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Convention on the Prevention and Punishment of the Crime of Genocide: Article II

"Any of the following acts committed with the 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."

Allegations of genocide practised by the Democratic Republic of Afghanistan and Soviet forces have frequently been lodged. A brief comment on the international law is necessary before we can apply it to the facts.

Genocide has both a customary and a conventional or treaty dimension. The conventional dimension is derived from the Convention's Article II as it defines genocide. Article II does not require that the acts in question sought the physical elimination, in whole or in part, of a national, ethnical, racial or religious group. as declared in Article II (a), (c) and (d). Under Article II, (b) and (e), the crime of genocide can also occur when the indigenous identity of the group is forcibly transformed. Both of these acts destroy the group and are genocidal.

Not only the actual act, but the intent which accompanies the designated acts has also been the

subject of extensive scholarly interpretations. Any of the designated acts in Article II, (a) to (e) are deemed to be genocidal if they were committed with the intent to destroy, in whole or in part the targeted group as such.

While the intent to destroy the whole group speaks for itself, the intent requirement for efforts to destroy part of the group would appear to be fulfilled if the aggressor targeted whatever is the considered the minimum number of people necessary to form a particular group "as such." Using the most minimal interpretation of the Convention, an intention to kill many members of a particular group because they are members of that group fulfills the Convention's requirement of intent.

We now turn to the specific allegations relating to the crime of genocide in Afghanistan. These include: depopulation; attacks on religion; forced removal of children; and strategic attacks on society.

Depopulation

According to widely reported accounts, substantial programmes of depopulation have been conducted in these Afghan provinces: Ghazni, Nangarhar, Lagham, Qandahar, Zabul, Badakhshan, Lowgar, Paktia, Paktika and Kunar. In addition, the Wakhan Corridor bordering on China has been almost entirely depopulated, and effectively annexed by the Soviet Union. The following methods were used to accomplish this: repeated targeting of villages in certain areas; the commission of atrocities in villages with the predictable flight of the civilian population; the intentional destruction of food supplies, irrigation canals and wells, making it impossible for the population to survive in these villages; and expropriation of property.

Absent an examination of documents of the government of the

Democratic Republic of Afghanistan or of the USSR, one cannot conclusively say whether or not these acts were conducted with specific intent. But, certainly, the most prudent and conservative of lawyers could not ignore the fact that these actions have been persistently committed for eight years, with the result that one-third of the Afghan population has been forced to leave its country and another one-third is in internal exile. These acts and the resultant exodus continue. Pakistani officials in charge of refugee influx reported to us that about 10,000 Afghans continue to cross the border monthly. International refugee officials believe that that figure was probably conservative.

There is substantial evidence to support the allegation that the Democratic Republic and the USSR have been pursuing these strategies. The flight of a substantial part of the more than five million Afghans who have been forced to leave their country since 1979 and the other five million in internal exile appear to be attributable to actions undertaken by the Democratic Republic and the USSR.

Where actions with predictable results are taken over an extended period of time and the consequences of these actions regularly confirm their outcome, one can reasonably infer that those responsible for such actions are committing them with specific intent. *Res ipsa loquitur*, as the law says. The thing speaks for itself.

Attacks on Religion

Even the briefest contact with Afghans reveals the extraordinary importance of religion in their lives. Interviews with Afghans show that even those who are Westernized and quite worldly share this basic view. All the Afghans engaged in the resistance describe themselves as mujahedeen literally "those who are engaged in a religious war." Many spoke dispassionately about the probability of their becoming shahedeen or "martyrs." This

impression is confirmed in scholarly and ethnographic literature about the Afghans. Religion is one of the basic factors which establishes their identity and binds them together. Its role in the life of an Afghan cannot be overestimated.

The war in Afghanistan is, in a substantial part, a result of governmental actions directed against these beliefs, in an effort to supplant them with the materialistic conceptions of Marxism-Lenism. Hence, these religious beliefs are frequently targeted. That fact has increased popular resistance and become a basic feature of the war. A great deal of evidence gathered through interviews with refugees confirms that a standard torture technique is taunting the victims about their religion. Many witnesses, after describing a variety of chilling physical tortures to which they were subjected, testified that the cruelest torture involved slurs on their faith and such taunts as "Where is your God now?" There is also evidence of the targeting of mosques and religious schools and, in one case, the intentional desecration of a mosque.

Given the Afghan value system, such acts could constitute genocide, Article II (b), in that they are acts committed with the intent to destroy a religious group by causing serious mental and physical harm to members of the group.

Forced Removal of Children

Evidence indicates a co-ordinated policy of forcibly transferring children from Afghanistan to the USSR. The objective appears to be a deliberate attempt to deculturate the transferred children from the values of their parents and the group and to forcibly inculcate in them the values of the Soviet Union. According to witnesses, the procedure is as follows: without warning, officials enter a classroom and, with no explanation, choose a certain number of children who must leave with the officials. When the children do not return

home that evening, no explanation is given to the parents. But several days later, the parents are told that their children have been sent to the Soviet Union. Some children who are taken are kept for one to two months, with the idea of inculcating in them favorable attitudes towards Russia. Some are kept for several years. There is testimony that some of the children are trained to be saboteurs and assassins who will target a particular mujahedeen commander. Accounts of this forcible transfer to the Soviet Union have also been reported elsewhere.

Article II(e) defines genocide to include such acts as "forcibly transferring children of the group to another group." The text does not contain specific language as to whether transfers for a period of time in order to change perspectives of identification with the targeted group's values are considered genocide, but such an interpretation is consistent both with the language of Article II and the obvious policy animating the provision. The anguish and despair caused to the parents of these children would certainly appear to constitute "mental harm" within the meaning of the Article II (b). It is not certain, however, from the testimony we received, whether this obvious and foreseeable consequence was sought with the intent to destroy the older generation of the targeted group.

Strategic Attacks on Society

Much evidence indicates that the Democratic Republic of Afghanistan and the Soviet Union are involved in a complex and premeditated attack on a traditional society and its values and that the attack is being pressed at every level of social organization: the village and its agricultural infrastructure, the religion, education and the children; and health and life itself. Article II(c) defines genocide to include acts "deliberately inflicting on the group conditions of life calculated to bring about its physical des-

truction in whole or in part." The cumulative effect of the variety of programmes which have been developed and directed against the civilian society of Afghanistan would appear to fall within the parameters of this provision.

Conclusions

There is considerable evidence that genocide has been committed against the Afghan people by the combined forces of the Democratic Republic of Afghanistan and the Soviet Union. The repetition and pattern indicates that many of the acts described above are part of a plan. These acts are inconsistent with the obligations of the signatories to the Genocide Convention.

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