The United Nations and the European Union on Genocide and International Law

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Defining Genocide

1944: Raphael Lemkin introduces the term "genocide": a coordinated assault on a civilian population

UN photo

Defining Genocide

Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, 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.

More Definitions

- Political, economic, social groups (Stalin in Soviet Union, Khmer Rouge in Cambodia)
- Humanistic perspective: all mass killing of human beings
- Extensions into other areas of life, e.g. "cultural genocide"

Genocide vs Crimes against Humanity

- The importance of intent and permanent or stable group identities
- Crimes against humanity: persecution; discriminatory (but not genocidal) intent
- Ex: Goran Jelisić case

A Legal Sanction is Born

1945: The Charter of the International Military Tribunal defines crimes against humanity
1998: The Rome Statute, which created The International Criminal Court, refines the definition of crimes against humanity

Photo credit: http://www.mtu.edu/home/history/art-06-11-02-in-gestapo-and-war.jpg
The UN Convention

- adopted on December 9, 1948
- draws on international criminal law, international humanitarian law, and international human rights law
- entered into force on January 12, 1951 with ratification by over 20 countries.

International Law on Genocide

- Pierces state sovereignty, imposes obligations on the state
- Ensures rights of the individual
- Imposes obligations on the individual who violates fellow citizens' rights
- Individuals as agents of the state

A regrettable track record

1950s to 1990s:
- Signatories to the Genocide Convention neglected to consider atrocities committed throughout the Cold War.
- The U.S. did not sign until 1988.
A regretttable track record

Eddie Lizard on genocide, borders, & sovereignty

Genocide Prevention In/action

Croatia (1991 – 94) and Bosnia & Herzegovina (1992 – 95): Atrocities are punished, but not prevented.

The Importance of Terminology

Part I: Ethnic Cleansing vs. Genocide
- The "Pin-Stripe Approach to Genocide"
- "animosity and violence"

Part II: Safe Areas vs. Safe Havens
- Latter term requires military action
- Srebrenica and Goražde


**Ad Hoc Tribunals**

- Along with ICC, *ad hoc* tribunals have jurisdiction over violations of both IHL and IHRL.
- Tribunals for the former Yugoslavia and Rwanda: created by UN Security Council.
- Advantages and disadvantages.

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**Ad Hoc Tribunals**

- 1st ever interpretation & application of the Genocide Convention at the international level.
- Clarify the contents of the (overly vague) UN Convention.
- Acc. to some legal scholars: may prevent abuse of the term genocide.

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**Ad Hoc Tribunals**

- ICTY and ICTR: interpretations of protected groups set precedents.
  - ICTR – Established that groups beyond national, ethnic, religious, & racial may be stable or permanent.
- More consistent with Lemkin’s view.
- UN Convention was response to Nazi crimes; today, other groups have become important.
The International Criminal Court

- 1998: Rome Statute reconfirms UN's definition of genocide, expands definition of crimes against humanity
- ICC: 1st permanent international court to prosecute atrocities against civilians

The European Union on Human Rights

- European Court of Human Rights: centerpiece of European system of HR protection
  - Importantly, NOT an EU institution
  - But, all EU member states are parties to ECHR (the European institutional landscape is nothing if not confusing!)
- Key facet of EU's projected international image: promoter of human rights in third countries
  - Not without its detractors!

The European Union on Genocide

Decision by the Council of the European Union in 2003:
- On investigation and prosecution of genocide, crimes against humanity and war crimes
  - Objective: to increase cooperation between member states on genocide cases
- Invokes the Rome Statute and the ICC, not the UN Convention on Genocide
  - ALL EU member states are parties to ICC
The EU & Fmr. Yugoslavia

- Bosnia, Kosovo
  - Major foreign policy failures for EU
  - Lack of cohesion, mechanisms for crisis management, political will
  - Catalysts for progress in Common Foreign and Security Policy

The EU & Fmr. Yugoslavia

- Recent developments:
  - 1st EU military missions were in the Balkans
  - Took over NATO mission in Bosnia & Herzegovina in 2005
  - Signed a Stabilization and Association Agreement with BiH in 2005
  - Cooperation with ICTY a key benchmark in European integration process for fmr. Yugoslav states