Genocide: Knowing what it is that we want to remember, or forget, or forgive

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PART ONE:

Perspectives
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Genocide:
Knowing What It Is That We Want to Remember, or Forget, or Forgive

TIM DUNNE and DANIELA KROSLAK

‘The Holocaust was born and executed in our modern rational society.’ This view, expressed by Zygmunt Bauman, has become influential in sociological accounts of the barbarism committed by the Nazis against Jews and other groups. Bauman’s argument steers us away from the conceit that the Holocaust was a freak accident, one that Western civilisation would never repeat. Given the genocidal violence we have witnessed in the 1990s, his critique of liberal narratives of historical progress is an important one. But his book Modernity and the Holocaust is problematic for the reason that acts of systematic slaughter against collectivities (including Jews in Europe) pre-date modernity; moreover, it is precisely modern ideas of responsibility that have given us a moral vocabulary – and an institutional context – for trying to remove the worst kind of crime from the landscape of international politics. The main focus of this essay will be the meaning given to genocide by lawyers, activists and intellectuals. In this sense, the complex causes of genocide remain outside the scope of our argument. Looking at the meaning and interpretation of genocide necessarily involves examining the controversy that has raged for the last half century between ‘restrictionists’, who want to maintain a narrow interpretation of the Genocide Convention, and writers we refer to as ‘expansivists’, who believe that the category must be adapted to conform to new patterns of violence directed at collectivities.

In contrast to Bauman’s view of genocide being a peculiarly modern phenomenon, the jurist who invented the term – Raphael Lemkin – argued that it had been part of human history since antiquity. But until the moment of its inclusion in the indictment of German leaders at
Nuremberg in 1945, it had been an evil practice without a name. Part 1 of this contribution will consider the evolution of the Genocide Convention of 1948 and the term genocide. In particular it focuses upon the various debates that ensued regarding the referent group (who is to be included), the psychological state of the perpetrators (their intentions or motives), and the extent of the violence (what counts as 'in whole or in part').

Part 2 will show, through a discussion of the case of Kosovo, what is at stake in this debate. Prior to and during the NATO bombing of the Federal Republic of Yugoslavia (FRY), many Western journalists and state leaders accused President Milosevic's government of committing genocide. Yet a substantial body of opinion believed that although massive human rights abuses took place in Kosovo, they should not have been labelled 'genocide'. This dispute prompts us to question the adequacy of our moral and legal vocabulary for describing large-scale killings of groups.

Most activists and writers working in the area of 'genocide studies' consider the Convention on the Prevention and Punishment of the Crime of Genocide to be inadequate but recognise that a contested convention is preferable to none at all. Towards the end of the essay, we consider the various ways in which the Convention is being re-interpreted. One important site for renewed legal interpretation concerns the war crimes tribunals set up to consider accusations of genocidal crimes in relation to Rwanda and the wars in Bosnia and Kosovo. These and other legal innovations are considered in Part 3; notably the International Court of Justice's consideration of genocide in relation to alleged war crimes committed by the Federal Republic of Yugoslavia during the Bosnia conflict. We will end with an evaluation of how far the world has moved towards overcoming some of the weaknesses evident in the founding document.

THE GENOCIDE CONVENTION AND DILEMMAS OF INTERPRETATION

Raphael Lemkin, a Polish born Jew (1900–59), devoted his life to the singular cause of taking a stand against genocide. With the outbreak of the Second World War, he joined the Polish underground, escaping to the United States in 1941. It was in his 1944 study of Nazism that he invented the word genocide from the Greek genos (race or tribe) and the Latin cide (killing). He defined the neologism as 'a co-ordinated 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'.
Lemkin’s lobbying helped to galvanise the UN General Assembly to pass a resolution that both recognised genocide as a crime, and charged the Economic and Social Council of the UN (ECOSOC) with responsibility for drawing up a draft convention. The text of the 1946 Resolution included the following statement:

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these groups, and is 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, political and other groups have been destroyed, entirely or in part. The punishment of the crime of genocide is a matter of international concern.

The two years that elapsed between the Resolution and the Convention provide a good example of how difficult it is to translate a general principle into a legal covenant that gives effect to it. In addition to the inherent problems, to complicate matters further, outside ECOSOC relations between the great powers were deteriorating significantly.

The question of the inclusion of the category of ‘political groups’ was hotly debated within ECOSOC. The Soviet Union strongly opposed deviating from the highly restrictionist view that genocide was intimately connected with fascism. One obvious reason why their representative took this line was to avoid any accusation that Stalin’s slaughter of 6,500,000 ‘kulaks’ between 1930 and 1937 constituted genocide. France, on the other hand, put forward the view that while in the past, genocide had been committed against racial or religious groups, in the future it was likely to be carried out against political targets.

