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Genocide by Attrition

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ABSTRACT

Human rights observers have a tendency to look at humanitarian crises as if they were frozen in time. Many unfolding genocides have gone unrecognized and unprevented because each death, each massacre, was treated as if it were a photograph, a snapshot to be compared in that instance against the definition of genocide. Genocide, however, is not an event. This paper will argue that genocide can be waged with a wide array of methods beyond direct and violent murder. In fact, there are more protracted, more ambiguously lethal means of extermination than machetes, guns or gas chambers. Many victims of historical genocides die from slower indirect and less immediately deadly methods of annihilation than outright murder. Genocide is a process that can unfold over several years, even decades. This paper proposes a notion of genocide by attrition that takes the usual linear (causal) accounts of mass death as its starting point and expands on them to suggest a more complex picture of genocidal processes. More specifically, this study aims to illuminate the concept of *genocide by attrition* in its proper legal and historical contexts, and identify indicators thereof through the lens of existing international human rights laws and obligations so as to assist legal, humanitarian and political actors in the difficult task of genocide identification and prevention. The paper will draw on empirical evidence from various cases of *genocide by attrition* to identify a set of attributes that allow a fresh rethinking of the process of genocide.

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õ[I]n such an enormous and complicated crime as the one we are now considering, wherein many people participated, on various levels and in various modes of activity ó the planners, the organizers, and those executing the deeds, according to their various ranks ó there is not much point in using the ordinary concept of counseling and soliciting to commit a crime. For these crimes were committed en masse, not only in regard to the numbers of victims, but also in regard to the numbers of those who perpetrated the crime, and the extent to which any one of the many criminals was close to or remote from the actual killer of the victim means nothing, as far as the measure of his responsibility is concerned. On the contrary, in general *the degree of responsibility increases as we draw further away from the man who uses the fatal instrument with his own hands.*ö

-From the judgment of the District Court in Jerusalem, 1961. Quote and italics by Hannah Arendt in *Eichmann in Jerusalem: A Report on the Banality of Evil.*¹

Genocide has been described as the crime of crimes. It represents the most abhorrent of acts that can be committed against humanity. For many, genocide is a tenuously whispered word for the evil that defies the bounds of language. Yet, despite the clarity that often comes with strong emotions, the definition of genocide has so far escaped consensus. In his introduction to the study of genocide, Adam Jones identifies no less than 16 different definitions and the list does not even include the two most authoritative conceptions of genocide, the UN Convention on the Prevention and Punishment of the Crime of Genocide and Raphael Lemkin's original argument regarding the concept.² My intent here is not to add to this list of attempts to capture the essence of the "unspeakable" crime. Rather, this paper will return to Lemkin's original definition of genocide and suggest that it was more complex and turned out to be more forward-looking than subsequent iterations of the term's usage. Indeed, Lemkin's nuanced and

¹ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*. Penguin Books 1963.

² Adam Jones, 2006. *Genocide: A Comprehensive Introduction*. New York: Routledge.

Careful thinking on the concept makes it more relevant to today's situations than most definitions coined during the last four decades. Building on Lemkin's conception of genocide, I argue that the process-based understanding of genocide presented in this paper is consistent with the UN Convention, with the evolving framework of international law and human rights, and the changing and contested nature of international relations concepts, structures, and actors.

The motivation for a return to Lemkin's more expanded view of the concept of genocide is the recognition that in some ways this first understanding of genocide is much more appropriate for today's changing international climate. In the detection of genocide, the emphasis on strong state actors, driven by totalitarian ideologies, appears to be the consequence of a peculiarly modern reading of the phenomenon.³ But the Realist lenses of the Cold War period are too restrictive to be useful in today's scenarios where weak or failed states degenerate into chaos and cascading human rights abuses rush into fill the power vacuum. The concept of genocide is plagued by yet another rigidity – the long shadow of history. Understandings of genocide have been so closely linked to the Nazi crimes during World War II that at times it has been the Holocaust that has determined the definition of what counts as genocide rather than the other way around.⁴ Martin Shaw observes that, "the Holocaust has assumed a position of overriding importance, universally commemorated and increasingly the dominant theme of the Second World War. In this debate [on uniqueness of the Holocaust], recognition of other cases – historical, like Armenia, and contemporary, such as Rwanda – often

³ See Irving Louis Horowitz, 1996. *Taking Lives: Genocide and State Power* (4th edition). New Brunswick, NJ: Transaction Publishers.

⁴ Martin Shaw, 2007. *What is Genocide?* Cambridge, UK: Polity Press.

depends on establishing a connection to the Holocaust.⁵ Though rich in nuanced historical data, the benefit of such an approach to the development of a robust concept of genocide is questionable. “[W]hen no adequate conceptual framework informs research, it either remains simply particularistic or leads to *ad hoc* comparisons between cases in which one becomes the standard for others.”⁶ He continues, such “*ad hoc* comparisons of other cases with the Holocaust tend to reproduce a narrow *exterminatory* conception and get caught up in secondary features, so blurring core similarities.”⁷

Finally, the abandon with which the Nazi regime committed its most despicable intentions to paper has made intent, in the cases of subsequent genocide trials, almost impossible to prove. The sheer overwhelming power of the Nazi state and military juggernaut and the utter innocence and hopelessness of the victims has led many genocide scholars and observers to a search for the “ideal” victims before the determination of genocide can be established.⁸ Again, the view that genocide is a relatively quick and murderous event distorts the messy realities of most violent conflicts. We must recognize that in protracted conflicts the passage of time will allow for emergence of rebel groups and will encourage individual violent actions that make distinction between docile “victims” and “evil” perpetrators difficult. This does not suggest, however, that there exists moral equivalency with regard to the groups involved. However, locked into a very narrow view of genocide, scholars who see it as an event are likely to categorize these (more messy) cases, such as Darfur and Bosnia-Herzegovina, as

⁵ Martin Shaw, 2007. Pp. 38.

⁶ Martin Shaw, 2007. Pp. 38-39.

⁷ Martin Shaw, 2007. Pp. 45. Italics mine.

⁸ The most recent argument along these lines suggested that due to less than laudable actions of the rebel factions in Darfur the international society had to be careful when assigning the blame in the conflict. For an expanded version of the thesis proposed in the New York Times, see Alan J. Kuperman, 2004. “Humanitarian Hazard: Revising Doctrines of Intervention,” *Harvard International Review* 26(1) (Spring). Pp. 64-68.

civil wars or instances of ethnic violence that fall short of the category of "genocide." One of the greatest tragedies of the conflicts in the former Yugoslavia was that, from the outset, the West incorrectly characterized the situation as a civil war stemming from ancient ethnic hatreds. But contrary to the general perception, the wars in the former federation were not historically inevitable.⁹ For Noel Malcolm, looking back at the recent history of the region, it is clear that "[t]he biggest obstacle to all understanding of the conflict is the assumption that what has happened in that country is the product of natural, spontaneous and at the same time necessary forces lying within Bosnia's own internal history."¹⁰ It was, as he aptly observes, "a fog of historical ignorance" that had filled the minds of the European and American statesmen that precluded the proper assessment of the situation in Bosnia. The presumption was that there was no clear aggressor and hence no need for intervention on anyone's behalf.¹¹ In a detailed account of the "violent disintegration" of the former Yugoslavia, Laura Silber and Allan Little acknowledge that ascribing historical inevitability to what happened prevents us from facing the "central dynamic of the war" and lets the guilty off the hook.¹² It was clear to them that "[w]hat the diplomats often failed to realize is that despite the appearance of chaos, the wars have been prosecuted with terrifying rationality by protagonists playing

⁹ Laura Silber and Allan Little, 1996. *Yugoslavia: the Death of a Nation*. New York: Penguin Books. Pp. 25.

¹⁰ Noel Malcolm, 1996. *Bosnia: A Short History*. Pp. xix-xx.

¹¹ Eric Reeves makes a similar observation regarding Darfur. In his assessment of the report by International Commission of Inquiry on Darfur Reeves sees very few positive points but the main among those is that "[t]hrough unsparing in its criticisms of the Darfur insurgency groups, particularly the Sudan Liberation Army/Movement and the Justice and Equality Movement, the report should put an end to the expedient and deeply distorting language of "moral equivalence" by which various international actors have equated the behavior of Khartoum and the Janjaweed on the one hand and the insurgencies on the other." Eric Reeves, 2005. "Report of the International Commission of Inquiry on Darfur: A critical analysis (Part I)," *Idea: A Journal of Social Issues* 10(1) (October 14). Available [Online]: <http://www.ideajournal.com/articles.php?id=38>

¹² Silber and Little, 1996. Pp. 25.

long-term power games.¹³ Malcolm is blunter in his critique of the absence of an aggressor in the ethnic inevitability myth, which he believes was carefully propagated by those who caused the conflict, who wanted the world to believe that what they and their gunmen were doing was done not by them, but by impersonal and inevitable historical forces beyond anyone's control.¹⁴ This erroneous conviction that in the former Yugoslavia all claims of injury, all accounts of history, and all abuses could be treated equally led to the misguided policies and belated attempts at intervention on behalf of the most persecuted. It led to the imposition of an international arms-embargo that undermined Bosnia's ability to fight the better-equipped Serb forces. It also influenced the final text of the Dayton Agreement, which drew the contours of the new political entities very much in line with ethnic identities and Serb conquests. This final injury to Bosnia-Herzegovina led Silber and Little to the devastating conclusion that, "[v]ictory in former Yugoslavia, will fall not to the just, but to the strong."¹⁵

Taken together the state-centrism of Cold War theories and the Holocaust "uniqueness" arguments have unfairly constricted the concept of genocide and have stubbornly refused to recognize that great evil can hide in the most ordinary political actions that do not require the great machinery of the state.

