

A Proposal for a New Definition of Genocide

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Bailey deconstructs the United Nations' definition of "genocide" to reveal its flaws, specifically in the case of defining Darfur as genocide, rather than its current status as a "humanitarian crisis." This paper outlines the current definition's flaws as lacking judgment capacity, neglecting groups of people and its inflexibility to allow for different levels of genocide. The author looks at other model definitions of genocide made by scholars in the field, but is not satisfied with the results. In the end, the author proposes a new definition of genocide that removes the widely debatable term "genocide" and replaces it with his term, The Code of Greater Crimes Against Humanity. [Abstract by editor]

In December of 1948, the United Nations came together at what came to be known as the December 1948 International Convention on the Prevention and Punishment of Crimes of Genocide. At the convention, the UN developed a definition of genocide. This definition as stood as the standard for judging genocide up until the present. The definition states,

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring the children of the group to another group (Office).

The convention also includes that the nations have an obligation to report any instances of genocide to the UN, at which point the UN evaluates the case and upon determining it to be a genocide is obligated to act on stopping it (Prunier 276). The definition's purpose, of course, is to stop any acts of genocide as early as possible; however this is not the case. The need for a new definition is obvious because the current definition is flawed and therefore unable to serve its purpose. The need for a new definition is also seen because in looking at the current UN definition through the current crisis in Darfur, its shortcomings present themselves clearly. Again, this need for a new definition is seen because once these shortcomings are apparent, a new definition can be created which takes them into account.

To begin the process of showing the inadequacies of the UN's current definition, it must be applied to the current situation in Darfur. Right now the UN is regarding Darfur as a humanitarian crisis (Official). They have not yet ruled it to be a case of genocide. However,

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looking at Paul Rusesabagina's description of the conflict, "A militia armed by the government slaughtering with impunity; displaced people fleeing their destroyed villages; refugees sleeping in the wind and the rain, without food, water, shelter, education, and medical care," it can be seen that the conflict is a genocide at least in regards to points a and c (qtd. in Marlowe xvi). They are certainly killing members of the group, the militias are killing Darfurians specifically, which is point a. They are also deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, by displacing them, forcing them to try and survive in refugee camps under poor conditions, which will definitely lead to the physical destruction of at least part of the group, which fits in point c (office). Other experts have determined Darfur is a genocide as well. As Gerard Prunier states, "If we use the December 1948 definition it is obvious that Darfur is a genocide" (Prunier 275). This is a noteworthy statement, Prunier is actually an opponent of the UN's current definition of genocide, and proposes his own, as will be seen later on. Thus, by these few examples, it can clearly be seen that the situation in Darfur fits into the UN's definition of genocide, though the UN will not say so.

Looking into the cause of the definition, more can be gleaned about the flaws in the processes. The definition was made directly as a result of the Jewish Holocaust, with the intention of never letting such an event occur again. Looking at Darfur as compared with the Jewish Holocaust though, it can be seen that the former, as appalling as it is, pales in comparison to the Jewish Holocaust, the effects of this comparison will be seen soon.

Now, with the groundwork laid, the current definition of genocide can be evaluated. This will serve to expose the shortcomings a new definition will be forced to address. The first of these shortcomings has been shown in looking at the definition as applied to Darfur. As demonstrated above, Darfur is a case of genocide as the UN defines it. So why hasn't the UN judged it to be a genocide? Other factors contribute to the UN's not calling the situation what it really is; however, the UN's current definition of genocide does not adequately serve its purpose if it can allow an obvious case of genocide such as Darfur to continue. When even an opponent of the UN's definition such as Prunier recognizes the fact that Darfur falls under the current definition, there is no excuse of the UN's lack of judgment on the issue.

UN's current definition of genocide has a second problem. It does not account for all different kinds of groups of people, and genocide is not an event reserved for ethnic groups. Deborah Harris explains the problem,

The definition's narrowness has meant that a number of atrocities do not 'qualify' as genocide. In particular, political groups and social classes are not included under the convention... Atrocities experienced by these groups must therefore be canvassed under titles such as 'Related Atrocities' or excluded from analysis altogether (Harris 2).

