

Addressing the Perpetuation of Violence and Impunity: A Call for Reforming the Definition and Enforcement of Genocide

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Abstract

The heinous crime of genocide is an abomination that strikes at the very core of humanity. It represents the ultimate harm that can be inflicted upon a group of people, as it involves not only the extinguishment of their lives but also the eradication of their cultural existence. To provide a broader conceptual definition of genocide, Presser (2013) states, “Genocide has been called ‘the crime of crimes’ (Schabas, 2000). It strikes us as the worst possible harm because its eliminationist intent is absolute and explicit, because large numbers of people are harmed or meant to be harmed, and because it is often associated with unthinkable atrocities” (p.31). Despite the grave nature of this crime and the numerous atrocities and harms that are associated, this paper will argue that the current legal definition of genocide, as it is currently applied, contributes to the perpetuation of violence and aggression by being too narrow and selectively enforced, allowing those in positions of power to act with impunity. Thus, there is a pressing need to restructure international procedures overseeing global conflicts and amend the current application of international law to address these concerns. A point of focus of this paper will be the mass atrocities committed against the Tutsi minority during the Rwandan Genocide in 1994, in conjunction with the failed peacekeeping efforts by the United Nations and their role in the catastrophe in order to demonstrate the fallibility of international law and the shortcomings of mainstream criminology within the context of genocide.

Introduction

The heinous crime of genocide is an abomination that strikes at the very core of humanity. It represents the ultimate harm that can be inflicted upon a group of people, as it involves not only the extinguishment of their lives but also the eradication of their cultural existence. To provide a broader conceptual definition of genocide, Presser (2013) states, “Genocide has been called ‘the crime of crimes’ (Schabas, 2000). It strikes us as the worst possible harm because its eliminationist intent is absolute and explicit, because large numbers of people are harmed or meant to be harmed, and because it is often associated with unthinkable atrocities” (p.31). To provide a legal context for the concept of genocide, this paper turns to the definition as provided within international law. As per the Convention on

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the Prevention and Punishment of the Crime of Genocide, which came into effect on January 12, 1951, Article II of the Genocide Convention declares genocide to mean the commitment of any of the following acts with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, such as:

- 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; and
- e) Forcibly transferring children of the group to another group.

Despite the grave nature of this crime and the numerous atrocities and harms that are associated, this paper will argue that the current legal definition of genocide, as it is currently applied, contributes to the perpetuation of violence and aggression by being too narrow and selectively enforced, allowing those in positions of power to act with impunity. Thus, there is a pressing need to restructure international procedures overseeing global conflicts and amend the current application of international law to address these concerns. A point of focus of this paper will be the mass atrocities committed against the Tutsi minority during the Rwandan Genocide in 1994, in conjunction with the failed peacekeeping efforts by the United Nations and their role in the catastrophe in order to demonstrate the fallibility of international law and the shortcomings of mainstream criminology within the context of genocide.

Genocidal Harms

The harms perpetrated upon victims of genocide are both wide-ranging and devastating. Physical harm is the most obvious harm caused by genocide, with murder being the defining criterion of such physical acts. Physical acts are not only limited to murder. Perpetrators may also engage in other forms of physical violence. Rape, torture, and mutilation often accompany the murderous ventures of genocidal perpetrators. These brutal acts leave not only physical scars but are often accompanied by deep emotional wounds that can persist for generations. It is crucial, however, to recognize that the harms caused by genocide extend beyond physical violence. Genocidal acts are also defined as the intentional destruction of a group's cultural identity. This erasure of cultural heritage is a form of harm that can have lasting consequences (Presser, 2013, p.31).

Moreover, genocide also inflicts profound psychological harm on survivors and their descendants. Agents of harm often use dehumanizing language and propaganda to justify their actions, portraying their targets as sub-human and unworthy of fundamental human rights. This not only provides a justification for extermination but also serves to strip the

targeted group of their identity and agency, leading to feelings of helplessness and hopelessness. The aftermath of genocide often creates ongoing social, economic, and political challenges that can further exacerbate the harms caused by the initial act of violence. Long-term instability and systemic marginalization can be resultant of the displacement of communities and the breakdown of the targeted social structures, leading to the perpetuation of harm and trauma. Lois Presser uses Rwanda as an example to illustrate this point in her article, “victims of the 1994 Rwanda genocide were most often labeled as cockroaches, or inyenzi. In any case, the victims in Rwanda were clearly constructed not as just any nonhuman, but only as those considered despicable” (Presser, 2013, p.31).