This paper will argue that genocide can be waged using a wide array of methods beyond direct and violent murder. An excessive focus on violent deaths and a preoccupation with numbers of victims have obscured alternative means of annihilation and have missed the signals of unfolding tragedies. In fact, many victims of historical genocides died from slower, "indirect," and less immediately deadly methods than

¹³ Silber and Little, 1996. Pp. 27.

¹⁴ Malcolm, 1996. Pp. xix.

¹⁵ Silber and Little, 1996. Pp. 390.

outright murder. Likewise, modern *genociders* have used tactics that undermine the basic principles of human security and expose countless individuals and groups of people to eventual death. These tactics rarely register in the international sphere as warning signs until it is too late. Based on these observations, this study argues that genocide is a process that can unfold over several years, even decades. It proposes a notion of genocide by attrition that takes the usual linear (causal) accounts of mass death as its starting point and expands upon them to suggest a more complex picture of the genocidal process. More specifically, this study aims to illuminate the concept of genocide by attrition in its proper legal and historical contexts. The paper will draw on empirical evidence from two different cases of genocide by attrition to identify a set of attributes that allow a fresh rethink of the process of genocide.

Genocide by attrition: Process

We in the West often have a tendency to look at events as if they are frozen in time. Too many cases of unfolding genocide have been treated like photographs, snapshots that we examine against the accepted definition of genocide to see if they fulfill the requirements. But, it is almost impossible to see genocide accurately unless we see it as a process. In his original thinking on genocide, Lemkin presented just such a long-term view of the phenomenon: “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 the disintegration of 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.¹⁶ According to Shaw's interpretation the understanding of genocide as a process was also captured in the Genocide Convention: "Article III of the Convention dealt with acts which "shall be punishable" conspiracy, incitement, attempting and complicity in genocide, as well as genocide itself. This was significant in more than a legal sense, since it exhibited the understanding of genocide as a process, not just a result."¹⁷ If we wish to prevent genocide from occurring we need to understand how it came about, and to understand how it came about we have to look at it as a process.

Genocide by attrition does just that. As stated earlier, genocide by attrition is a slow process of annihilation. Instead of an immediate unleashing of violence and death upon the targeted group, genocide by attrition focuses our attention on an unfolding of a phenomenon of mass murder. It is a long term process that might take months, years, and if we consider the 1895 massacres of Armenians by the Turkish sultan as a dress rehearsal to the genocides of 1915, even decades.¹⁸ The killings are often indirect but the intent is the same, extermination of an unwanted group or groups of people. The attention on process rather than the outcomes of process, on how consequences are brought about

¹⁶ Raphael Lemkin, 1944. *Axis Rule in Occupied Europe* as quoted in Anson Rabinbach, "Raphael Lemkin's Concept of Genocide: Fifty years later, the first conviction was handed down," *Internationale Politik* (Transatlantic edition). Spring issue 1 (2005) v. 1.

¹⁷ Martin Shaw, 2007. Pp. 27-28.

¹⁸ The observation is made by Leo Kuper (1981) who writes about Sultan's massacres of 1895 that "if however much they differed in the immediacy and concentrated nature of their occurrence, they employed many of the same elements as the 1915 genocide, serving somewhat as a pilot project for the later genocide." In Leo Kuper, 1981. *Genocide: Its Political Uses in the Twentieth Century*. London: Yale University Press. Pp. 116.

rather than the raw numbers of victims of direct executions, recognizes the intimate and logical connection that exists between various attributes, such as denial of food and housing and adequate health maintenance that culminate in genocide by attrition, and a dismissal of 'the right to life, of which genocide is a violation on the largest scale possible.'¹⁹ As Helen Fein observes, the attributes of genocide and the dismissal of the right to life become indivisible. Concentration on process is also significant for establishing (however indirectly) the intent of the persecutors. Unlike the Holocaust and the Rwanda genocide, where the leaders of the state gave clear orders to annihilate the targeted group, most cases of genocide by attrition do not present such clear evidence for intent. The indirect means employed to bring about a large number of deaths by forced displacement, starvation or other means hint at government complicity and suggest a particular policy preference but they rarely provide the 'smoking gun.' In absence of direct proof of intent the focus on unfolding process presents us with the more indirect sources of evidence. As a snapshot, the act of removing the Jews of Warsaw from their place of residence into a ghetto might not appear as a deliberate move to bring about their death. Instead, it might be characterized as an attempt by the authorities to protect the public health and prevent the spread of typhus that was menacing the Jewish population of Warsaw. It is only when we examine the circumstances leading up to the forced displacement of Warsaw Jews and the resulting situation in the ghetto that we can establish with comfortable certainty that the intention of German leadership was extermination of Warsaw Jews. As Helen Fein observes about the German doctors and economic planners, 'Their understanding of famine in the Warsaw ghetto is marked for

¹⁹ Helen Fein, 1997. 'Genocide by Attrition 1939-1993: The Warsaw Ghetto, Cambodia and Sudan,' *Health and Human Rights* 2(2). Pp. 12.

the great majority by acceptance that the Jews were to die; they were outside their universe of obligation.²⁰ We arrive at this conclusion only after we have collected all the different scattered fragments of the event together in one cumulative story. The long-term view exposes the consistency in the behavior of the perpetrators, the pattern that emerges cannot be argued to be a part of random and un-coordinate acts of brutality. The intent then can be inferred from the story that unfolds in front of us.

Though most studies of genocide in the twentieth century have focused on historical analysis of specific cases there are an increasing number of authors who take this broader view of genocide as a process.²¹ But even where the process is not the conscious focus of the study, the unfolding nature of genocide is implied by careful consideration of socio-economic, cultural, and historic factors that lead to a genocide. In their descriptions of structures of government and political system in general, many authors touch upon discriminatory practices that existed before the commencement of the genocide. For example, in case of Rwanda, Paul Magnarella writes that since the ascendance to power of Major-General Juvenal Habyarimana, in 1973, Tutsis were severely under-represented in all institutions of government and the military. Additionally, all citizens were required to carry ethnic identity cards.²² In the 1990s, under pretence of fighting the RPF (the Rwandan Patriotic Front), Habyarimana's government indiscriminately interred and persecuted Tutsi. And in the period from

²⁰ Helen Fein, 1997, Pp. 18.

²¹ Helen Fein, 1997. Leon Kuper, 1981. Eric D. Weitz, 2003. *A Century of Genocide: Utopias of Race and Nation*. Princeton: Princeton University Press. Gregory H. Stanton, 1997. "How We Can Prevent Genocide: Building An International Campaign to End Genocide," Genocide Watch. <http://www.genocidewatch.org/HOWWECANPREVENTGENOCIDE.htm>

²² Paul J. Magnarella, 2002. "Recent Developments in the International Law of Genocide: An Anthropological Perspective on the International Criminal Court Tribunal for Rwanda." In Alexander L. Hinton (ed.) *Annihilating Difference: The Anthropology of Genocide*. Berkeley: University of California Press.

1990 to 1993, Hutu ultranationalists killed an estimated two thousand Tutsi.²³ Focus on genocide by attrition clarifies the relationship between these contextual factors, the various attributes of attrition and the mass killing that is the result of this process.

The authors who focus on the process of genocide have identified a few generalizable characteristics that are present in cases of genocide. Gregory H. Stanton describes genocide as "a process that develops in eight stages that are predictable but not inexorable."²⁴ These are: classification, symbolization, dehumanization, organization, polarization, identification, extermination, and denial. Helen Fein uses the Holocaust to describe the genocidal process that unfolds in five functionally necessary and usually sequential stages of "definition (identifying and discriminating victims), stripping (of rights, roles, offices, claims), segregation (enforced by compulsory wearing of the yellow star), isolation, and concentration preceded the Final Solution (in most cases, killing in extermination camps)."²⁵ Though these stages are broad enough to cover most instances of genocide it is unlikely that there is a single process of genocide.²⁶ As Kuper notes: "The forms of genocide are too varied, with quite different sequences of action, and great differences in scale, raising different logistic problems."²⁷ Technological sophistication, geographical concentration of victims, bureaucratic efficiency, and possibility for reciprocal violence/threat from the victims, are some of the variables that differentiate one genocide from another and resist the easy accommodation of a linear model of the genocidal process. To avoid the problem of over-generalization, Kuper borrows the

²³ Here he references Jefremovas 1995 and Newbury 1995. Newbury (1995) as quoted in Paul J. Magnarella, 2002.

