

Problems with the 1948 United Nations Convention on the Prevention and Punishment of
Genocide

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From the ancient world to the present day, genocide has existed in various forms. Examples of genocide range from the destruction of Carthage by the Roman Empire in Julius Caesar's time to the killing of African agricultural tribes in the Darfur region of Sudan. In 1943, Raphael Lemkin gave name to an age-old phenomenon: the destruction of a group of people in whole or in part because of their differences, with intent to extinguish this culture from the earth. Lemkin called this practice 'genocide'. Because the term is relatively new, trouble still exists in categorizing conflicts as instances of genocide, complicating discussions about the implications of international law and the relationship of genocide to other crimes against humanity.

After the creation of the term for genocide, a problem quickly arose: how to specifically legal definitions so that the international community could prevent such atrocities and punish guilty actors? Lemkin, a Polish lawyer with a Jewish family background, was witness to the Holocaust and eventually left Poland for the United States. He was a strong advocate for specific international laws to punish genocide, separate from laws to punish and prevent other crimes against humanity. After years of campaigning in the international community, Lemkin drafted the first United Nations convention on genocide, which was adopted in 1948 and entered into force in 1951.¹ The Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as:

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;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group²

¹ United Nations Database. "UNTC." *UNTC*. United Nations Treaty Collection, n.d. Web. 02 Dec. 2012. <http://treaties.un.org/Pages/DB.aspx?path=DB/MTDSGStatus/pageIntro_en.xml>.

² United Nations General Assembly. "Convention on Genocide." *Convention on Genocide*. United Nations, 27 Jan. 1997. Web. 02 Dec. 2012. <<http://www.hrweb.org/legal/genocide.html>>.

Although the Genocide Convention was a tremendous step in the right direction in terms of ideologically defining and preventing genocide, the convention still fails in many ways. The definition fails to provide adequate protection for marginalized groups, and even if these criteria are met, intervention often is unable to provide protection, as was the case of Srebrenica in 1992. The definition does not protect rights of certain minority groups, such as political or socioeconomic groups, from genocide; it only protects racial, ethnic, religious or national groups.³ Finally, the convention fails to deter genocide because of problems in enforcement. It has no way of forcing the international community into action against genocide, and it has no mandate for military or political action. Former United States Secretary of State Colin Powell clearly pointed out this inadequacy in 2004⁴.

Even if every case of genocide is unique, they all share a similar development. Genocide Watch has identified “Eight Stages of Genocide”:

1. CLASSIFICATION: All cultures have categories to distinguish people into “us and them” by ethnicity, race, religion, or nationality...
2. SYMBOLIZATION: We give names or other symbols to the classifications... Classification and symbolization are universally human and do not necessarily result in genocide unless they lead to the next stage, dehumanization.
3. DEHUMANIZATION: One group denies the humanity of the other group. Members of it are equated with animals, vermin, insects or diseases...
4. ORGANIZATION: Genocide is always organized, usually by the state, often using militias to provide deniability of state responsibility...
5. POLARIZATION: Extremists drive the groups apart. Hate groups broadcast polarizing propaganda. Laws may forbid intermarriage or social interaction. Extremist terrorism targets moderates, intimidating and silencing the center.
6. PREPARATION: Victims are identified and separated out because of their ethnic or religious identity... Members of victim groups are forced to wear identifying symbols. Their property is expropriated.
7. EXTERMINATION begins, and quickly becomes the mass killing legally called “genocide.” It is “extermination” to the killers because they do not believe their victims to be fully human
8. DENIAL...is among the surest indicators of further genocidal massacres...They

³ United Nations General Assembly. "Convention on Genocide." *Convention on Genocide*. United Nations, 27 Jan. 1997. Web. 02 Dec. 2012. <<http://www.hrweb.org/legal/genocide.html>>.

⁴ Jones, Adam. *Genocide: A Comprehensive Introduction*. London: Routledge, 2006. Print.

deny that they committed any crimes.⁵

These eight stages demonstrate the work that goes into a genocide. One cannot just start mass killing, there has to be planning involved. A stronger UN Convention would have provisions in place to find possible perpetrators early in this process, to stop genocide before it unfolds. The definition of genocide in the Genocide Convention should have some consideration for the prevention of genocide aside from the deterrent of criminalization and the legal system, like a peacekeeping task force with the ability to quickly go into a conflict area and resolve the conflict before it turns into genocide. For the task force to function properly, it would need to function somewhat independently so that it is free from the bonds of politics. In theory, the convention is admirable, but if it cannot save lives, it is clearly not doing its job correctly.

