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Genocide: What Do We Want It To Be?

Allan A. Ryan, Jr.

The definition of genocide in the Genocide Convention has been universally accepted, in the statutes of the ad hoc international tribunals and the International Criminal Court, but it conceals a host of ambiguities. Sociologists, political scientists, and others have not devised any legally adequate substitute.

This article proposes a non-linear definition of genocide, that is, a definition that takes into account the presence or absence of several factors, rather than one that attempts to generalize the crime of genocide. It disregards the motives or objectives of the perpetrator, sheds the secondary phenomena that often accompany genocide (such as dehumanization of the victims and global apathy), and separates genocide from ethnocide. It specifies that genocide requires the killing of humans and in absolutely large numbers; that the victims be objectively identifiable by race, religion, ethnicity, and similar criteria; that they comprise a relatively large proportion of that group in the national or global community; that the state (where there is a state) be a participant; and that legitimate warfare is inconsistent with genocidal conduct.

The objective of the definition is to reflect genocide as most observers would acknowledge it, and to provide the foundation for a revised definition that could be applied in legal proceedings as a gloss on the Convention's definition.

What is a genocide?

Most of us would respond with examples. The Holocaust was a genocide, and the slaughter of hundreds of thousands of Tutsi in Rwanda in 1994. Some would point out that the murderous rampage of the Turkish government against Armenians in 1915 was a genocide as well.

But where does one go from there? Was the 1999 campaign by Serbian forces against ethnic Albanians in Kosovo a genocide? What about the atrocities committed by the same Serbian government against Muslims in Bosnia in 1992? Was there a genocide in Croatia from 1941 to 1945, when the Nazi puppet government there killed a hundred thousand Serbs, some of them in a death camp as savage as any the Germans erected in Poland? Have Native Americans been the victims of a genocide over the past three hundred years? What about the forcible conversion of the Jews in the Inquisition in the fifteenth century? Did the Nazi machinery carry out a genocide against the Roma or gypsies while it also did so against Jews? Did the

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United States commit genocide, or try to, when it interned Japanese-American citizens during World War II? Or when it dropped two nuclear weapons on Hiroshima and Nagasaki in the summer of 1945?

Who can be the victims of a genocide? Were homosexuals — or, for that matter, mentally retarded Germans — the target of a genocide in Nazi Germany? The Pol Pot regime in Cambodia killed 750,000 Cambodians in the “Killing Fields” years of the mid seventies. Was that a genocide? Was the virtual elimination of Buddhist monks in Cambodia a genocide within a genocide? Was Stalin, who joined in bringing the Nazi criminals to trial, guilty of a genocide when he carried out the killing of kulaks in the Soviet Union in the twenties? Does the practice of female genital mutilation, practiced in some African and other societies and that often destroys the ability to conceive, constitute a genocide against women?

As difficult as genocides may be to prevent or prosecute, they are fiendishly difficult to define, and the process of definition can become highly politicized, subjective, and emotional, as we try to make the definition fit the events we want to call “genocides.” Each of the questions in the previous paragraph has been answered *yes*. And each has been answered *no*. Nothing about the definition of genocide is simple: not the acts, not the victims, not the scale, not the results: and that is even before we come to the complexities of how we prevent and prosecute it, which we cannot do unless we know what it is.

What acts comprise a genocide? Outright killing, *yes*. There is agreement there. But beyond that, what about mass deportation? The destruction of culture? Official hostility to the practice of religion? Organized campaigns of aggressive rape? State failure to respond to natural disaster, such as earthquake, drought, or famine?

Who can be the victims of genocide? Racial and religious groups, *yes*. But what about political groups? Social or economic groups? Women? Aboriginal peoples? The mentally retarded? Political dissidents? Children? All the people of a country? Is any “group” demarcation necessary at all?

Can there be a small genocide? Does proportion, or scale, determine what a genocide is? Does motivation matter? Or the objectives? Can there be a private or entrepreneurial genocide, or does state sponsorship define the very nature of the crime? Can a war be genocide? Is every “unjust” or aggressive war a genocide? Is there such a thing as “attempted” genocide, if it does not succeed? And at what point does it “succeed” — when does a policy and practice of atrocities and persecution cross the line and become genocide?

Many of the acts mentioned above were monstrous crimes carried out on a huge scale. There can be no question that the Albanians in Kosovo, or the kulaks in the Soviet Union, were victims of crimes against humanity. The removal of Japanese-Americans was a shameful government policy, motivated by racial prejudice and baseless suspicions of their loyalty. Other actions, such as the bombing of Japan, may not be crimes at all, let alone genocide, but lethal, legal acts of war. But which of these acts are criminal and which are not? Even as to those acts that are clearly criminal, what does it mean if we call them — or refuse to call them — “genocide”?

These are fundamentally important questions. As we shall see, genocide is a special crime. Like any other crime, it needs to be defined so that we can say with some accuracy what it is and what it is not. But by common consent genocide is not like “any other” crime, because of the number of its victims, and because we recognize that there is a special evil in a campaign that seeks to eliminate an entire people, a special tragedy in a crime that marks its victims not by what they have

done but by who they are, a special danger in a persecution that seeks out its targets because of their ethnicity, their race, their religion, and, maybe, for that matter, their political beliefs or their gender or other characteristics. When nations were debating the treaty for the establishment of an international criminal court, eventually finalized in Rome in 1998, genocide was the one crime that everyone agreed, without question, should be within the court's jurisdiction. When we seek to express our condemnation of governments engaged in the massive deprivation of human rights in their own lands or others, especially when people are being killed, the word that delivers the full force of our outrage is "genocide."

And that is precisely the problem. If every government policy that deprives its victims of human rights, or that attacks the qualities that give a group its identity, or that results in a frightening number of victims, is a genocide, then we have lost any word to name the special crimes of the Holocaust that succeeded in killing six million Jews of Europe, or the rampage that in only three months killed nearly a million Tutsis in the small nation of Rwanda. Most of us feel instinctively that, while there are crimes against humanity and campaigns of persecution and crimes with appalling numbers of victims, genocide stands apart as something extraordinary.

On the other hand, if we describe genocide too narrowly or place too many qualifications on its name, we limit it to a special reserve of crimes that take place so rarely that we may well ask why we need a special name for it at all, since any genocide is necessarily comprised of a multitude of criminal acts that could be punished as war crimes, crimes against humanity, or mass murder, not to mention kidnapping, torture, destruction of property, and offenses against a host of ordinary criminal laws.

And too constricted a view of genocide may blind us to genocides in the making: if we wait for some million-victim mark to be surpassed, we may discount the murders of thousands and find ourselves at great disadvantage — as the Allies were in 1939 and 1940 and 1941 — when we realize the seriousness of the situation. Or we may turn away from the genocides that act over decades by corrosion rather than in months by open and spectacular flame.

