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STATEMENT BY Prof. Dr. ALFRED de ZAYAS

Expulsion Symposium-Human Rights question

More than four decades ago, as a high school student in Chicago, college student in New York and graduate student at the Harvard Graduate School of Arts and Sciences, I knew absolutely nothing about the expulsion of more than 14 million Germans at the end of World War II, nor of the death, caused directly and indirectly by this maelstrom, of more than two million of them¹.

I first learned about this tragedy – not in history class, but at an international law seminar by the late Professor Richard Baxter at Harvard Law School. I was shocked. Not only by the magnitude of the suffering, but by the fact that my history teachers had somehow skipped this chapter of 20th century history. I had never read anything about it in the press, had never seen any documentary film, nor Hollywood drama based on it. And yet it was undoubtedly a major event in the twentieth century that deserved study and reflection, particularly in universities. Clearly the subject matter provides hundreds of topics for master theses, doctoral dissertations, post-doctoral research projects. Indeed, the phenomenon of forced population transfer² came back to haunt us decades later in the form of “ethnic cleansing” in the former Yugoslavia.

I realized that the expulsion of the Germans had not only economic and demographic consequences, but also ethical, legal, political, cultural, sociological, and psychological implications. When I started looking for literature on the subject, I discovered the long forgotten book *Our Threatened Values* by the British publisher and human rights activist Victor Gollancz. On page 96 of this book Gollancz wrote: “If the conscience of mankind ever again becomes sensitive, these expulsions will be remembered to the undying shame of all who committed or connived at them... The Germans were expelled, not just with an absence of over-nice consideration, but with the very maximum of brutality”³.

I felt that Gollancz’s book should have been compulsory reading in every school. Of course, much more research had to be still conducted on the subject. I hoped that someone would write an interdisciplinary analysis of the expulsions, putting all the events into proper historical, legal and ethical context. What amazed me was that we, the Allies, had fought a war against the Nazis because of Hitler’s unspeakable policies and his inhuman methods. Paradoxically, at the end of the war, we found ourselves enmeshed in policies that completely negated the noble principles of Wilson’s 14 Points, Roosevelt’s Four Freedoms, and the 1941 Allied Agreement known as the Atlantic Charter.

Thanks to a Fulbright Graduate Fellowship to Germany I was able to commence my studies on the subject. I met and interviewed hundreds of expellees from East Prussia, Pomerania, Silesia, East Brandenburg, Bohemia, Moravia, Hungary, Yugoslavia. I worked in the relevant archives in Germany, Switzerland, France, the Netherlands, Great Britain, United States. I interviewed George F. Kennan at Princeton, James Riddleberger in Washington, Sir Geoffrey Harrison (the author of the draft of article 13 of the Potsdam Communiqué on the “transfer” of the Germans) in London, Sir Dennis Allen, and many other participants at the Potsdam Conference. Gradually I thought I understood what had happened and why it had happened. By end 1976 the manuscript of my book “Nemesis at Potsdam” was finished. I chose the title “Nemesis” because of the Greek goddess of revenge. It was clear to me that because the Nazis had committed so many crimes during the war, upon their defeat the entire

¹ Statistisches Bundesamt, *Die deutschen Vertreibungsverluste*, Wiesbaden 1958.

² Alfred de Zayas «Forced Population Transfer» in *Max Planck Encyclopaedia of Public International Law*, Oxford University Press, Online 2010.

³ Victor Gollancz, *Our Threatened Values*, Gollancz, London 1946, p. 96.

German nation was treated as collectively guilty. It was the 14 million Eastern Germans, whose ancestors had settled on the Baltic coast, in Silesia, in Bohemia seven centuries ago, who were made to pay, who were brutally expelled and denied the right to return to and live in their homeland.

General Dwight Eisenhower's political advisor, Ambassador Robert Murphy, was a great American and a man of solid moral values. I had the honour of twice visiting him in New York, and he delivered the preface for my book, observing: "There is no doubt that many of us in the West were indifferent, or actually uninformed and casual about the flight of these millions of Germans. It was advertised that the transfers should be made under 'humane' conditions. There were no controls or authoritative supervision, so that the individual refugee had no recourse or protection. It is true that the United States State Department voiced proper regard for the humanities, but its voice was not vigorous or even heard in Eastern Europe at the time of the expulsion. Few Americans dreamt of a brutal expulsion affecting perhaps 16 million persons."⁴

I was unable to interview General Eisenhower, who had already passed away in 1969, when I was still a young student at Harvard and knew nothing about the expulsion. But at the National Archives in Washington D.C. I discovered a revealing telegram by Eisenhower to the State Department, dated 18 October 1945: "In Silesia, Polish administration and methods are causing a mass exodus westward of German inhabitants. ... Many unable to move are placed in camps on meagre rations and under poor sanitary conditions. Death and disease rate in camps extremely high... Methods used by Poles definitely do not conform to Potsdam agreement. Breslau death rate increased tenfold and death rate reported to be 75% of all births. Typhoid, typhus, dysentery and diphtheria are spreading... serious danger of epidemic of such great proportion as to menace all Europe, including our troops, and probably of mass starvation on an unprecedented scale."⁵

In this context it is important to recall that the forced population transfers that the Nazis carried out during the Second World War were considered war crimes and crimes against humanity, as reflected in articles 6b and 6c of the Nuremberg Indictment, and as confirmed in the judgment of 1946. Applying the same criteria, the expulsion of the Eastern Germans similarly constituted war crimes and crimes against humanity.