Throughout history, humans have been known to commit violent and cruel acts against one another. One of the most heinous crimes is genocide, yet it has been and is still familiar around the world. One would suppose that after the United Nations agreed on a common definition, genocide would be far less common, however that has not been the case. Problems still flourish.

The definition of the genocide in the international community is still up for discussion and broad debate. Other scholarly definitions are strikingly narrow, like that of Peter Drost in his 1959 work on genocide: "Genocide is the deliberate destruction of physical life of an individual human being by reason of their membership of any human collectivity as such".⁶ Generally, a narrow definition is adopted to manipulate the meaning of genocide to only contain the most extreme cases so that they may be dealt with in a more severe manner. The Convention has an interesting definition in that for a crime to be considered genocide, intent is extremely important

⁵ Stanton, Gregory H. "Genocide Watch." *8 Stages of Genocide*. Genocide Watch, n.d. Web. 14 Jan. 2013. <<http://www.genocidewatch.org/genocide/8stagesofgenocide.html>>.

in persecution. The intent of the crime separates genocide from other crimes against humanity and shows how heinous the crime truly is. Lemkin was a strong advocate for cultural protection; for instance the destruction of mosques in Bosnia were used to prove genocidal intent.⁷ Consequently, the way the UN Convention is written one would not actually have to kill a single person in order to still be persecuted for the crime of genocide. Another tricky part of the UN convention is the exclusion of a definition of groups. The ambiguous term ‘groups’ has recently been interpreted by the International Criminal Tribunal for Rwanda. Adam Jones elaborates: “At no point did the Convention’s drafters actually define ‘national, ethnical, racial or religious’ groups, and these terms have been subject to considerable subsequent interpretation. The position of the International Criminal Tribunal for Rwanda (ICTR), that ‘any stable and permanent group’ is in fact to be accorded protection under the Convention, is likely to become the norm in future judgments.”⁸

Lemkin wanted to emphasize the tragedy that comes from the loss of a cultural identity, which comes from the destruction of a singular particular group. Lemkin focused on national and ethnic groups’ importance in order to maintain a group identity. He also focused on the importance of intent when convicting for genocide. Scholars who have a narrower view on genocide would label only the most horrible cases like those of the Holocaust, Rwanda, and Darfur, as genocide in order to preserve the rigidity of the word so it maintains its strength and impact.

Other definitions are much more obtuse. Mark Levene explained in 2005, “Genocide occurs when a state, perceiving the integrity of its agenda to be threatened by an aggregate

⁶ Qtd. in Jones, Adam. *Genocide: A Comprehensive Introduction*. 16. London: Routledge, 2006. Print.

⁷ Jones, Adam. *Genocide: A Comprehensive Introduction*. 31. London: Routledge, 2006. Print.

⁸ Jones, Adam. *Genocide: A Comprehensive Introduction*. 14. London: Routledge, 2006. Print.

population-defined by the state as an organic collectivity, or series of collectivities- seeks to remedy the situation by the systematic, *en masse* physical elimination of that aggregate, in *toto*, or until it is no longer perceived to represent a threat.”⁹ Broader definitions try to expand genocide to cases previously ignored or excluded by the UN Convention; wide definitions also expand the term to include violence against political and socioeconomic groups. These two groups were included in Lemkin’s original definition but ultimately were excluded from the final draft of the convention in order to get the measure passed. Lemkin himself made a push for the inclusion of ethnic and national groups as he operated under the assumption that “the murder of a poet is morally worse than the of a janitor, because the poet is the ‘brain’ without which the ‘body’ cannot function.”¹⁰ Essentially Lemkin believed in specific protection for the culture of a group.

Differences in defining genocide make it difficult to label specific conflict situations as genocide, let alone take action to stop the catastrophe. All too often the international community gets caught up in political issues and ignores the lives of those most vulnerable to the conflict. Even if genocide is a terrible crime, is it really right to put it at the top of an ‘international crimes against humanity’ hierarchy? To say that one terrible crime is worse than another is inappropriate, as well as ineffective; labelling one crime against humanity worse than the other divides public attention and highlights the general bias in the international community. Public attention helps to put pressure on the international community for change. A broader definition of genocide would allow the international community to shed a more equilateral light on all cases of genocide. In addition, a broader definition would include any political and socioeconomic groups targeted.

