Genocide: An Introduction
A René Cassin Background Paper
Introduction

Ever since the phrase ‘never again’ was etched onto handmade signs by the inmates at the newly liberated Buchenwald camp, it has become the rallying call against genocide around the world. The discriminated against swore they would never again be trampled underfoot, the discounted promised to rise up, and the disregarded vowed never to be forgotten. Although we have memorialised the Holocaust and ensured that its narrative is taught to children and adults alike, its lessons seem to have been neglected. The “millions of victims of genocidal violence in the 20th century are testimony to the ever present danger of genocide” and to the failure of the international community in being unable, or unwilling, to prevent it.¹ Former Secretary General of the UN, Kofi Annan alluded to this at the first ever session marking the anniversary of the liberation of Auschwitz, where he pointed out that though “we rightly say never again...action is much harder. Since the Holocaust the world has, to its shame, failed more than once to prevent or halt genocide”.

This paper will examine how the crime of genocide is defined and is distinguished from other crimes against humanity. It will also discuss some of the controversies regarding how genocide has been interpreted and the manner in which it has been implemented in practice.

What is Genocide?

The term ‘genocide’ was coined by a Polish-Jewish lawyer named Raphael Lemkin who formed the word by combining the Greek word for race or tribe (Geno) with the Latin word for killing (cide). In proposing this new term, Lemkin had in mind “a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves.”²

After witnessing the horrors of what would later become known as the Holocaust, in which every member of his family except his brother was killed, Dr Lemkin campaigned to have genocide recognised as a crime under international law. However it is important to note at this point, that although the terminology and criminal law of genocide is a product of the Holocaust, genocide has occurred numerous times throughout history.³

In 1948, the U.N. approved its Convention on the Prevention and Punishment of the Crime of Genocide (“the Convention”). This Convention establishes “genocide” as an international crime, which signatory nations “undertake to prevent and punish.” It defines genocide as:

> 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 group.

Significantly, Article 1 of the Convention establishes the crime of genocide in times of war or peace. In 1948, this definition differed considerably from that of crimes against humanity, which

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¹ The Holocaust and Other Genocides, NIOD Institute for War, Holocaust and Genocide Studies, 2012
² United States Holocaust Memorial Museum, “What is Genocide?”
³ See for example the Armenian Genocide from 1915, the Zulu Kingdoms genocide in the early 1800’s, Haiti in 1804 to name but a few.
only concerned violations against civilians during war—a limitation on the definition that no longer applies.  

The first draft of the Convention included political killings but these stipulations were subsequently removed in a last-minute political and diplomatic compromise. However, *politicide* is increasingly being recognised by scholars and the international community alike as being a crime against humanity. This is reflective of the constantly evolving nature of the law of genocide. It is important to consider that the legal framework surrounding genocide is not static and thus one of the purposes of this paper is to provide a platform from which you can develop your own opinion of how genocide should be defined in law.

**Protected Groups**

According to the Convention, in order for a perpetrator to be guilty of genocide, the people he intends to destroy must belong to one of the following four categories:

A *national group*: a set of individuals whose identity is defined by a common country of nationality or national origin.

An *ethnic group*: a set of individuals whose identity is defined by common cultural traditions, language or heritage.

A *racial group*: a set of individuals whose identity is defined by physical characteristics.

A *religious group*: a set of individuals whose identity is defined by common religious creeds, beliefs, doctrines, practices, or rituals.

Generally, people are born into these groups. Whilst some individuals may change nationality or religion once cannot change their racial, ethnic, or cultural group identity. Group identity is often imposed by the perpetrators. Perpetrators of genocide frequently make group categories more rigid or create new definitions which impose group identity on individuals, without regard to people’s individual choices.

**Elements of the Crime of Genocide**

Under Article II of the Convention, the crime of genocide will be considered committed if two distinct elements are simultaneously present: firstly, the intent to destroy in whole or in part a national, ethnic, racial or religious group as such (which is actually comprised of two separate requirements); secondly, the execution of any of the prohibited acts against any (member of the) protected group. In legal terminology, these are the “mens rea” and “actus reus”.