The omission of political groups neglects the fact that genocide against a racial or religious group is usually the result of political conflict. This point was made strongly by the Haitian representative, who argued that a government responsible for genocide ‘would always be able to allege that the extermination of any group had been dictated by political considerations, such as the necessity for quelling an insurrection or maintaining public order’. The proposal to include political groups in the Convention was eventually ruled out because of the widespread fear that this might lead to intervention in the domestic affairs of states. The example of Vietnam’s intervention in Cambodia in 1979 to halt the genocide, and the widespread criticism this action received, adds weight to the view that a political conception of genocidal violence would erode
the non-intervention principle. This sentiment prompted Leo Kuper, much later, to draw the bitter conclusion that "many nations were unwilling to renounce the right to commit political genocide against their own nationals."10

After lengthy debates on this and other issues,11 the Convention was approved by the General Assembly of the United Nations on 9 December 1948. The main articles to note for present purposes are I, II and III:12

Article I
The Contracting Parties confirm 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 to punish.

Article II
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 with the group;
(e) Forcibly transferring children of the group to another group.

Article III
The following acts shall be punishable:
(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity in genocide.

In 1998 the Convention celebrated its fiftieth anniversary. Peoples around the world are aware of its existence, and at the last count, 130 governments had ratified the treaty.13 Despite the existence of a widespread consensus regarding the declaratory importance of the Convention, the genocide in Rwanda in 1994 underscored the gap that exists between the normative aspiration, that the practice must be prevented, and the cold reality of its persistence. Given the scope of this essay, it is not possible to address all the issues raised by this yawning gap between the standard and the practice; this would require an analysis of the causes of genocide as well as the adequacy of the instruments for...
dealing with it once an outbreak has started. Instead, we will examine how far the conceptual weaknesses in the Convention have contributed to international society's inability to respond effectively to targeted violence against collectives. Our analysis finds fault with both the restrictionists, who maintain that only Armenia, the Holocaust and Rwanda are legitimate examples of genocide, and expansivists, who attach the label to a wide range of human tragedies and even environmental disasters. We begin by discussing three of the chief difficulties in theorising genocide, and hence in devising counter-strategies: the problem of scale, referent and intent.

The Problem of Scale

The Convention is very vague regarding the scale of atrocity necessary for a crime to be called genocide. The intent to destroy 'in whole or in part' opens up a number of definitional ambiguities. Is there not a significant difference between Hitler's extermination of six million Jews between 1939 and 1945 and the murder of between tens of thousands of Sudeten Germans by Czechs after the war? Similarly, is not Australia's extermination of large sections of Aborigine societies in the nineteenth century a greater crime than the premature deaths of indigenous peoples caused by disease and neglect? Jean-Paul Sartre famously argued that colonisation is inherently an act of genocide since colonisation cannot be pursued without a systematic destruction of all native features of society. But was the attempt by Lord Milner to anglicise (i.e., colonise) the South African education system genocidal in the same sense that Pol Pot exterminated millions of Cambodians?

Israel Charny is one writer working in the area of genocide studies who is content to work with a 'generic definition' that does not exclude any case of mass murder irrespective of racial, national, ethnic, cultural, religious or political categories. In his words, 'whenever large numbers of unarmed human beings are put to death at the hands of their fellow human beings, we are talking about genocide'. He claims that it is 'a moral absurdity and an insult to the value of human life to exclude from full historical recognition any instance of mass killing as if it were undeserving of inclusion in the record'. He fails to see, however, that it is not a question of 'undeserving' in the sense of being included in the record but of attempting to identify a particular kind of atrocity. A useful analogy can be found in domestic law. In cases of homicide we rightly consider the crime of the serial killer to be more repugnant than manslaughter. The important point here is that comparability is not the same thing as equivalence, and the challenge is to find adequate means to express the 'gradations of genocide'.
Charny’s expansivist understanding of genocide even goes as far as claiming that massive deaths resulting from the meltdown of a nuclear reactor would count as genocide. Just such an incident happened in Chernobyl, Ukraine, in 1986. Hundreds lost their lives and many thousands were irradiated. This was a tragic consequence that followed from human error, but it was not genocide. The line of argument pursued by Charny leads to the flattening out of history. Acknowledged masters of this practice are the Holocaust deniers such as Ernst Nolte who equate what Germans did at Auschwitz with what Americans did at My Lai in Vietnam. Colin Tatz refers to this danger as ‘comparative trivialisation’. If we allow this to happen, he argues, ‘then we acquiesce in the demise of genocide and its meaning’.  