The first requirement of genocide, therefore, is a definition. If we are to have an international criminal court that can punish it, we must know what it is so that proper authorities can decide whom to put on trial, and defendants can know the elements of the crimes they are accused of so that they can prepare a defense, and judges can weigh the evidence against the definition and determine guilt or innocence under the law. A court cannot try crimes for which there is no definition, which is why the framers of the Nuremberg Charter painstakingly defined crimes against peace and crimes against humanity in the summer of 1945.

But the need for definition, important as it is, goes beyond the demands of legal process and judgment. Genocide is also a political judgment, because nations can intervene, or refuse to intervene, against violations of human rights by characterizing the conduct as genocide, or refusing to do so. In 1994, the United States did not act in response to the massacres in Rwanda and refrained from calling it a genocide. In 1999, the United States led NATO to intervene in Kosovo and did call it a genocide. Military or political intervention is far easier to justify in genocides than non-genocides, and some may believe that the Clinton administration simply did not want to intervene in remote East Africa, and did want to intervene in sensitive Central Europe. So genocide — what it is and what it is not — is, like most things,

too important to be left to the lawyers and judges and those who write the documents that establish courts. If nations are to go to war and put their soldiers under enemy fire to bring an end to genocide, as the NATO nations did in 1999 and will no doubt do again, then we need to understand what genocide is.

At first glance, this may seem like a straightforward enough question to answer because there is a definition of genocide in international law that seems both refreshingly brief and clear, and universally accepted. It is useful to consider how that definition came to be.

The word itself (from the Greek *genos*, meaning race or people or tribe, and the Latin *-cide*, meaning killing, as in homicide) was coined in 1944 by Raphael Lemkin, a Polish lawyer and scholar who described it thus:

By “genocide” we mean the destruction of a nation or of an ethnic group. . . . Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify 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. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.¹

The word was not used in the Charter or the Judgment of the international trial at Nuremberg.² In fact, the Judgment, despite characterizing the persecution of Jews as “consistent and systematic inhumanity on the greatest scale” does not focus on or discuss what many would consider the preeminent feature of that inhumanity: Hitler’s intent to destroy the European Jews as a people. But on December 11, 1946, the day that the first session of the United Nations General Assembly unanimously approved the Nuremberg principles as international law, it also unanimously adopted a resolution branding genocide a crime under international law and condemning it as “a denial of the right of existence of entire human groups . . . contrary to moral law and to the spirit and aims of the United Nations. Many instances of such crimes of genocide have occurred, when racial, religious, political and other groups have been destroyed, entirely or in part.”³

The United Nations resolution urged all members to adopt domestic legislation against genocide, and it began work on drafting a treaty on genocide — which it completed with surprising speed, submitting the Convention for approval by its member states in only two years. Approval by states came quickly, and the Convention entered into force barely two years later, on January 12, 1951. The Convention on Genocide, a simple one-page document that virtually every nation in the world came to adopt,⁴ speaks with force and clarity. “The Contracting Parties confirm,” it begins, “that genocide whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.”

It goes on:

In the present Convention, 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 group.

One might think that the universal condemnation of genocide, and the relatively simple form of the treaty defining and proscribing it, made the task of identifying genocide a relatively uncontroversial one. One would be wrong. While everyone agrees that genocide should be a crime under international law, few agree on what it actually *is*.

Political Groups

The first issue emerges when one compares the 1946 UN resolution, which cites the genocidal destruction of “racial, religious, political and other groups,” to the 1948 Convention, which defines genocide as acts undertaken to destroy “a national, ethnical, racial or religious group, as such.” Political groups as such are not protected by the Convention.

There are a number of reasons for this omission. Unlike nationality, ethnicity, race, and, generally speaking, religion, one’s political beliefs are not an immutable characteristic fixed at birth. One’s political beliefs are, in most cases, a matter of choice, and they can change over time. It is true that in many societies political beliefs can be closely correlated to one’s nationality or ethnicity or religion to the point that one can’t really be said to have “chosen” those beliefs in the sense that one would in a pluralistic democracy such as the United States, but nonetheless they remain matters of belief rather than birth.⁵

It can also be difficult to draw clear lines around political groups — to distinguish them from one another in the sense that one often can for groups whose ethnicity or race is relatively clear. But the most daunting argument against inclusion of political groups in the Genocide Convention — and the reason most often given as the Convention was being drafted — is that governments may undertake through a variety of means to assimilate political groups into the larger society, dissolving the political ties that unite a particular group. This may be undertaken for relatively benign purposes, and it certainly may be undertaken for sinister ones, as totalitarian governments seek to outlaw and punish dissident movements whose politics threatens the stability of the state. One of the leading voices for the elimination of political groups was the Soviet Union, though it was not alone.

On the other hand, proponents of the inclusion of political groups argued that, without it, a genocidal state could use “political beliefs” to justify its actions against political groups or movements that were, in fact, closely correlated with national, religious, or ethnic boundaries, using the pretense of restoring public order or putting down an insurrection.⁶ But two responses can be made to this. First, the world is obviously not bound to accept such pretexts. And second, to say that a government’s particular course of action against its own or others is not genocide is not to suggest that it is thereby permissible, lawful, or justifiable. Lethal persecutions on political grounds are a crime against humanity under the Nuremberg principles. The price of excluding political groups from the Convention’s protected categories may indeed be to allow governments “unrestricted freedom to suppress political opposition”⁷ without intervention under the Convention, but that price may not be an unreasonable one for a treaty that addresses the quite different matter of genocide.

But there is more to the definition of groups than the exclusion of political ones. Under the Convention's definition, the Nazi persecution of homosexuals would not be a genocide, since sexual orientation is not a defined group. Nor, for that matter, would the cruelties inflicted on the mentally retarded be considered genocide, and because gender is not a defined category there is nothing that could constitute a genocide against women.

This seems unjust, at least to New Millenium sensibilities, which are far more tolerant of those who used to be branded "deviants," far more compassionate to the plight of the disabled, and far more attuned to the historic susceptibility of women to mistreatment and abuse. And surely one's sexual orientation, mental acuity, and gender are not matters of choice in the sense that politics are, nor are there particular problems in determining where to draw those lines, as there are for political groups. In fact, despite the historical record in 1948, there seems to have been little discussion whether to include homosexuals, the disabled, or women in the Convention.

