

The Impact on the Hongaya Manyawa of the Weda Bay Nickel Project, Indonesia and the Explicit Threat of Genocide

Statement by Dr Mark Levene, 16th March, 2024

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BASF: To whom it may concern.

In the last thirty or more post-Cold War years, markedly in parallel with growing awareness of the climate emergency, awareness of the vulnerability of indigenous peoples to large-scale development projects has grown apace within academic scholarship, NGOS and UN organisations and fora. Within this awareness there has also been an emerging consensus that development projects' infringement on the environmental space in and through which indigenous peoples are communally and collectively able to maintain life and wellbeing are likely to act as catalysts to these groups complete destruction. This growing consensus includes the view that the effects of such projects can themselves be construed as genocide.

Agreed, the 1948 United Nations Convention on Genocide : UNGC (of which Germany is a signatory, Indonesia not), specifically defines genocide in international law as an act committed with intent to destroy 'a national, ethnic, racial or religious group.'¹ And it is unsurprisingly the use of the word 'intent' that has been repeatedly utilised as a get-out clause by government and corporate lawyers as an argument on behalf of their respective clients in such developmentalist instances that, as no harm was intended, no charge of genocide can be justified.

Such reasoning is in error.

To be sure, I am an historian of the causation, patterns and spatial and temporal range of genocide: not an international legal expert. Consequently, I cannot argue the minutiae of the juridical semantics. However, I can say with some clarity that the interpretation of UNGC over the last seventy-five years, as it has become both more robust and more elastic, has made the charge of genocide in cases of state-corporate infringement on the lands of indigenous peoples, entirely more plausible.

Firstly, it is well to remember the words of the international jurist, Raphael Lemkin, who both coined the term and was the main promoter and instigator of the Genocide Convention. Lemkin, in his original 1944 scoping of what genocide entails, avoided use of the word 'intent' speaking instead of a 'coordinated plan of different actions aiming at the destruction of the essential foundations of the life of national groups with the aim of annihilating the groups themselves.' However, he went on to note these actions did not necessarily have to entail 'immediate destruction' but would nevertheless constitute genocide where they were part of an overall plan to cause 'the disintegration of the political and social institutions of the group,' including the 'destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.' (my emphasis).²

Secondly, this firmly and unequivocally carries through into Article II c) of the 1948 Convention, where genocide is understood to include acts "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" (my emphasis).³

Consequently, a deliberate programme by the French mining company, Eramet, to expand the operation of the already huge and environmentally damaging Weda Bay Nickel Mine on the island of Halmahera within the rainforest in which indigenous peoples live, may not be equivalent to a deliberate intention to exterminate the Hongana Manyawa, who otherwise depend on the forest for their physical, cultural and entire emotional sustenance. Eramet may indeed claim that they are acting with due diligence in relation to 'human rights', the respect 'of the culture and traditions of local communities' as well as 'environmental protection.'⁴ However, if, at the same time, the company knows that its deliberate effort to develop and expand its Weda Bay operation will ineluctably produce conditions which will lead to an exterminatory outcome of indigenous inhabitants then they are culpable of, at the very least, anticipating that outcome. This argument has been pursued, for instance, by the British political scientist, Eric Herring in relation to an estimated half a million excess deaths, primarily children, largely as a consequence of the US and British embargo on equipment to maintain Iraqi water purification plants in the 1990s, itself part of a broader anti-Iraq sanctions policy which denied vaccines and basic humanitarian aid to the country in that period. Herring argued as follows: 'Those policymakers who backed the sanctions cannot say they did not know what was going to happen. Whatever the political purpose, it was a conscious and callous choice to deny an entire society the means necessary to survive.'⁵

Herring importantly thereby shifted the argument from a deliberate intent to kill, to anticipation of what the exterminatory outcome of certain deliberate actions would be, regardless. And this is actually reflected in ongoing legal thinking on how culpability in terms of committing genocide should be understood. For instance, in 1985, a report prepared by the then UN rapporteur on genocide, Benjamin Whitaker, proposed revisions and updates on 'the Question of the Prevention and Punishment of the Crime of Genocide'. Whitaker recommended modification of Article I of the Convention to include 'acts of advertent omission which may be as culpable as an act of commission.'⁶ More recently, still, the common law concept of 'oblique intent' which argues that not 'conscious objective' per se but rather 'conduct' of the protagonist is the fundamental issue at stake, has entered into the legal terminology of the International Criminal Court (ICC) as Article 30 of the Rome Statute. This states:

'For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.'⁷

In other words, if anticipated that such-and-such act, for instance, developing and expanding a nickel mine will destroy the livelihood, lives and wellbeing of the people who ancestrally have lived there and in its vicinity, there can be no mitigating plea of innocence when the protagonists know in advance what the outcome will be.