Other writers in this field concur with this dismissal of the expansivist position. Helen Fein, for example, rejects a wide application of the label genocide: ‘If we aggregated all cases of mass death – from war, genocide, migrations, and slavery – together, we would probably reach rather banal and very general conclusions. And it would reduce recognition that the causes of the genocides occurring during two world wars in this century ... were distinct from war deaths’. She dismisses the trend to attach the label to various political struggles, citing as examples speeches by anti-abortion and anti-nuclear activists as well as partisans of both sides in the Israeli-Palestinian conflict. Fein is convinced that ‘labelling them with a super blanket of generalised compassion as certified victims of “genocide”’ does not help the victims of any of these violations.  

The view expressed by Chalk and Jonassohn is representative of most scholarly work on genocide. They argue that it is important to delimit genocide from other forms of gross human rights abuses since ‘neither our understanding of them nor our exploration of possible means of prediction and prevention will be facilitated by lumping them all together’. One way of overcoming this problem would be to maintain some kind of victim threshold, rather in the way that the definition of war is sometimes associated with a minimum casualty level of 1,000 battle deaths. Leo Kuper insists that the qualification for genocide be set at a minimum of ‘substantial’ or an ‘appreciable’ number of victims. While not going as far as expansivists like Charny, Barbara Harff challenges the argument that numbers matter. In her words, ‘As long as one can identify victims as members of a deliberately targeted group whose existence or survival is at stake, numbers of victims are irrelevant’.

Identifying a Victim-Group
Following her rejection of the blurring of genocide with other kinds of mass atrocity, Fein emphasises that the differences between the victims of
state terror and genocide is their selection, a process that is crucial in defining genocide. While victims of terror are selected because they are accused of committing 'subversive' acts, or even simply chosen arbitrarily, victims of genocide are chosen because they are members of a certain group. Here she dismisses Leo Kuper's argument that the bombs dropped on Hiroshima and Dresden constituted genocide because the intent was to destroy the German and Japanese inhabitants. Where Kuper emphasises the intent as the overriding element Fein argues, following her analysis and emphasis on group definition and selection, that Germans and Japanese were considered the enemy and not killed because they were German or Japanese per se.

In order to clarify the different kinds of victim group, Barbara Harff and Ted Gurr distinguish between politically and socially or racially motivated killings, genocide and politicide: 'genocides and politicides are the promotion and execution of policies by a state or its agent that result in the deaths of a substantial portion of a group'. In cases of genocide the focus is on the communal characteristics of the victim group, whereas in politicide it is on the victim group's political opposition to the regime and to the dominant group. The problem here is that it is sometimes hard to distinguish between politicides and genocides; the Nazis had no difficulty in including political opponents in the Holocaust. A variation on this argument points to the fact that politicides often become genocides. In Bosnia, the ethnicity of 'Bosnian Muslims' was in part constructed by Bosnian Serb aggression.

The most expansivist argument in regard to the victim group is provided by Frank Chalk and Kurt Jonassohn who define genocide as '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'. The main difference between the Genocide Convention and this definition is that there is no restriction on the identity of the victimised group. Chalk and Jonassohn maintain that by accepting the UN definition, their research would necessarily continue the 'silence' in the genocide literature regarding 'the assault on certain victimised social groups of the past'. Although Chalk and Jonassohn rightly point out the limitations of the Genocide Convention's definition - particular the erasing of the category of 'political group' discussed earlier on - their definition of the victimised group is too broad. Furthermore this definition of the group ultimately buys into the reasoning of the perpetrator, which can be a dangerous enterprise since it accepts the singling out of a certain group, reducing complex human experiences to essential ethnic, political or religious characteristics.
The Problem of Intent

The question is how to assess the intentions of a genocidal agent is notoriously problematic in the social sciences. Max Weber overcame the problem by assuming that instrumental rationality pervaded social action in the modern world; likewise, political economists believe that agents are motivated by the desire to maximise utility, thereby circumventing the need to inquire into the origins of their preferences. Evaluating the intentions of corporate actors like states is even more problematic. Apart from the case of the Nazis, there is no historical example where a plan to commit genocide has been so co-ordinated and well documented.

