

Around the world, **Crimes Against Humanity** are taking place on an immense and ever-growing scale – and fugitives are finding safe haven in the United States.

The United States is virtually **alone** among its allies and in the international community in failing to prohibit and deter Crimes Against Humanity.

### What are Crimes against Humanity?

- **Crimes Against Humanity are defined as crimes committed as part of a widespread or systematic attack directed against a civilian population.** Crimes Against Humanity were prosecuted during post-WWII tribunals such as military tribunals at Nuremberg and Tokyo and have been prosecuted by the international criminal tribunals for the former Yugoslavia, Rwanda, Sierra Leone and Cambodia, all of which the United States actively helped in creating and resourcing over the last 23 years.

### Interests of the United States

- The United States has become a safe haven for human rights abusers from around the world. The Department of Homeland Security is currently pursuing more than 1,800 leads involving human rights violators from 97 different nations. These are just the known leads. The actual number may be much higher. These fugitives come here, hiding among legitimate refugees, because they do not fear being prosecuted for their crimes. This is a **large** loophole in U.S. Law and bears grave consequences.
- No federal law prohibits Crimes Against Humanity. As a result, the Justice Department lacks power to prosecute these offenses, even if the perpetrators are fugitives on U.S. soil or are captured by U.S. forces in the field.
- A recent news release by ICE and the FBI (July 9, 2015) states: “Over the last four years, ICE’s Human Rights Violators and War Crimes Center has issued more than 67,000 lookouts for individuals from more than 111 countries and stopped 161 human rights violators or war crime suspects from entering the United States.” This shows how serious this problem is and can become in the age of ISIS and Boko Haram.
- A **Crimes Against Humanity** law would give US authorities the power to prosecute foreign perpetrators who end up in the United States, or extradite them more speedily to jurisdictions that would. Existing federal law only punishes isolated crimes (such as murder) that are disproportionate penalties for mass atrocity crimes, and terrorism laws are too narrow. Most of our major allies have incorporated Crimes Against Humanity laws of this nature into their national criminal codes. **This gap in federal law** undermines US ability not only to punish, but also condemn Crimes Against Humanity being committed elsewhere, such as ISIS, Boko Haram, Syria, North Korea, to name a few.
- For purposes of national security and protection of basic human rights, the United States must not be a sanctuary for alien perpetrators of Crimes Against Humanity who might reach our shores to avoid prosecution elsewhere. Our penal code only permits the prosecution of two of the three core atrocity crimes (**Genocide and war crimes being the other two**) as well as other international crimes that are arguably of lesser gravity (such as the **recruitment or use of child soldiers or individual acts of terrorism**)

### The power of this Act

- **The Act Would Enable the United States to Prosecute All Atrocity Crimes and Deny Safe Haven to Human Rights Violators.**

It would make it a federal offense to commit, at home or abroad, murder, rape, enslavement, human trafficking, and ethnic cleansing as part of a widespread or systematic attack directed against any civilian population. Some examples are:

1. The torture statute, 18 U.S.C. § 2340A, does not apply to non-state actors like Joseph Kony's Lord's Resistance Army in Uganda or Nigeria's Boko Haram. A Crimes Against Humanity statute would include the use of rape as a weapon of war and other crimes of sexual violence.
2. The war crimes statute, 18 U.S.C. § 2441, only applies when the perpetrator or the victim is a U.S. national. As a result, our penal code effectively includes a safe harbor for many foreign war criminals. They can terrorize civilians and POWs overseas, then travel to the United States without fear of these criminal charges.
3. The genocide statute, 18 U.S.C. § 1091, is reserved for the rare cases where the defendant has the specific intent to destroy a protected group. For this reason, most mass atrocities have been charged as Crimes Against Humanity in international tribunals from Nuremberg, to Yugoslavia and Rwanda, to the Khmer Rouge Tribunal.

- **Federal courts have long recognized that Crimes Against Humanity are well-defined under international law and within Congress's constitutional authority.**

Under Article I, Section 8, Clause 10 of the Constitution, Congress has the power to "define and punish . . . Offences against the Law of Nations." For decades, federal courts have held that Crimes Against Humanity are a core part of the "Law of Nations" (i.e. international law) and, as part of the Nuremberg legacy, are actionable in civil suits.