The Limitations of Mainstream Criminology in Understanding Genocide

Within mainstream criminology, there has been a failure to contribute to the study of genocide and understanding of that subject (Woolford, 2006, p. 87). The current approach of mainstream criminology towards genocide is a broad and lacking landscape that has yet to be able to discern the effective methods in which laws can be implemented to prevent or even reduce the occurrences of mass atrocities imposed upon a marginalized group. Andrew Woolford identifies three limitations to the mainstream approach. He highlights mainstream criminology’s tendency to disregard political, socioeconomic, and historical contexts, providing a narrow-minded examination of genocide (Woolford, 2006, p. 97).

In addition to these tendencies, mainstream criminology identifies motivation in terms of mass violence, only involving a limited number of perspectives, often omitting factors like imperialism, capitalism, and exploitation (Woolford, 2006, p. 97). Mainstream criminology is also characterized by its reductionist and individualist view, emphasizing the role of criminals (Woolford, 2006, p. 98). In other words, mainstream criminology is a subject in which war criminals are analyzed from a perspective reminiscent of tunnel vision, only accounting for their role within genocide as perpetrators with an insistence on overlooking the broader, critical social factors of systemic deficiencies within the society.

These limitations not only have negative repercussions for the understanding of genocide as a subject but can also be a hindrance due to the over-emphasis on the dichotomy between the identities of criminals and their victims. According to Woolford (2006), understanding genocide with no regard for broader societal factors is a futile endeavour, as the identities of both perpetrator and victim are subject to varying interpretations among different views over different historical stages (p. 98). Woolford (2006) also states that the narratives that mainstream criminology maintains need to be looked at with extreme scrutiny, as these applied narratives have the potential to contribute to or even legitimize genocidal tendencies (p. 98).

Mainstream criminology not only fails to contribute significantly to the study of genocide but also lacks representation of the study within that discipline. As stated by Yacoubian (2000), despite the cultural impact of genocidal behaviour upon those imposed upon these

conditions and those aware of these atrocities being committed, there is a lack of attention put forth by scholars within criminology (p. 9). “Scholars devoted to the discipline of criminology have treated the study of genocidal behaviour, and, more, generally, international crime, as if it was inconsequential to contemporary society” (Yacoubian, 2000, p. 15). In other words, criminologists often withhold applying the same importance to the study of genocide and international crimes as they do to traditional domestic crimes. Mainstream criminology regularly ignores the concept of international crime and focuses on corrections, laws, policing, and sentencing. Shifting a focus from a narrower point of view towards a perspective that includes genocidal causation can lead to an improvement and evolution of mainstream criminological theory, as well as provide insight into the worst possible harm that can be imposed (Yacoubian, 2000, p. 15). Mainstream criminology needs to incorporate a multidisciplinary approach that engages in other perspectives, including historical, social, and political contexts. This remediation of limitations will provide a more well-rounded approach that gives genocide an all-encompassing definition that produces improved research and an inclusive discipline of criminology (Woolford, 2006, p. 100).

Legal Definition of Genocide and Its Flaws in Preventing Mass Atrocities

In regards to the fallibility of the legal definition of genocide as defined by the Genocide Convention of 1951 mentioned above, Woolford (2006) mentions that the legal definition of genocide has been surrounded by controversy that has been shaped by the sociocultural environment that Raphael Lemkin has been subjected to. This definition emphasizes the protection of the culture of a group of people, which reflects a Western ideal of nationhood.

Lemkin’s definition also sparks debates on whether or not the destruction of a cultural group can be considered genocide without the presence of physical destruction. Furthermore, Lemkin’s definition of genocide generates discussions on the classification of the Jewish Holocaust, whether it should be compared to other instances of genocidal atrocities or be classified within its separate category (p. 99). The importance of how one could interpret this legal definition cannot be understated, as the suffering of certain groups may be excluded from the classification of genocide and reparations as a result of genocidal atrocities (Woolford, 2006, p. 99)

Even though major powers have ratified the Genocide Convention, there has still been a repeated occurrence of genocidal events. These include the Vietnam War between 1965 and 1974 (400,00 civilians dead), Bangladesh in 1971 (over 1 million Bengali dead), Burundi in 1972 (150,000 Hutu dead), Cambodia between 1975 and 1979 (1.5 million Cambodians dead), former Yugoslavia in 1992 (200,000 Bosnian, Muslims and Croats dead), and Rwanda in 1994 (800,000 Tutsi dead) (Yacoubian, 2000, p. 9). These occurrences of genocide, despite an agreement between major powers to prevent the act, illustrate the need for changes within the procedures around dealing with genocide and its associated effects.