The discussion concerning intent is wide-reaching in the field of genocide studies. Leo Kuper emphasises that the intent to destroy is a crucial element. Destruction alone is not sufficient: 'The “inadvertent” wiping out of a group,' he argues, 'is not genocide.' This means that the wholesale destruction of the Aztec civilisation following the arrival of the Spanish conquistadores in the late fifteenth century would not count as an act of genocide, since the majority of deaths were caused by disease and the ill-effects of slave labour. There have been two innovative suggestions about how to overcome the dilemma of intentionality. First, the idea of developing a legal definition of genocide that follows the custom of classifying homicides by degree (first degree and second degree murder/genocide).

Second, it has been argued that it is possible to separate intentions from motives. According to Hurst Hannum and David Hawk, the "intent" clause of Article II of the Genocide Convention requires only that the various destructive acts – killings, causing mental and physical harm, deliberately inflicted conditions of life, etc. – have a purposeful or deliberate character as opposed to an accidental or unintentional character. This effectively shifts the focus from a legal language of guilt to a more sociological assessment of the causes of genocidal conflicts.

This last issue of 'intent' is probably the least problematic aspect of the Convention. Even where the destruction of a national, ethnical, racial or religious group has been least organised, as was the case with the genocide against the Aborigines in Australia, it is relatively easy to find evidence of official complicity. While there was no 'Hitler' in London plotting their destruction, there were plenty of colonial government employees justifying the attacks on their culture and civilisation with reference to arguments about racial inferiority. And there were many more policemen out in the bush obeying the order of 'dispersal', the euphemism for shooting on sight when a group of Aboriginal men gathered together. In short, it is hard to resist the
conclusion of Chalk and Jonassohn that ‘it is not plausible that a group of some considerable size is victimised by man-made means without anyone meaning to do it!’

The related issues of the identity of the target group, and the scale of the destruction, are less easily resolved. By leaving out the destruction of political classes, such as intellectuals (1970s Cambodia) or kulaks (1930s Soviet Union), the Convention is too restrictive. But in terms of scale, the Convention is arguably too broad. There is no mention of a minimum threshold, thereby enabling those wishing to take an expansivist view to argue that countless dictators have sought to destroy ‘in part’ the form of life of particular religious or national groups within their states.

The ambiguities evident in the text itself lead genocide scholars to draw sharply diverging conclusions about its adequacy. The most adamant defender of the Genocide Convention definition is Leo Kuper. In his extensive writings on the subject he maintains, contrary to many of his colleagues: ‘I do not think it helpful to create new definitions of genocide, when there is an internationally recognised definition and a Genocide Convention which might become the basis for some effective action, however limited the underlying conception’. Contrary to Kuper and Fein, Chalk and Jonassohn conclude that ‘although it marked a milestone in international law, the UN definition is of little use to scholars’.

The position taken in this essay is that the chasm opening up between legal and academic definitions of genocide needs to be bridged. Academic thinking needs to be sensitive to the uniqueness of genocide as a crime under international law and the international legal regime must find ways of identifying (and punishing) gross human rights violations that fall short of genocide.

KOSOVO AND THE NEW DEBATE ON GENOCIDE

From the beginning of 1999, some Western journalists, intellectuals, and state leaders increasingly applied the term genocide to describe the actions of the Milosevic regime in Kosovo. As the British Defence Secretary, George Robertson, put it: ‘These air strikes have one purpose only: to stop the genocidal violence.’ How should we interpret this claim, in the light of the Convention and the scholarly debates discussed above? Is it an example of a further widening – hence trivialising – of the concept? Or does Kosovo comply with what we have called an expansive reading of the Convention?

There is no doubt that politicians and the media engaged in absurd parallels between the herding of Jews onto trains leading to forced labour
The Kosovo Tragedy and/or the gas chambers, and the forced transportation of Kosovars to refugee camps in Albania and Macedonia. Robin Cook argued that ‘the appalling mass deportations we saw from Pristina, particularly the use of the railways, is evocative of what happened under Hitler and again under Stalin’. There is no question that this kind of argument conforms to what Tatz referred to as ‘comparative trivialisation’. Other world leaders were more guarded in their assessments. The UN Secretary-General said that the actions of the FRY were in violation of humanitarian law (not explicitly the Genocide Convention). His preferred description for the barbarous acts was ‘ethnic cleansing’. The differentiation between genocide and ethnic cleansing is important here since it shows that the interchangeable use of the two concepts has added to the debate about the prevention and punishment of genocide. We would like to argue that the confusion between genocide ethnic cleansing has led to a widening perception of genocide in international law. Although both concepts describe large-scale killings of groups, and genocide can be seen as a particular – the ultimate – form of ethnic cleansing, a legal differentiation is necessary to avoid misinterpretation under international law. Both terms have often been used in similar contexts, and wrongly so; however, unless ethnic cleansing is recognised in international law, the expansion of the concept of genocide will continue.