**General Intent: The ‘Intent to Destroy’**

The offence of genocide has two separate mental elements. The first is the ‘general intent’, and the specific ‘intent to destroy’. ‘General intent’ normally relates to all objective elements of the offence definition and has now been defined in international criminal law by Article 30 of the Statute of the International Criminal Court (ICC) as basically encompassing a volitional (intent) and/or a cognitive or intellectual (knowledge) element. In other words the ‘general intent’ requirement of genocide

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6 Art. 30(1) reads: ‘Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed
is satisfied if the perpetrator acts with the knowledge that his actions are targeting a specific group.\(^7\) Thus ‘general intent’ pertains to actions carried out purposefully and with the knowledge that a particular group is being targeted.

This can be contrasted with specific intent, which for the crime of genocide is the ‘intent to destroy’, the second mental element. It is this latter requirement which separates genocide from other ‘crimes against humanity’ and contributes to genocide being considered the “most inhumane form of persecution”.\(^8\)

“Intent to destroy constitutes an additional subjective requirement that compliments the general intent and goes beyond the objective elements of the offence definition”.\(^9\) The most helpful way to think of this requirement is that it transforms genocide into a “goal-oriented crime”\(^10\), i.e. unless the destruction of a protected group is actively pursued and intended the crime, though heinous, will not constitute genocide.

Thus, the requirements of genocide can even be met where the genocidaire intended more harm than he could realistically accomplish. An oft given example of this occurring is that of a racist person who intends to wipe out all of the black people in a large city, but, who working alone will only be able to kill a few members of the group. Taking into account the specific-intent structure of genocide, “his genocidal intent would suffice to fulfil the offence elements if only one of the underlying acts…were to be accomplished”.\(^11\)

This requirement actually distinguishes genocide from other crimes against humanity, such as ethnic cleansing which aims at forcibly expelling a group from a geographic area (by killing, forced deportation and other methods). Consider that where a regime kills a number of people belonging to a protected group, whether this will constitute genocide or ethnic cleansing (or indeed another crime) will hinge solely on the intention of the perpetrators. If the intention was to force others in the community to leave out of fear the crime would be ethnic cleansing, if the intention was to continue murdering (or taking other genocidal action) in order to destroy the group, genocide will have been committed.

The specific intent to destroy a group is the qualitative element that transforms into genocide a conduct that would otherwise amount to an act of crime against humanity or mass murder. Such intent is the essence of genocide. One of the most common problems associated with the determination of the mental element of the crime of genocide is that, in practice, its presence is difficult to prove; in many cases genocidal intent has to be inferred from the general context of the crime itself.\(^12\)

**Conduct**

The second element of the crime of genocide is the conduct itself, as listed in sub-paragraphs (a) to (e) of Genocide Convention Article II; it may also take the form of an omission. In both cases, the acts must be committed either against the physical or psychological integrity of the members of the targeted group, or against their existence or biological continuity. It is important

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\(^7\) Kai Ambos, *What does ‘intent to destroy’ in genocide mean?*, International Review of the Red Cross, Vol. 91, Number 876 December 2009.

\(^8\) Prosecutor v. Zoran Kupres’kic et al., *Trial Judgement*, Case No. IT-95-16-T, 14 January 2000, para. 636


\(^11\) Kai Ambos supra note 7

\(^12\) Faustin Ntoubandi, *Uncovering the Components and Elements of Genocidal Acts*, The Sentinel Project for Genocide Prevention, May 2013
to observe at this point that members of political, social, economic or cultural groups are excluded from the purview of Article II of the Genocide Convention.

