recognized human rights to the man who was the West’s principal interlocutor in Balkan peace negotiations for over half a decade, the ICTY is failing in its mission to “educate” the Serbs, then the point is well taken. Scharf deplores the fact that opinion polls show that “75% of Serbs do not feel Milosevic is getting a fair trial.” Scharf’s disappointment in this expression of popular distrust—which may well be directed to the institution as a whole—assumes that public opinion in Serbia and Montenegro is misguided, and that it fails to

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<sup>26</sup> Michael Scharf, "Making a Spectacle of Himself: Milosevic Wants a Stage, Not the Right to Provide His Own Defense", *Washington Post*, August 29<sup>th</sup>, 2004.

appreciate the “fairness” of the proceedings. But if, as Scharf claims, ICTY hearings are “top rated” TV shows, then public opinion was formed by actually observing the proceedings; in which case the problem might not be collective delusion abroad, but rather Western ignorance of the ICTY’s day to day workings. The latter are largely inconsistent with the widely held Western belief—based, perhaps, on faith or missionary zeal—that proceedings in The Hague are inherently fair.

Scharf’s preoccupation with graffiti adorning the buses and buildings of Belgrade is perhaps an expression of concern for the environment. However, any threat posed by ‘Slobo Hero!’ pales in comparison to the effects of NATO’s bombing, and in particular, with the presence of depleted uranium in the soil and groundwater of Serbia and Montenegro. It may be that “Serb” public opinion has not yet been sufficiently educated by the “court of law” to lose sight of this disturbing reality, which will remain with it for decades, and possibly centuries. Perhaps this reality and the ever-present reminders of NATO’s bombing in the streets of Belgrade have had some influence on the public perception of the ICTY’s “fairness.”<sup>27</sup> Or perhaps the massive privatizations forced upon Serbia and Montenegro, as well as the sudden staggering increase in unemployment and the impoverishments that came in the wake of the nation’s new, post-Yugoslav “openness,” fail to inspire the majority of people struggling for survival, with global *anything*, much less “global justice,” which after all, was largely responsible for triggering the first aerial bombing of Belgrade since World War II.

In an eloquent illustration of how the genocidalist discourse permits dizzying contortions of logic, all justified (or promoted) by some article of faith, Scharf makes plain that the ICTY was created for political reasons, yet advocates imposing counsel on Slobodan Milosevic to prevent him from making precisely the same point. The only difference is that Milosevic is “disparaging,” while Scharf argues that the ICTY’s evident political objectives are somehow valid:

*“In creating the Yugoslavia tribunal statute, the U.N. Security Council set three objectives: first, to educate the Serbian people, who were long misled by Milosevic’s propaganda, about the acts of aggression, war crimes and crimes against humanity committed by his regime; second, to facilitate national reconciliation by pinning prime responsibility on Milosevic and other top leaders and disclosing the ways in which the Milosevic regime had induced ordinary Serbs to commit atrocities; and third, to promote political catharsis while enabling Serbia’s newly elected leaders to distance*

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<sup>27</sup> The ICTY refused to consider NATO’s 1999 bombing of Yugoslavia as a crime. Passenger trains were struck by so-called smart bombs, as was the RTS public television station, numerous villages, farms, civilian infrastructure, places of worship, and more importantly civilians – actual people – men, women and children. There were surprisingly few military targets in this gruesome 78-day bombing. The environment was polluted for centuries with depleted uranium. Smart bombs were so smart that they appeared to make foreign policy decisions, and thereby struck the Chinese Embassy. President Milosevic’s bedroom was bombed, a naked assassination attempt in complete violation of international law.

*themselves from the repressive policies of the past. May's decision to allow Milosevic to represent himself has seriously undercut these aims."*

The idea that affording the right of self-representation to Milosevic had "seriously undercut" the "aims" of the ICTY's very establishment strains credulity. However, if those aims were, and continue to be, "to pin" responsibility on Slobodan Milosevic, and to "educate" Serbs about how bad he was—or, ultimately, how bad Yugoslavia was—then these aims are assuredly not shared by the defendant. Indeed, Milosevic has no intention of assisting the ICTY in "convincing Serbs" that acts of aggression committed against Yugoslavia were justified. Furthermore, whether or not the political aims set out by Scharf are valid, morally correct, or politically expedient, they cannot make legal what is illegal, they cannot make legitimate what is illegitimate, and they cannot, most crucially, turn a political body into a court.