Could the expulsion also qualify as genocide? Article II of the 1948 Genocide Convention stipulates: 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 ... "

Surely the expulsion of the Germans entailed the killing of hundreds of thousands of human beings, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part. The question that arises is that of "intent". Several professors of international law, among them Professors Felix Ermacora, Dietrich Blumenwitz, Gilbert Gornig and myself, are convinced that aspects of the expulsion of the Germans fall under article II of the Genocide Convention, and that the genocidal "intent" is provable. The orders and speeches of Polish and Czechoslovak political and military leaders in 1945 attest to this intent.

It is also important to recall that the United Nations General Assembly in its resolution 47/121 described the policy of ethnic cleansing in Yugoslavia as constituting "a form of genocide". Bearing in mind that the expulsion of the Germans was much wider in scope and claimed many more lives than the Yugoslav ethnic cleansing, it becomes evident that at

⁴ Alfred de Zayas, *Nemesis at Potsdam*, Routledge, London 1977, p. xv (6th revised edition, Picton Press, Rockland Maine 2003).

⁵ Alfred de Zayas, *A Terrible Revenge*, Palgrave/Macmillan, New York 2006, p. 115.

least certain aspects of the expulsion of the Germans can be referred to as genocide. Moreover, the International Criminal Tribunal for the former Yugoslavia and the International Court of Justice have both held that the Bosnian-Serb massacre perpetrated in Srebrenica against Bosnian-Muslims constituted genocide. Applying the same criteria, it would seem that many of the massacres of ethnic Germans – in Nemmersdorf, Metgethen, Marienburg, Brünn, Aussig, Postelberg, Rann, as well as the mass deaths in concentration camps such as Lamsdorff, Swientochlowice, Gakowo, and Rudolfsgnad would qualify as manifestations of genocide. We should also not forget the fate of more than a million and a half ethnic Germans who were deported to slave labour in the Soviet Union, some 30% of whom perished of exhaustion, disease and malnutrition. They were deported pursuant to the Allied agreement of 11 February 1945 at the Yalta Conference, where Churchill, Roosevelt and Stalin agreed to use German labour as a form of “reparations in kind”.⁶

In addressing all of these tragedies, schools and universities should endeavour to analyze the commonalities of these crimes against humanity. In so doing, all should endeavour to identify common denominators so as to try to understand the root causes of the inhuman behaviour: a fundamental absence of belief in the equal dignity of all human beings. In other words, the ethnic cleansing carried out by the Nazis, by the Poles, by the Yugoslavs all reveal racism and religious hatred, based on generalizations, stereotypes and theories of collective guilt. All these savage policies deny the dignity and the individuality of the human person. Victims were victimized not because of their conduct but because of their status: The Jews were murdered because they were Jews; the Germans were murdered because they were Germans; the Bosnian-Muslims were murdered because they were Bosnian-Muslims.

The first United Nations High Commissioner for Human Rights, Dr. Jose Ayala Lasso, was one of the first public figures to give the German expellees recognition as victims of gross violations of human rights. Already on 28 May 1995 he addressed the following statement to the German expellees assembled at the Paulskirche in Frankfurt am Main:

“I submit that if in the years following the Second World War the States had reflected more on the implications of the enforced flight and the expulsion of the Germans, today's demographic catastrophes, particularly those referred to as ‘ethnic cleansing’, would, perhaps, not have occurred to the same extent. In this context I should like to refer to the Charter of the German Expellees. It is good that men and women who have suffered injustice are prepared to break the vicious circle of revenge and reprisals and devote themselves in peaceful ways to seek the recognition of the right to the homeland and work toward reconstruction and integration in Europe. One day this peaceful approach will receive the recognition it deserves.

“There is no doubt that during the Nazi occupation the people of Central and Eastern Europe suffered enormous injustices that cannot be forgotten. Accordingly they had a legitimate claim for reparation. However, legitimate claims ought not to be enforced through collective punishment on the basis of general discrimination and without a determination of personal guilt. In the Nuremberg and Tokyo trials the crucial principle of personal responsibility for crimes was wisely applied. It is worthwhile to reread the Nuremberg protocols and judgment.”⁷

Again on 6 August 2005 the retired High Commissioner addressed the Expellees in Berlin, in the presence of Chancellor Angela Merkel, and said:

“I believe that the example of the German expellees is particularly telling. While we acknowledge the magnitude of the expulsion and the sorrow over the loss of provinces that had been the homeland of Immanuel Kant, Arthur Schopenhauer, Johann Gottfried Herder, Joseph

⁶ Ibid., p. 85.

⁷ Ibid, p. 151.

von Eichendorff, and others, we must also recognize the considerable sacrifice made by the expellees in choosing the path of peaceful integration. We cannot but admire the moral fiber of these people, the wisdom of their leaders, who renounced any and all forms of violence, who decided to build a new homeland in the West, without, however, abandoning their love for their origins, for the landscapes where they grew up, the churches and temples where they worshiped, the cemeteries where their ancestors are buried.”⁸

It is in this human rights perspective that schools and universities should inform and teach about the expulsion of the Germans. What is needed is a new human rights paradigm that recognizes that all victims of violence and injustice have a right to our compassion -- and to our time. We must reject the concept of politically correct victims, and those unfortunate non-consensus or unpopular victims whose suffering can be safely ignored.

All victims have a right to truth, rehabilitation, reparation and reconciliation, equally, without any discrimination -- because all victims share the same *dignitas humana*. Let us therefore hear the German victims too – there are many German expellees who migrated to the United States and have become American citizens. High Schools and colleges should welcome them to their classes. There is much to learn from the “unsung victims”.

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⁸ Ibid., p. 153.