Had such matters arisen, however, they almost surely would have been defeated, and not merely because of the relatively unenlightened attitudes of 1948 as compared to today. The objection would be — much as it was on the subject of political groups — that governments ought not to be hindered in their decisions to define their society by fear that others might call it genocide and seek to intervene. Even today, some governments that define themselves as religious ones — as in much of the Islamic world — prohibit and punish homosexual activities, discussion or depiction of those activities, or any advocacy for change of those laws and policies. Is there a difference between such a position and, say, the prohibition and punishment of the practice of a particular religion? For that matter — since religious groups are explicitly protected by the Convention — does a government's prohibition of the practice of a particular religion within its borders constitute genocide? And while few governments today are so benighted as to treat mental retardation or mental illness as punishable conditions, is it genocide if those governments refuse to provide social services, housing, or care to those who by reason of their mental state need such assistance?

Whatever one's answers to these difficult questions, it is important to keep in mind a distinction between discrimination and destruction. The Genocide Convention does not prohibit even racial, religious, or ethnic discrimination. A government that reserves its civil service positions or its university seats or its training for desirable employment to some religious adherents and denies it to others is discriminating, but it is not committing genocide. Unlike the laws of the United States and some other countries, the Genocide Convention imposes no obligation on governments to treat all religions or ethnicities or nationalities without distinction or to provide equal opportunity to all. Indeed, the Constitution of the United States forbids national and state governments from providing assistance to any church: to suggest that this is "genocide" against religious Americans would be to strip the word of all sense and meaning.

Intent

The Convention requires that the proscribed acts be done "with intent to destroy, in whole or in part" a protected group. But what is an "intent to destroy"? For that matter, what does "destroy" mean? It may seem only sensible to require that there be an *intent* to accomplish a genocide — the notion of an accidental or inadvertent genocide makes no sense. How does one determine intent? Because crimes are

seldom committed with affirmative statements of intent, the law allows intent to be inferred from the act itself, by presuming that the perpetrator intended the natural consequence of his acts. If the defendant aims a pistol at the victim's heart and pulls the trigger, the jury is allowed to conclude from this that he intended to kill the victim and thus is guilty of murder. On the other hand, if the defendant shows that the victim was his friend, that they were engaged in horseplay and that he honestly believed the gun was unloaded, a jury might find that he had no intent to kill and that his crime is something less than murder, such as manslaughter, or negligent homicide, or even a tragic accident that is no crime at all. To require that a genocidist act with "intent" to destroy is only to say that, if extrinsic evidence of his intent is absent, the intention may be reliably inferred from the things he does.

One must be careful not to confuse intent with either motivation or objective. Motivation is one's reason for doing a particular thing, and the Genocide Convention, like most laws, does not take motivation into account. It requires that the acts be undertaken with an intent to destroy a group, regardless of why one wants to do that. Similarly, objective is the result one seeks in doing something — the act's purpose. Unlike motivation, purpose is frequently an element of a crime. Lying, for example, is not a crime. But lying for the purpose of deceiving another into parting with his money is the crime of fraud. Nothing in the Genocide Convention requires that a genocidist act with any particular purpose — the act alone is enough.

Destroy

The real challenge lies in the word "destroy." What does it mean to destroy a people? Suppose, for example, that the Nazi government had not killed a single Jew, but had demolished synagogues and rabbinical schools, forbade the teaching of Jewish history and the speaking or writing of Hebrew and Yiddish, outlawed the observance of the holy days and the requirements of kosher, seized the Torahs and other sacred texts — in short, had done everything in its power to destroy the bonds that gave the Jewish people their identity *as a people*,⁸ effectively taking away their language, their religion, their liturgies and observances and books, and with it their history and their definition of themselves. Can there be "cultural genocide"? Is it a genocide if nobody dies?

The concept of destroying a community in this way is known as *ethnocide*, an integral component of Lemkin's definition of genocide: "disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and *even* the lives of the individuals belonging to such groups." (my emphasis.) In his view, genocide had two phases: "one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and the colonization of the area by the oppressor's own nationals."⁹

A concept of "cultural genocide" is an appealing one; most people would accept that the obliteration of one's religious or ethnic infrastructure can be quite as devastating as outright murder. For many, there can *be* no religion without a religious community; for many, an ancestral language, history, and way of life are far more central to their lives and well-being than an identity with their present political state. Ethnic Albanians in the Kosovo region of Yugoslavia (in effect, Serbia) and Kurds in Iraqi territory, to take just two examples, have faced devastating injury as those

governments root out and seek to destroy the bonds that define them.

But defining genocide to include ethnocide is not a foregone conclusion, for the same reason that we see given for the exclusion of political or social groups: governments, even good governments, are jealous of their prerogatives to define and shape society within their borders. Saudi Arabia, for example, does not allow synagogues, the observance of Jewish holy days or other aspects of Jewish life and faith: is it engaged in cultural genocide? One may say, *no*, there are no Jews in Saudi Arabia and therefore no one's faith or community is being disrupted. But should prohibition of a religion stand clearly on the other side of the genocide line from obliteration of it? When one defines genocide in cultural or community terms one enters a sensitive area that implicates complex policies of a society's definition of itself.

Even to say that a prohibition on religious life is not genocide because no one's faith or community is disrupted is dubious. Until the Soviet Union's dissolution in 1992, its national policy was one of unyielding hostility to the practice of any religion, including Judaism and Orthodoxy. Houses of worship were few, clergy were regulated in number and in their activities, private religious instruction and education were actively opposed, publication and circulation of religious texts were closely regulated, and religious communities were denied virtually all means of support in a society where private endeavor was in no position to make up the difference. If one accepts that ethnocide is genocide, a serious case can be made that the Soviet Union practiced just that.

Whether the Convention does in fact prohibit "cultural" genocide is a vigorous debate, because one of the specific types of destruction that the Convention recognizes is "causing serious bodily or mental harm" to members of the group, or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."

"In whole or in part"

The definition of genocide as specified actions taken with an intent to destroy a protected group "in whole or in part" presents further conundrums. The "part" is there because genocide should not be made to depend on an attempt to destroy a group world-wide. But how small is a "part"? To what extent does one consider numbers, or scale? If, say, a mayor of a small town undertook "ethnic cleansing" in his town and killed all members of a certain ethnic or religious minority — numbering fifty in a town of five hundred — has he committed genocide? Can there be a genocide with only fifty victims, regardless of the victims or the intent or the actions taken to carry it out? Suppose the fifty are members of a substantial minority, numbering tens of thousands in that country, all of whom save the fifty are unharmed? Suppose that a tyrant orders the murder of all fifty members of a racial or religious minority in the entire country? Do we say that fifty victims are simply insufficient to constitute a genocide regardless of circumstances? The Nazis sought to make regions, then nations, *Judenfrei* — "free of Jews." Do we see a greater danger when the fifty victims make a nation *Judenfrei* than when they are fifty victims out of a population of thousands in that country?