²⁴ Gregory Stanton, 1997, appendix 1.

²⁵ Helen Fein, 1997, Pp. 31.

²⁶ Leon Kuper, 1981, Pp. 101.

²⁷ Leon Kuper, 1981, Pp. 101.

typology of genocides developed by Dadrian rather than the linear model of the genocidal process advocated by Stanton and Fein. Dadrian identifies five different types of genocide: (1) cultural; (2) violent-latent (that is, genocide as a by-product of other operations); (3) retributive (either punitive or admonitory); (4) utilitarian (I think this overlaps with others of his categories); and (5) optimal (massive, relatively indiscriminate, sustained and aiming at total obliteration).²⁸ Kuper suggests that a different process would unfold in each type of genocide. This study will not offer yet another typology of stages. Rather it presents a list of attributes that might occur at different stages of genocide and that follow their own distinct path of development. The linear models of genocidal process are useful, especially for the early warning system, as they provide a simple starting point or the first set of signals that genocide might be in preparation. But they miss some crucial points for the understanding of the genocide. Our focus on the genocide by attrition aims to fill in these gaps. This study is not meant to be a critique of the linear models of genocide process but it does suggest a rethinking of the issue. In a way what we are doing is building on the linear model to suggest a more complex picture of genocidal process. Empirical evidence from the cases of genocide by attrition explored throughout this study point to a set of attributes that suggest several tentative conclusions about the genocidal process. First, indirect forms of mass killing play a more important role in genocidal processes than suggested by the linear models. Second, indirect methods of annihilation may occur at different points in the linear process and/or may reflect a jumping or collapsing of stages. Instead of linear accumulation of indicators or stages of what might happen, it is a rapid acceleration of a particular attribute. The presence of any one of the attributes should prompt additional

²⁸ Dadrian as quoted in Kuper, 1981. Pp. 105.

examination of the events preceding the occurrence but it should not mean that unless the events have reached a particular stage the situation is not dire. The forced removal of Armenians itself was a death march that was meant to kill most of the people. It was therefore the penultimate stage of the Armenian genocide. The removal of Jews to the Warsaw ghetto did not lead to their immediate death. It did however create a situation in which resulting conditions of overcrowding, lack of health measures, absence of food and means for sustenance made survival almost impossible. In order to devise a successful early warning system, these differences in form must be taken into account. In case of the Warsaw ghetto, the forced displacement would signal to the international community that intervention of some sort is necessary to prevent genocide. In the case of the Armenians intervention would have been required to forestall the forced displacement. In sum, per Kuperø observations, what we are suggesting is that there are numerous processes of genocide and they unfold based on their own specific internal logic. In particular, the genocide by attrition process might be qualitatively different from the one exhibited in the cases of direct mass killings.

It is important to make clear the distinction between the linear models of genocide and the concept of process we are advocating to understand genocide by attrition. The concept of process we employ in this study is a cluster concept, drawn from Wittgensteinø metaphor of ÷family resemblanceö, which was created to avoid easy generalizations of the meanings of words.²⁹ ÷Family resemblanceö is ÷a more suitable analogy for the means of connecting particular uses of the same word.ö³⁰ In ÷family

²⁹ Ludwig Wittgenstein, *Philosophical Investigations*. G.E.M. Anscombe and R. Rhees (eds.), G.E.M. Anscombe (trans.) Oxford: Blackwell. 1953.

³⁰ Anat Biletzki and Anat Matar, ÷Ludwig Wittgenstein,ö in *Stanford Encyclopedia of Philosophy*. 2002. <http://plato.stanford.edu/entries/wittgenstein/#Lan>

resemblance a word (or concept) does not share a single common attribute but rather a cluster of attributes across various uses of the word, a complicated network of similarities, overlapping and criss-crossing.³¹ A cluster concept emerges only after a variety of indicators cluster together. We use this notion of a cluster of indicators to suggest a process of genocide by attrition. Process occurs over time so in a way it is similar to the linear accounts of events. But whereas a linear model is based on discrete causal relationships that unfold into mass killings, when employing our concept of process we do not have to wait for the process to unfold to know that a genocide is underway. This is due to two factors. First, we have derived our notion of process deductively from previous cases of genocide by attrition. Second, the presence of attributes indicates that a process is underway before the final stage is reached. In process the attributes fold into a powerful story that is revealed to be a familiar one of genocide. In other words, there is no single attribute that moves through all cases or all stages of genocide but when the cluster of attributes reaches a tipping point it triggers an epic narrative of genocide. Finally, the process-based view of genocide suggests specific measures for an early warning system that are not available to those looking only at linear models.

In sum, the focus on process in genocide by attrition provides an additional analytical tool that is not available from the typical, and narrower, interpretations of genocide. First, the awareness of the unfolding nature of the phenomenon allows us to focus on the events that at the given time may not yet signal the presence of genocide but that are indicative of a potential for genocide. Second, the various attributes of genocide by attrition serve as a list of indicators against which we can assess unfolding patterns of

³¹ Ludwig Wittgenstein as quoted by Biletzki and Matar, 2002.

discrimination and human rights abuses throughout the world. Third, attention on process reminds us that the targeted group is likely to suffer long lasting consequences, some of which may not be apparent at the time the crime is committed. AIDS has been one of the more horrible effects of the mass rapes that accompanied the Rwanda genocide. It is only by looking at genocide as a process that we can recognize that the Rwanda genocide still "causes serious bodily or mental harm to members of the group."³²

Genocide by attrition and International Law

In the domestic context, law is seen as forming a system where the constitutional documents, precedence, and international treaties all create a web of rights, duties, rules and regulations. The domestic legal system is seen to be at least minimally (some would say, normatively) consistent.³³ The international system of law is perhaps less ordered and organized but it too forms a kind of web of interconnected norms, rules, and regulations. International human rights law can certainly be seen to provide a consistent and continuous formal protection against human rights abuses. For example, the right to life is protected by several international human rights treaties and by several provisions in international humanitarian law. If read as a stand-alone independent document, the UN Genocide Convention might appear slightly vague with regard to what abuses it is meant to prevent and punish. However, if read as part of broader human rights law many of its concepts and principles are elaborated in the UN Charter, the International Covenant on Civil and Political Rights (ICCPR), the Convention on Economic, Social and Cultural

³² United Nations Convention on the Prevention and Punishment of the Crimes of Genocide (UNGC). UNGA Res. 26A (III), 1948.

³³ Marcelo Dascal, 2003. *Interpretation and Understanding*. John Benjamins Publishing Company. Pp. 357.

Rights (CESCR), Convention Against Torture (CAT), and the Convention on the Rights of the Child (CRC), to mention a few documents. Likewise, the international humanitarian law embodied especially in the Geneva Convention and Additional Protocols further illuminates the nature of several human rights in situations of war. Recognizing the interdependence of various human rights documents, Craig Scott points out that this property of international law "suggests a mutual reinforcement of rights, so that they are more valuable together, as a complete package, than a simple summation of individual rights would suggest"³⁴ This view of international human rights law is consistent with the view of genocide as a process of attrition of human rights where the denial of a specific right usually leads to weakening of most other rights and the eventual annihilation of a group of people.

Additionally, for the purposes of genocide by attrition the relationship of the Genocide Convention to the other human rights documents can be characterized in terms of H.L.A. Hart's thesis that law consists of both primary and secondary rules. Hart argued that in a legal system primary rules impose duties and regulations, whereas the secondary rules are needed, among other things, to interpret the primary rules.³⁵ For example, the primary rule might provide that genocide is a crime that can be committed against "members of a targeted national, ethnical, racial or religious group."³⁶ But it will require recourse to a set of secondary rules, including, in this case, other UN human rights documents, to ascertain what constitutes an ethnic group. Utilizing this approach of interdependence and complementarity between the Genocide Convention and other UN

³⁴ Craig Scott, 1989. "The Interdependence and Permeability of Human Rights Norms: Toward a Partial Fusion of the International Covenant on Human Rights," 27 *Osgoode Hall Law Journal* 769-878. See footnote 35.

³⁵ H. L. A. Hart, 1961. *The Concept of Law*. Oxford: Clarendon Press.

³⁶ Genocide Convention.

treaties, international human rights law becomes an indispensable tool in genocide identification, prevention and punishment. A process-based view of genocide therefore recognizes and is fully engaged with recent developments in international human rights law, most importantly the establishment of the International Criminal Court and the inclusion of the Responsibility to Protect articles into the UN World Summit 2005 Outcome document.