Thus, under the current definition, cases of genocide can be ignored if they are targeting a political or social group. The current definition has a major error if cases of genocide can not be acted against strictly based on the classification of the target. Staub also sees the lack of political groups in the UN's definition as a problem, and tells that the only reason it was not added was due to pressure from some states, particularly the Soviet Union, at the time of the convention. He also argues that though some refer to political party genocide as politicide, it is in fact a form of genocide (Staub 368). Staub demonstrates the tendency that genocide can easily be complicated further by being called something different if related to certain groups of people. This is the

direct result of the lack of certain groups being included in the UN's definition of genocide. If the UN's definition can allow genocide to occur within certain groups because they were not included in the definition, then the definition has a major problem.

The third and perhaps worst error of the UN's current definition is that it does not acknowledge the fact that genocide occurs in levels, or degrees. As the definition begins, "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part..." (Office). The definition, by specifying in "in whole or in part" seems to believe any act of genocide, no matter how big or small the scale, can be fit. However, this is not the way the law works in the human mind. Other laws take levels into account. Take killing a person for instance. The act could be charged at many different levels. It could be first or second degree murder, it could be a case of manslaughter; it could even be an example of what is popularly referred to as the "make my day" law, which would leave the shooter innocent. If all these rulings could be given to a case of a single killing, could there not be at least as many recognized scenarios for cases of genocide? The issue behind the cause of the definition also demonstrates this point. The Jewish Holocaust was arguably the worst case of genocide known to history. The Nazi regime sought the total destruction of the Jewish people, not just within their country, or even just their occupied holding, but they sought the eventual annihilation of the Jewish people world wide. Because the definition was created as a direct result of this horrific event, the two are inseparably tied together. Now this is where the problem occurs. When genocide is considered by the worst scenario, it is difficult to apply the term to anything less.

Respected researchers and scholars on the matter of genocide also demonstrate this need for levels. Though they themselves do not make the claim for a need of levels, their points very clearly demonstrate the need for degrees. Blum and colleagues examine the term "ethnic cleansing", and argue that it is simply a euphemism for genocide, "which gradually penetrated the official language of diplomacy and international law—with the implication that it applied to scenarios which somehow could not satisfy the legal requirement for proof of intent to commit genocide" (Blum 204). Genocide is a complex issue. The term "ethnic cleansing" seems to have arisen because something genocide-like was occurring, but it was difficult to consider it an actual genocide. It seems to be applied to lesser forms of genocide. The fact that the term has made its way into use in the UN, where it has no meaning, shows the inadequacy of the UN's definition. If the current definition was adequate then such terms wouldn't need to be used. Staub also shows this need for degrees. As he explains, "In my view, killing large numbers of people without the apparent purpose of eliminating the whole group is best regarded as mass killing. The purpose of mass killing may be to eliminate the leadership of a group, or to intimidate the group, and in general to reestablish dominance" (Staub 369). However, is mass killing not still a punishable offense? These terms demonstrate that a definition needs to be aware of degrees, for both of these terms still refer to genocidal acts. The official definition was created as a result of the Jewish Holocaust, one of the most terrible and atrocious genocides ever committed. It is understandable then that people would be reluctant to call acts lesser than the Holocaust a genocide. Obviously, the UN's definition has a problem in that it cannot deal with multiple levels of genocide.

The definition does have one notable strength. The strength is the recognition of the many ways a genocide can occur. As the definition states:

- (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 the children of the group to another group (Office).

The recognition is very astute. At first thought without pondering the situation over, one could reasonably come to the conclusion that killing constitutes genocide. However, the definition clearly recognizes that there are many ways to destroy a people.