This is not simply a numbers exercise. To ask, how many victims make a genocide — one thousand, ten thousand, one hundred thousand? — is to ask a question that, by itself, can have no categorical answer. But the imprecision of the terms "group" and "part" lead to legitimate questions — how big is the group? how large is the part? — that force us to consider just what we want the term "genocide" to define.

Unfortunately, the historians, political scientists, sociologists, and philosophers who have tried to settle the question of what a genocide actually is have done little to clarify the issue. At one extreme are those who argue that the Holocaust was “unique” and that, in fact, it is the only true genocide in history.¹⁰ But one can make a convincing argument that the Holocaust is indeed “unique,” in that it is the only genocide in which the vast resources of a modern industrial state — its government, its industry, its financial apparatus, its military, its propaganda machinery — were organized, coordinated and deployed for the express purpose of killing members of a religious faith and destroying the faith itself — without reaching the astonishing conclusion that there have been no other genocides.¹¹ If one defines genocide so narrowly that it includes only the Holocaust, there is little reason to be concerned with how we might recognize, prevent and prosecute genocide in the future, for then we are only asking, “How can we prevent a modern industrial state from mounting a decade-long campaign in which the persecution, terror, and death of millions of Jews (or some other religious or ethnic community) is its highest domestic and foreign affairs priority?” That simply is not a question likely to arise in today’s world.

At the other end of the spectrum are theorists such as Israel Charny, who would make any mass death outside of war a “genocide,” including such events as environmental destruction, the nuclear arms race, “unjust” wars, or any other phenomenon that directly or indirectly results in the death of innocent people.¹² Charny goes so far as to label the deaths of Chinese protestors in Tiananmen Square in 1989 as a “genocidal massacre.”¹³ A massacre it was, but it was levelled at pro-democracy demonstrators and had nothing to do with genocide.

To say that every mass death is genocide ought to be as self-evidently useless as saying that only the Holocaust is genocide. Yet these two seriously argued positions by thoughtful scholars point out the chasm that exists in trying to reach consensus on what distinguishes the special crime of genocide from political persecution, state-sponsored terrorism, crimes against humanity, and other criminal or oppressive acts.

Other, less extreme scholars have made thoughtful efforts to define genocide. Generally, these are brief definitions, usually accompanied by typologies that try to identify different types of genocides (usually by distinguishing among motivations or objectives of the perpetrators) or different types of societies that are prone to genocide (usually by historical examples).

Irving Louis Horowitz defines genocide as “a structural and systematic destruction of innocent people by a state bureaucratic apparatus.”¹⁴ Vahakn Dadrian, the leading historian of the Armenian genocide, states: “Genocide is the successful attempt by a dominant group, vested with formal authority and/or with preponderant access to the overall resources of power, to reduce by coercion or lethal violence the number of a minority group whose ultimate extermination is held desirable and useful and whose respective vulnerability is a major factor contributing to the decision for genocide.”¹⁵

Helen Fein’s definition is that genocide is “a series of purposeful actions by a perpetrator(s) to destroy a collectivity through mass or selective murders of group members and suppressing the biological and social reproduction of the collectivity. This can be accomplished through the imposed proscription or restriction of reproduction of group members, increasing infant mortality, and breaking the linkage between reproduction and socialization of children in the family or group of origin. The perpetrator may represent the state of the victim, another state, or

another collectivity.”¹⁶ Henry Huttenbach notes, “[G]enocide is best served as a concept to be clarified by as simple a definition as possible. That is to say, genocide is the destruction of a specific group within a given national or even international population. The precise character of the group need not be spelled out. . . . Simply put, genocide is any act that puts the very existence of a group in jeopardy.”¹⁷

Reviewing the literature, historian Frank Chalk and sociologist Kurt Jonassohn propose a revision: “Genocide is a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator.”¹⁸

There are several difficulties with these definitions, apart from the fact that they seem to have little in common with each other. They are vague, highly detailed, or overly broad, and the accompanying typologies are often so detailed, specialized,¹⁹ or of such daunting complexity²⁰ that they are of little help in trying to distinguish actual situations in the world. Without explicitly saying so, most seek to straddle both the killing of many people and the destruction of community or continuity without killing. They avoid any attempt to determine when a group is “destroyed,” and some suggest that genocide occurs even when a group is “reduced” or “jeopardized.” For that matter, there is no consensus whatever on how a “group” is to be defined, or whether it may simply consist of the group of victims, or whether any concept of “group” is even necessary at all. Some require state sponsorship; some don’t. They are ill-suited as definitions of the crime of genocide.

To be fair, it must be said that such is not their purpose. But that is the point: we lack any workable, unambiguous, reasonably clear definition of genocide that can be used by courts, judges, and lawyers in deciding who is, or is not, guilty of genocide and — equally importantly — by governments called upon to take action against genocide.

Even when one breaks free of the scholarly jargon and all-encompassing theories, thoughtful experts can look at the same situation and reach opposite results. Consider the views of Irving Louis Horowitz and Yehuda Bauer on the fate of the Poles in World War II.

Horowitz:

Between 1939 and 1945, some three million non-Jewish Poles, about 10 percent of the population, were murdered by the Nazis. During this same period three million Jews living in Poland were also annihilated, about 90-[9]5 per cent of the Jewish population in this country. The fact that, in both cases, each group lost three million people disguises the fact that the Polish nation, and 90 per cent of Poles, survived the war. The Jewish community of Poland was eradicated.²¹

Bauer:

The Poles, during World War II, were subject to massive persecutions accompanied by the murder of many, especially intellectuals, and in some areas peasants whose lands the Germans wanted to settle with German evacuees from other areas. According to Polish sources, about three million ethnic Poles lost their lives during the war, or about 10 percent of the Polish nation. Not all of these were victims of murder actions. Many died as Polish soldiers, or even as a result of Allied bombings. But large numbers were murdered, or died as a result of direct German actions such as denying food or medical treatment to Poles, or incarceration in concentration camps. There is no way of estimating the exact proportions, but I believe it would be difficult to deny that we have here a case of mass murder directed against Poles.

German plans regarding Poles talked about denationalizing the Polish people, or in

other words, making them into individuals who would no longer have any national identity. This meant that the Polish nation as such would disappear, though a majority of the individuals composing it would continue to live. In order to do that the Germans dismantled Polish-owned industry or appropriated it for themselves; they closed schools and universities and eliminated the educated classes; they forbade all Polish political activity and consigned the Polish people to boorishness and a primitive existence under German overlordship. This is a case of genocide — a purposeful attempt to eliminate an ethnicity or a nation, accompanied by the murder of large numbers of the targeted group.”²²

The best way to derive such a definition, I believe, is not to seek some existing normative standard — clearly, there isn’t any — but to ask: what do we want “genocide” to be? What is it about that special crime that sets it apart from lesser abuses of political power or armed might that visit persecution, cruelty, and death on significant numbers of people?