Security and attributes of genocide by attrition

Genocide is an extreme case of human rights violations. It can take the more familiar form of a denial of the right to life by killing *en masse* a group of people in concentration camps or by attacking them with machetes in the streets, houses, churches, school yards and in every other ordinary place they inhabit. Genocide by attrition brings to attention more gradual, perhaps widespread, and cumulative denial of human rights. By looking at genocide as a process we recognize that human rights are, to a great extent, interconnected and interdependent. The ability to sustain life can be compromised by the withdrawal of a number of other human rights outlined in various international legal instruments. In this paper I will focus only on two human rights that can constitute the attributes of genocide. Attrition of these rights, singly or together, can lead to mass deaths and possibly an extermination of an entire group. These attributes are: the denial of food (and water) and sexual violence. It is possible to treat sexual violence as an especially insidious case of denial of the right to healthcare. However, due to its prevalence in recent conflicts, and in recently recognized cases of genocide, and due to its psychological and demoralizing effects, I believe it merits a separate consideration. These

two attributes are drawn from studies and detailed accounts of historical cases of genocide and identity-based violence. This is, however, not an exhaustive list, and attributes based on other human rights abuses, such denial of proper healthcare, forced labour, forced displacement, slavery and confiscation of property, have also played a role in several historic cases. Finally, before I move on to a more detailed discussion of each attribute it is important to address the question of the right to security, which by definition is compromised in every instance of genocide.

Security, or the right to security, relates to a right to life in a manner that is qualitatively different from all other human rights. Security can be thought of as an underwriting or a foundational right. By that I mean it is a precondition for all other rights to exist in any meaningful sense. Even the right to life, as so many instances of genocide have shown, is held only temporarily if the right to security cannot be guaranteed. In situations where existence can be sustained under conditions of insecurity, the psychological stress this insecurity causes can nevertheless produce the desired effect (of the perpetrators) by wearing down the individual's will to survive. Death, in those cases, might be greeted as a welcoming closure to a nightmarish reality.

Most modern theories of state, from Hobbes forward, recognize this relationship between security and other human rights. In his oft-quoted hypothetical scenario Hobbes illustrates quite dramatically what is lost - industry, culture, navigation, use of commodities, commodious building, instruments of moving and removing such things as require much force, knowledge of the face of the Earth, account of time, arts, letters, and society itself - and what remains if security cannot be guaranteed - worst of all, continuall feare, and danger of violent death; And life of man, solitary, poore, nasty,

brutish, and short.³⁷ Even Nozick's minimal definition of state saw its primary duty in providing security,³⁸ and prompted a description of the state as a "dominant protection agency" or "a kind of insurance company which sells people protection against invasion by others of their individual rights."³⁹ It is this conception of the legitimacy of the state built on the provision of security for its inhabitants that has been reinvigorated in the 2001 report of the International Commission on Intervention and State Sovereignty on *The Responsibility to Protect*. (Oddly, this theoretical pedigree is not acknowledged anywhere in the report.) More recently, the view that security is intimately connected with all other human rights has formed the core of the critical security literature and the concept of human security. Hence the rights-focused conception of security informs the 1994 UNDP definition of human security, which sees it as: "safety from such chronic threats as hunger, disease, and repression," and "protection from sudden and hurtful disruptions in the patterns of life."⁴⁰

The process-based understanding of genocide is sensitive to the symbiotic relationship between the right to security and other human rights. It is therefore able to accommodate the broader and deeper conception of security advocated by the *human security* school. Gradually unfolding genocide is characterized by a persistent denial of security to a group of people. As I show below, attrition might result, for example, from forced removal, as was the case in Ottoman Turkey, Nazi occupied Warsaw, and throughout towns and villages of Bosnia-Herzegovina. But the study of these processes

³⁷ Thomas Hobbes, *Leviathan*. 1651.

³⁸ Robert Nozick, 1974. *Anarchy, State, and Utopia*. New York: Basic Books.

³⁹ Karen Johnson, 1976. "Government by Insurance Company: The Antipolitical Philosophy of Robert Nozick," *The Western Political Quarterly* 29(2): 177-188. Pp. 177.

⁴⁰ United Nations Development Programme, Human Development Report, 1994. New York: Oxford University Press. 1994. Pp.22. cited in Roland Paris, 2001. "Human Security: Paradigm Shift or Hot Air?" *International Security* 26(2): 87-102. Pp. 89.

reveals that it was essential to compromise the security and safety of the targeted group in order to make it unavailable for displacement in the first place. Hence, in the unfolding crisis in Darfur, the insecurity of isolated villages, of open desert where many Darfurians are forced to flee, and of life in refugee camps, makes them easy targets of rape, mutilation, and murder by the Janjaweed forces.

The models of genocide that see it as a discreet event perpetrated by a strong state are likely to miss this long-term interdependence between individual security and other attributes of human rights violations. It is not surprising therefore that many accounts of the Holocaust do not include the description of the Warsaw Ghetto. The strong state theories also ignore the chronic insecurity experienced by Native Americans and Aborigines during the times of European colonialism and by most people residing in weak and failing states throughout the world today. If we step away from the more Realist-dominated conception of genocide where the state exercises the monopoly of violence, it would allow us to recognize that in many weak states genocidal actions are carried out not by direct intervention of the state apparatus, the efficient workings of bureaucracy and normalization of violence, but that *genociders* are often non-state/private actors, sometimes even members of private military or security companies who have no emotional or identity-based relation to the state. As we have seen in the two recent conflicts in Sudan, they can however be convenient proxies for carrying out state violence. But these actors are invisible to the Realist notion of state security and its more rigid view of genocide. As such, these theories are likely to be inadequate guides for recognizing most of the situations of insecurity and genocide.

Consider, briefly, the nature of insecurity and unfolding crisis in Darfur, a situation where the moral order of society is slowly breaking down and where the pathology of genocide comes to define the relations between the members of community.⁴¹ If we look at the Darfur conflict as an unfolding process the first signs of trouble were already present in 1980s.⁴² As Alex de Waal writes in the revised edition of *Famine that Kills*, "By 1987, political processes were in motion that led ultimately to the outbreak of war in 2003 and its escalation into genocidal massacre and displacement." He observes, in the first edition of his book, that "there are hints of coming violence." For example, in accounts of relations between "the Fur farmers of Nankose and the nearby pastoralists (p. 52), and the disputes associated with moving herds through the settled areas of Goz Dango (pp. 155-56)." Perhaps the strongest indicator of the violence that was to unfold was "how the changing ecology of Darfur also profoundly disturbed the moral order of society."⁴³ The drought and famine of the early 1980s were having a very visible and long-lasting effect on the region. Their significance went beyond the physically trying conditions they imposed on the people of Darfur. They struck directly at the fabric of community.

The disintegration of the moral order of society, as de Waal describes above, is a slow pattern that is difficult to measure with quantitative instruments. It is likely to go unrecognized by those looking for more "visible" indicators of mass murder about to be unleashed by the state. Recognizing the essential role that security plays in the

⁴¹Rakiya Omar, 1995. "The Pathology of Genocide," *Rwanda: Death, Despair and Defiance*. Revised Edition. London: A Publication of African Rights. Pp. 1-45.

⁴² Alex de Waal, 2005. *Famine that Kills: Darfur, Sudan*. (Revised Edition). Oxford: Oxford University Press.

⁴³ Alex de Waal, 2005. Pp. xiii.

maintenance of all other human rights might direct our attention to the broader phenomenon of weak states and the disintegration of society, which in turn might signal the unfolding of genocide.

Finally, the view of security as a foundational or an underwriting right for all other human rights is also more consistent with the view of the international human rights law as an interdependent body of law advocated above.

Attributes of genocide by attrition and historic cases

The two attributes that I wish to examine here correspond to two human rights that are protected by international law: the right to food and the right to freedom from sexual violence. I start by briefly outlining the network of overlapping legal protections in which these rights are embedded and which acts as a kind of set of secondary rules elucidating the meaning of the list of crimes under the Genocide Convention. This is followed by two historic case studies in which I trace the unfolding nature of genocide by attrition by focusing on one of the two attributes mention above. For the purpose of clarity and space, I have chosen to examine a single attribute in each historic setting. This does not, however, connote that there were no other large scale and systematic human rights abuses taking place. It is merely used here as a case to elucidate the concept of genocide by attrition.

The Genocide Convention defines the crime of genocide as: "Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;

- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.⁴⁴

This list of crimes outlined above constitutes the most authoritative document on genocide, yet none of the terms is unambiguous. Paragraphs (b) and (c), especially, open up possibilities for quite divergent interpretations. However, if read in the wider context of international human rights law, some ambiguities fall away and a more familiar picture emerges.

(A) Right to Food

The right to food is one of the most basic human rights enshrined in international law. Food and water are indispensable for human survival and flourishing but by their very nature they can be easily controlled, withdrawn and selectively distributed. In a shrewd observation George Kent points out that (contrary to general consensus) 'famine is the characteristic of some people not having enough food to eat. It is not characteristic of there not being enough food to eat.'⁴⁵ Hence, the UDHR and the ICESCR set out very clearly the significance assigned to the right to food (and water). The UDHR Art. 25 states that everyone has the right to a 'standard of living adequate for the health and well being of himself and his family, including [the right] to food.'⁴⁶ Beyond the fundamental right to food and water guaranteed by the UDHR, the ICESCR also recognizes that

⁴⁴ Genocide Convention.

⁴⁵ George Kent, 2005. *Freedom of Want*, Pp. 24.