The mandate to act seems at first glance be the definition's biggest weakness. Ideally, it would serve to stop any case of genocide as soon as possible. However, the mandate may be the reason some genocides are not judged as such. Not wishing to be forced to act is quite likely a reason for not judging a case a genocidal (Prunier 276). However, what is the difference between not calling it a genocide and doing nothing, or calling it a genocide and still doing nothing. Will it comfort those who suffer to know that even though they are without hope, the world does know of their terrible plight? It is doubtful. This mandate serves as the current definition's biggest weakness because the definition is not strong enough to carry it. In a strong enough definition, this mandate would not serve as a crippling weakness. The key to supporting this mandate is a definition that is clear enough that any genocidal case has to fit. Its status as a genocide as to be absolutely apparent. Then the debate of whether or not the case is truly a genocide cannot last long. Levels are the key to demonstrating with absolute certainty exactly how an incident fits into the definition.

Thus it can be seen that the current definition of genocide as three major shortcomings. Its major strength is an important one, however not enough to balance the shortcomings and cannot carry a mandate to act. These shortcomings prevent the definition for living up to its desired effect. Of course, it can easily be argued that the UN's definition of genocide was made by the main players of the UN, and that they all agreed to it. The UN's definition also has a defined legal status (Blum 204). All of this is true and correct; however, the definition obviously does not address cases of genocide with any efficiency due to its shortcomings.

If the current definition cannot effectively identify cases of genocide as they occur, then it obviously is not serving the only purpose it was created for. Therefore, a new definition is needed. Perhaps it is best to look to the experts in the field and examine if their definitions can better serve identifying genocide as viewed through the case of Darfur. Looking at the proposals presented by scholars it seems that there are two camps of the argument.

The first camp of argument is presented by Gerard Prunier and Ervin Staub. Prunier's definition of genocide states, a genocide is "a coordinated attempt to destroy a racially, religiously, or politically predefined group in its entirety" (Prunier, 278). Genocide, as Staub defines it, "is an attempt to eliminate, directly by killing them or indirectly by creating conditions (e.g., starvation) that lead to their death, a whole group of people" (Staub, 368). These definitions, though worded differently, are identical. These definitions serve to solve the second problem. They address all groups, though the language is not so explicit, which is an issue in itself, though that is all that need be said about it. This is a step in the right direction. Genocide is certainly not an event reserved for ethnic and religious groups. The suffering of a political group or social class at the hands of genocide also need be recognized, and these definitions satisfy that need. However, both of these definitions insist on the motive of total destruction to classify a situation as a genocide. This also does not take care of the third issue regarding genocide, which is the need of levels. These definitions provide a level, however, as demonstrated, an adequate definition needs multiple levels. What of genocidal cases where total

annihilation is not the goal? Are the motives behind the act not still dangerously similar? Is the act not still punishable? These definitions fall short on the aspects of levels. It can also be seen that these definitions would not solve the first issue; they would not find an obvious case of genocide, such as Darfur, as a genocidal act. Prunier and Staub have improved on the UN's definition, where the UN as failed on three key issues, they have only failed two.

The second camp offering a proposal is represented by Deborah Harris. As Harris defines genocide,

I believe that the answer lies in a more inclusive definition of genocide. Few would argue with the proposition that genocide is a complex, extreme event. Yet most definitions are relatively narrow... I suggest the following definition may be most appropriate. 'Genocide is a one-sided attempt by a state or other authority/ies to destroy a specific victim group, as that group and membership in it are defined by the perpetrator (Harris, 8-9).

This definition is essentially quite similar to the UN's current definition. Like the first camp, consisting of Prunier and Staub, Harris too solves the second issues. All possible groups are accounted for by her definition. Her definition would, in theory, solve the first issue as well, judging Darfur to in fact be a genocide. The "in theory" must be noted because Harris's definition does not address level either. Therefore, her definition could be just as likely to overlook such a case for the reasons presented in the discussion of the lack of levels. Harris's definition certainly fixes one of the three issues presented, possibly two.

