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David Stoll

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EXCHANGE



Efraín Ríos Montt Should Have Been Prosecuted for Command Responsibility for War Crimes, not Genocide: Response to Marc Drouin

David Stoll

Anthropology Department, Middlebury College, Middlebury, USA

Recently I read your 2016 special issue on the 2013 genocide case against former Guatemalan dictator Efraín Ríos Montt. In one of the articles, Marc Drouin makes the following false statement: “Stoll does not believe Ríos Montt can be held accountable for the atrocities committed against non-combatants.”¹ In the Guatemalan magazine that Drouin cites, here is what I wrote, in an English translation that Drouin also cites:

Given the gravity of what occurred, and the longstanding immunity of Guatemalan army officers, making Ríos Montt accountable in a court of law was quite an accomplishment. His confidence in his own righteousness, which has always impressed some Guatemalans but outraged others, makes it seem appropriate to hold him responsible for what happened. But is he really guilty of genocide?

Legally speaking, genocide is famously difficult to prove because it requires the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” The three judges found this intent, and Ríos Montt’s responsibility for it, in their interpretation of declassified army planning documents. Unfortunately, the so-called “Plan Victoria 82” and “Operación Sofía” do not include directives to exterminate a population or even kill noncombatants. All they do is identify the civilian population as a military objective, which is hardly surprising given the [Guerrilla Army of the Poor’s] announcements that the Ixil people had become its logistical base.

During Ríos Montt’s seventeen months in the national palace, he denied all the evidence that his troops were committing massacres. He also claimed to be in full control of the army – a claim that he was obliged to make because his authority was so tenuous. The army’s code of institutional solidarity and a single chain of command has often been belied by deep factionalism. Local commanders tend to become autonomous, not all agreed with Ríos Montt’s amnesty, and some may have committed massacres in order to undermine it. Given the euphemisms that the Guatemalan army has always used to refer to massacres, I will be surprised if orders to kill non-combatants ever surface.

So if no one has proven that Ríos Montt ordered massacres, does this leave him off the hook legally? Not necessarily. The doctrine of command responsibility dates back centuries. It was used against Nazi and Imperial Japanese commanders after World War II. Commanders become legally responsible for systematic abuses by their troops if they do not try to stop the abuses. As president in 1982-83, not as army chief of staff or a theater commander,

CONTACT David Stoll ✉ dstoll@middlebury.edu 📍 Anthropology Department, Middlebury College, Middlebury, VT 05753, USA

¹ Marc Drouin, “The Realities of Power”: David Stoll and the Story of the 1982 Guatemalan genocide,” *Journal of Genocide Research* 18, nos. 2–3 (2016): 316.

Ríos Montt may be shielded from command responsibility by Guatemalan law. But even if this is the case, Ríos Montt still could have command responsibility under international law.

Field officers definitely do have command responsibility, as confirmed by a Guatemalan court in 2009 when it sentenced a colonel and three military commissioners to 53 years in prison for disappearing eight people from El Jute, Chiquimula in October 1981. In the same El Jute case, Guatemala's highest court recognized that certain crimes are excluded from the 1996 amnesty and can be prosecuted decades later. As I write toward the end of 2013, a Guatemalan court has sentenced a former national police chief to forty years in prison for the disappearance of a student union leader in 1984.²

Because I do not find the genocide paradigm very convincing, Drouin suggests, I am an apologist for the atrocities committed by the Guatemalan army. This is ridiculous. Intent is a necessary element in any conviction for genocide, and proving it in the Guatemalan case has not been easy. As one of your other contributors acknowledges: "in Guatemala there was never an elite proposing the elimination of indigenous peoples, nor were there organizations or groups organized specifically to kill indigenous people of any particular ethnic group."³

Intent to commit genocide, according to the prosecution and your contributors, can be proven from a 1982 army offensive called Operation Sofia. Because Sofia documents describe the local Mayan population as guerrilla supporters, according to the prosecutors and your contributors, the army's motive of suppressing an insurgency was accompanied by an intent to destroy civilians who supported the insurgents – hence the army's intent to destroy Mayas "in whole or in part."⁴ Leaked Sofia documents do indeed report the killing of 20 people, some combatants and some not. The same documents also report the capture of 1,247 refugees who later would be resettled in army-controlled strategic hamlets.⁵

For the prosecution and your contributors, the only possible explanation for the army's classification of civilians as enemies of the state is Guatemala's history of racism – thus fulfilling the requirement that genocide be directed against a national, ethnic, racial or religious group. What prosecution witnesses carefully avoided mentioning, to the astonishment of many, was a far more obvious reason that the Guatemalan army would identify Mayan civilians as internal enemies. A group calling itself the Guerrilla Army of the Poor [EGP], that claimed to represent the indigenous population, was using this population to launch attacks on the Guatemalan army, for the announced aim of overthrowing the state. However significant Guatemala's legacy of racism, it never brought the army into this part of the country until years after the EGP began organizing it.

To omit this obvious factor in army thinking is a formula which any belligerent can use to accuse any adversary of intent to commit genocide. The only requirements are (1) claim to represent a civilian population (2) use the civilian population to launch attacks on the other side (3) then, when the adversary fails to distinguish between combatants and non-combatants, accuse it of genocide. Unlike Marc Drouin, some of your 2016 contributors

² David Stoll, "Guatemala: ¿Hubo genocidio?" *Revista Contrapoder* (Guatemala City) 1 no. 30 (22 November 2013): 19. English translation, <http://sites.middlebury.edu/dstoll/files/2013/10/Guatemala-Was-It-Genocide.pdf>

³ Manolo E. Vela Castañeda, "Perpetrators: Specialization, Willingness, Group Pressure and Incentives. Lessons from the Guatemalan Acts of Genocide," *Journal of Genocide Research* 18, nos. 2–3 (2016): 231.

⁴ Elizabeth Oglesby and Diane M. Nelson, "Guatemala's Genocide Trial and the Nexus of Racism and Counterinsurgency," *Journal of Genocide Research* 18, nos. 2–3 (2016): 139.

⁵ Thanks to researcher Ben Parker for his careful analysis of Operation Sofia documents.

have done field research with survivors of Guatemala's civil war. What Grégoire and Hamilton, Olson, Vanthuyne and Falla report is congruent with the conflicting memories and deep skepticism that I found in 2013.⁶ If your goal is to bring together Guatemalans of the left, center and right in repudiation of the army's crimes, the most credible prosecutions will focus on specific atrocities, not intent to commit genocide.

Note on contributor

David Stoll is the author of *Fishers of Men or Founders of Empire?* (1982), *Is Latin America Turning Protestant?* (1990), *Between Two Armies in the Ixil Towns of Guatemala* (1994), *Rigoberta Menchú and the Story of All Poor Guatemalans* (1999), and *El Norte or Bust! How Migration Fever and Micro-credit Produced a Financial Crash in a Latin American Town* (2012).

Disclosure statement

No potential conflict of interest was reported by the author(s).

⁶ Etienne Roy Grégoire and Karen Hamilton, "International Accompaniment, Reflexivity and the Intelligibility of Power in Post-Conflict Guatemala," *Journal of Genocide Research* 18, nos. 2–3 (2016): 189–205; Krisjon Olson, "Waging Peace: A New Generation of Ixiles Confronts the Debts of War in Guatemala," in *ibid.*, 343–359; Karina Vanthuyne and Ricardo Falla, "Surviving in the Margins of a Genocide Case in the Making: Recognizing the Economy of Testimony at Stake in Research on Political Violence," in *ibid.*, 207–224.