People who argue that genocide was committed in Kosovo insist on the ambiguity of the ‘whole or in part’ clause of the Convention. They maintain that a part of the population was targeted to be exterminated. However, although orders may have been given to massacre certain elements of the Kosovo Albanian population – such as occurred in the village of Racak – the intent was not to exterminate the group as a whole. Torture and mass killings were a systematic pattern of state terror, especially in the first five months of 1999; however, these were used as methods of intimidation and not as part of a more general policy ‘aimed at the destruction of a target group’.

What then distinguishes ethnic cleansing from genocide? It is not a matter of scale, since this is not an explicit element of the Convention. The key difference is that ethnic cleansing implies the forced removal of a victim group from a territory; it is a matter of dispossession and not destruction. The element of destroying a particular culture or nation means that none of the victim’s family, race, ethnic or other group will be left to carry on its tradition, pass on its folklore and religious beliefs. This is the main difference between genocide and other massacres since in cases where genocide ‘succeeds’ no members of the victim group are left to take the side of the victim. Other victims of massacres might still have the hope that their children or like-minded survivors will be able to
continue the cultural traditions in another country, with the possibility of returning to their homeland at some future date.

In short, we believe that those who seek to describe the conduct of the Milosevic regime in Kosovo in genocidal terms are wrong because the aim was not to destroy Kosovar Albanians as a group. Ever since the mid-1980s, and especially since 1989, Kosovars had been subjected to a campaign of terror which included arbitrary arrests, rape, state terror and violent clashes between demonstrators and security forces. The Albanian language was banned in the media, ethnic Albanian students were refused further education, political activists were imprisoned for their actions (prisoners of conscience), and unlawful deaths occurred in custody as a result of torture and other kinds of ill treatment. From 1996 onwards the Belgrade Government justified its human rights violations in terms of the need to respond to ‘terrorist’ activities by the KLA. In 1998 the level of violence escalated even further with extrajudicial and other killings and the beginnings of forced displacement. This campaign of violent exclusion sought primarily to suppress calls by ethnic Albanian leaders for independence rather than attempt to eradicate Kosovar Albanians as a group.

This interpretation appears to find favour with Amnesty International. In a recent analysis, published in 1998, it argues that ‘the authorities’ unstated policy appears to be to encourage their departure’. One victim of continuous ill-treatment at the hands of police asserts that the various visits by police were intended to intimidate his family into leaving: ‘They even said to me once, “What are you doing here, go to Switzerland or we’ll kill you. You’re either stupid or crazy to remain in Kosovo.”’ This supports the argument that although subjected to state terror and ethnic cleansing the Albanians of Kosovo were not denied their right to life, even though forceful deportation and violent intimidation denied them the possibility of continuing their culture in what they regarded as their home. In cases of genocide the targeted group are not given the chance to practice their tradition elsewhere.

MODIFICATIONS TO THE ANTI-GENOCIDE REGIME, FIFTY YEARS ON

Kosovo has not been the only event that has triggered a heightened sense of self-reflection among leaders of states and international public opinion. Guilt about the failure to do anything substantive to stop the genocide in Rwanda continues to stalk the committee rooms of the United Nations and national governments. In a highly charged appearance in Rwanda in March 1998, President Clinton acknowledged that he and other world leaders should have intervened to prevent
Africa's contemporary holocaust. As he put it, 'we did not act quickly enough after the killing began. We did not immediately call these crimes by their rightful name: genocide.' At the end of the same year, the General Assembly reaffirmed 'the significance of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, by adopting a resolution on the fiftieth anniversary of that treaty', a text which was fittingly introduced by Armenia, one of the first victims of genocide in the twentieth century. The discussion in the UN General Assembly in 1998 on the prevention, detection and punishment of genocide marked a significant moment of international reflection fifty years after the establishment of the Genocide Convention.

The contours of the debate were familiar; restrictionists and expansivist positions were both in evidence. Alamgir Babar, representative of Pakistan, expressed his support for 'the extension of the Tribunal's jurisdiction over the crimes committed in Kosovo'. His broad view of genocide was to some extent supported by Volodymyr Yel’chenko of Ukraine who insisted that 'the definition of genocide should be expanded to include all groups targeted by policies which led to the destruction or any delineation of humanity. ... Chemical, biological or radiological warfare could also be regarded as innately genocidal.'