#### *3.4 Rwanda's mind-numbing genocidalism, and selective jurisdiction*

While the massacres that took place in Rwanda from April to July, 1994 were undoubtedly a historical tragedy, little is known, it seems, of that nation's war—a war of aggression—which began on October, 1990, when Rwanda was the object of an invasion from Uganda, by Ugandan officers, with Ugandan materiel and weapons, led by a commander being trained in Fort Leavenworth, Kansas, precisely at the moment the IMF was clamping down on the country's developing economy, and when the international coffee markets—Rwanda's principal export—were crashing<sup>28</sup>. A few months earlier, French President Mitterrand had stepped up the rhetoric of democratization, and demanded its francophone "partners" in Africa move towards multipartism<sup>29</sup>. Thus, a tiny, mostly rural nation, debilitated by the economic pressures of the promise of globalization, endured the horror of war, replete with nightmarish massacres of the civilian population<sup>30</sup>, until it entered into the Arusha Peace Accords, which were to install a "broad-based transitional government" and eventually see democratic, multiparty elections, with a UN peacekeeping force to help the nation along the path to peace and recovery. This force was UNAMIR, the United Nations Assistance Mission in Rwanda, whose force commander was Canadian general Romeo Dallaire, now a Carr Fellow at

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<sup>28</sup> See Michael Chossudovsky "The US was Behind the Rwandan Genocide: Installing a US Protectorate in Central Africa," at: <http://www.globalresearch.ca/articles/CHO305A.html>.

<sup>29</sup> Barrie Collins "New Wars and Old Wars? The Lessons of Rwanda," in David Chandler (ed.) *Rethinking Human Rights : Critical Approaches to International Politics* (New York: Palgrave Macmillan 2003) 157—75.

<sup>30</sup> See testimony of Abdul Ruzibiza, a former RPF officer detailing the RPF's crimes against the civilian population at: <http://www.inshuti.org/ruzibiza.htm>.

Harvard, and an ardent advocate of intervention in the Darfur region of Sudan,<sup>31</sup> where he has proposed that “special units” could “eliminate or incarcerate” (in that order?) those “presumed responsible”<sup>32</sup> for committing acts of genocide. Humanitarian intervention seems to have evolved from apparently indiscriminate aerial bombing (Yugoslavia) to good, old-fashioned death squads, and while the refinement in technique should perhaps be welcomed, the utter lack of interest in whether genocide *was* or *was not* committed in Darfur before the “elimination” or “incarceration” (in whatever order) take place really ought, putting it very mildly, give pause. But as we have seen, the genocide discourse hardly requires logic, and appears to shrug off epistemology as some boring, outdated requirement applicable only to academic eggheads and defense lawyers (if at all).

On April 6<sup>th</sup>, 1994, the plane carrying the Presidents of Rwanda and Burundi back from a peace conference in Dar es Salaam, Tanzania, was shot down by two SAM-16 missiles on its approach to Grégoire Kayibanda International Airport, killing all aboard: the presidents of two countries barely maintaining a fragile peace, the chief of staff of the Rwandan Armed Forces, close advisors to the presidents, and a French crew. Any (perhaps delusional) idea of peace had instantly vanished, and as armed conflict resumed, the killings began.

The shooting down of the President's plane, considered by all, including the UN Special Rapporteur on Rwanda<sup>33</sup> the proximate cause of the massacres, had been under investigation several years ago, but it was shut down, personally, by then-Prosecutor, Louise Arbour, who is now High Commissioner for Human Rights of the United Nations.<sup>34</sup> The ICTR investigation had revealed that those responsible for shooting down the plane were in fact those currently in power—the Rwandan Patriotic Front, led by Major-General Paul Kagame—with the assistance of a foreign country.<sup>35</sup> And when defense counsel sought to obtain the results of those investigations, or attempted to ascertain whether they were even taking place,

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<sup>31</sup> See his *New York Times* op-ed “Looking at Darfur, Seeing Rwanda” of October 4, 2004 at: [http://www.nytimes.com/2004/10/04/opinion/04dallaire.html?ex=1097902196&ei=1&en=7ce9559173ae8940\\_](http://www.nytimes.com/2004/10/04/opinion/04dallaire.html?ex=1097902196&ei=1&en=7ce9559173ae8940_)

<sup>32</sup> Both *ad hoc* Security Council tribunals are, by their official titles, tribunals for the prosecution of those “presumed responsible” of grave violations of humanitarian law. Both, in an apparent paradox, guarantee the presumption of innocence.