The UN's Failure to Protect: Consequences of a Flawed Legal Definition

To illustrate the ineffectiveness of the current international laws as well as structural deficiencies within the international legal system, the United Nations' failure and their policy of non-intervention will be analyzed, most notably, their failure in preventing the Rwandan Genocide. Under the observation of the United Nations, hundreds of thousands of lives in Rwanda were lost due to the targeted violence imposed by the Rwandan Hutus upon the Tutsi minority. The United Nations deployed a peacekeeping force to prevent further conflict within Rwanda, dubbed the United Nations Assistance Mission for Rwanda (UNAMIR). UNAMIR is accompanied by the rules of engagement involving using deadly force to prevent crimes against humanity (Scherr, 2018, p. 123). The rules of engagement seemed to have been forgotten as the UN opted to order UNAMIR "not to fire unless fired upon—[they] were to negotiate and, above all else, avoid conflict." as revealed by UNAMIR commander Romeo Dallaire (Scherr, 2018, p. 123). This reluctance to take action and an obstinate adherence to the principles of non-intervention, accompanied by a misguided need to appear impartial, allowed for the deaths of hundreds of thousands of Rwandans who depended on the UN's peacekeeping policies.

Member nations would withdraw most of the UNAMIR troops from Rwanda, with the remaining troops being held to a strict policy of avoiding confrontation (Scherr, 2018, p. 126). Thousands of Rwandans begged the troops for help while they withdrew from the country, effectively confirming their deaths.

Despite the UN's goal of protecting human rights and preventing the violation of said rights, genocide was still able to affect the country of Rwanda. This was due to a lack of political will and a reluctance to use military tactics to protect innocent lives, as demonstrated by the withdrawal of most of the UNAMIR troops from Rwanda and the strict policy of avoiding confrontation for the remaining troops. (Scherr, 2018, p. 123).

Moving Forward: Necessary Changes for the UN's Response to Genocide

Acknowledgment of mistakes committed is a big step towards making amends, and the UN owned up to their faults in the genocides they were involved with, including the Rwandan Genocide. The UN released a self-critical report outlining their errors regarding the topic of genocide. In this self-critical report, the UN acknowledged that neutrality and non-intervention were inappropriate philosophies for preventing and remediating genocide (Scherr, 2018, p. 130). Using negotiation tactics instead of military force in the case of genocide displayed the inadequacy of the approaches implemented by the UN, involving the criticisms of allowing political considerations in military decisions (Scherr, 2018, pp. 130-131). The UN then plans to rectify its mistakes in the past by learning from them. "Moving forward, the United Nations committed itself to avoiding the mistakes of Bosnia and Rwanda by recognizing 'that a deliberate and systematic attempt to terrorize, expel, or murder an entire people must be met decisively with all necessary means' (Scherr, 2018, p. 130)." These changes include:

- The need for member nations to fully support peacekeeping missions (Scherr, 2018, p.131).
- Member nations must contribute more troops and money (Scherr, 2018, p. 131).
- Peacekeeping mission success should center around keeping faith and strength of will in the face of danger rather than bolstering political reputation by prioritizing low-risk missions and abandoning all responsibilities once faced with hardship (Scherr, 2018, p. 131).
- Allow for UN military commanders full access to the assets they require and increased autonomy when in the heat of battle. (Scherr, 2018, p. 132).
- The UN has to reduce its dependence on the contribution of the United States for the bulk of its peacekeeping efforts (Scherr, 2018, p. 130).

While these changes can be a stepping stone in the right direction, they do not seem to be radical enough to make a strong and lasting difference when it comes to dealing with genocide. From a critical criminologist's standpoint, several changes can be implemented in order to ensure the prevention of genocide and the preservation of lives on all levels of society.

Firstly, addressing the root cause of genocide is a significant step towards improving the system. Genocide is often rooted in structural inequalities within specific countries. Using the lens of a Marxist criminologist, these structural deficiencies include poverty, political marginalization, and discrimination (Nelund, 2023). These are just a few qualities marginalized populations are subjected to within troubled countries. The UN can address these root causes by amending its policies to align with the development of economic and social programs that promote democratic governance and the protection of human rights. To make significant progress in preventing genocide, changes to the UN's approach must go beyond increasing troop numbers and funding. These changes can be bolstered by a shift of focus from a narrower view that prioritizes punishing crimes committed by lower classes towards a focus on the systemic and structural harms caused by the powerful. Activities that are harmful but not designated as "crimes" by the legal framework established by the powerful, such as economic exploitation and environmental destruction, must be acknowledged and addressed to prevent them from leading to genocide (Nelund, 2023). This requires a shift towards a more critical approach that challenges existing power structures and aims to address the root causes of genocide, including poverty, discrimination, and political marginalization.

Secondly, one could argue that the international legal system, as enforced by the UN, is biased towards the more powerful countries, often selective in holding them accountable, failing in their persecution multiple times. This global justice can be promoted by applying international law equally to all countries, solving the dilemma of selective application. Equal global justice can also be achieved by promoting the rule of law at the international and national levels. An example of this lack of accountability is the Indigenous genocide within Canada. Atrocities committed against the Indigenous have not been classified as genocide under the narrow legal definition. This is in part due to the nature of the atrocities, as they are not always explicit but instead facilitated by the numerous policies

and legal frameworks aimed toward assimilation or outright elimination (Nelund, 2023). This has allowed the Canadian government to avoid accountability for their actions and even to perpetuate ongoing injustices against Indigenous peoples, due in part to their intent not being explicitly stated to destroy a group in whole or in part. Although these actions may not meet the strict legal criteria for genocide, they are still widely recognized as egregious human rights violations.