It is important to note that a single (individual) act directed against one single member of the selected group, with the requisite intent, may constitute genocide. This is because the intent to destroy a protected group in whole or in part is the driving force behind the perpetration of any of the following acts:

(1) **Killing members of the group:** this means intentionally causing the death of a person belonging to any of the protected groups on the basis of that membership;\(^\text{13}\)

(2) **Causing serious bodily and mental harm to members of the group:** this means inflicting serious injuries to physical health (e.g. through mutilation and excessive use of force, beating with rifle butts, wounds inflicted with machetes.) The perpetrator must act intentionally, and his acts must be directed to at least one member of the targeted group. In addition, causing ‘serious mental harm’ requires that the impairment of mental faculties be of the nature that causes “grave and long-term disadvantage to the victim’s ability to lead a normal and constructive life”. This implies that the harm must be permanent or irreversible. Instances of acts that Article II (b) of the Genocide Convention aims at include torture; interrogations combined with beatings and/or threats of death, rape, or inhuman or degrading treatment; sexual violence or sexual crimes (in that they cause both serious bodily and mental injuries);\(^\text{14}\)

(3) **Deliberately inflicting conditions of life calculated to bring about the physical destruction of the group:** this subparagraph mainly criminalizes what is generally referred to as slow death measures imposed on the group (such measures do not immediately kill the victims, but they ultimately seek their physical destruction on a long-term basis). Such measures may include long-term forced labour or physical exertion; deportation; subjecting a group to a subsistence diet; imprisonment in concentration and extermination camps; or deliberate deprivation of resources indispensable for survival of the group (such as food, medical services, clothing and shelter);\(^\text{15}\)

(4) **Imposing measures intended to prevent births within the group:** such measures, which must be forcible, threaten the biological existence of the group by limiting or destroying its capability to reproduce. Relevant incriminated conduct includes enforced sterilization, forced birth control or restriction (e.g., sterilization and/or compulsory abortion), segregation of sexes, prohibition on or erecting obstacles to marriages. Rape committed with the purpose of changing or modifying the ethnic composition of the targeted group is also included in this category of measures. However, public policy measures of general application adopted by densely populated countries (such as China or India) to lower the birth rate for social or economic reasons do not reflect genocidal intent;\(^\text{16}\)

(5) **Forcibly transferring children of the group to another group:** the word ‘forcibly’ may be interpreted to include actual acts of forceful physical transfer or threats of force or coercion. The intention behind such transfer is to destroy the group’s existence. The assumption underlying this prohibition is that when transferred to another group, children lose the cultural identity of the group to which they originally belong. However, legally transferring children for any other reason (social, economic, protection, etc.) would not violate the present provision.\(^\text{17}\)
In sum, when any of the acts listed above are committed with the underlying intent to destroy a protected group in whole or in part, the perpetrator thereof is fully liable for the commission of genocide.

The Genocide Convention also outlaws a number of behaviours which are likely to culminate in the perpetration of the core crime of genocide. Article III of the Genocide Convention punishes certain categories of acts which are committed in preparation of the main offence of genocide. These are conspiracy and incitement to commit genocide, attempt to commit genocide, and complicity in genocide. Such conduct constitutes what is technically referred to as ‘inchoate offences’; i.e., conduct deemed criminal without the actual crime having been committed and for which the perpetrator may be prosecuted.18

Controversy

Many commentators have criticised the Convention for a variety of reasons. The main criticism revolves around the idea that the definition of genocide found in the Convention is too narrow. The objections most often cited include:

- The Convention excludes targeted political and social groups.
- The definition is limited to direct acts against people, and excludes acts against the environment which sustains them or their cultural distinctiveness.
- Proving intention beyond reasonable doubt is very difficult.
- UN member states are hesitant to single out other members or intervene, as was the case with Rwanda.
- There is no body of international law to clarify the parameters of the Convention (though this is changing as UN war crimes tribunals issue indictments).
- The difficulty of defining or measuring “in part” and establishing how many deaths equal genocide.

Genocide since the Holocaust

Whilst genocide as a verbal construct and legal concept was developed in response to the Holocaust, the Holocaust was not the first case of genocide in human history, and neither would it be the last. For the purposes of this paper we will discuss two cases from what has been called ‘the century of genocide’,19 to counter the abstraction of the above academic and legal overview. Our consideration of the Bosnian and Rwandan cases does not attempt to offer a comprehensive analysis, which would go far beyond the scope of this paper. Neither does our choice of case studies elevate these particular genocides over others, or detract from the horror and suffering experienced by other groups worldwide before or since. Rather, our discussion of Bosnia and Rwanda seeks to engage the reader with some of the wider concerns of genocide studies in a human rights context, and encourage interaction with our strategies of prevention and intervention.