<sup>33</sup> See report on the situation of human rights in Rwanda submitted by Mr. R. Degni-Ségui, Special Rapporteur of the Commission on Human Rights, under paragraph 20 of Commission resolution E/CN.4/S-3/1 of 25 May 1994 available at: <http://www1.umn.edu/humanrts/commission/country51/7.htm>.

<sup>34</sup> See Robin Philpot “Nobody Can Call It a ‘Plane Crash’ Now! Judge Bruguière's Report on the Assassination of former Rwandan President Habyarimana,” *Counterpunch* March 12/14, 2004: <http://www.counterpunch.org/philpot03122004.html>.

<sup>35</sup> Steven Edwards “Explosive Leak on Rwanda Genocide,” *National Post*, (Toronto), March 1<sup>st</sup>, 2000, page 1.

the Prosecution boldly claimed that there were none, nor were any required, as the ICTR had no interest, and indeed no jurisdiction, to investigate “plane crashes” or the deaths of “presidents or vice-presidents.”<sup>36</sup> The investigation was terminated shortly after that motion was argued in the *Rutaganda* case.<sup>37</sup> This is a fascinating illustration of genocidalism’s double standard, its *moralité à géométrie variable*<sup>38</sup>, as the practice is just as capable of retreating rapidly into disingenuous claims of “lack of jurisdiction” (when pretty serious crimes really *ought* to be investigated) as it is of quasi-tentacular reach into an ever-increasing number of conflicts<sup>39</sup> and issues<sup>40</sup> framed as genocide.

According to the Nuremberg Tribunal, “To initiate a war of aggression is not only an international crime; it is the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole.”<sup>41</sup> Neither of the UN *ad hoc* Tribunals for Rwanda and Yugoslavia—created without recourse to treaty, or to the General Assembly, and in blithe disregard for the UN Charter’s apparently platitudinous orthodoxies of a bygone era, such as respect for national sovereignty and a Security Council limited to jurisdiction over peace and security, not international circuit courts—consider aggression within their jurisdiction. In fact, they provide cover and justification for wars of aggression and contribute to the creation of conditions that actually increase the incidence of crime (including crimes against Humanity and rape, for starters) such as war, lawlessness, dehumanization, and the immiseration of men, women and children.

The ICTR does not consider the militarily victorious (with the help, perhaps, of the US, who succeeded in reducing the UN peacekeeping force to a symbolic presence<sup>42</sup>) RPF's 1996 invasion of the Congo—with reported massacres of tens of thousands of Hutu refugees and Congolese civilians<sup>43</sup>, nor Rwanda's bloody 1998 reinvasion of Congo, which degenerated, at one point, into a war involving 8

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<sup>36</sup> *Prosecutor v. Rutaganda*, ICTR 96-3-T, transcripts, February 7<sup>th</sup>, 1997, pp. 44-5.

<sup>37</sup> *Id.*

<sup>38</sup> For an excellent analysis of this aspect of the phenomenon see Edward S. Herman “The Cruise Missile Left (Part 5): Samantha Power and the Genocide Gambit,” May 17, 2004 available at: <http://musictravel.free.fr/political/political49.htm>.

<sup>39</sup> See, for example, Gajendra K. Singh “New Bush Era Begins,” South Asian Analysis Group, paper no. 1174 available at: <http://www.saag.org/papers12/paper1174.html>.

<sup>40</sup> See, for example, Gregg Cunningham “Why Abortion is Genocide?” a publication of something called The Center for Bio-Ethical Reform available at: <http://abortionno.org/Resources/abortion.html>.

<sup>41</sup> *Nuremberg Tribunal Judgment*, (IMT, *Goering et al.*), 1946, p. 26.

<sup>42</sup> Michael Mandel, *How America Gets Away With Murder: Illegal Wars, Collateral Damage, and Crimes Against Humanity*, (London-Ann Arbor, Pluto Press, 2004) p. 105.