The Austrian representative Ernst Sucharipa weighed in with the counter-restrictionist argument that genocide is 'a crime on a different scale than all other crimes against humanity'. Thus, the extension of the concept was a counter-productive enterprise. The representative of Israel, Dore Gold warned of the 'politicisation of the International Criminal Court by including as war crimes actions that had no connection whatsoever with the history of genocide. This simply abused the Genocide Convention and insulted the memory of the millions who died in Nazi-occupied Europe'. Nevertheless, what was interesting about the Israeli statement was the willingness to contemplate ways in which the Convention could be strengthened by including 'groups that had so far resisted classification'. Even restrictionists were taking seriously the question of broadening the treaty.

Equally, the establishment of the two international tribunals for Rwanda and the former Yugoslavia have added new impetus to the international fight against crimes against humanity and war crimes. On 2 September 1998, Jean-Paul Akayesu was found guilty of the crime of genocide by an international court. And it was Jean Kambanda, Rwandan prime minister during the genocide, who on 1 May 1998 was the first person to accept culpability for genocide before an international court. In addition to their slow but deliberative judicial function, the War Crimes Tribunals are also playing a part in widening the definition to include
such practices as rape (in contravention of Article 2b). The representative of Tanzania heralded this as ‘a groundbreaking interpretation that would have far-reaching significance in cases elsewhere’. On the fiftieth anniversary of the Genocide Convention, the debate served to affirm the presence of old cleavages as well as a willingness to contemplate new approaches to the concept of genocide.

In legal terms the application of the concept of genocide in the International Criminal Courts for Rwanda and Yugoslavia seems to have enabled a clarification of many of its ambiguities. Especially in the case of the break-up of the former Yugoslavia, divisions remain as to whether or not the ‘crimes against humanity’ that have been identified constitute genocide or not. The Tribunal seems to have taken several approaches in order to try those responsible for the atrocities. First, there is a focus on acts of genocide; in other words, the court does not differentiate between genocidal acts and genocide, which means that there is a focus on ‘acts’ of genocide and not a policy of destruction as a whole. Restrictionist approaches would emphasise the ‘intent to destroy’ clause of the Genocide Convention, whereas expansivists would underline ‘acts of genocide’ and the different acts concerned. Since the Tribunal does not make such a distinction and focuses its interpretation of the Genocide Convention on the acts committed, several indictments became possible even though there are good reasons for believing that some of these crimes should have been tried not as genocide but as ethnic cleansing, were it a legal term. Thus, former Bosnian Serb President Radovan Karadzic and General Ratko Mladic (commander of the army during the war), were both indicted on charges of genocide, crimes against humanity and violation of the laws or customs of war. The interpretation of the Tribunal focuses on the acts that can be separated from a policy as a whole, i.e., what was formerly considered genocide. Hence, Mladic and Karadzic could be indicted for the massacre that occurred in Srebrenica in July 1995.

In the case of Kosovo, Slobodan Milosevic’s indictment asserts that ‘between 1 January 1999 and late May 1999, the military forces and some police units of FRY, the police force of Serbia and associated paramilitary units jointly engaged in a widespread and systematic series of offensives against many towns and villages predominantly inhabited by Albanian in the Province of Kosovo’. Charges are made on the basis of individual criminal responsibility and superior criminal responsibility in connection with the violation of the laws or customs of war and crimes against humanity (Article 5 of the Statute). What is crucial here concerning the argument made above is that Milosevic has not been indicted on charges of genocide. Hence, even with a broadened approach
of genocide put forward by the Tribunal, the actions of Milosevic have, until now, been considered to fall outside of this category of international crime.

If there were to be a change in Milosevic's indictment, and consequently a judgment, concerning the atrocities in Kosovo under the charge of genocide, this would mean that there had been a clear shift away from the original definition of genocide, and its founding spirit which referred to a specific crime. As argued above, this crime ultimately seeks the extermination of a group. However, since ethnic cleansing does not constitute a crime under international law, those atrocities that can be summarised under this label will be tried under international law as a form of genocide. This of course dilutes the concept that was established by Raphael Lemkin in order to describe a very specific kind of atrocity.

Words evolve and meanings change. If genocide has become a more broadly defined term than restrictionists would interpret it, due to its application in the International Criminal Tribunal for Rwanda and Yugoslavia, then one has to accept such changes. It is through the Tribunal's work that the concept of genocide has become clearer, even if broader. The inclusion and acceptance of rape as a genocidal practice and especially the punishment of genocide as an established procedure reflects these changes. A more clearly defined concept of genocide might also give more prospect to the prevention of this crime, where the UN Convention on the Prevention and Punishment has evidently failed.