The Act would preserve diplomatic immunity and minimize interference with foreign relations. CAH Act includes important procedural safeguards to protect against abuse and mitigate foreign policy impacts.

- **The Act would give the U.S. policy options to reinforce the fight against terrorism.**

The Act would also give prosecutors another tool in the fight against terrorism. Current terrorism statutes often require a U.S. victim or a connection to U.S. territory or national interests. For example, while the U.S. government could prosecute members of ISIS under terrorism statutes for executing American hostages, current law would not permit charging ISIS members for using rape as a weapon of war against religious minorities in Iraq and Syria.

In 2014, had it not been for the International Criminal Court, there would be no forum to hold Joseph Kony's right-hand man – Dominik Ongwen – accountability for atrocity crimes after his capture by U.S. forces. The United States could not prosecute him for Crimes Against Humanity because we lacked the statutory authorities to do so. The only choice was to hand him over to Uganda – despite its amnesty law – with a promise to hand him over to the International Criminal Court. In the future, if this were to happen, a Crimes Against Humanity law would prevent the aforementioned result. The United States should not have to depend on the ICC to bring warlords to justice. Our country needs to have the policy option of prosecuting Crimes Against Humanity ourselves – just as American prosecutors led the trial of Nazi war criminals after World War II.

**Case Studies: How A Crimes Against Humanity Bill Would Have Enabled The U.S. to Hold Accountable War Criminals Captured in the Field or Living In The U.S.**

- **The U.S. Could Not Prosecute the Most Senior ISIS Leader in U.S. Custody for the Sexual Enslavement of Religious Minorities.** In May 2015, a U.S. Delta Force raid captured Umm Sayyaf, an ISIS member responsible for the mass sexual enslavement of Yazidi religious minorities and complicit in the abduction and rape of U.S. aid worker Kayla Mueller, who later died in ISIS custody. Lacking the legal authority to charge Sayyaf for mass atrocity crimes, the U.S. only charged Sayyaf with material support of terrorism in connection to Kayla Mueller. A crimes against humanity bill would have allowed the U.S. to charge Sayyaf with enslavement and religious persecution, in addition to terrorism, and hold her to account for the hundreds of lives she victimized.
- **Assassin of Salvadoran Archbishop Oscar Romero Hid for 20 Years in the U.S.; Found Civilly Liable for Crimes Against Humanity, but Never Prosecuted.** In 1980, Salvadoran Army captain Alvaro Saravia was one of the key planners of the assassination of Monsignor Oscar Romero. Saravia fled to the United States in the 1980s and was discovered working as a used car salesman in California. In 2004, a federal court found Saravia civilly liable for crimes against humanity, but Saravia fled into hiding. During his 20 years in the U.S., Saravia was never criminally prosecuted for crimes against humanity: the charge did not exist in U.S. law and is still missing from Title 18.
- **Bosnian Living in MA, Who Murdered 7-8,000 Muslims, Convicted of Immigration Fraud, Not War Crimes.** In 1995, Marko Boskic was a soldier in Bosnia, where he participated in the execution of 7,000 – 8,000 unarmed Muslim men and boys at Srebrenica. In 2004, the United States learned that he was living in Massachusetts. Rather than standing trial for crimes against humanity, he was only charged with visa fraud. In 2010, he was sentenced to 10 years: the maximum available. The prosecutor's hands were tied. He couldn't be charged with war crimes because our war crimes statute does not apply to foreigners who murder foreign civilians overseas. Homeland Security reports that it has identified an additional 300 suspected Bosnian war criminals living in the United States, but the U.S. lacks the criminal laws to prosecute them and there is at least a 10 year backlog to prosecute them in the Bosnian War Crimes Chamber.
- **Salvadoran Living in MA, Who Perpetrated Jesuits Massacre in El Salvador, Cannot be Tried For War Crimes.** One of the architects of the 1989 Jesuits Massacre in El Salvador found safe haven as well. In 1989, Colonel Inocente Orlando Montano helped plan the execution-style shooting of 6 Jesuit priests, their housekeeper, and her daughter by security forces. In 2013, Montano was eventually convicted in federal court – not for murdering priests and unarmed civilians, but for lying in his immigration application. Spain has now requested that the United States extradite Montano to stand charges for terrorism and crimes against humanity – charges he could not face in the United States because of gaps in our penal code.