<sup>43</sup> *Id.*: “America has provided military aid for the Rwanda regime’s participation since 1996 in the Congo war, which has benefited so many North American mining interests and taken millions of lives.”

African countries, and which has been responsible for the death of at least 5 million people, according to conservative sources such as the International Committee for Refugees.<sup>44</sup> The ICTR instead greatly contributes to the justification of Rwandan aggression abroad (and repression at home) by consecrating a “victim” status for the current military leadership, and collectively demonizes the Hutu as “génocidaires”.

Courts who consider the gravity of an offence based on the identity of the victim are not carrying out justice; they are promoting *injustice* as they create conditions of *impunity* for the crimes committed against the victims they *exclude*. Furthermore, can it be justice when the nature of actions depends on the identity of an alleged perpetrator? Accounts of Serb “rape camps” in Bosnia and Herzegovina are “genocidal”. Saddam’s “rape rooms” justify invasion and occupation. Yet rapes of boys, committed in front of their parents by US troops and private contractors at Abu Ghraib warrant impunity. It is fair to say that that is not justice, but a perversion of justice.

During the September 30<sup>th</sup> US Presidential debate, George W. Bush stated that he would not join the International Criminal Court where “unaccountable judges and prosecutors can pull our troops or diplomats up for trial”<sup>45</sup>, adding that such a practice would be contrary to the national interest. It is obviously (to us, at least) not in *anybody’s* interest to be tried before unaccountable judges. But it would appear that *it is* in the US national interest that other people, lesser people, are thus prosecuted.

The US national interest is in diminishing—eliminating ultimately—everyone else’s national sovereignty. And one of the means to achieve that interest is by establishing these non-democratic Tribunals, and manipulating the concept of genocide to attain legitimacy. The Tribunals bully, coerce, and blackmail recalcitrant nations with bogus indictments, and create instant versions of history to further destabilize its colonies. And the US interest is in securing impunity for itself, as well as its clients, for the crime of aggression, which is frequently required in the pursuit of its goal: the destruction of national sovereignty. Genocidalism, to paraphrase Michael Mandel (on the “punitive vision of international human rights”), looks a lot like “globalized American law-and-order politics, like music videos and jeans: what they used to call the ‘Coca-colonization’ of the world”.<sup>46</sup> That is not international or UN justice, that is imperialism.

#### 4. Conclusion

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<sup>44</sup> On the “conservative” estimates of 5 million dead in Congo, it seems the International Refugee Committee has brought it down to 3.3 million: [www.refintl.org/content/article/detail971](http://www.refintl.org/content/article/detail971).

<sup>45</sup> See the debate transcript at: <http://www.debates.org/pages/trans2004a.html>.

<sup>46</sup> Mandel, p. 249.

There are two results of our discussion that should be emphasized in the concluding remarks. The first result exposes what might be described as a huge *normative divide* between ways of attending to domestic (or national) concerns and ways of attending to international issues characteristic of Western democracies. Often what is clearly wrong, even criminalized on the domestic (national) level seems all right, even encouraged when it is practiced with respect to international affairs. The second outcome is the recognition that there exists a need for proper institutionalization of protection against harms (individual and collective) that genocidalism of commission inflicts on its targets.

It looks to us that globalization is the globalization of US sovereignty, i.e., its extension over as much foreign territory as possible. And genocidalism is a means to that end, more effective than, say, weapons of mass destruction, or even “terrorism” as a tool.<sup>47</sup> Genocidalism is so effective that it bars the inherent right to self-defense against aggression, and obviates the sovereignty of the targeted state. Genocidalism can even be employed to actually make states vanish, in what can only be called republicide. Genocidalism—so far, tragically—means never having to say you’re sorry. The claim simply sticks, no matter what, as fiction is elevated above truth in the public discourse, whether the general public discourse, the media discourse, the academic discourse, and increasingly, the judicial discourse.

Determining the existence of facts (in law) involves a certain methodology that increases the chances that what is being established will also be reliable and relevant. Fiction’s methodology is not even important, but its effect—the ability to create emotion, seems more appealing to more and more “thinkers” (who should logically be renamed “feelers”).<sup>48</sup> When genocidalism is employed to advance foreign policy aims, in particular territorial ones, the debunking of the genocide claim, while possible, is entirely ineffective, and in any event does not influence the “facts on the ground,” such as Camp Bondsteel in the occupied province of Serbia, Kosovo and Metohija, or NATO’s continued presence in Bosnia and Herzegovina.