**CONCLUSION**

'It was a complete delusion to suppose that the adoption of a convention of the type proposed, even if generally adhered to, would give people a greater sense of security or would diminish existing dangers of persecution on racial, religious or national grounds.' These realist intimations were uttered by Sir Hartley Shawcross, the British delegate to the committee that formulated the text of the Convention. Fifty years later, we need to ask he was right? What difference has the Genocide Convention made? Has it all been 'a complete delusion'?

It is easy to point to the failures of the Convention. To get a sense of these, we only need to dwell for a moment on two words in the title; 'prevention' and 'punishment'. It would be hard to provide conclusive evidence that the treaty has prevented potential genocides, and it took fifty years before convicted perpetrators were punished by an international body. Yet the case in defence of the Convention is not so easily dismissed. To begin with, it sets a normative standard that has achieved near universal acceptance in international society, unlike other
aspects of the human rights regime that remain contested. The illegitimacy of genocide is something that no state challenges.

Many of the reasons for the failure to develop an effective anti-genocide capability lie beyond the scope of this essay; to address these, one would need to reflect on the origins of such violence, as well as the structural and institutional constraints militating against the collective enforcement of agreed norms. Our ambition in this essay has been more modest. By focusing on the Convention and the work of leading theorists working in this area, we have sought to clarify what genocide is and how it has been interpreted. In this aim, we have been guided by Colin Tatz’s thought that ‘it is essential that we know what it is we want to remember, or to forget, or to forgive’.

Our discussion of the debates surrounding the meaning of genocide (the ‘what it is’) reveal the following key arguments. First, that the consensus supporting the Genocide Convention masks important disputes around issues of intent, scale, and identity of victim-group. For instance, by excluding the category of ‘political’ from the list of referents, many states have been able to attempt to destroy their political opponents without being legally responsible according to the terms of the Convention. Second, we showed that Kosovo is a good example of the dispute between those who want to define genocide very broadly (expansivists) and those who want a narrower definition (restrictionists). Widely labelled a genocide by politicians, journalists, and some genocide studies scholars, the judgment of these expansivists is called into question because Kosovar Albanians were in the main expelled from Serbia rather than liquidated. Here we drew a distinction between a policy of dispossession (ethnic cleansing) and destruction (genocide). But until the term ethnic cleansing is recognised in international law, genocide will continue to be stretched, fuelling the fears of restrictionists of ‘comparative trivialisation’ across cases.

Kosovo is part of a new debate about genocide, in which we sketched the contributions of the various war crimes tribunals to the development of new interpretations of genocide. Once again, this provided evidence that state leaders and legal practitioners are becoming increasingly aware of the need to differentiate within the category in order to avoid the perils of either restrictionism or expansivism. What is missing from this new thinking on genocide is an effective means of including the victims’ understandings of what it is, and whether meaningful distinctions can be made between dispossession and destruction.

The starting point for critical thinking about international relations requires that victims of world politics be put at the centre of our inquiry into who gets what, when and how, on a global scale. ‘To remember’ –
following Tatz – means remembering all the victims of genocide. It means remembering too the fates of non-Jewish Germans, Romani (Gypsies) and homosexuals at the hands of Nazis. In the case of America, where Holocaust studies is a respected part of the curriculum, it means remembering the destruction of the indigenous cultures of the Americas as well as the horrors of Auschwitz or Treblinka. It means remembering that the destruction of ethnic groups has a history stretching to the earliest recorded history, such as the Athenian assault on the islanders of Melos. It means remembering the haunting words by George Santayana at the entrance to Dachau museum: ‘Those who forget the past are doomed to repeat it.’ Finally, by remembering past genocides, we might all become more human, more caring, and therefore less likely to walk away when called upon to risk lives and commit resources to protect strangers in danger.

We cannot forget the past, but we might want to forget – or unlearn – certain kinds of behaviour that contributed towards the production of genocidal massacres. We need to forget the idea that genocide is exceptional, forget that governments are normally benign institutions to provide for our welfare and security. Few have made this argument with as much force as the political scientist R.J. Rummel: ‘In total, during the first 88 years of this century, almost 170 million men, women, and children were shot, beaten, tortured, knifed, burned, starved, frozen, crushed, or worked to death, buried alive, drowned, hanged, bombed, or killed in any other of the myriad ways governments have inflicted death on unarmed, helpless citizens and foreigners.’ The discipline of International Relations needs to forget its habit of selectively describing and explain the past. Instead of taking ‘family snaps’ of human history, we must not forget the blood and immorality. Having spent years researching the worst atrocities of the twentieth century, Rummel expressed his amazement at the Political Science and International Relations literature; it just did not explain, he said, ‘the existence of a Hell-State like Pol Pot’s Cambodia, a Gulag-State like Stalin’s Soviet Union, or a Genocide-State like Hitler’s Germany’.