Thus, in comparing the proposals of leaders in this debate, it can be seen that they still fall short. These proposals cannot adequately address the three main problems that render the UN's current definition of genocide ineffective. The strong points, such as the methods of genocide, are assumed in all, in Prunier and Staub providing the aim is total destruction. The mandate to act is also assumed, though Harris's definition shows that it would not be strong enough to carry it either. Staub's and Prunier's definition might be strong enough to carry it, but it would of course only address the worst and most heinous cases of total genocide.

At this point one must begin to wonder if there is an answer to this dilemma. Can an effective definition be crafted that will address these three key issues? Perhaps, by taking heed of the three main problems which present themselves in the UN's current definition, a more appropriate definition can be created. The definition will of course need to be able to address such an obvious situation. It will also need to include any possible target group. It must also be a multi-tiered; accounting for the fact the genocide occurs in levels. The removal the term "genocide" itself may ease tensions about definition. If the research presented as demonstrated anything, it has shown that the mere term conjures debate and argument. Due to its history, the term has become a heated one, and perhaps removing it could quell further argument. Thus, a better definition would be something along these lines:

Targeting any group whatsoever, be it national, ethnic, racial, religious, political, social, or any other identifiable group and subjecting them to any of the following methods is considered a greater crime against humanity:

Killing members of the group, causing serious bodily or mental harm, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births, or forcibly transferring the children of the group to another group (Office).

Regardless of the methods chosen, the level of intent, not action, will be assessed from the following levels:

- V. Seeking total destruction of a peoples, whether within a specified area or on a worldwide scale.
 - IV. Seeking to rid a country or specified area if a peoples.
 - III. Seeking to reduce the population of a specified group, regardless of reason.
 - II. Greater crimes of war, killing of target people civilians due to orders or propaganda spread by a government or military officials.
 - I. Lesser crimes of war, killing of a civilians by units under the stresses of battle.
- Upon judgment, The United Nations will take immediate action, not necessarily military, to stop the act, and for all levels guilty parties will be tried and punished accordingly.

Thus it can be seen that in such a definition, the key shortcomings that hinder other proposals have been addressed. The definition would absolutely recognize Darfur as a genocide. It would in fact be a class IV genocide. The proposed definition also recognizes all groups which could be targeted for a genocide. Perhaps most importantly, the proposed definition creates levels, and removes the ridiculously high benchmark of the term "genocide". The proposed definition also includes the biggest strong point of the current definition, the methods that constitute genocide. The proposal too is able to carry the mandate to act. This can be seen by the clearly defined levels, which address all actions that could be consider genocidal from the largest scale down to the smallest.

Of course such a proposal would encounter much opposition. The main problem would be getting it passed and instituted as the UN accepted definition. This would certainly be a problem. One can only hope that through logic and good intentions, supporters could get such a definition through. Of course it would face opposition, but it is a very fair and balanced definition, and with enough support, opponents would have a difficult time arguing against such an adequate and fair definition. One might also argue that perhaps not definition is strong enough to carry a mandate of action, and even with a definition which can very clearly judge a genocidal case not only as genocide, but also according to severity, would still be subject to the endless debates that plague the current definition. Perhaps this is true, but with such a definition, the debates would be much more difficult to wage. The hope would be that the case would be defined as a genocide, and debates would more on to how and what action to take.

Certainly even a perfect definition would not solve all the problems surrounding this issue of genocide. It is far beyond hopeful optimism to expect there is any simple solution to such a terrible and complex problem. Instead it is more fruitful to try and make positive yet realistic changes one step at a time. Such a step is what this proposed definition is. It is starting at

the very bottom of a broken system and repairing it from the ground up. In fixing the major errors which prevent the current definition for being effective, a better definition has been created. The hope is with such a definition the debate and rhetoric can be moved to the next step, the action. Once that happens, the second step, that of action, can be addressed and repaired. For this definition will bring something else of great power with it. It will bring a spirit of change and reform. Thus, it can be seen that though this definition will not solve all problems in addressing cases of genocide, by creating it will the flaws of the current definition in mind, it can serve in identifying cases of genocide with much more efficiency.

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