⁴⁶ Universal Declaration of Human Rights, G.A. res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc A/810 (Dec.12, 1948) [hereinafter UDHR]. Article 25.

individuals have the right to an adequate standard of living, including the right to food and water.⁴⁷ More specifically, the ICESCR, in its General Comment on the implementation of the right to adequate food,⁴⁸ notes that because the right to food is fundamentally linked with the dignity of a person and is crucial to the fulfillment of the other rights enunciated in the ICESCR,⁴⁹ the term "adequate" in the right to adequate food should not be construed narrowly in terms of particular calorie or nutritional content.⁵⁰

In addition to the major UN documents, the UDHR and the ICESCR, the right to food is also protected by the Geneva Conventions. Both Protocol I, which applies to international conflicts, and Protocol II, which "prescribes rules governing internal armed conflicts," prohibit starvation of civilians. Marcus points out that Article 14 of Protocol II is even more strict in its condemnation of starvation as a military tactic than its corollary Article 54 in Protocol I as it states that "[n]o measure of military necessity justifies the starvation of civilians."⁵¹ These claims illuminate Article II (c), the clause⁵² encompasses

⁴⁷ See ICESCR, Article 11.

⁴⁸ See, General Comment 12, Committee on Economic, Social, and Cultural Rights, *The right to adequate food*, U.N. Doc. E/C.12/1999/5 (May 12, 1999).

⁴⁹ See General Comment 12, Committee on Economic, Social, and Cultural Right.

⁵⁰ See General Comment 12, Committee on Economic, Social, and Cultural Right, para. 6. Instead, the right to adequate food implies, "the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights." See para 8. Sustainability is an important part of this definition, as it is linked to the concept of food security and the access to food in the future. See para 7. Finally, the ICESCR asserts that procurement of food should not compromise any other human rights.

⁵¹ David Marcus, 2003. "Famine Crimes in International Law," *The American Journal of International Law* 97(2): 245-281. Pp. 14. See also Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, Art.14, 1125 UNTS 609. See Art 54 of Protocol I, which puts it the most bluntly: "Starvation of civilians as a method of warfare is prohibited. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilians population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive."

⁵² See Genocide Convention Art II (c)

situations in which the perpetrators do not seek to kill all members of a group immediately but instead intentionally subject them to such harsh circumstances that death would be virtually assured without outside intervention and aid.

Along with major human rights instruments case law from the ad hoc tribunals also supports the view that deliberately inflicting conditions of life calculated to bring about physical destruction includes the intentional use of starvation.⁵³ In its judgments the ICTR has held that starving a group of people constitutes a violation of Article II because it is a measure that deliberately inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part,⁵⁴ and "include, *inter-alia*, subjecting a group of people to a subsistence diet, systematic expulsion from home and the reduction of essential medical services below minimum requirements."⁵⁵ The Tribunal noted that it did not limit acts of genocide to those that lead immediately to death, but included acts such as starvation which would eventually lead to the destruction of a group in whole or in part.⁵⁶

(B) Right to Freedom from Sexual Violence

It is no longer questioned that sexual violence constitutes a crime in international legal order. Rape, seen by many as perhaps the most severe form of sexual violence, has been prohibited under international customary law for centuries.⁵⁷ But it has been recognized as a purposeful strategy adopted by those committing genocide only recently.

The *Akayeshu* case under the ICTR marked a historic watershed in the treatment of

⁵³ Prosecutor v. Kayishema, Judgment and Sentence, No. ICTR 6 95-1-T, para. 116 (May 21, 1999). ICTR decisions are available online at the Tribunal's Web site, <[http:// www.ictt.org](http://www.ictt.org)> as cited in Marcus (2003). pg. 11 (online page).

⁵⁴ Kayishema, para. 115-116.

⁵⁵ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Chamber, ¶ 688 (September 2, 1998)

⁵⁶ Akayesu.

⁵⁷ Kelly D. Askin, 1999. "Sexual Violence in Decisions and Indictments of the Yugoslav and Rwanda Tribunals: Current Status," *The American Journal of International Law* Pp.97.

sexual violence as it authoritatively affirmed “the intricate linkage of sexual violence to the genocide committed during the Rwanda conflict.”⁵⁸

International law has also come to recognize that sexual violence is a far more complex concept than focus on the crime of rape might suggest. Increasingly, the notion of sexual crime has been broadened from the immediate violent act to one that carries crippling long-term consequences, and includes such crimes as sexual slavery and molestation. The residual effects of sexual violence, such as depression and indifference, alienation from a social group, ability and desire to have children, and lingering effects of sexually transmitted diseases are all part of the gender-based crime and may put the entire group at risk of destruction. While women are overwhelmingly the targets of sexual violence, Yugoslavian conflict attracted attention to the sexual crimes committed against men as well. Finally, the ICTR has also recognized that when considering the form of sexual violence, it is important to keep in mind that “[it] is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.”⁵⁹ At its most fundamental then the sexual violence “describes the deliberate use of sex as a weapon to demonstrate power over, and to inflict pain and humiliation upon, another human being. Thus, sexual violence does not have to include direct physical contact between perpetrator and victim: threats, humiliation and intimidation may all be considered as sexually violent when they are used with the above purpose.”⁶⁰

⁵⁸ Kelly D. Askin, Pp.98.

⁵⁹ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Chamber, ¶ 688 (September 2, 1998) (For example, forcing a Tutsi woman to undress and perform gymnastics in a public courtyard in front of a crowd is a form of forced nudity that constitutes sexual violence).

⁶⁰ Peter Gordon and Kate Crehan, “Dying of Sadness: Gender, Sexual Violence and the HIV Epidemic,” HIV and Development Programme. UNDP. Available: [Online] <http://www.undp.org/hiv/publications/gender/violencee.htm>

The right to be free of sexual violence under international law is derived from ICCPR Article 3;⁶¹ ICCPR Article 26;⁶² CEDAW;⁶³ The Convention on the Rights of the Child (CRC); Convention Against Torture (CAT),⁶⁴ ICCPR Article 7,⁶⁵ and UDHR Article 5.⁶⁶ The right is also guaranteed under numerous international treaties, and is further defined by various committees to international treaties and by international case law. International humanitarian law and laws and customs of wars extend the protection against sexual violence to the situations of internal armed conflict and inter-state war. The Geneva Conventions and the Additional Protocols implicitly and explicitly condemn rape and other forms of sexual violence as serious violations of humanitarian law.⁶⁷

The equal right of men and women to the enjoyment of civil and political rights provided for in ICCPR Article 3 encompasses a woman's right to be free of rape and

⁶¹ ICCPR Art. 3 (The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.)

⁶² ICCPR Art. 26 (All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.) (emphasis added).

⁶³ CEDAW Art. 1, 6 (Art. 1: For the purposes of the present Convention, the term discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Art. 6: States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.)

⁶⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratification and accession by G.A. Res. 39/46 Dec. 10, 1984, entry into force June 26, 1987 in accordance with Art. 27(1).

⁶⁵ ICCPR Art. 7 (No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.)

⁶⁶ UDHR Art. 5 (No one shall be subject to torture or cruel, inhuman or degrading treatment or punishment.)

⁶⁷ Human Rights Watch, 2003. *International Legal Protection Against Gender-based Violence*.

other forms of sexual violence and is subject to the ICCPR non-derogation provision.⁶⁸ General Comment No. 28 to ICCPR Article 3 recognizes that women's enjoyment of civil and political rights is vulnerable in times of internal or international armed conflict and places a positive obligation upon the States Parties to prevent women from being subject to sexual violence in a discriminatory fashion during such times and to inform the Committee of all measures taken during these situations to protect women from rape, abduction and other forms of gender-based violence.⁶⁹ Under Article 1 of CEDAW discrimination is understood to include gender-based violence precisely because gender-based violence has the effect or purpose of impairing or nullifying the enjoyment by women of human rights on an equal footing with men.⁷⁰ In addition, General Recommendation No. 19 to CEDAW establishes a link between the rights provided for in CEDAW Article 6⁷¹ and the CEDAW States Parties' obligation 1) to prevent sexual violence against women in times of war and armed conflict and 2) to punish perpetrators of sexual violence.⁷² Moreover, [t]he full implementation of the Convention require[s]

⁶⁸ General Comment No. 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21?rev.1?add.10, ¶ 7, 9 (2000) (The ICCPR non-derogation provision, ICCPR Art. 4, is applicable to the equal enjoyment of human rights by women during internal or international armed conflict and States Parties that elect to derogate in such a time of public emergency are asked to provide information to the [Human Rights] Committee with respect to the impact on the situation of women of such measures and should demonstrate that they are non-discriminatory.)

⁶⁹ General Comment No. 28, Equality of rights between men and women (article 3), U.N. Doc. CCPR/C/21?rev.1?add.10, ¶ 8 (2000).

⁷⁰ Women, Law and Development International, *Gender Violence: The Hidden War Crimes*. Washington D.C.: Women, Law and Development International, 1998. Pg. 37 as quoted in Human Rights Watch, *International Legal Protection Against Gender-Based Violence*.

⁷¹ CEDAW Art. 6 (States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.)