The grip of realism on foreign policy has led to moral indifference on the part of statist elites to the fate of those beyond their jurisdiction. We should not forget that the allies in the Second World War were indifferent to the victims of the Final Solution; that American companies traded with and profited from German businesses in the 1930s; or that world leaders were complicit in the Indonesia genocide in East Timor in 1975. The role of so-called external bystanders is not a neutral one. As the Holocaust survivor Elie Wiesel put it, ‘The opposite of love, I have learned, is not hate, but indifference.’ But what of the indifference shown by internal
bystanders, those living in fear of their lives and those of their families? At the end of The Drowned and the Saved, Primo Levi recounts the correspondence he engaged in with German citizens who had read his Survival in Auschwitz. One woman wrote:

I was born in 1922, grew up in Upper Silesia, not far from Auschwitz, but at the same time, in truth, I knew nothing (please do not consider this statement as a convenient excuse, but as a fact) of the atrocious things that were being committed, actually a few kilometres away from us. And yet, at least until the outbreak of the war, I happened to meet here and there people with the Jewish star and I did not welcome them into my home nor did I offer them hospitality as I would have done with others, but did not intervene on their behalf. That is my crime. I can come to terms with this terrible levity of mine, cowardice and selfishness only by relying on Christian forgiveness.71

Situations can make rescuers or perpetrators of us all. Perhaps the opposite of hatred is not love, but forgiveness.

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The subtitle of this essay has been adapted from a phrase used by Colin Tatz in his essay 'Genocide and the Politics of Memory' in Colin Tatz (ed.), Genocide Perspectives: Essays in Comparative Genocide (Sydney: Centre for Comparative Genocide Studies, Macquarie University, 1997), p.313. The authors would like to thank Alex J. Bellamy and Paul Williams for their comments on an earlier draft, and Ken Booth's judicious advice as the draft neared completion. In addition, Daniela Kroslak would like to thank Remy Ourdan for raising some thought-provoking issues.

NOTES

2. Leo Kuper, Genocide. Its Political Use in the Twentieth Century (London: Penguin, 1981), p.22. The generic phrase 'crime against humanity' predates the term genocide; it was used by France, Great Britain and Russia in a 'joint declaration' (24 May 1915) denouncing the massacres of Armenians by the Ottoman Government.
3. As early as 1933, Lemkin submitted to the International Conference for Unification of Criminal Law a proposal to declare the destruction of racial, religious, or social collectivities a crime (of barbarity) under the law of nations'. Quoted in Leo Kuper, Genocide (note 3), p.22.
7. Defined by R.J. Rummel as 'the better-off peasants and those resisting collectivisation
The Kosovo Tragedy


11. For a comprehensive discussion of these debates, see Kuper, *Genocide* (note 3), Chapter 2, ‘The Genocide Convention’.


18. Ibid., p.313.


20. Ibid., p.5.


34. This is Ward Churchill’s classification in Fein, *Genocide* (note 20), p.15.


36. Ibid., p.20.

37. Although not formally sanctioned, ‘these shootings were tacitly approved by senior


39. Moreover, there is a danger that the very text can produce the kind of collectivist thinking about identity that informs the thoughtways of the perpetrators. David Campbell develops the logic of this argument. Because Bosnia was a multi-cultural entity, it was difficult – in the absence of partition – to invoke the Convention in order to protect citizens in danger. In Campbell’s words: ‘In the guide of a “civic” conception – the national group – we find the convention depends on “ethnic formulations”’. Campbell, National Deconstruction (note 30), p.108.

40. Kuper, Genocide, p.39 (note 3); emphasis added.


42. The genocide studies scholars Israel W. Charny and Steven L. Jacobs refer to the ‘genocide perpetrated against the Albanian Kosovars’ in Charny, Encyclopedia (note 8), p.645.


46. Quoted in Martin Kettle, ‘UN Head Voices Deep Rage’, The Guardian, 1 April 1999, p.3.


49. Ibid., p.18.

50. Ibid.

51. Quoted in ibid., p.48.


63. Article 5 of the Statute of the International Tribunal entitled ‘Crimes against humanity’ states: ‘The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: a) murder; b) extermination; c) enslavement; d) deportation; e) imprisonment; f) torture; g) rape; h) persecutions on political, racial and religious grounds; other inhumane acts.'


70. Rummel, ‘The New Concept of Democide’ (note 69), p.34.