## **Former Salvadoran defense minister, tied to killings of Oscar Romero and churchwomen, deported back to El Salvador**

Linda Cooper James Hodge | Jan. 13, 2016

For 25 years, Florida provided Gen. Jose Guillermo Garcia safe haven from the brutal violence in his native El Salvador, where as defense minister he played a key role in the murders of Archbishop Oscar Romero, four U.S. churchwomen and 1,000 defenseless peasants of the village of El Mozote.

But then the United States, the country that gave him refuge, switched gears and declared that he should be deported. And on Jan. 8, U.S. immigration officers, acting on court rulings that Garcia had participated in torture and extrajudicial killings, stuck him on a plane with 130 other Salvadorans being forcibly expelled.

The plane landed in mid-afternoon at San Salvador's international airport, which was renamed in Garcia's absence in honor of his most famous victim, Archbishop Oscar Arnulfo Romero.

Waiting for Garcia were television reporters and cameras and a small crowd confronting him with the ghosts from his past, many carrying signs calling him "assassin" and "torturer."

Among the crowd were Mirna Perla and Dr. Juan Romagoza.

Perla is a former Salvadoran Supreme Court magistrate, whose husband Herbert Anaya was assassinated in front of their young daughter. Anaya served on the Non-Governmental Human Rights Commission, one of two popular organizations that Romero had fostered, the other being the Mothers of the Disappeared. Perla, herself, was tortured with electric shocks when she was pregnant.

Romagoza, a surgeon, was so savagely tortured in 1980 when Garcia was defense minister that he could never again perform surgery. When he was released from prison, he weighed less than 80 pounds and had to be physically carried out by his uncle.

Romagoza was "beaten, shocked with electrical probes all over his body, sexually assaulted with a stick and hung from the ceiling for several days," according to a U.S. immigration court's summary of his testimony in the Garcia deportation case.

---

Related: [US upholds deportation order for former Salvadoran defense minister linked to slayings of Romero, churchwomen](#) [1]

---

His testimony in that case and before the U.S. Congress was a key reason Garcia was aboard the plane chartered by the U.S. Immigration and Customs Enforcement.

Romagoza told *NCR* that to witness the man who was once the most powerful person in the country and

responsible for so much suffering being forcibly returned to El Salvador was "a unique therapeutic moment."

It was a special moment, he said, to be standing with other "victims of the war and relatives of the disappeared and shouting with them and longing for justice in our own country."

Garcia's face, he said, was "the face of genocide," but it "changed from arrogance to fear upon seeing the victims waiting for him and hearing them shouting: 'Murderer, the people are waiting for you.' "

The family of Maryknoll Sr. Ita Ford, one of the four U.S. churchwomen raped and murdered on Dec. 2, 1980, "is enormously gratified" to see Garcia finally deported, said Mary Anne Ford. Her late husband Bill Ford, Ita's brother, had taken Garcia and another Salvadoran Defense Minister, Gen. Carlos Eugenio Vides Casanova, to court in 2000, arguing that the generals bore command responsibility for the women's murders.

Garcia was defense minister and Vides Casanova was the head of the National Guard whose members were arrested for the executions of Maryknoll Srs. Ford and Maura Clarke\*, Ursuline Sr. Dorothy Kazel and lay missionary Jean Donovan.

"My only regret is that Bill is not here to see it," Ford said. When a federal jury cleared the generals, she said, her husband never gave up hope that justice would be done, saying, "We're down for the day but not out."

He did live to see the San Francisco-based Center for Justice and Accountability successfully sue the generals in 2002 on behalf of Romagoza and two other torture victims, incorporating the argument of command responsibility. But when he died in 2008, the two generals were still "living the life of Riley in Florida," she said.