BOSNIA

In April 1992, the government of the Yugoslav republic of Bosnia-Herzegovina declared its independence from Yugoslavia. The dissolution of this multi-ethnic state returned genocidal conflict to Europe for the first time since the Holocaust as atrocities committed by Serbs against

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Muslims, and clashes between Croats and Serbs, and between Muslims and Croats, claimed around a hundred thousand lives.\(^{20}\)

**Background**

In the aftermath of the Second World War, the Balkan states of Bosnia-Herzegovina, Serbia, Montenegro, Croatia, Slovenia and Macedonia became part of the Federal People’s Republic of Yugoslavia. After the death of long time Yugoslav leader Josip Broz Tito in 1980, economic strife and growing nationalism among the different Yugoslav republics threatened to split their union apart. This process intensified after the mid-1980s with the rise of the Serbian leader Slobodan Milosevic, who realised that stirring nationalist passions amidst the Yugoslav upheavals was the most effective route to personal power.\(^{21}\)

When in April 1987 Milosevic was dispatched to the Albanian-dominated province of Kosovo to hold talks with the local communist Party leadership he was greeted by riotous Serbs, barely controlled by hard-handed police. Milosevic’s words of comfort to the crowd: ‘no one should dare to beat you’, received an ecstatic reaction and sowed the seeds for genocide.\(^{22}\)

In 1991-92, Yugoslavia descended to a state of open warfare. In the bloody aftermath of the independence declarations of Croatia and Slovenia, the Muslim-dominated but multi-ethnic Bosnia-Herzegovina found itself on the losing end of a zero-sum game; following the Slovenian and Croatian secession example would inevitably result in further secession by Bosnian Serbs to integrate ‘their’ zone of influence into Milosevic’s vision of a Greater Serbia, whilst remaining within the federation meant conceding to Serb domination.\(^{23}\)

In February 1992 Bosnia declared its independence from Yugoslavia.\(^{24}\)

**Struggle for Control in Bosnia**

Amidst the upheaval populations sought safety and stability in ethnic exclusivity. Bosnia quickly became the most brutal battlefield of the Balkan wars.\(^{25}\) In early May 1992, two days after the US and the European Community recognized Bosnia’s independence Serb forces launched the bombardment and siege of Bosnia’s capital, Sarajevo. The global condemnation of the attack on Sarajevo and its cultural landmarks distracted attention from the far greater scale of killing taking place in Bosnia’s industrialised east. Although this complex, brutal conflict was far from a one-sided killing spree, an in-depth UN report later ascribed 90% of atrocities committed in Bosnia to Serbs, and the other 10% to Croats and Muslims combined.\(^{26}\)

In August 1992 the first stories of Serb-run concentration camps in Bosnia broke in the Western Press. He harrowing images of the Muslim (mostly male) victims, reminiscent of the Nazi concentration camps, sparked the first mainstream application of the term ‘genocide’ to the Balkans. The strategy was to ensure military victory and establish the borders of the envisioned post-genocide, ethnically-pure Greater Serbia.\(^{27}\) The strategy of gender-selective killing of Muslim male civilians was systematically implemented throughout the Bosnian war, primarily though not solely, by Serb military and paramilitary forces. The sexual assaults of women were central to the broader campaign of ‘cleansing’, and it was in the Bosnian context that the term


\(^{21}\) Jones, p. 318.

\(^{22}\) Jones, p. 318.

\(^{23}\) Jones, p. 320.

\(^{24}\) Jones, p. 320.

\(^{25}\) Jones, p. 321.