One reason that traditional definitions have failed is that they seldom account for the central characteristic of genocide, which is that it is not a single discrete act. It assumes many forms, and it exhibits them simultaneously. It is, in diagnostic terms, a syndrome: a grouping of signs and symptoms that collectively comprise an abnormal condition. We can distinguish torture from murder; we can distinguish the arbitrary or discriminatory denial of civil rights from involuntary deportation; and expropriation of property from forced sterilization. But all of these, and more, may be part of a genocide, and the absence of any one does not contraindicate a genocide. We cannot define or identify genocide without first understanding that it is not a single or discrete crime; it is an amalgam of crimes.

Trying to define genocide as if it were a discrete crime that could be described, like murder, in a sentence or two therefore will nearly always lead to a definition so broad that relatively minor events can fit within it. Thus, when the UN Convention defines genocide to include the destruction “in part” of a religious or other group, it allows the destruction of even a small part: an Arab terrorist drives a car bomb into a crowd of Jews leaving a synagogue in Jerusalem; a well-armed Israeli gunman opens fire in the crowded Arab city of Hebron — both are, within the Convention’s definition, committing genocide. Even if we were to amend the Convention to require “in substantial part,” it would beg the question of what “part” is to be measured. When one of Hitler’s Einsatzkommando units killed 85 of the 100 Jews in a village in Ukraine, for example, it was a substantial part of that village, but was it a substantial part of the Jews in the region, or in Ukraine, or in the Soviet Union, or Europe, or the world? What is the whole of which the victims are a part?

On the other hand, no definition of genocide should be so narrow that only prolonged global campaigns will satisfy it. That veers too closely to the fallacy that no crime is a genocide until it is the Holocaust.

No definition will be perfect, but we need one that will, in some sensible way, reach the events we recognize as sufficiently serious to be classified as genocide and to exclude those crimes that can be adequately dealt with through existing prohibitions on crimes such as murder or crimes against humanity.

I propose such a definition below. Before doing so, however, it is instructive to clear away three obstacles that have unnecessarily confused the definition business in the past.

First, it is needlessly confusing and complex to define genocide according to the motives of the perpetrator, or the objectives the perpetrator is trying to achieve. Such things are seldom clear in any event, nor for that matter is there generally a

single overriding motivation or purpose. The law traditionally does not consider motive in defining crimes or in weighing guilt or innocence, for the very good reason that why a person commits a crime does not alter the fact that he has committed it. Even the familiar distinctions among homicides — premeditated murder, for example, versus manslaughter — do not weigh motive but rather the presence or absence of premeditation or intent. Consideration of motive is often relevant at the punishment stage, recognizing that people sometimes commit crimes for understandable reasons.

Second, we need to focus on the essential elements of the crime itself and put aside what we might call the secondary characteristics of genocide, that is, those phenomena that often accompany or encourage it but are not elements of the crime itself. In this category we have such things as intense nationalism, the tacit support or quiescence of the population, the absence of a pluralist political system, non-interference from abroad, the support of the mass media (usually government-controlled), dehumanization of the victims, minimization or outright denial by the perpetrators, and other societal and political phenomena. A focus on these matters is important from a sociological or historical perspective and in understanding the dynamics of genocide, but they add nothing to the question of whether a genocide is actually taking place.

The 1994 genocide in Rwanda, for example, might or might not have taken place without the incessant anti-Tutsi hatemongering of the government radio station, but what happened was a genocide regardless of whether the radio station was complicit in it or not. The world's neglect of the increasingly perilous condition of Jews in Germany in the 1930s and early 1940s almost surely encouraged Hitler to move ever more closer to the Final Solution, but what happened was a genocide whether the world tried to stop it or not. By removing these accompanying or facilitating phenomena from our analysis, we leave for another day the question of what *causes* a genocide, because our concern is what *is* a genocide.

Third and finally, we must distinguish, at least for purposes of definition, between genocide and what may be called ethnocide. Genocide is accomplished by mass killing (usually accompanied by other things as well); ethnocide leaves the victims alive but destroys their community, their heritage, their common bonds, either directly as by outlawing or destroying the manifestations of community (such as religious ceremonies and language) or indirectly by dispersing the community so that it is no longer a community at all. I don't mean to suggest that ethnocide is not a serious crime, perhaps as serious as genocide through killing, and perhaps even legitimately a type of genocide itself. That was, in fact, Lemkin's original conception, and the UN Convention definition is arguably (but only arguably) broad enough to include ethnocide.

But trying to formulate a definition that is commodious enough to include genocide both by killing and by ethnocide will fail because the phenomena, though they may be equally condemnable and may also accompany each other, are quite distinct. There are at least two important reasons for this. First, ethnic communities expand, shrink and change due to any number of reasons. Sometimes they dissolve on their own and for benign reasons (as through assimilation in the larger society for example, as in the case of many immigrant communities in America); they sometimes dissolve or shrink through the neglect or hostility of the government over them (forcing the inhabitants to disperse because life in the enclave has become too difficult, as in the case of African-Americans in the South in the mid twentieth

century); they sometimes dissolve precipitously and involuntarily because of government action (Native Americans forcibly relocated in the nineteenth century to reservations distant from their traditional habitats); they sometimes exist both separate from, and as an integral part of, the larger society (the Chinese and Chinese-American community in San Francisco, for example).

The second reason is that there is a broad area in which governments may legitimately (although not always wisely, and not always compassionately) seek to impose change on ethnic or racial communities. To take some recent American examples: the busing of schoolchildren from their neighborhoods to schools some distance away in order to achieve racial balance in all schools; the requirement of, or in some cases the prohibition of, bilingual education in ethnic communities; the enforcement of labor laws against businesses that traditionally have employed large numbers of “undocumented workers” in Latino communities in the American Southwest — all of these have had far-reaching and some would say deleterious effects on the racial or ethnic communities they most directly affect, but they are examples of legitimate choices a society or government may select to balance competing needs and demands.

At times, of course, such choices take on sinister dimensions. The Jim Crow laws of the American South in decades past, which denied basic civil rights and essential human services to black communities, and the unequal application of the laws to African-Americans, profoundly affected the vitality of those communities and the human rights and dignity of their members, to the point that one can properly at least begin to speak of *ethnocide*. But other types of social intervention are problematic. The relocation of Japanese-Americans from the West Coast to inland camps during World War II — approved by no less than President Roosevelt — was unjustified and profoundly disruptive, but the effects were temporary and the communities, as communities, recovered when the camps were disbanded. It is now universally seen as a racially motivated overreaction, but it is not universally seen as *ethnocide*.