⁷² Catherine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 UCLA Women's L. J. 59, 78 (1993) (The committee that oversees [CEDAW] is coming to recognize . . . that violence against women is a form of sex discrimination and seeks to make states responsible for private acts *if they fail to prevent*, investigate, or punish discriminatory acts of violence.) (emphasis added); *see also* General Recommendation No. 19, Violence Against Women, Committee on the Elimination of Discrimination Against Women, U.N. Doc. CEDAW/C/1992/L/1/Add.15, ¶ 16 (1992) (Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and *sexual assault of women*, which require specific protective and punitive measures.) (emphasis added).

States to take positive measures to eliminate all forms of violence against women.⁷³

These include ensuring appropriate treatment for victims in the justice system, counseling and support services, and medical and psychological assistance to victims.⁷⁴

The CRC extends the same rights and protections to children and minors.⁷⁵ Children's security is easier compromised than that of most adults. In recognition of this the CRC Article 20 charges states to extend special protection and assistance to children temporarily or permanently deprived of their family environment.

Genocide by attrition through historic cases

Denial of right to food in Ukrainian famine of 1932-33

Ukrainians call the famine of 1932-33 "Holodomor" the Great Man-Made famine. In 1932 Stalin imposed excessive grain quotas on Ukraine and condemned several million peasants to starvation in the land that has often been described as "the breadbasket of Europe". In reported conversation with Khrushchev, Stalin explained, "Ukrainians, unfortunately, are too numerous to be deported to Siberia."⁷⁶ As an alternative, famine was a much more convenient tool for annihilating the Ukrainian nation.

We can say with some certainty that judging from the numbers of the dead alone, the Ukrainian famine of 1932-33 was a major human rights disaster. Because the famine

⁷³ General Recommendation No. 19, Violence Against Women, Committee on the Elimination of Discrimination Against Women, U.N. Doc. CEDAW/C/1992/L/1/Add.15, ¶ 4 (1992).

⁷⁴ Human Rights Watch, *International Legal Protection Against Gender-Based Violence*.

⁷⁵ See specifically Article 34 "State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse." And Article 38 pertaining to children caught up in armed conflicts. The Convention on the Rights of the Child.

⁷⁶ Khrushchev as quoted in Mykola Riabchuk, "The Elimination of a People," *The Great Famine of 1932-1933 in Ukraine* a presentation at Penn State University. Available [Online]: www.ukrweekly.com/Archive/Great_Famine

was carefully concealed, Soviet documentation and statistics regarding mortality rates are highly distorted. Some researchers believe that in one year alone almost eleven million people died of hunger or famine deliberately manufactured by the Soviet government.⁷⁷ However, most estimates conclude that anywhere from 5 to 7.5 million Ukrainian people died due to starvation caused by famine or diseases resulting from malnutrition. In an extremely conservative demographic report in which he utilized the lowest possible available statistics, M. Maksudov declares the death toll to be 4.4 million.⁷⁸

In his testimony to the U.S. Commission on the Ukraine Famine, Robert Conquest described the famine of 1932-1933 as a complex story that would be unfamiliar to Western conception of such events, "That is, we find no single, and simply describable and assimilable [sic.], event, but a complicated sequence."⁷⁹ It is quite obvious, however, that the Ukrainian famine was not an outcome of a natural disaster or even negligent government policies. The story that emerges from the "complicated sequence" of events reveals that the Soviet government was directly responsible for creating famine in Ukraine. It was, as Marcus observes, one of "the most severe of the unprecedented European human rights disasters of the first half of the twentieth century" deliberately manufactured by the Soviet government to achieve a set of political and economic ends.⁸⁰

⁷⁷ W.A. Dando, *Man-Made Famines: Some Geographical Insights from an Exploratory Study of a Millennium of Russian Famines*, 4 Ecology Food & Nutrition 219, 229, 1976. Robert Conquest observes that "the number dying in Stalin's war against the peasants was higher than the total deaths for all countries in World War I." ⁷⁷ From the testimony of Robert Conquest at the October 8 hearing of the U.S. Commission of the Ukraine Famine. www.ukrweekly.com/Archive/1986/448621.shtml, Pp. 4 (emphasis added).

⁷⁸ Quoted in Robert Conquest, Pp. 253.

⁷⁹ Robert Conquest.

⁸⁰ David Marcus, 2003. Pp. 252.

In December of 1922, the sovereign Ukraine became a member of the new Union of Soviet Socialist Republics. From the start, Soviet policy toward national identity of the various Soviet republics, or the so-called national question, was somewhat schizophrenic. In the early 1920s, Lenin adopted the policy of "Russianization," which tried to minimize the national identity of republics and instead set up Russian language and culture as a kind of universal identity of the Soviet peoples. But fearing too much backlash against the New Economic Policy and forced agricultural requisitions, the Soviet government soon relaxed its national policy and allowed some revitalization of the national, including the Ukrainian, cultures and languages. The reversal did not last long. Following Lenin's death in 1924, Joseph Stalin became the new leader of the Communist party and the head of the USSR. This marked the end of the more relaxed and permissive attitude toward the various nations of the new Communist state and brutal suppression of nationalism soon followed.

Stalin also instituted a wide-sweeping economic restructuring. In order to modernize and transform the backwards economy of the USSR, in 1927 Stalin launched a "revolution from above." To this end, he set out two goals for the new Soviet state, "rapid industrialization" and "collectivization of agriculture," that formed the basis of the new policy of the Five Year Plans.⁸¹ The first Five Year Plan was introduced in 1928 and it immediately established "goals that were unrealistic -- a 250 percent increase in overall industrial development and a 330 percent expansion in heavy industry alone."⁸² The second part of the first Five Year Plan was directed specifically toward agriculture. It

⁸¹ James E. Mace quoted in Yaroslav Bilinsky, "Was the Ukrainian Famine of 1932-1933 Genocide?" *Journal of Genocide Research* 1(2) 1999. Pg.147-156.

⁸² "Collectivization and Industrialization," Revelations from the Russian Archives. Available [Online]: <http://www.loc.gov/exhibits/archives/coll.html>

called for "transforming Soviet agriculture from predominantly individual farms into a system of large state collective farms."⁸³ Collectivization would be crucial for supplying new industrial centers with food and would free up farm workers for factory work in the cities making them subject to closer political control by the government. At this point, in Ukraine the collectivization was focused mostly on the wealthiest peasants, the kulaks (literally, the fist). They were seen, or as some have suggested, they were constructed, as the main enemy of the Soviet state, the danger to collectivization of agriculture, indeed to state socialism itself. As a consequence, "about one million kulak households (some five million people) were deported and never heard from again."⁸⁴ These early attacks against kulaks were part of Stalin's attempt to clean the Soviet state of all subversive political and economic forces, anyone who might oppose the new economic policies and support nationalist causes. Though they played an important role in undermining the local power base in Ukraine and in destroying the main opposition, the policies, in and of themselves, were not direct causes of the famine that followed. As Conquest observed, "[d]ekulakization and collectivization were virtually complete by mid-1932."⁸⁵ Likewise, most kulaks had been killed or sent to Siberia by the time the famine started and those most affected by the famine were poor peasants and those who had already joined the collective farms. Rather, the escalating grain quotas and harsh penal measures adopted to enforce the grain procurement played the main role in the famine creation. 1926 had seen the best agricultural yield before the onset of collectivization. That year the central government collected 3.3 million tons of grain or 21 percent of Ukraine's total harvest. In 1930 the quotas had gone up to 7.7 million tons, "a third of that year's exceptionally good

⁸³ From Soviet Archives. Available [Online]: www.ukrweekly.com/Archive/Great_Famine/

⁸⁴ From Soviet Archives. Available [Online]: www.ukrweekly.com/Archive/Great_Famine/

⁸⁵ From the testimony of Robert Conquest.

23 million ton harvest.⁸⁶ The changes in quotas were also clearly discriminatory. While this increased grain procurement amounted to 38 percent of the total Soviet grain deliveries, the Ukraine represented a mere 27 percent of the entire Soviet population. The following year, the same amount of grain was demanded of the Ukrainian peasantry even though the harvest was poorer than the previous year reaching only 18.3 million tons.⁸⁷ Despite fluctuating harvests and unfavourable weather and growing conditions in 1931 the quotas kept increasing. By 1932 the quotas for grain had reached fantastic levels and as Converse noted, "if enforced, could only lead to starvation of the Ukrainian peasantry."⁸⁸

Along with high grain quotas, Moscow further undermined the Ukrainian right to food by implementing strict measures against anyone trying to obtain food from other sources. Watchtowers were constructed to ensure "the protection of socialist property."⁸⁹ On August 7, 1932, the Soviet government passed a law, which permitted the organs of OGPU (the original secret police) to shoot anyone who attempted to steal "socialist property" from the kolkhoz.⁹⁰ Stealing potatoes or onions yielded a ten-year prison sentence and the taking of a mere two sheaves of corn resulted in death sentences. According to Mace, some 20 percent of all cases prosecuted in Soviet courts in 1932 "were tried under this decree."⁹¹ An additional November decree prohibited kolkhozs "from creating any reserves or distributing any food to its members until the quota was met." Finally, a December 6th decree created a blacklist of six villages. Among the

⁸⁶ James E. Mace, "The famine: Stalin imposes a 'final solution,'" *The Ukrainian Weekly*, July 1, 1984, No. 27, Vol. LII. Available [Online]: <http://www.ukrweekly.com/Archive/1984/278421.shtml>

⁸⁷ James E. Mace.