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<sup>47</sup> However, when WMD fails, just use “democracy”—you’re already occupying the country, so why not give the uncivilized some “democracy” for their troubles, and call it even? Even pretend to throw a bone to those on the Left—fake appeasement for the fake peace crowd—and comfort their delusion that somehow they succeeded in their efforts to Bring Home the Troops, Now! and give Iraq the great democracy of America, which far too many of these people invoke as a reason America should just live up to its ideals and do more good-like President Clinton did for Sudan, Rwanda and Yugoslavia – and less evil – like Bush and Afghanistan, Iraq, and whoever is next on the target list.

<sup>48</sup> On this most alarming trend, it is interesting to note that the American Society for International Law published academic and State Department insider Michael Scharf’s reference to what an ICTY judge was “feeling” when he issued a decision. Jurists should be serious, and be interested in rules of evidence, but where genocide claims are involved, feelings appear to carry more weight. See, “ICTY Appeals Chamber Decision of Slobodan Milosevic’s Right to Self Representation”, November 2004; [www.asil.org/2004/11/insight041111.html](http://www.asil.org/2004/11/insight041111.html)

Although the act of genocide can be disproved, it is much more difficult to remove the feeling of Genocide, and therefore the necessity of intervention, and its subsequent justification.<sup>49</sup> It may not be genocide, but it sure feels like it, therefore if (what I'm feeling) isn't genocide, then I don't know what is! And that creates a belief, unshakable, in a "reality," although the holder of the belief might even know it to be factually false. So what! The genocidalists, now practically artists, seem to be having fun deploying their craft. If that is the case, then they are not morally better than the sociopaths who take pleasure in torturing their victims.

This is why we believe that once the nature of genocidalism of commission is truly appreciated, that is, once it becomes a properly understood, and well-researched social phenomenon, it should become recognized as a criminal act. And the sentences should be very stiff indeed.

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*S u m m a r y*

ГЛОБАЛИЗАЦИЈА И ГЕНОЦИДАЛИЗАМ:  
БЕЗГРАНИЧНИ ФИКЦИОНИ ДИСКУРС  
(ЗА ЗАБАВУ И ПРОФИТ)

У овом есеју аутори истражују однос између глобализације и геноцидализма. "Глобализација" је схваћена као "слобода и способност индивидуа и фирми да иницирају добровољне економске трансакције са становницима других земаља", док "геноцидализам" дефинишу као "(i) сврховито занемаривање или приписивање одговорности за геноцид у случајевима када постоји обимна евиденција; (ii) упорно приписивање "геноцида" у нејасним случајевима без узимања у обзир расположиве и уверљиве евиденције и аргументације.

Аутори бране хипотезу да се напад на концепт суверенитета националне државе (свих држава изузев САД) и агресивна промоција интервенционизма, нарочито "хуманитарне" интервенције, може приписати утицају једино преостале суперсиле. О томе посебно сведочи друштвено-политички феномен "геноцидализма". Овај се манифестује као оруђе глобализације која показује карактеристике империјализма и неоколонијализма а делује попут успешног Тројанског коња у правном смислу.

У глобализацији је према ауторима реч о глобализовању суверенитета САД, то јест, реч је о њиховом ширењу на што више иностраних земаља. Геноцидализам је

<sup>49</sup> Thus we can only agree with the claims in Dale Jamieson "Duties to the Distant: Aid, Assistance, and Intervention in the Developing World," *The Journal of Ethics* 9, No. 1-2 (2005): 151-71. Jamieson argues that "humanitarian" interventions (i.e., wars of aggression ostensibly "justified" in the name of protecting and promoting "human rights") usually serve various imperial projects of the U.S.



средство које служи у ту сврху а које је често успешније од оружја за масовно уништење и од “тероризма”. Генецидализам је успешан зато што се ослања на право самоодбране у чије име оспорава суверенитет одређене земље. Он може да буде употребљен за уништење читавих држава, као што је било у случају Југославије или Руанде.

*Кључне речи:* глобализација, геноцид, геноцидализам, агресија, међународно право, међународни трибунал. Југославија, Руанда.