⁹ Qtd. in Jones, Adam. *Genocide: A Comprehensive Introduction*. 19. London: Routledge, 2006. Print.

¹⁰ Jones, Adam. *Genocide: A Comprehensive Introduction*. 13. London: Routledge, 2006. Print.

Genocide against political groups is no less detrimental to a culture than genocide against a specific ethnic group. The violence in Stalin's Soviet Union and Mao's People's Republic of China also created destruction and death worthy of the term genocide, even if not directly covered by the current convention. Both of these regimes used wide scale murder, but also used methods that indirectly killed a large part of the population.¹¹ Through manipulated famines, forced hard labour or incarceration these regimes punished their enemies harshly. Lynne Viola said of these famines "the famine was the natural conclusion of the disasters of collectivization, dekulakization, and merciless grain levies; it was minutely observed and publicly ignored by a regime and a dictator that viewed the peasantry as less than human, as raw materials to be exploited to the maximum."¹² These cases do not display genocide in the traditional sense because the victims and perpetrators come from the same ethnic or national background, yet genocidal intent can be gleaned from the murder directly or indirectly of large numbers of people of the same political or socioeconomic status. Although Mao and Stalin occasionally targeted ethnic minorities like the Chechens and Tibetans, the fact that they targeted political and socioeconomic groups as adversaries that makes them so horribly influential in the twentieth century.¹³ Yet under the current UN Convention these crimes go unpunished and improperly named, a broader definition would open up the field to convict actors who carried out terrible political crimes. A broader definition would enhance the definition rather than dilute it: more convictions on charges of genocide would show the strength in the international system to stand up and protect those who cannot protect themselves.

A prime example of the inconsistency of the international community is the decline of support for the people of the Darfur region of western Sudan. A simplified version of the conflict

¹¹ Jones, Adam. *Genocide: A Comprehensive Introduction*. 188-217. London: Routledge, 2006. Print.

¹² Qtd. in Jones, Adam. *Genocide: A Comprehensive Introduction*. 217. London: Routledge, 2006. Print.

puts the government of Sudan in Khartoum and the Janjaweed Militia, a group of Arab fighters who are known for storming into villages killing, raping, and in general causing as much destruction as possible, in opposition to the African agricultural tribes, the Fur, Massalit and Zaghawa. In 2003, the Janjaweed Militia started widely attacking members of Darfur's African tribes with the support of the Sudanese government, sometimes including bombing campaigns to reign terror from the sky. Translated into English, 'janjaweed' means 'devil on horseback', and accounts of attack on villages in Darfur give vivid descriptions of the quick and devastating effects of these so called devils. In Jen Marlow's book *Darfur Diaries*, she illustrates the destruction of the tribes of Darfur and the impact on the neighboring county of Chad. Her conversation with the head of the UNICEF mission in Chad explains it:

'This was a very well implemented campaign against the population of Darfur' he began. 'The strategy to throw out populations from entire regions was very systematic'...But most of the people who fled Darfur were caught in the middle of fighting. The Janjaweed burned down the villages, took slaves, beat some of the leaders, abused many of the women"¹⁴

More than 300,000 Fur, Massalit and Zaghawa died because of the Janjaweed in just four years and millions more were displaced.¹⁵ The American people were truly moved by the plight of the people of Darfur. United State Senators like Barack Obama worked across party lines and joined forces to mobilize the international community into action. Throughout high schools and colleges around the country, the youth of America echoed the phrase "Never again." For a time it looked like American politicians had answered the call and were prepared to stand up for international justice. Yet when the push came to shove, human interest fell to political might.

David Luban elucidates on the situation:

¹³ Jones, Adam. *Genocide: A Comprehensive Introduction*. 188-217. London: Routledge, 2006. Print

¹⁴ Marlowe, Jen, Aisha Bain, Adam Shapiro, Paul Rusesabagina, and Francis Mading Deng. *Darfur Diaries: Stories of Survival*. New York: Nation, 2006. Print.