⁸⁸ Robert Conquest, 1986. *The Harvest of Sorrow: Soviet Collectivization and the Terror-Famine*. Quoted in Marcus, 2003. Pp. 5. (online version)

⁸⁹ Conquest, 1986.

⁹⁰ Conquest, 1986.

⁹¹ James E. Mace.

measures applied to the villages was immediate closing of state and cooperative stores, and removal of all goods in them from the village as well as a complete ban on all trade.⁹² In 1932, between 25 and 30 percent of the Ukrainian agricultural management was arrested. As a result of the local management's nonconformance, Ukrainian brigades were formed who beat resistors with steel rods and drill-like tools. They confiscated every morsel of food including beetroot, peas, and potatoes and any remnant of valuable property such as frames, kitchen utensils, painted carpets, and clothing from the peasants.⁹³ They went as far as hunting and killing domestic and wild animals to ensure the peasants could not use them for food.⁹⁴ David Marcus observes that this wider process of requisitioning illustrates the extent to which a state, by eradicating individuals' entitlements, can manufacture starvation. Authorities were ordered to take not only every last ounce of grain but anything that might be eaten or traded for food.⁹⁵

By 1932, after assuming power of the Ukrainian Committee, Stalin had organized gangs of party activists to perform household searches and forcefully ensure that no food was hidden. Thus, the Ukrainian famine was solidly in progress. An average family of five was in possession of approximately eighty kilograms of grain to last through the harvest. The Ukrainian peasantry was forced to consume garbage, bark, domestic animals, and rodents and in many cases, dead people. When that food was gone and the people had puffed up with watery edema, they shuffled off to the cities, begging for bits of bread and dying like flies in the streets. In the spring of 1933, when the previous year's supplies were gone and before the new vegetation brought some relief, the peasants were

⁹² James E. Mace.

⁹³ Robert Conquest, Pp. 224.

⁹⁴ Orest Subtelny, Pp. 414.

⁹⁵ David Marcus, 2003. Pp. 253.

dying at the rate of 25,000 a day, or 1,000 an hour, or 17 a minute. (In World War II, by comparison, about 6,000 people were killed every day.) Corpses could be seen in every country lane and city street, and mass graves were hastily dug in remote areas. By the time the famine tapered off in the autumn of 1933, some 6 million men, women and children had starved to death.⁹⁶ Additionally, a top-secret document written by Molotov on January 22, 1933 instructed that "Kuban and all of Ukraine were to be subjected to a strict blockade and all peasants were to be prevented by the secret police from traveling into neighboring areas in search of food." As Bilinsky observed, "it was as if war had been declared against the Kuban region and all of Ukraine."⁹⁷

The famine in Ukraine was not caused by a shortage of food, but rather a governmental policy instituted by the USSR.⁹⁸ "The resulting hardship in the Ukraine was deliberately intensified by a policy of unrelenting grain procurement. If the consequences of the policy were known and remedies were available."⁹⁹ In fact, the harvest of 1932 had been sufficient to avoid the famine. Mace estimates that according to the official Soviet data, "the 1932 grain harvest in Soviet Ukraine was 14.4 million tons, which should still have been adequate to feed the population and livestock but which would have left few reserves."¹⁰⁰ Indeed, "food continued to be stockpiled and exported

⁹⁶ Marco Carynyk, "Deliberate, Diabolical Starvation."

⁹⁷ Yaroslav Bilinsky, 1999. *Was the Ukrainian Famine of 1932-1933 Genocide?* Journal of Genocide Research 1(2). Pg. 147-156.

⁹⁸ United Human Rights Council, Pp. 231.

⁹⁹ Lyman H. Legters, (1992). "The Ukrainian Famine." In Michael Dubkowsky and Isidor Wallimann, *Genocide in Our Time: An Annotated Bibliography with Analytical Introduction*. Ann Arbor, Michigan: Pierion Press. Pp.107.

¹⁰⁰ James E. Mace.

even as people dropped dead on the streets.¹⁰¹ In 1932 the state exported 1.54 million tons and another 1.77 million was exported in the following year.¹⁰²

Likewise, as we noted earlier, the famine was not an outcome of forced collectivization and in-efficient agriculture practices of the new kolkhozs as is often assumed. The collectivization had been almost completed by 1931 and the harvests did improve after adoption of the new agricultural policy. As the numbers for the yearly harvest indicate, the 1931 crop was much higher than the previous years, including those before the collectivization. Rather, the dual strategy of the rising grain quotas and the search and seizure tactics pursued by the Soviet government indicate that the famine conditions were brought about by purposeful, even planned, human engineering rather than natural calamity or agricultural mismanagement. The quotas rose in disproportionate measure to the amount of grain that even the most optimistic forecast would have recommended. If scientific formulas were used to calculate the contribution that each republic had to make to the national grain holdings/reserves, they obviously excluded any notion of human consumption and redistribution from their arithmetic. This is an especially odd omission given the Soviet ideology of state socialism. The systematic and thorough searches and confiscation of all grain and other food stuff from the Ukrainian farms is even harder to account for unless we posit the intent to exterminate a group of people through starvation. All this leads to the observation that the famine of 1932-1933 was a deliberate attempt by Stalin to crush any opposition to the Soviet regime and to resolve once and for all the national question of Ukrainians by getting rid of a large part of the population. Famine, as Kurt Jonassohn and Karin Solveig Bjornson observe, is

¹⁰¹ Marco Carynnyk.

¹⁰² James E. Mace.

ãa low-cost and low-technology methodö that örequires neither sophisticated expertise nor elaborate bureaucracy in order to achieve its intended goals.ö¹⁰³ It was a much more convenient tool for annihilating the Ukrainian nation.

The International Commission of Inquiry into the 1932-1933 famine in the Ukraine¹⁰⁴ determined that despite long-reaching Soviet protest to the contrary, the famine did occur and that it was caused by excessive grain procurements imposed by the government to increase its exports, forced collectivization, and liquidation of Kulaks. In the concluding remarks the Commission agreed that the causes were man-made.¹⁰⁵

Sexual Violence in Bosnia-Herzegovina 1992-1995

The first accounts of mass rapes in the former Yugoslavia emerged in the summer of 1992. It was quickly apparent that the majority of victims were Muslim girls and women and that the atrocities were carried out primarily by Serb forces in Bosnia. As Serbs rapidly took over several mid-size towns rape-camps started appearing across Bosnia-Herzegovina. Roy Gutman estimated that by the end of 1992 some 20,000 Muslim women had been raped.¹⁰⁶ In total approximately 20,000-50,000 women were raped by Serbian soldiers during the war.¹⁰⁷ The U.S. State Department in its Fifth Report on War Crimes in the Former Yugoslavia quotes a representative of the Zenica Center for the Investigation of War Crimes as estimating 30,000 rape victims based on interviews of

¹⁰³ Quoted in David Marcus, 2003. Pp. 251-252.

¹⁰⁴ David Marcus, 2003.

¹⁰⁵ Krawchenko, Pp. 71-72.

¹⁰⁶ Roy Gutman, 1993. *A Witness to Genocide*. New Yorkö Macmillan Publishing Company.

¹⁰⁷ Ruth Seifert, 1994. War and Rape: A Preliminary Analysis, in mass rape: the war against women in Bosnia-Herzegovina. Alexandra Stiglmayer, ed., University of Nebraska Press.

witnesses of rape and violence.¹⁰⁸ However, it has to be kept in mind that sexual violence is usually one of the most under-reported crimes as it carries strong social stigma in many societies.

In 1990, after 45 years of unification, the bonds that had held the delicate ties between the different groups that made up the former Yugoslavia dissolved. In June of 1991, Slovenia and Croatia declared their independence from Yugoslavia. In an attempt to prevent the disintegration of the federation, the Yugoslav People's Army (JNA) attacked Slovenia. However, the JNA was no match for Slovenia's territorial defense, which had been preparing for just this moment for the last two years, and the war was over in 10 days.¹⁰⁹ The situation was quite different in Croatia. Croatia was not prepared, either politically or militarily, to defend its newly established independence, nor was Milosevic going to allow Croatia's secession. Unlike Slovenia, it had a substantial Serb population within its borders. According to the leadership in Belgrade, Croatian Serbs wanted to remain in Yugoslavia and the federation would not let them down. Throughout the summer of 1991, Serb forces from the self-styled Serb Republic of Krajina extended their territorial control quickly capturing several Croatian towns, driving out Croats and setting up Serb-based local authorities. The Croatian National Guard, severely under-equipped, could do little to halt them. The JNA, which had been observing the Serb advances now intervened openly on the side of Serbs.¹¹⁰ It was one of the odd facts of the Yugoslav wars that all the while Serbians and Croats were killing each other on the ground, Milosevic and the Croatian leader Franjo Tudjman were engaged in secret

¹⁰⁸ United States. Department of State. Fifth Report on the War Crimes in the Former Yugoslavia. Jan. 1992. *Human Rights Archives on the Genocide in Bosnia*. Ed. Michael Sells. Haverford College. 1 Mar. 2006. <http://www.haverford.edu/th.html>

¹⁰⁹ Roy Gutman, 1993. Pp. xxv.

