

## Re-thinking Genocide Prevention

By Dr. Gregory H. Stanton<sup>1</sup>

The word *genocide* was invented by a lawyer, Raphael Lemkin. He also defined his concept of genocide when he first proposed it. Lemkin said in Axis Rule in Occupied Europe<sup>2</sup>:

"By "genocide" we mean the destruction of a nation or of an ethnic group. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing), thus corresponding in its formation to such words as tyrannicide, homicide, infanticide, etc. 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."

Lemkin also played a leading role in defining genocide in the Convention for the Prevention and Punishment of the Crime of Genocide. He was the force that drove the United Nations to draft and pass its first international law.

But the international lawyers and diplomatic politicians who actually drafted the Genocide Convention fell short of Lemkin's definition and of Lemkin's dream. They narrowed the concept to omit cultural, political, and economic destruction of groups, and destruction of personal security, liberty, health, and dignity of individuals belonging to those groups. So they eliminated the early stages of the genocidal process, significantly weakening the Convention as an instrument for prevention.

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<sup>2</sup> Raphael Lemkin, *Axis Rule in Occupied Europe*, Carnegie Foundation for International Peace, 1944, 79.



*They* established no new institutions to enforce the Convention. Although the framers referred to an international court to try perpetrators, it was not established until 2002. They established no international monitoring institution to prevent genocide.

Legally the framers bound the definition of genocide in the strait-jacket of "specific or special intent" (*dolus specialis*) of German-Roman law, so that proving genocide becomes difficult after the fact, and nearly impossible while genocide is being committed. Short of interception of written orders, the intent of the perpetrator is extremely hard to prove during the chaos and secrecy of war. As Melson and others have shown, most genocides occur during civil or international wars.<sup>3</sup> The fatal consequences have been evident in the refusal to name the killing in Rwanda and Darfur "genocide" until the killing is finished.

Worst of all, they made Article 1 of the convention so vague that States-Parties merely "undertake to prevent and to punish" genocide, without any legal obligation to do so. The Genocide Convention was born without teeth.

With the creation of the special international tribunals -- the ICTY, ICTR, Special Court for Sierra Leone, and tribunals for East Timor and Cambodia -- the Genocide Convention began to cut some teeth. Restrictive definitions of the special intent requirement by Judge Antonio Cassese and others on the ICTY (following Professor William Schabas's influential treatise<sup>4</sup>), prevented it from finding anyone guilty of genocide until Judge Cassese had resigned from the court.

The ICTR, on the other hand, has built a much stronger jurisprudence, mainly because Rwanda so clearly suffered genocide. The ICTR's judgments have greatly strengthened the law of genocide. They have put the first sharp teeth into the Genocide Convention. The ICTR has resolved many issues, such as how to define a group (subjectively, from the point of view of the perpetrator)<sup>5</sup>, whether mass rape is an act of genocide (it is)<sup>6</sup>, and when hate speech is incitement to commit genocide.<sup>7</sup> Beginning with its path-breaking Akayesu judgment<sup>8</sup> and

<sup>3</sup> Robert Melson, *Revolution and Genocide*, Chicago, 1992.

<sup>4</sup> William Schabas, *Genocide in International Law*, Cambridge, 2000.

<sup>5</sup> See *Kayishema and Ruzindana* (ICTR, Trial Chamber, 21 May 1999), para 97-98.

<sup>6</sup> *Prosecutor v Jean-Paul Akayesu*, ICTR-96-4-T, 1998.

<sup>7</sup> "The *mens rea* required for the crime of direct and public incitement to commit genocide lies in the intent to directly prompt or provoke another to commit



continuing through its far-reaching decision on incitement in the Media case, (*Nahimana, et al.*)<sup>9</sup>, the ICTR has provided the legal basis for reclaiming much of what Lemkin lost to the Stalinists at the drafting of the Genocide Convention and to the legal Pharisees at the ICTY. The ICTR's judgments are not favored by scholars with a narrow view of the Genocide Convention,<sup>10</sup> but they are restoring Lemkin's original intent to the Convention.