Her husband was "stupefied" upon first learning that "these absolute villains" responsible for his sister's murder "were living here in the lap of luxury."

Garcia entered the U.S. after claiming he and his family were being threatened. The Bush administration granted him political asylum in 1989, at the same time it was deporting hundreds of poor Salvadorans to an uncertain fate.

That same year, Vides Casanova was admitted despite the fact that the State Department had documents showing he was likely "aware of, and for a time acquiesced in, the cover-up" of the murders of the four U.S. churchwomen.

According to former U.S. Ambassador to El Salvador Robert White, Vides Casanova's record disqualified him for a U.S. visa, but the Bush administration got around immigration policies under a law dating back to World War II where "the CIA can settle one hundred collaborators a year in the United States, no questions asked."

"Here and there, there were some congressmen and senators," she said, who were there for the families, but by and large it was not the government, but individuals, "too many to mention, who accompanied the families of the churchwomen in those dark years and who continue the work of justice."

"The only question now," she said, "is whether the amnesty law will be overturned," referring to the 1993 Salvadoran law that has shielded war criminals from prosecution.

Both Garcia and Vides Casanova face an uncertain future, now that U.S. courts have highlighted their war crimes.

Vides Casanova was deported last spring after the U.S. Board of Immigration Appeals found he had covered up torture and murder by his troops, including those of the four churchwomen.

The same court upheld findings that Garcia had protected death squads and "assisted or otherwise participated in" 14 assassinations, six massacres, and the torture of countless civilians including Romagoza.

The court also found that Garcia failed to investigate the murders of Romero and the churchwomen, or the 1980 Rio Sumpul massacre of about 600 civilians and the 1981 El Mozote massacre in which the army systematically executed 1,000 villagers, including more than 250 children -- a crime Garcia not only refused to investigate, but denied ever happened, calling it a fabrication by Farabundo Martí National Liberation Front (FMLN) guerrillas for propaganda purposes. In fact, it was the worst massacre of civilians in contemporary Latin American history.

The Constitutional Chamber of the Salvadoran Supreme Court has taken under advisement a suit challenging the amnesty law, filed by the Central American University's Human Rights Institute in the wake of the 1989 Jesuit massacre, in which an elite U.S.-trained Salvadoran military unit killed six Jesuit priests, their housekeeper and her teenaged daughter.

The amnesty law was pushed through the legislature by the rightwing Nationalist Republican Alliance (ARENA) in 1993 -- just 5 days after the U.N. Truth Commission announced that the Salvadoran military and its death squads had committed 85 percent of the war's worst atrocities.

Pressure has been mounting for the Supreme Court to act ever since an FMLN\* candidate defeated ARENA's candidate in the last presidential election.

And the deportations of Garcia and Vides Casanova "is changing the landscape," said Patty Blum, the legal advisor for the Center for Justice and Accountability who represented Romagoza.

"These are the two top guys," she said, and implicated in the most shocking cases. "And now that they're back in El Salvador, everything that's happened and everything that people are trying to make happen is reopening."

She pointed to Romagoza as one of those not only seeking justice but making a real difference. "He fled to the United States, opened up an incredible healthcare clinic in Washington D.C., which is now a major service delivery clinic for the Latino community, and testified in several court cases involving Garcia and Vides Casanova."

Several years ago he returned to El Salvador, set up a small clinic and after the FMLN came into power, was appointed to the public health ministry and opened scores of new clinics.

Although unable to perform surgery, Romagoza is working with his fellow countrymen to excise the legal impediments to bringing the likes of Garcia and Vides Casanova to justice, so the country can heal from the brutal violence that claimed more than 75,000 lives.

*\*An earlier version of this story misspelled Clarke's last name and included an incorrect acronym.*

[Linda Cooper and James Hodge are the authors of [Disturbing the Peace: The Story of Father Roy Bourgeois and the Movement to Close the School of the Americas](#) [2].]