¹¹⁰ Silber and Little, 1996, Pp.136-137.

meetings about how best to carve up Bosnia-Herzegovina. Once Bosnia-Herzegovina declared its independence in March 1992, the war took on new dimensions.

Aside from sporadic fighting between Croats and Serbs, and Croats and Muslims, the Bosnian war of 1992-95 was marked by Serbian atrocities against the Muslim population. Radovan Karadzic, the leader of Serbs in Bosnia had warned that if the republic announced independence its Muslim population could prepare for war. The term of "ethnic cleansing" was quickly adopted from Nazi strategies in Poland to describe Serb designs for Bosnian Muslims. As Silber and Little observed, "[i]t had been practiced the year before in Croatia; in Bosnia it became the defining characteristic of the conflict."¹¹¹ Gruesome reports of mass executions, physical and sexual violence, death and rape camps, and of mass exodus of refugees started surfacing from across Bosnia-Herzegovina. Countless refugees described the torture and rape as common- place among the Serbs treatment.¹¹² In Foca, one of the first Bosnian towns to be taken over by Serb forces, a rape camp was set up almost immediately in the Partizan sports hall. The Partizan sports hall doubled as a temporary transit facility for refugee transfer out of Serb-held territories. It was a convenient ruse and a horrible trap for those women who escaped from the killing and raping in their native villages only to end up in more efficiently organized conditions of violence. During the summer months of June and August 74 people (about 50 of them women) were held there. Most men had been rounded up earlier and taken away; some were held in separate concentration camps in

¹¹¹ Silber and Little, 1996. Pp. 244.

¹¹² Patricia Marchak, 2003. "Yugoslavia: 1990-1994," *Reigns of Terror*. Montreal and Kingston: McGill-Queen's University Press. Pp. 252-266.

Foca.¹¹³ In Pale, in Liplje, in Omarsk and in dozens of towns and cities throughout Serb-controlled Bosnia the events unfolded in much the same way.

In the former Yugoslavia, rape was not merely incidental to war, but rather served a strategic purpose of intimidation and degradation.¹¹⁴ From the rape camps, such as Partizan Sports Hall and Buk Bijela, to attacks in victims' homes, during their removal from Serb-held territories, and in refugee transfer facilities, rape and other forms of sexual violence formed an important part of the ethnic cleansing campaign perpetrated by Serbs. Furthering the humiliation, many of the rapes were committed in full view of other prisoners, while gang-rapes were also a common occurrence.¹¹⁵ One woman recalls being gang-raped by uniformed soldiers: "I counted 29 of them. Then I lost consciousness."¹¹⁶ The patterns of rape documented by the UN Commission of Experts reflect that the rapes were not a random occurrence, but rather a specific and organized method of brutality carried out through a policy of State encouragement.¹¹⁷ One victim described her perpetrators as: "a kind of military police [that] did nothing but rape. It was all organized; *they had a group for raping* and a group for killing."¹¹⁸ When confronted with news reports about sexual violence in Serb-run camps, both Karadzic and Ratko Mladic, the commander of Bosnian-Serb army, denied any knowledge of the situation and feigned disbelief. The widespread and systematic nature of the sexual violence unleashed by Serb forces suggests otherwise. Many of the female victims reported to the ICTY investigators that Serb conquering forces raping them often confessed that they

¹¹³ The account of Foca is based on witness testimonies and facts collected by Roy Gutman in *A Witness to Genocide*.

¹¹⁴ Seifert, 1994.

¹¹⁵ Seifert, 1994.

¹¹⁶ Seifert, 1994.

¹¹⁷ Seifert, 1994. Pp. 357-359.

¹¹⁸ Human Rights Watch, Bosnia and Herzegovina: A Closed Dark Place. 10.6 (July 1998). [hrw.org](http://www.hrw.org). Human Rights Watch. <http://www.hrw.org> (emphasis added).

were following orders. In a highly bizarre conversation with Major Milovan Milutinovic at Banja Luka headquarters, Roy Gutman uncovered what he believed was a coded message to the Serb forces and paramilitaries encouraging violence (including sexual violence) against Muslim population. Major Milutinovic was busy typing a memo that "accused Muslim authorities of launching a jihad or holy war against Serbs." The report described the campaign of sexual violence unleashed by Muslims against healthy Serbian women, forcibly impregnating them with Islamic seeds in hope of raising Muslim children on the territories "they surely consider to be theirs."¹¹⁹ As Gutman observed, this strange claim made sense only if taken to be a coded message to the Serbian troops authorizing them to do the same to Muslim women and citizens.¹²⁰ In a cynical reversal of reality and propaganda, the forced impregnation of Muslim women formed, it seems, an important part of the organized strategy of "ethnic cleansing."

These assaults had a drastic effect on the victims' psychological and physical health, and many times resulted in death. Physically, the women experienced complete exhaustion, vaginal discharges, bladder problems, irregular menstrual cycles, and permanent gynecological harm. Psychologically, the victims were traumatized and to this day many suffer from severe depression. Suicide is quite common among the rape victims.¹²¹ The systematic nature of the rapes demonstrates that the Serbs intended to utilize their rape campaign to drive Muslim women away from their families in the hopes that they would never return.¹²² The evidence collected in Bosnia-Herzegovina gives

¹¹⁹ From the typed report by Major Milutinovic as quoted in Roy Gutman, 1993. Pp. ix-x.

¹²⁰ Gutman, 1993. Pp. x.

¹²¹ United Nations. International Criminal Tribunal for the Former Yugoslavia. *The Prosecutor of the Tribunal Against Gojko Jankovic, Janko Janjic, Zoran Vukovic, Dragan Zelenovic, Radovan Stankovic*. By Carla Del Ponte. 5 Oct. 1999. United Nations. <<http://www.un.org/ai991007e.htm>>.

¹²² See Amnesty International, *Rape as a Tool of War: a fact sheet, available at* <http://www.amnestyusa.org/stopviolence/factsheets/rapeinwartime.pdf> (last accessed November 13, 2005).

ample reason to believe as Karen Engle observed that it was not your 'everyday rape' or even your everyday wartime rape. It was a means to achieve the 'systematic extermination of Bosnian Muslims.'¹²³

Conclusion

In 1933, Raphael Lemkin tried to articulate what he saw as a particular kind of evil that had been part of human history throughout the ages but which had failed so far to capture the fascination of scholars and legal minds. The acts of 'vandalism' and 'barbarity' in pursuit of the destruction of a group of people, despite their prevalence, remained unnamed.¹²⁴ By defining the crime of genocide, Lemkin, for the first time, gave humanity insight into its own terrifying capacity for evil and forever denied us the easy conscience of the ignorant. The term, genocide, entered the public domain and the international legal framework in 1948 with the adoption of the Genocide Convention. Though the text of the Convention did not capture the depth and the breadth of Lemkin's original thinking on the term, I have argued that if viewed as part of a broader framework of international human rights law it can, in fact, accommodate a much broader conception of genocide than the narrow definitions promulgated in the last five decades. 'Although drafted by diplomats and lawyers rather than social scientists, and approved by governments as a result of political debate and compromise, the Convention laid out an intellectually powerful concept. While it is flawed in important respects, its influence reflects real internal strength as well as political and legal weight.'¹²⁵

¹²³ Karen Engle, 2005. 'Feminism and Its (Dis) Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina,' *American Journal of International Law*. 99(778).

¹²⁴ Adam Jones, 2006. Pp. 9.

¹²⁵ Martin Shaw, 2007. Pp. 29.

The notion of genocide by attrition I have described in this paper sees genocide as a process that can unfold slowly over weeks, months, even years. More importantly, it is a process that can take many forms, with mass murder being one of the many methods, but far from the only or even the most common one, by which a group of people might be annihilated. I have argued that the post WWII definitions of genocide have been unnecessarily restrictive and too invested in the memories of the Holocaust and too committed to the Realist world view of strong states as major perpetrators. They have departed both from Lemkin's more expansive understanding of genocide and the messy realities of actual genocides. By offering the notion of genocide by attrition, I have returned to Lemkin's broader definition of the crime. I have also argued that it is compatible with the Genocide Convention and the existing (and evolving) international legal framework. Furthermore, it is a better reflection of the current international scene where massive human rights abuses and, yes, genocides, can be committed by a multitude of actors that do not easily fit into the "strong state" category. Finally, I believe that return to the more expansive notion of genocide will allow us to recognize that a search for a morally 'safe' and narrow identification of genocide is a capitulation to our own fragile sense of justice and leaves those in need of help without the assistance they have the right to receive from the rest of humanity.