Now we finally have an International Criminal Court. Luis Moreno-Ocampo has proven to be an aggressive prosecutor, and we can hope that the court will adopt the ICTR's jurisprudence of genocide, not the ICTY's. We already have one indicator: He has brought charges against three of the top leaders of the genocide in Darfur, including President Omar al-Bashir. He has taken up the challenge thrown at him by the UN Commission of Inquiry, which found that certain individuals may have committed genocide in Darfur, to be determined later by a court, but the Commission could not find genocidal intent by the government of Sudan.<sup>11</sup> It turns out that the ICC Prosecutor has found genocidal intent in the President of Sudan, himself.

Why lawyers at the UN, Amnesty International, and Human Rights Watch have failed to call the genocide in Darfur by its proper name is a shameful story. It is at least as important as why State Department lawyers committed similar legal malpractice during the Rwandan genocide. As an international lawyer, I think it is particularly telling, because it reveals our own self-inflicted blindness.

The US State Department's Atrocities Documentation Team threw down the gauntlet in 2004. After the best designed social scientific investigation of an incipient genocide ever conducted, the Secretary of State named the atrocities what they are: genocide. Three months of debate about whether the term applied were then substituted for any action to stop the killing.

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genocide. It implies a desire on the part of the perpetrator to create by his actions a particular state of mind necessary to commit such a crime in the minds of the person(s) he is so engaging. That is to say that the person who is inciting to commit genocide must have himself the specific intent to commit genocide, namely, to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." Prosecutor v Jean-Paul Akayesu, ICTR-96-4-T, 1998, para 516.

<sup>8</sup> Prosecutor v Jean-Paul Akayesu, ICTR-96-4-T, 1998.

<sup>9</sup> The Prosecutor v. Ferdinand Nahimana et al., ICTR-99-52-T, 2003.

<sup>10</sup> See, eg. William Schabas, *op. cit.*, and Diane Orentlicher, *Criminalizing Hate Speech: A Comment on the ICTR's Judgment in The Prosecutor v. Nahimana, et al.*, 13 No. 1 Hum. Rights Br. 1 (2006).

<sup>11</sup> UN Commission of Inquiry Report S/2005/60, para 520.

Finally, the United Nations appointed a Commission of Inquiry to investigate the situation in Darfur. It appointed Judge Cassese as its head. According to reliable sources, in its initial briefings, even before the Commission went to Darfur, Cassese told its members that they would not find the specific intent necessary to find the Sudanese government had committed genocide in Darfur. As he predicted, the Commission did not.

The Cassese Commission's Report on Darfur<sup>12</sup> is a classic case of what is wrong with the current law of genocide. After a tone-deaf consideration of whether specific ethnic groups have been targeted, since the Commission wrongly believed that "they speak the same language (Arabic)"<sup>13</sup> (deaf to the fact that the targeted groups speak their own ethnic languages, though some also speak Arabic), the Commission adopts the subjective test of the ICTR and concludes that protected ethnic groups have indeed been victims. It then enumerates a horrifying list of atrocities, many of which are acts enumerated in the Genocide Convention. But incredibly, the Commission concludes there is inadequate evidence that genocide is being committed under the direction of the Sudanese government because the government lacks the "special intent" required.<sup>14</sup>

Why does the Commission conclude there is no genocidal intent?

1. The Janjaweed and Sudanese troops leave some<sup>15</sup> people alive in the villages where they commit their massacres. The Report even cites a case of a man who was spared when the Janjaweed took his 200 camels, even though his brother, who resisted, was murdered.<sup>16</sup>

The Commission concludes that "clearly, in this instance the special intent to kill a member of a group to destroy the group as such was lacking, the murder being only motivated by the motivation to appropriate cattle...."