\(^{27}\) Jones, p. 322.
'genocidal rape' was introduced to the vocabulary of international criminal law, although Bosnia was not the first instance of rape as part of a broader genocidal strategy.28

**Attack On Srebrenica: July 1995**

The US led the response to the Serb besieging of Muslim-majority cities in Bosnia in spring 1993 by prompting the establishment of six ‘safe-areas’ under UN protection. These were never effectively defended. In July 1995 Srebrenica was protected by 400 Dutch peacekeepers, lightly armed and under orders to fire their weapons only in self-defence.29 The genocidal massacre of Muslim men and boys at Srebrenica was the most devastating instance of gendercidal killing to take place in the Balkans, but was simultaneously one case amongst dozens of other systematically-applied slaughters.30 It is estimated that around 8,000 ‘battle-aged’ Bosnian Muslim men and boys were murdered. Following the strategy adopted during the Armenian genocide in 1915 the ‘removal’ of males from the group made it easier for Serb forces and paramilitaries to branch out their attacks to ‘remaining’ group members. Young women were particular targets.31

**International Response**

According to Samantha Power, author of *A Problem from Hell: America and the Age of Genocide*, “no other atrocity campaign [than the Bosnian genocide] in the twentieth century was better monitored and understood by the US government”. Despite the wealth of information and irrefutable evidence of genocide, the U.S. government under both Presidents George H.W. Bush and Bill Clinton initially chose isolationist policies, citing the lack of U.S. interests at stake in the conflict.

In July 1992, the first international press reports, photos, and videos of the conflict in Bosnia were published, eerily evoking memories and images of the horror of the Holocaust fifty years earlier.32 Despite the public outrage created by these reports, the international community still refused to intervene. A year later, after Serbian forces had taken over several Bosniak-dominated cities, the UN established safe areas that were to be protected by international peacekeepers. However with very few weapons and orders not to fire unless in self-defence, these peacekeepers were completely ineffective and were quickly overwhelmed by Serb forces who massacred thousands.33

Though the international community did little to prevent the systematic atrocities committed against Bosniaks and Croats in Bosnia while they were occurring, it did actively seek justice against those who committed them. In May 1993, the U.N. Security Council created the International Criminal Tribunal for the Former Yugoslavia (ICTY) at The Hague, Netherlands. It was the first international tribunal since the Nuremberg Trials in 1945-46 and the first to prosecute genocide, among other war crimes. Radovan Karadzic and the Bosnian Serb military commander, General Ratko Mladic, were among those indicted by the ICTY for genocide and other crimes against humanity.34

Over the better part of the next two decades, the ICTY charged more than 160 individuals of crimes committed during conflict in the former Yugoslavia. Brought before the tribunal in 2002 on charges of genocide, crimes against humanity and war crimes, Slobodan Milosevic served as his own defence lawyer; his poor health led to long delays in the trial until he was found dead in his

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28 Jones, p. 324; Consider the Rape of Nanjing of December 1937 and the mass rapes perpetrated during the Soviet invasion of eastern Germany in 1944-45.
29 Jones, p. 325.
30 Jones, p. 323.
31 Jones, p. 324.
34 Id
prison cell in 2006. In 2007, the International Court of Justice issued its ruling in a historic civil lawsuit brought by Bosnia against Serbia. Though the court called the massacre at Srebrenica genocide and said that Serbia “could and should” have prevented it and punished those who committed it, it stopped short of declaring Serbia guilty of the genocide itself.\textsuperscript{35}

**Rwanda**

From April to July 1994 approximately one million people were murdered, primarily by machetes, clubs and small arms, in the ‘most concentrated mass killing ever seen’.\textsuperscript{36} Sparked by the shooting down of President Habyarimana’s plane as it approached the landing strip at Kigali airport on 6\textsuperscript{th} April the genocide spread throughout the country with staggering speed and brutality as ordinary Hutu civilians raped and hacked their neighbours to death. The international community had received numerous warnings of impending genocide, and the UN ‘assistance mission’ (UNAMIR) had been in-country since October 1993 to monitor the implementation of the Arusha Accords that had ended the Habyarimana government’s civil war with the Rwandan Patriotic Front, Rwandan Tutsi exiles in Uganda. When genocide broke out well-armed international forces arrived, to evacuate whites. UNAMIR’s commander, General Dallaire, illegally defied the Security Council order to withdraw all but 270 UNAMIR personnel and managed to keep 470 peacekeepers in country. Despite the weakness of their mandate, which prevented them from using force to protect civilians, even these few managed to save thousands of lives from the genocidal frenzy over the next few weeks.\textsuperscript{37}