At other times, social engineering is met with considerable acclaim. The Head Start program, for example, which is aimed at early educational intervention in poor (and largely minority) communities, is generally well-regarded, as is, today, the Voting Rights Act, which introduced an imposing federal presence in the South to remove legal barriers to full voter registration. Indeed, a great many vigorously debated government programs have direct impact on ethnic or racial communities. Are we doing enough to combat AIDS? Are our drug-abuse programs helping or hurting minority communities? What should be our policies on education?

Whatever verdicts one might reach on these social and legal initiatives of greater or lesser legitimacy, they have no analogue in a spectrum of genocide. There is no such thing as a legitimate or well-intentioned or beneficial social killing program.

None of this is to deny the plain truth that, in its most aggravated form, *ethnocide* can be an integral part of a genocide, as it was in the destruction of Jewish communities and Jewish life that was a prelude to Treblinka and Auschwitz. But it can also take place without mass killing, and in those cases there seems little point to trying to argue whether it is, in and of itself, genocide. It is *ethnocide*. Perhaps it is as bad as genocide. Perhaps it is more prevalent. Perhaps it is more insidious. Perhaps there should be a UN Convention on *Ethnocide*, and perhaps *ethnocide* should, with genocide, be a crime punishable by the International Criminal Court. But it is a crime different from genocide, just as kidnapping is a crime different from murder even

when they take place in tandem, with the same victim, and the same perpetrator guilty of both.

To try to define here what *ethnocide* is would be even more difficult than trying to define what *genocide* is, because we would first have to devise a way to distinguish *ethnocide* from other forms of natural or induced change to communities, and then reckon with the concept of inadvertent *ethnocide*, and then try to discern the point at which malignant activity ripens into a special international crime. Whatever it may be, it is a sufficiently varied and distinct set of phenomena that ought not to be forced into a definition of *genocide*, and much of the confusion and disagreement over what constitutes a *genocide* (as, for example, the opposed views of Horowitz and Bauer quoted above) are based on attempts to define *genocide* so as to include both phenomena.

We can now proceed to *genocide* as the crime we want to separate and define. What is it that we want to include in this special crime? What do we want *genocide* to be? What I propose here is not something purposefully innovative; to the contrary, my purpose is to reflect what I believe our common sense and judgment recognize as *genocide*. To do that, I have not tried, as others have, to define *genocide* in a conventional way. Instead, I identify below the attributes that I believe comprise the essence of *genocide* as we recognize it.

First, *genocide* requires intentional, targeted killing of people, and second, there must be an absolutely large number of deaths. One of the most serious defects of the UN Convention and others' efforts, as I have shown above, is that it allows the definition to extend to incidents of a limited number of deaths that are more accurately characterized as atrocities or massacres than what we think of as *genocide*. This shortcoming has in turn led some analysts to espouse a concept of "genocidal massacres" to denote atrocities targeted at a particular group.²³

This is both conceptually confusing and legally unnecessary. The Statute of the International Criminal Court makes virtually any state-sponsored mass murder of civilians a crime against humanity.²⁴ The deaths of fifty or one hundred persons — whether state-sponsored or not, whether in war or not — may be a massacre, a war crime, a crime against humanity, or ordinary mass murder, but it is not a *genocide* no matter what the circumstances. While every *genocide* is a crime against humanity, not every such crime is a *genocide*. Every *genocide* (as I have characterized it, excluding *ethnocide* per se) includes mass murder, but not every such crime is a *genocide*. There is no reason that we have to affix the adjective "genocidal" to every murderous atrocity against an ethnic or racial or religious cohort. The act is a crime without it, and calling it *genocide*, or even a diluted "genocidal," is confusing and unnecessary.

What, then, is the threshold number of deaths? Can we conclude that under, say, ten thousand can never be a *genocide* but ten thousand or more can be, assuming the other criteria set forth below are also present? It is tempting to be so concrete, but probably futile. What we are seeking in this element is not a specific number, but an order of magnitude that unambiguously sets the event or campaign apart from a baseline of political persecution or atrocities. Responsibly, I think we can only say that several hundreds of deaths are not a *genocide*, several thousands are probably not, several tens of thousands probably are, several hundreds of thousands certainly are.

Despite the breadth and necessary imprecision of these parameters, I think they are useful in conveying the sense of absoluteness that is necessary to a definition of

genocide. But counteracting the imprecision, at least to some extent, is the requirement of scale or proportion, which I address below. Before doing so, however, it is necessary to consider the question of victim identity.

Third. The victims must be targetted because of their membership in a group that is objectively identifiable. No issue in genocide studies has generated more controversy than how one defines the distinguishing characteristics of the victims or, indeed, whether there must be an identifiable victim “group” at all. Nearly everyone finds fault with the UN Convention’s omission of political groups, and on that rationale one should include social, economic (or socioeconomic) groups as well. Given present sensibilities, there also seems little opposition to including women, gays and lesbians, children, the mentally retarded, the disabled, and others who are customarily characterized as minority, vulnerable, or disadvantaged. The logical end point of this expansionism is to argue, as some have, that no group identity of any kind is needed: people are people, and no one is entitled to special status that denies victim-eligibility to others.

Whatever the defects of the Convention’s definition, however, it adheres to the notion of genocide’s root. *Gens* expresses the sense of a people, a tribe or nation — an “us”-ness — that is reflected in the Convention’s demarcation of a “national, ethnical, racial or religious group, *as such*.” Not even political or (merely) social groups, let alone groups sharing only a common gender or sexual orientation or mental acuity, fit this concept. And it is impossible to read Lemkin’s definition of genocide — with its expressions of institutions, language, and culture, all based on the idea of a “group as an entity” — as applying to such broad categories of otherwise disparate and unconnected people.

The reluctance to “exclude” any group, however defined, from “eligibility” as victims of genocide seems based on two precepts. First, we do not want to appear to denigrate the identity, worthiness, or personality of *any* collectivity of human beings, lest by doing so we appear to be undervaluing that which makes them human — including, of course, their gender, sexual orientation, mentality, youth, political beliefs, or whatever the defining characteristic may be. Second, we find it distasteful to place people in “favored” or “disfavored” status — that is to say, “eligible” or “not eligible” for genocide “status” — because to do so suggests that the murders of some people are less a matter of international or human-rights concern than the murders of others.