2. The Sudanese government has permitted the construction of camps for people it has driven out of their pillaged villages, where it "generally allows humanitarian organizations to help the population."<sup>17</sup>

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<sup>12</sup> UN Commission of Inquiry Report S/2005/60.

<sup>13</sup> *Ibid.*, para 508.

<sup>14</sup> *Ibid.*, para 513 – 521.

<sup>15</sup> *Ibid.*, para 513.

<sup>16</sup> *Ibid.*, para 517.

<sup>17</sup> *Ibid.*, para 515.

3. The Sudanese government has not attacked all villages of mixed ethnic composition.<sup>18</sup>

Not only does the Commission violate its self-imposed injunction not to confuse motive and intent, it also completely ignores the “in part” language of the Genocide Convention. By the time the Commission conducted its inquiry, conservative estimates put the number of people killed by Janjaweed raids and Sudanese government bombings of Darfur villages at over 100,000. Surely, at least a substantial part of the victim groups had been targeted, notwithstanding isolated tales of mercy.

What has been the cost of the UN’s failure to even call the atrocities in Darfur by their proper name, genocide, and more importantly by the UN and the world’s failure to effectively stop the genocide in Darfur? In April 2008, the UN’s Undersecretary for Humanitarian Affairs said that 300,000 people have now died in Darfur above the normal mortality rate. Eric Reeves calculates the figure at over 450,000. Two and a half million people are living in camps for displaced persons and refugees and the conflict has spread to Chad and the Central African Republic.

### **Rethinking Genocide Prevention**

I am a lawyer, trained by Myres McDougal and Michael Reisman at Yale Law School. They trained me that law and policy are not two separate realms: that law is concretized policy, and law should be evaluated as policy. I am also a cultural anthropologist, trained by Victor Turner, Marshall Sahlins, and Leo Kuper. They trained me to look beneath the surface for the deeper structures and schisms that underlie societies and conflicts.

Today, I would like to do an anthropological analysis of lawyers, that may help us understand why the Genocide Convention has thus far failed to prevent genocide.

The Genocide Convention was born toothless, and lawyers have kept it from ever outgrowing its baby teeth.

First, the training of lawyers creates a backward-looking, adjudication-oriented view of genocide. At a conference at Cardozo Law School last year, my colleague Jens Meierhenrich put it this way, “The convention

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<sup>18</sup> Ibid., para 516.



was meant to adjudicate an individual's criminal responsibility." That is certainly one purpose of the Convention: to punish genocidists.

But if that is all it is, and our reliance is on courts and a theory of judicial deterrence, we have forgotten the very name of the Convention: the International Convention on the Prevention and Punishment of the Crime of Genocide. The Convention was meant to be forward-looking and preventive, not just a law for punishment.

Why hasn't the Genocide Convention prevented genocide?

**1. Courts cannot work without police forces.** Today, there is no effective international police force. We lack a police force to arrest those who are already indicted for genocide, depending on national police forces that may refuse to cooperate for many years. But more importantly, we lack police forces to prevent genocide. When New York put twice as many beat cops on the street under Mayor Giuliani and President Clinton's programs to hire more police, the crime rate for violent crime in New York was cut in half. In cities that cut back on their police forces when that program ended, the crime rate has climbed back up.

Can we depend on national police forces to play a similar role in preventing genocide? Probably not, because so often genocide is perpetrated by the state that controls the police.

So we need international police. But interjecting them into a nation-state is considered a violation of national sovereignty by many governments, especially genocidal regimes. The emerging international norm of The Responsibility to Protect may be invoked to answer such arguments. But how many nations will be willing to send their police into other countries to face heavily armed national military forces determined to keep them out? The answer can be seen in the difficulty the UN has in recruiting troops for its Peace Keeping Operations, especially from countries with powerful militaries like the US, UK, France, Russia, and China. If the UN can't muster the forces, other means must be found.