By the same token, BASF will know only too well from the legacy of its corporate relationship to I.G. Farben, that being a company which knowingly provided key services, not least in the form of the lethal chemical agent Zyklon B, to the Nazi regime for its use in its extermination camps, equally embraces it within the universe of culpability for the outcome of mass murder and genocide which that regime perpetrated.

In this instance, if BASF joins with Eramet, in the development of the Sonic Bay Project, its responsibility will not be at one remove from a genocidal outcome but a matter of direct and knowing responsibility.

Nor is this statement about genocide and genocidal outcomes a matter of rhetoric or conjecture. Best historical and contemporary evidence as to what happens to otherwise isolated indigenous tribal

groups when they are exposed to even limited state, settler and/or corporate development repeatedly and unequivocally, over time and place, confirms worst case scenarios.⁸

Thus, this is not simply a case of the behaviour of individual or rogue actors on the ground acting arguably against the grain of precautionary principles set by state or corporate project developers. Or the entirely more devastating impact of physical contact between incoming workers and indigenes leading to the transfer of alien pathogens to the latter entailing a consequent epidemiological collapse. The key ingredient for disaster rather lies in the state, developers, or settlers agendas in the first place for the utilisation of a region, most obviously in terms of standard, monetary cost-benefit analysis, or, put otherwise, without reference to the environmental carrying-capacity of the region, or the wider cultural-cum-spiritual relationship of indigenous people to that environment. It is these imperatives alone which provide the death sentence, creating the inevitable and ineluctable trajectory towards the physical and psychic collapse of the indigenes, and thus their individual and collective obliteration.⁹

Furthermore, there is no single instance this historian of genocide can think of where the outcome of modern, corporate-driven developmentalist programmes on the territories of previously uncontacted indigenous peoples has not lead to their group destruction. The notion that such an outcome in this particular instance can be obviated by alleged precautionary measures to 'protect' the Hongana Manyawa, or somehow assimilate them into 'settled' Indonesian society is equally misguided, or worse, disingenuous, as it is in turn based on false, sophist, or confabulated arguments providing both pretext and alibi for what is otherwise rapacious intent.

BASF, through its own historical legacy, knows that it will forever be linked with the Holocaust and hence with the knowledge that it has, on its hands, the blood of a million innocents.¹⁰ If it is now sincere and serious in its own determination not to go there again; indeed, if it genuinely is an adherent to the post-Holocaust cry of 'never again', and thus to an eschewal of projects and partnerships which may lead to genocide, it cannot afford, for its own public reputation and image, let alone peace of mind, to be in any shape or form linked to, or associated, or aligned with, the Weda Bay Nickel project.

Dr Mark Levene, 16 March 2024

Endnotes

1. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf
2. Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington D.C :Carnegie Endowment for International Peace1944), p.79.
3. as 1. above.
4. Eramet, Human Rights, Report, December 2023. <https://www.eramet.com/wp-content/uploads/2023/12/2023-12-Eramet-Human-Rights-report.pdf>
5. Eric Herring, 'Between Iraq and a Hard Place: A Critique of the British Government's Case for UN Economic Sanctions,' *Review of International Studies*, 28:1 (2002), 40-1.
6. Quoted in Frank Chalk, 'Redefining Genocide,' in George Andreopoulos,ed., *Genocide: Conceptual and Historical Dimensions* (Philadelphia : University of Pennsylvania Press, 1994), 59,
7. Rome Statute of the International Criminal Court, 1998, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>
8. See Survival International, *The Onge*, <https://www.survivalinternational.org/tribes/onge>; *The Great Andamanese*, <https://www.survivalinternational.org/tribes/great-andamanese>
9. See Alan Moorhead, *The Fatal Impact: An Account of the Invasion of the South Pacific, 1767-1840* (London: Penguin, 1968); Rebe Taylor, 'Genocide in Van Diemens Land (Tasmania) 1803-1871,' in Ned Blackhawk, Ben Kiernan, Benjamin Madley and Rebe Taylor, eds., *Genocide: Volume II: Genocide in the Indigenous, Early Modern and Imperial Worlds from c.1535 to World War One* (Cambridge and New York: Cambridge University Press, 2023), 481-507; Alfred W.Crosby, *Ecological Imperialism; The Biological Expansion of Europe* (Cambridge and New York: Cambridge University Press 1986); John H. Bodley, *Victims of Progress*, 6th ed. (London:Rowman and Littlefield, 2015) for further , wide-ranging examples.
10. BASF, *Remember, Reflect, Rethink*, 2021, <https://www.basf.com/global/en/who-we-are/organization/locations/europe/german-sites/ludwigshafen/the-site/remembrance.html>