These liberal, inclusive precepts are humane and in some senses admirable, but when our task is to define genocide both of them are fallacious. To say that genocide does not extend to every conceivable collectivity of humans is not to suggest that some collectivities are less “human” than others. Any murderous campaign targetting, say, mentally retarded people would surely be a crime against humanity, a matter of legal and moral concern comparable to genocide. Moreover, even the UN Convention’s definition of genocide excludes no *person* — we are all members of a national, ethnical, racial, or religious group, and so if the touchstone is “eligibility” for genocide “status” no one is excluded merely because the definition of genocide omits our gender, sexual orientation, or any other of the scores of attributes that make us human.

But “eligibility” for genocide “status” ought not to be the touchstone, for the purpose of defining the crime is not to validate the human status of any collectivity in the first place. The foundation of international human rights is the recognition that humanity transcends any secular attempt to confine or denigrate it, as Thomas

Jefferson well recognized when he wrote in the U.S. Declaration of Independence that “all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.” That precept animated the Universal Declaration of Human Rights, which on December 10, 1948 — one day after the adoption of the Convention on Genocide — declared that “All human beings are born free and equal in dignity and rights . . . without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone has the right to life, liberty and the security of person.” We do not need the definition of genocide to do by implication and indirection what the Declaration of Human Rights already does, explicitly and eloquently.

Moreover, in defining genocide we ought to pay some attention to the genocidal evils that have actually been perpetrated in the world. There is no doubt that women, and gays and lesbians, and the disabled and the poor among many other collectivities have suffered unwarranted discrimination at law, including the all too frequent assumption that crimes against them are somehow less serious, or at least more to be expected, than crimes against others. Rape, for example, has historically been treated as an unavoidable consequence of war or even an acceptable element of it. This attitude has now been forcefully repudiated; international law now recognizes rape both as an element of genocide and as a crime against humanity.²⁵ Genital mutilation, another atrocity unique to women, has been resistant to international law. But the fact is that there have been no murderous campaigns against women on a scale that would meet the threshold of genocide, nor any such murderous campaigns against homosexuals or the disabled. Crimes on that scale — as in Armenia, Nazi Germany and Rwanda — have been directed at national, religious, racial, or ethnic groups.

To all of this, however, there is yet an addition, and that is political groups, which the UN Convention omits. I believe any definition of genocide must include such groups, for several reasons. First, political groups were included both in Lemkin’s definition and in the UN Resolution on Genocide that kicked off the deliberations leading to the Convention. It was dropped in those deliberations not for any particularly principled reason, but because the Soviet Union and others objected. Second, killing on a genocidal scale has been targeted at political groups to an extent comparable to racial or religious or ethnic or national ones — most notably in Cambodia, about which more below. Third, while it is in some sense true that one’s political beliefs are less immutable than one’s race or ethnicity, immutability is not the determining criterion: one’s gender and sexual orientation are also immutable. And there is very often a close correlation between one’s political beliefs and one’s nationality or ethnicity. There should be no legal defense that allows a genocidal perpetrator to evade responsibility by configuring a policy so as to follow political, rather than national or ethnic, boundaries.

Finally, and to me most persuasively, political beliefs are the only feasible grounds on which to conclude that what took place in Cambodia in the 1970s was a genocide, and any definition of genocide that would overlook Pol Pot’s killing fields in which three-quarters of a million persons were put to death would be unacceptable.

Fourth. There must be a scale or proportion such that the murdered victims comprise an appreciable part of the larger group of which they are members. At first blush, this requirement may seem superfluous, for if — as we have established

above — any genocide requires a quantum of deaths that number at least in the several thousands, why should it also be necessary that these several thousand victims comprise some significant portion of the racial, religious, ethnic, national, or political group to which they belong? The answer is that the requirement serves not to mask the murder of a very large number, but rather to extend genocide into relatively smaller numbers of absolute murders when that victim number is in fact an appreciable part of a larger group. In this sense, it operates as a counterweight on the requirement of absolute numbers: relatively smaller numbers will qualify, up to a point, because they represent a more significant loss from the parent group.

The problem, of course, is to determine the “larger group” against which the victims are measured. In a relatively few cases (the Holocaust, for example, and probably the genocide of the Tutsis in Rwanda, and probably the Armenians in Turkey) one can fairly say that the victims were a substantial part of the group in the whole world. But these are the clearest cases; not every genocide, to be considered such, need meet such a rigorous criterion.

For example, imagine some small Third World nation in which 5 percent of the population of a half million is Christian. A dictator assumes power and wages a murderous campaign against all 25,000 Christians; 20,000, in fact, die. Do we say that this is not a genocide because, after all, 20,000 is not an appreciable portion of the billions of Christians in the world? *No*. The number is an appreciable part of the Christians in that country, and 20,000 is not so small a number that it should not be considered a genocide.

What makes scale or proportion important is eradication as a historical and conceptual element of genocide. Hitler’s objective was to make this or that occupied country, or this or that region in the country, *Judenfrei*. That quintessentially genocidal concept was expressed half a century later in Bosnia and Kosovo as “ethnic cleansing.” Its special repugnance is reflected in the assumption that an area needs to be cleansed, or made free, of some unwanted presence.

“Ethnic cleansing” may also take place on a small scale, with a number of victims too few in absolute terms to be considered a genocide — if, for example, the hypothetical dictator above carried out a limited campaign to “cleanse” a village or town by killing all fifty Christians. This typifies what some analysts have called a “genocidal massacre,” but what should properly be called an murderous atrocity without the genocidal ambiguity: fifty victims do not make a genocide. Indeed, this example might or might not make the threshold of a crime against humanity, but that simply recognizes that not every hate crime is a matter of international concern.

The “larger group” measurement should never be larger than that group in the country, and it may occasionally be smaller, particularly where the genocidist concentrates the campaign in a particular region of the country. But it probably should not be as small as a town, or a county-like unit.

One could plausibly argue that we shouldn’t require both the identifiable-group criterion and the scale or proportion criterion: that is, it should be enough, to constitute a genocide, that the victims be members of an objectively identifiable group *or* that they comprise an appreciable portion of the country’s population, so long as the number of absolute deaths is sufficiently great. That approach would surely bring the Cambodian tragedy within the ambit of genocide where it belongs. But doing away with group identification altogether in a given case drains *genocide* of its meaning. The approach, in any event, may be more theoretical than real: it is difficult to imagine a case in which the deaths are so evenly distributed that, while

they comprise a significant portion of the nation's population, they do not comprise a significant portion of any one group within that population.