¹⁵ Kiernan, Ben. *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*. New

“In spring 2005, both houses of the US Congress introduced tough legislation on behalf of Darfur- the Darfur Accountability Act... the Bush administration, preoccupied with Iraq, did not want a mandate to do something drastic in Sudan. The White House wrote to Congressional leaders requesting removal of the strongest portion of the Darfur Accountability Act-a broad authorization to act- from a crucial appropriations bill an in May Congress complied.”¹⁶

In 2005, the state of affairs got more complicated when the International Commission of Inquiry on Darfur came out with its report on the situation to UN Secretary General Kofi Annan. The commission did not find genocide; instead, it ruled that crimes against humanity were committed against the people of Darfur. This debate over language was no less harmful to the people of Darfur, but without the name genocide, public attention declined rapidly and many news outlets misread the situation horribly and squashed public consideration for the people of Darfur. David Luban explains it in the Chicago Journal of International Law:

Headlines from the Herald Sun in Melbourne (*Horrors Short of Genocide*), the Glasgow Herald (*UN “Clears Sudan of Genocide” in Darfur*), and London’s Daily Telegraph (*UN confusion as Sudan Conflict is No longer “Genocide”*). Plainly, ‘short of genocide’ means ‘not as bad as genocide’. ‘Clears Sudan of genocide’ means exoneration-and, coming just two days after headlines declaring that Sudanese officials denied bombing a village in Darfur; headlines-scanners could be excused for believing that the UN report had disproven atrocity reports in Darfur... The UN no longer knew what to do, because without the word ‘genocide,’ the mandate for action disappears¹⁷

The case of Darfur is just one example of how the international system is not working for the benefit of the people, when world leaders squabble over defining an issue and people die half a world away. A broader definition would limit arguments over what is and is not genocide so that maybe a conflict situation could be diffused without such a high human price.

Darfur brings up countless problems with the current international system. One of the

Haven: Yale UP, 2007. Print.

¹⁶Luban, David. "Calling Genocide by Its Rightful Name: Lemkin's Word, Darfur, and the UN Report." *Georgetown University Law Center* (2006): n. pag. *University of Chicago Journal of International Law*. Web. 13 Jan. 2013. <<http://scholarship.law.georgetown.edu/facpub/893> <http://ssrn.com/abstract=903009>>.

¹⁷ Luban, David. "Calling Genocide by Its Rightful Name: Lemkin's Word, Darfur, and the UN

most depressing aspects of this conflict is the fact that these events occurred during the International Criminal Tribunals for individuals from the former Yugoslavia and Rwanda. As a deterrent, the legal system clearly failed. Al-Bashir was planning and implementing his crimes while other leaders like him were being handed convictions. If the delivery of punishments for such terrible crimes does nothing to actually prevent the murder of thousands, it shows a disturbing failure in the system. What does it say about the international system when criminals like Al-Bashir, who murdered thousands, can walk around free from the threat of punishment? It demonstrates that the current system is broken and must be changed because we are on an unsustainable trajectory where the wealth of a nation is valued over the lives of thousands.

In addition, even though the International Criminal Court has declared the situation genocide, accused Al-Bashir of genocide and crimes against humanity, and issued an arrest warrant for him, Al-Bashir remains free and occasionally travels throughout the African Union. The main reason for Al-Bashir's lack of imprisonment is the disagreement over the designation of genocide. Some international bodies, like the African Union and the Arab League, agree with Al-Bashir's denial of genocide and refuse to carry out the warrant.¹⁸ Other international actors like the United States hold that the actions taken by Al-Bashir constitute genocide, but these nations have stayed away from intervention. In 2004, the US Secretary of State Colin Powell identified the situation as genocide, yet wiggled out of any responsibility to protect the people of Darfur on legal technicalities.¹⁹

A way to possibly end genocidal conflicts is with the help of a UN task force that is not

Report." *Georgetown University Law Center* (2006): n. pag. *University of Chicago Journal of International Law*. Web. 13 Jan. 2013. <<http://scholarship.law.georgetown.edu/facpub/893> <http://ssrn.com/abstract=903009>>.

¹⁸ Jones, Adam. *Genocide: A Comprehensive Introduction*. London: Routledge, 2006. Print

¹⁹ Luban, David. "Calling Genocide by Its Rightful Name: Lemkin's Word, Darfur, and the UN Report." *Georgetown University Law Center* (2006): n. pag. *University of Chicago Journal of International Law*. Web. 13 Jan. 2013. <<http://scholarship.law.georgetown.edu/facpub/893> <http://ssrn.com/abstract=903009>>.

tied down by limitations of UN politics. In order to gain success, a task force must be able to avoid the typical UN run-around. So far, UN forces sent to prevent genocide have rarely worked, because of too much UN political interference and a weak military mandate to help those who are suffering. One tragic incident is the case of Srebrenica.