Canada and other countries have suggested a "mid-sized state" solution, in which Canada, Australia, Argentina, the Nordic countries, and others would volunteer for peace-keeping. Regional forces are also being created. NATO has intervened in Kosovo and now Afghanistan. The European Union has created its Rapid Response Force and used it in the Congo, ECOWAS has intervened in Liberia, Sierra Leone and other conflicts in West Africa, and the African Union has sent forces



into Darfur. Unfortunately, as we have seen in Darfur with UNAMID, *such* forces often lack the mandate, rules of engagement, arms, aircraft, and logistical, communications, and financial support to stop genocidal violence.

**2. Genocide requires popular participation. The best way to prevent it is locally.** As many as 200,000 people actively participated in the slaughter of 800,000 Tutsis in Rwanda in 1994.<sup>19</sup> Churches in Rwanda could have played a powerful role in creating a culture resistant to genocide in Rwanda, because many Hutus and Tutsis are Roman Catholics and attended the same churches. But the church was as ethnically divided as the rest of Rwandan society, and some priests and nuns even participated in the killings.

In re-thinking genocide prevention, we should pay special attention to the “bottom-up” dimension of genocide.<sup>20</sup> How can anti-genocidal cultures be built? Religion has far too often been a cause of genocide. What if every major religion made it central to its preaching the affirmation of a core principle in all of them: that all human beings belong to one race – the human race? What if an Inter-Religious Anti-Genocide Alliance was formed to provide forums and materials to each religious tradition, written by members of that tradition, on why genocide violates that religion’s doctrine?

With help from Genocide Watch and George Mason University’s Institute for Conflict Analysis and Resolution, the National Council of Churches, the Roman Catholic Church, Eastern Orthodox Churches, Jewish, Muslim, Baha’i, Buddhist, Sikh, and Hindu leaders are launching an international Inter-Religious Anti-Genocide Alliance this year. To quote the advice on how to deliver a sermon once given to me by Reverend Walter Fauntroy, one of the organizers of the March on Washington, we will “start low, go slow, light the fire, and sit down.” We will sit down, because our intention is not to build another vast self-perpetuating human rights organization, but rather to spark the efforts of people at the grass roots in seminaries, churches, synagogues, mosques, and temples all over the world.

**3. Our leaders do not see beyond their “national interests” and therefore lack the political will to prevent genocide in other countries.** Many people have said that the problem in the Rwandan

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<sup>19</sup> Scott Straus, “How Many Perpetrators Were There in the Rwandan Genocide? An Estimate,” *Journal of Genocide Research* 6, 2004.

<sup>20</sup> See James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*, 2<sup>nd</sup> ed. Oxford, 2007.

genocide and in Bosnia and Darfur was not the absence of early warning of the coming catastrophe. It was the absence of political will to prepare for and prevent it.

Political will is not a mystery. It is not mumbo-jumbo that cannot be analyzed and understood. Anyone who witnessed the triumph of the political campaign of President Barack Obama should understand that. Political will can be built from the ground up.

One of the reasons we are creating the Inter-Religious Anti-Genocide Alliance is to create the popular will to oppose genocide and to demand that our political leaders take action to prevent it. We will work hand-in-hand with secular anti-genocide coalitions like the International Campaign to End Genocide, the Save Darfur Coalition, and other groups. It is time that we hold our leaders to account, that we do not accept their excuses. President Clinton's pathetic "we did not know" speech in Kigali was a case in point. Of course he knew! I have read the classified cables.

It is time to build an international anti-genocide movement on the scale of the anti-slavery movement. When I first declared that ten years ago, there was not a single organization in the world devoted to the prevention of genocide. That is why I founded Genocide Watch and the International Campaign to End Genocide. Now there are hundreds of organizations. We share the same vision.

It is especially important to build anti-genocide organizations in countries at risk of genocide. That is why we work closely with organizations in Rwanda, Sudan, Côte d'Ivoire, Liberia, and Burma.

I want to end with the true story of how a prayer group of market ladies brought down one of the most vicious killers in Liberian history.