**Background to Genocide**

Rwanda's genocide was the catastrophic result of a combination of complex, nuanced and dynamic factors, full exploration of which goes far beyond the scope of this background paper. For the first time in history a state successfully transformed the vast majority of its population into murderers who, for those few months in 1994, took killing to be their 9 to 5 occupation. Genocide in Rwanda was not a murderous expression of ancient tribal hatreds and complicity in it extends far beyond the borders of the tiny nation to the meeting-rooms of the United Nations.\textsuperscript{38}

The issues behind genocide in Rwanda in 1994 include:

- The country's colonial and post-colonial history, particularly the politicisation of Hutu and Tutsi ethnic identities, institutionalised through the introduction of ethnically-defined identity cards, under Belgian rule beginning in 1959.
- The authoritarian political system installed by Rwanda’s post-independence rulers and the second-class status it assigned to Tutsis, which motivated the formation of a rebel movement led by Tutsi exiles based in Uganda, the Rwandan Patriotic Front (RPF).
- The role of international actors, especially France, in financing, arming and nurturing Rwanda’s Hutu extremist elite.
- The pervasive economic crisis facing one of the world’s poorest and most density populated countries.
- The international factors governing humanitarian interventions in the 1990s, and the impact that the Bosnian and Somalian interventions had on thwarting international will to intervene in Rwanda.\textsuperscript{39}


\textsuperscript{36} Jones, p. 347.


\textsuperscript{39} Jones, p. 348.
Outbreak of Genocide

On 6th April, within an hour of the President’s plane crash, the Presidential Guard, the army and Hutu extremist militias set up roadblocks and barricades around Kigali and began slaughtering Tutsis and moderate Hutus with impunity. Among the first victims of the genocide were the moderate Hutu Prime Minister Agathe Uwilingiyimana and her 10 Belgian bodyguards, prompting the international evacuation of foreigners and the UNAMIR withdrawal. This violence created a political vacuum into which an interim government of extremist Hutu Power leaders from the military high command stepped on 9th April.

Genocide quickly spread from Kigali across the rest of the country as the machetes, hoes and grenades stockpiled over the previous years were made readily available to militias and civilians alike. Meanwhile, the RPF invaded from Uganda and civil war raged alongside the genocide, gradually pushing the genocidaires West towards Zaire and complicating the humanitarian response. The international community refused to label the violence as genocide, and whilst logistics and terminology were debated lethargically by the Security Council, Dallaire’s small contingent of peacekeepers was prevented by their mandate from using force to protect civilians. By early July, RPF forces had gained control over most of country, including Kigali. The French Operation Turquoise was the only international intervention and was designed to establish a ‘safe zone’ in the south-west for Hutus, the majority of whom were first-hand perpetrators, fleeing RPF retaliation. Images of overcrowded, disease-ridden refugee camps in Zaire prompted an international outcry. Twenty years later the long-term consequences of Rwanda’s genocide continue to represent a clear and present danger to life and human security throughout the region.

Conclusion: What can you do?

Whenever one engages with the study of genocide there is a sense of confrontation with the greatest scourge of human history. Genocide is integral to our historical inheritance: all stages of human existence, in almost all parts of the world, have experienced genocide at one time or another and it is as prevalent today as at any other time in history. Investigating it can be deeply intimidating and can leave you with a sense of powerlessness and triviality in the face of immeasurable suffering. Yet understanding and confronting genocide is a means of empowerment: in doing so one is coming face to face with the processes through which hundreds of millions of people have suffered at the brutal hands of others, the blind rush to hatred which countless others have bravely resisted. Simply through reading this background paper you have contributed to the fight to make ‘never again’ a reality.

The basic understanding you will have gained is the first step. René Cassin has developed a range of resources to help get you started in joining our fight against genocide. All are freely accessible via our website at:

http://www.renecassin.org/advocacy/current-campaigns/genocide.html

“To remain silent and indifferent is the greatest sin of all.”

- Elie Wiesel