While reflecting on the Indigenous genocide in Canada, the third rectification can be elaborated on. Acknowledging the ongoing impact of colonialism and imperialism becomes crucial in charting a path toward addressing the issue and amending the current approach to genocide. In order for this recognition to be of merit, historical context must be considered, especially the ways in which colonialism and imperialism have impacted racialized communities, most notably their processes of domination and exploitation. Powerful countries of the past and current powers have exerted control and power over the lands and resources of other countries and communities. These exertions are characterized by their innate drive from racism and a sense of superiority over other civilizations, with the justification that these actions are driven by the belief in societal improvement and global progression (Nelund, 2023). The impact of colonialism and imperialism can still be seen in contemporary terms, especially in countries that European countries have colonized. The legacy of colonialism in these countries is defined by the dispossession of land, the appropriation and suppression of cultural practices, and, most notably, the establishment of economic systems that favour the goals of powerful colonists over the needs of colonized communities (Nelund, 2023). Therefore, for the UN to recognize and rectify the effects of colonialism and imperialism on racialized communities, they must work to promote decolonization and provide reparations for those who have been affected by colonial violence and exploitation. These can be achieved through the acknowledgement of historical and ongoing structural inequalities resulting from colonialism, which have created conditions of vulnerability and violence, following the conviction to take steps to address these structural inequalities through structural change and rectification.

A fourth approach in the remediation of current policies could involve shifting focus towards a more proactive and preventative mentality towards stopping genocide. This approach would mean that the UN will move beyond a philosophy of simply responding to genocides after they occur. There are several key ways this goal of preventativeness can be achieved, all of which require a long-term approach. One critical way to adopt a preventative approach is by using early warning systems. Data gathering and analysis will serve to alert the international community of early signs of mass violence and targeted conflict. These early warning systems will take into account the structural and situational factors of a given country that is at risk of genocide. Examples of these factors may include political instability, economic discrepancies, and historical tensions between communities. Another key strategy is to target countries at risk of genocidal occurrences. Addressing underlying causes of conflict and violence within these countries could reduce and ultimately prevent the occurrence of genocide. The UN could promote dialogue and negotiation between conflicting groups, prioritizing peace-building initiatives and conflict resolution, which would empower local communities to resolve disputes in a peaceful

manner. These remediations can serve as a temporary solution as more permanent and radical structural revisions are formed.

Overall, while the strides the UN has made are driven by good intentions and are proof that the UN is taking steps towards improvement, these changes, however, lack the radical conviction that a critical criminologist would argue for. The UN must take a more proactive approach, one that goes above simply punishing perpetrators and addresses the underlying issues regarding genocide, as well as the structural causes of violence and oppression. This effective improvement would require a fundamental transformation of the UN's policies and laws.

Putting Everything Into Consideration

In conclusion, even with the severity of genocide and its resultant harms, the current definition of genocide is insufficiently vague and inconsistently enforced. This allows individuals and groups in positions of power to act with impunity, contributing to the perpetuation of violence and aggression. As a result, urgent reform of international conflict resolution mechanisms and revisions to the current application of international law are necessary to address these issues. Mainstream criminology has failed to provide a comprehensive understanding of genocide, continuously neglecting the factors of historical, political, and socioeconomic contexts, insisting on emphasizing the role of individual perpetrators. Therefore, in broader terms, there is a crucial need for restructuring international procedures concerning global conflicts, starting with the amendment of the current application of international law in international affairs. Concerning the UN's response to genocide, it is essential to highlight its failures in preventing the recurrence of genocidal atrocities in various parts of the world, particularly the Rwandan Genocide of 1994. The policy of neutrality and non-intervention that the UN strictly abided by during the genocide reduced them to the role of bystanders to hundreds of thousands of deaths. While acknowledging these faults in their response is a significant step towards making amends, this acknowledgement is not a radical enough approach to make an effective and lasting resolution. The UN needs to make a radical change in approaching international conflict to provide effective resolutions. This will require a shift towards a more critical approach that challenges existing power structures and also aims to address the underlying causes of genocide. These can all be achieved by promoting global justice, which involves the application of international law equally to all countries. Acknowledgement of the ongoing and historical impact of colonialism and imperialism is also crucial in addressing the issue of genocide. Adopting this approach that challenges existing power structures that also address the underlying root causes of genocide will be sufficient in replacing the fundamentally flawed system that the United Nations is currently implementing.

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