---

**Source URL (retrieved on 02/19/2016 - 10:11):** <http://ncronline.org/news/peace-justice/former-salvadoran-defense-minister-tied-killings-oscar-romero-and-churchwomen>

**Links:**

[1] <http://ncronline.org/node/115916>

[2] <http://www.amazon.com/Disturbing-Peace-Bourgeois-Movement-Americas/dp/1570754349>





December 23, 2015, 12:00 pm

## Shield America from crimes against humanity

By David Scheffer

Heinous terrorist attacks can be viewed, as President Obama described the Paris attacks, as "an attack on all of humanity and the universal values that we share." Those words also aptly describe the mega horror known as "crimes against humanity," which can include terrorist attacks. Oddly, the United States remains dangerously exposed to the masterminds of crimes against humanity, which are large-scale assaults on civilian populations, because unlike terrorism this category of international crimes is surprisingly absent from the federal criminal code.

Crimes against humanity have plagued humankind throughout history but evolved in law steadily over the last hundred years to become one of the dominant atrocity crimes of our time. The Nuremberg Military Tribunal after World War II defined the cluster of crimes against humanity that Nazi leaders were prosecuted for and those trials gave impetus to codifying perhaps the worst manifestation of such crimes, genocide, a few years later in the Genocide Convention.

In short, a crime against humanity is a widespread or systematic assault on a civilian population that unleashes such horrors as national, political, ethnic, racial, or religious cleansing as experienced in the Balkans 20 years ago and in Darfur and Syria today. Such crimes also include mass rape, enslavement, extermination, and enforced disappearances.

The United States remains a sanctuary for war criminals drawn from the so-called Islamic State or ISIS, Boko Haram, and repressive governments intent on decimating their civilian opponents with crimes against humanity. There are no clear-cut ways to prosecute such individuals if they land on American territory because their crimes occurred overseas and are neither explicitly defined in federal law nor articulated on immigration forms that require truthful statements. Counterterrorism statutes help, but not enough.

No one should be surprised if in the future veterans of ISIS operations conducted anywhere else in the world slip by U.S. immigration with ease and live happily in Florida immune from any prosecution for crimes against humanity or even deportation because the immigration forms they signed bizarrely omit any question about having committed crimes against humanity. Though a war criminal likely would deny having participated in ethnic cleansing in a distant land even if asked by immigration authorities, he should be open to fraud charges if his real identity is later revealed.

Prosecutors are stymied from bringing those who commit crimes against humanity to justice because the law remains so vague and ignores aliens who commit such crimes overseas and then reside in the United States.

This absurd situation need not exist. Most of America's staunchest allies in the fight against international terrorism and ISIS have incorporated crimes against humanity into their domestic criminal law.

If anyone with the blood of crimes against humanity on his or her hands decides to enjoy the privilege of residing in the United States, that individual must be targeted for investigation and prosecution in a federal court or deportation to a country that will prosecute the crime. American security and international justice demand no less as crimes against humanity proliferate on several continents.

Congress joined ranks in recent years on other atrocity crimes to signal to the world that the United States is no sanctuary for war criminals. The crimes of genocide, torture, human trafficking, and recruitment or use of child soldiers are "no-sanctuary" laws that send a strong message: "Don't even think of entering the United States."

To exclude crimes against humanity in the face of an ever-expanding reach of ISIS violence and the stealth recruitment of thousands of Syrians, Europeans, and even American citizens into ISIS ranks would be the height of folly. Some of them doubtless will seek to enter the United States, either to further commit crimes against humanity or to seek refuge from the reach of other national or international courts. That door must be slammed shut.

I chair an American Bar Association working group to facilitate consideration of appropriate bi-partisan legislation. I have found a shared logic on Capitol Hill that the United States must not be a sanctuary for perpetrators of crimes against humanity. National security interests and our shared commitment to the rule of law demand no less.

Federal law must be modernized to enable law enforcement authorities to more easily extradite the architects of crimes against humanity to foreign courts or, failing that, the option to bring them to justice in federal courts and thus deter such despicable individuals from achieving sanctuary in America.

*Scheffer is a law professor at Northwestern Pritzker School of Law and former U.S. Ambassador at Large for War Crimes Issues (1997-2001).*