## **A Crazy Dream**

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By BOB HERBERT  
The New York Times

In the documentary film “Pray the Devil Back to Hell,” a woman whose family had endured the agony of civil war in Liberia talks about a dream she had in 2003 in which someone urged her to organize the women of her church to pray for peace.

“It was a crazy dream,” she said.

Prayer seemed like a flimsy counterweight to the forces of Charles Taylor, the tyrannical president at the time, and the brutally predatory rebels who were trying to oust him from power. The violence was excruciating. People were dying by the tens of thousands. Rape had become commonplace. Children were starving. Scenes from the film showed even small children whose limbs had been amputated.

The movie, for me, was about much more than the tragic, and then ultimately uplifting events in Liberia. It was about the power of ordinary people to intervene in their own fate.

The first thing that struck me about the film, which is playing in select theaters around the country now, was the way it captured the almost unimaginable horror that war imposes on noncombatants: the looks of terror on the faces of people fleeing gunfire in the streets; children crouching and flinching, almost paralyzed with fear by the sound of nearby explosions; homes engulfed in flames.

It’s the kind of environment that breeds feelings of helplessness. But Leymah Gbowee, the woman who had the crazy dream, would have none of that, and she should be a lesson to all of us.

The filmmakers Abigail Disney and Gini Reticker show us how Ms. Gbowee not only rallied the women at her Lutheran church to pray for peace, but organized them into a full-blown, all-women peace initiative that spread to other Christian churches — and then to women of the Muslim faith.

They wanted the madness stopped. They wanted an end to the maiming and the killing, especially the destruction of a generation of children. They wanted to eradicate the plague of rape. They wanted all the things that noncombatants crave whenever the warrior crowd — in the U.S., the Middle East, Asia, wherever — decides it’s time once again to break out the bombs and guns and let the mindless killing begin.

When the Liberian Christians reached out to “their Muslim sisters,” there was some fear on both sides that such an alliance could result in a dilution of faith. But the chaos and the killing had reached such extremes that the religious concerns were set aside in the interest of raising a powerful collective voice.

The women prayed, yes, but they also moved outside of the churches and the mosques to demonstrate, to protest, to enlist all who would listen in the cause of peace. Working with hardly any resources, save their extraordinary will and intense desire to end the conflict, the women’s initial efforts evolved into a movement, the Liberian Mass Action for Peace.

Their headquarters was an open-air fish market in the capital, Monrovia. Thousands of women responded to the call, broadcast over a Catholic radio station, to demonstrate at the market for peace. The women showed up day after day, praying, waving signs, singing, dancing, chanting and agitating for peace.

They called on the two sides in the conflict to begin peace talks and their calls coincided with international efforts to have the two sides sit down and begin to negotiate.

Nothing could stop the rallies at the market, not the fierce heat of the sun, nor drenching rainstorms, nor the publicly expressed anger of Mr. Taylor, who was embarrassed by the protests. Public support for the women grew and eventually Mr. Taylor, and soon afterward the rebel leaders, felt obliged to meet with them and hear their grievances.

The moral authority of this movement that seemed to have arisen from nowhere had become one of the significant factors pushing the warring sides to the peace table. Peace talks were eventually held in Accra, the capital of Ghana, and when it looked as if they were about to break down, Ms. Gbowee and nearly 200 of her followers staged a sit-in at the site of the talks, demanding that the two sides stay put until an agreement was reached.

A tentative peace was established, and Mr. Taylor went into exile in Nigeria. The women continued their activism. Three years ago, on Jan. 16, 2006, in an absolutely thrilling triumph for the mothers and wives and sisters and aunts and grandmothers who had worked so courageously for peace, Ellen Johnson-Sirleaf was sworn in as the president of Liberia — the first woman ever elected president of a country in Africa.

Liberia is hardly the world’s most stable society. But “Pray the Devil Back to Hell” reminds us of the incredible power available to the most ordinary of people if they are willing to act with courage and unwavering commitment.