Fifth. The genocide must be carried out by the state, or at least by some state-sponsored entity, if there is a state. It cannot be carried out over the opposition of the state. It can be cogently argued²⁶ that genocide waged by, say, one tribe against another, with no assistance by the state, is equally condemnable and criminal; but this overlooks that one of the essential evils of genocide is, in fact, the instigation and participation of the state. This sponsorship is evil both conceptually — because the state is the public *res*, whose basis for authority, according to the Universal Declaration of Human Rights, is the will of the people²⁷ — and practically, because the state can control the infrastructure — roads, rail lines, airfields, telephone, fuel, media, and other elements — that can mean the difference between success and failure of the genocide, not to mention awareness of its scope in the rest of the world. In practice, of course, few genocides historically have been waged without the state's sponsorship, though there may be room to argue that where the state has ceased to exist or function, state sponsorship is no longer an essential element of genocide.

Sixth. Legitimate warfare against an organized opposition cannot be genocide. Warfare against an enemy is not genocide, provided that it ceases when the enemy surrenders or is defeated. That is not to excuse genocide when the victims take up arms and fight back. Self-defense is an internationally recognized right,²⁸ and common sense dictates that a genocide does not lose its character merely because the victims are trying to defend themselves. But warfare also kills a large number of people, who are very frequently members of an identifiable national or other group, and who may be killed in appreciable numbers by state-sponsored armies — that is, all the criteria listed above for genocide. But both in law and in common sense there is a difference between legitimate warfare and genocide, and if the determination is made that it is legitimate warfare, it cannot be genocide. Warfare, to be legitimate, must stop when the enemy is defeated or surrenders, however.

Conclusion

This outline of a definition is hardly perfect, but its flexibility allows it to be sensitively applied to the facts of a given case, enabling a court or prosecutor to be faithful to the legally-binding Convention while overcoming its inherent ambiguities. Our knowledge of the dynamics of genocide has, unfortunately, grown through experience since 1948, and attempts at linear definitions include or exclude too much. It is not ironic to ask, what do we want genocide to be? When do atrocities and crimes against humanity cross the line into genocide, and, just as importantly, when do they not? ❀

Notes

1. Raphael Lemkin, *Axis Rule in Occupied Europe* (Washington: Carnegie Endowment for International Peace, 1944), 79.
2. Interestingly, the word does appear in the indictment. In the portion charging war crimes in occupied territories; the indictment alleges that the defendants "conducted deliberate and systematic genocide, viz., the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial, or religious groups, particularly Jews, Poles, Gypsies and others." Indictment VIII (a). It is evident that the drafters of the indictment had read Lemkin, but this seems to be the only reference to genocide at these proceedings.
3. United Nations General Assembly Resolution Res. 96-I, December 11, 1946.
4. Although the United States did so only in 1985.
5. Of course, this does not include such de facto "political" groups as "dissidents," or "enemies of the people." See Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide* (New Haven: Yale University Press, 1990), 10.
6. Leo Kuper, *Genocide* (New Haven: Yale University Press, 1982) 28–29.
7. *Ibid.*, 30.
8. In fact, of course, the Nazi government and party did all those things.
9. Lemkin, *Axis Rule*, 79.
10. See Steven Katz, *The Holocaust in Historical Context* (Oxford: Oxford University Press, 1991). For a cogent discussion of this thesis, see Yehuda Bauer, "Comparison of Genocides," in Levon Chorbajian and George Shirinian, eds., *Studies in Comparative Genocide* (New York: St. Martin's Press, 1999), 31–43.
11. See Raul Hilberg, *The Destruction of the European Jews* (New York: Harper Colophon, 1979), 760–65. The literature on the uniqueness of the Holocaust is imposing, and it is not my purpose to review it here. Historians of the Armenian genocide make the entirely valid point that Turkey likewise harnessed modern technology toward the killing of Armenians in 1915–18. See, e.g., Roger W. Smith, "State Power and Genocidal Intent: On the Uses of Genocide in the Twentieth Century," in Chorbajian and Shirinian, *Comparative Genocide*, 11–13 (acknowledging that the Nazis were "more sophisticated in the production of mass death" than the Young Turks).
12. "I call on fellow scholars to be faithful to the commonsense meanings of loss of human lives so that we do not exclude in arbitrary, cynical or intellectual elitist ways the deaths of *any* group of our fellow human beings from the definitions of genocide. I believe there is no task of greater importance than that of committing ourselves to the protection of all human lives." Charny, "Toward a Generic Definition of Genocide," in Andreopoulos, *Genocide: Conceptual and Historical Dimensions* (University of Pennsylvania Press, 1997) 74 (emphasis original). Why the commitment to protect all human lives requires us to call everything genocide is not explained.
13. Charny, "Generic Definition," 77. Even less sensible is the definition of Tony Barta, who defines a "genocidal society" as one in which "the whole bureaucratic apparatus might officially be directed to protect innocent people but in which a whole race is nonetheless subject to remorseless pressures of destruction inherent in the very nature of society." Quoted in Frank Chalk, "Redefining Genocide," in Andreopoulos, *Genocide*, 55.
14. Irving Louis Horowitz, *Genocide* (Transaction, 1976) 18; and his *Taking Lives: Genocide and State Power* (4th ed., Transaction, 1997) 21.
15. Vahakn Dadrian, "A Typology of Genocide," *International Review of Modern Sociology* 5 (Fall 1975): 201–12.
16. Quoted in Chalk and Jonassohn, *Genocide*, 16.
17. Henry Huttenbach, "Locating the Holocaust on the Genocide Spectrum: Towards a Methodology of Definition and Categorization," *Holocaust and Genocide Studies*, 3, no. 3, (1988): 289–303.
18. Chalk and Jonassohn, *Genocide*, 23.
19. See Smith, "State Power," 3–14. Smith proposes a typology of "retributive," "institutional," "utilitarian," "monopolistic," and "ideological" genocides.

20. See, e.g., Charny, "Generic Definition," 86–90.
21. Irving Louis Horowitz, "Science, Modernity and Authorized Terror: Reconsidering the Genocidal State," in Chorbajian and Shirinian, *Comparative Genocide*, 21.
22. Yehuda Bauer, "Comparison of Genocides," 35–36.
23. See, e.g., Chalk and Jonassohn, *Genocide*, 26; Charny, "Generic Definition," 77
24. Article 7 of the Rome Statute.
25. That is, Article 5, Amended statute of the International Tribune for the Former Territory of Yugoslavia; Article 3, International Criminal Tribunal for Rwanda; Prosecutor v. Jean-Paul Akayesu (ICTR, Sept. 2, 1998) Judgment of Trial Chamber II in Kunarac, et al. ("Foca case") (ICTFY, Feb. 22, 2001).
26. Huttenbach, "Locating the Holocaust."
27. UDHR, Art. 21(3); cf. the Declaration of Independence: "to secure these rights governments are instituted among men."
28. Article 51, UN Charter.

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