When Yugoslavia fell apart in the early 1990s the stage was set for a disaster. The multiethnic state of Bosnia-Herzegovina imploded into genocidal madness. After declaring national sovereignty in 1991, Bosnia-Herzegovina propelled the former Yugoslavia to dissolution. A national referendum in 1992 secured independence, much to the disappointment to Bosnian Muslims living within Serbian borders. The leader of the Serbian government at the time, Slobodan Milosevic, supported Bosnian Serbs and decided to attack Bosnian Muslim forces to unify and protect Serb territory in the region. The Serbians adopted a particularly violent approach to ethnic cleansing of all non-Serbs. Serbs frequently committed terrible crimes against ethnic Muslims, but confrontations between Croats and Serbs as well as Muslims and Croats were extremely violent and destructive. In order to protect the vulnerable areas, the UN set up 'safe zones'. One particular zone was the Bosnian- Muslim village of Srebrenica.²⁰ Near the Serbian border and surrounded by Serbian territory, the town was a constant target for Serbian forces, as they tried to unite Serb areas in the region. In order to protect the village inhabitants, the UN sent less than 400 Dutch peacekeepers to protect tens of thousands of Bosnia-Muslims seeking refuge in Srebrenica.²¹

The Dutch peacekeepers were lightly armed and told to fire on in self-defence. Soon enough, the 'safe zone' broke down, people started to starve. Eventually the Serbian army came marching to Srebrenica. This became one of the most prominent cases of gendercide in the 20th

²⁰ Jones, Adam. *Genocide: A Comprehensive Introduction*. 323. London: Routledge, 2006. Print.

²¹ Jones, Adam. *Genocide: A Comprehensive Introduction*. 323. London: Routledge, 2006. Print.

century: more than 8,000 men and boys died in the massacre, not to mention the thousands of women who were sexually abused. The UN force was powerless to stop the onslaught.²² The Dutch peacekeepers were unable to receive air support because of UN channels and a complex and cumbersome chain of command. The peacekeepers on the ground called for air support when they knew the Serbians were on the way. The UN sent a jet to protect the village, but due to a miscommunication, the jet was forced to circle above Srebrenica until it had to leave its mission behind in order to refuel. This left the people without hope or any kind of defense. This displays the inability of the Convention to actually do anything to save the weak. It is unimaginable that a UN force with support from all of the strongest world military powers would not be able to protect a village from destruction. The process to receive any type of help from the UN is incredibly difficult and almost impossible for many situations but this problem could potentially be solved by a UN task force devoted to investigating potential cases of genocide, then working to resolve the conflict without a high human life cost.

The UN convention is a tremendous first step in the punishment of genocide, yet it actually does little to prevent genocide. In order for the convention to function properly, it needs to have a stronger definition upon which the international community can agree in order to make better progress and be effective in conflict situations. In addition, a stronger mandate for political and, if absolutely necessary, military intervention must exist to help end genocide. Better yet, we may even hope to stop acts of genocide by tyrannical regimes before they start.

²² Jones, Adam. *Genocide: A Comprehensive Introduction*. 323. London: Routledge, 2006. Print.

Bibliography

- Jones, Adam. *Genocide: A Comprehensive Introduction*. London: Routledge, 2006. Print.
- Kiernan, Ben. *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*. New Haven: Yale UP, 2007. Print.
- Luban, David. "Calling Genocide by Its Rightful Name: Lemkin's Word, Darfur, and the UN Report." *Georgetown University Law Center* (2006): n. pag. *University of Chicago Journal of International Law*. Web. 13 Jan. 2013. <<http://scholarship.law.georgetown.edu/facpub/893> <http://ssrn.com/abstract=903009>>.
- Marlowe, Jen, Aisha Bain, Adam Shapiro, Paul Rusesabagina, and Francis Mading Deng. *Darfur Diaries: Stories of Survival*. New York: Nation, 2006. Print.
- Stanton, Gregory H. "Genocide Watch." *8 Stages of Genocide*. Genocide Watch, n.d. Web. 14 Jan. 2013. <<http://www.genocidewatch.org/genocide/8stagesofgenocide.html>>.
- United Nations Database. "UNTC." *UNTC*. United Nations Treaty Collection, n.d. Web. 02 Dec. 2012. <http://treaties.un.org/Pages/DB.aspx?path=DB/MTDSGStatus/pageIntro_en.xml>.
- United Nations General Assembly. "Convention on Genocide." *Convention on Genocide*. United Nations, 27 Jan. 1997. Web. 02 Dec. 2012. <<http://www.hrweb.org/legal/genocide.html>>.