FIVE MISCONCEPTIONS ABOUT USING THE WORD GENOCIDE

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Five of the most common misunderstandings about the Genocide Convention have again appeared in the press in the debate about whether the atrocities in Darfur constitute genocide:

1. Many assume, like David White did in his Commentary and Analysis in the Financial Times July 12/13 that to be genocide, the intent must be to destroy the whole group. This misconception is echoed in the Saunders Op-Ed in the Globe and Mail, 19 June 2004 (www.genocidewatch.org/ISTHEBRUTALITYINSUDANGENOCIDE.htm) . It was the fatal mistake Alain Destexhe, M.D. made in his statement in "Rwanda and Genocide in the Twentieth Century" that there were only three genocides in the twentieth century, Armenia, the Holocaust, and Rwanda. As Helen Fein and other experts have pointed out, the Genocide Convention, includes acts intended to destroy, in whole or IN PART.

2. Others think it's hard to prove intent. That was the specious argument of the lawyers at the State Department who said the word genocide shouldn't be applied to the Rwandan genocide, because it was a "civil war, not a genocide." That view ignores the fact that most genocides occur during wars, including civil wars. Intent can be inferred from a systematic pattern of actions, not just from explicit orders, as it can be in many other conspiracy crimes.

3. Some think genocide and ethnic cleansing are mutually exclusive crimes. (I've heard Professor Shabas argue this, saying that in ethnic cleansing, borders are open, and people are driven out; but in genocide, borders are closed, and people are killed.) The truth is that the two crimes are not mutually exclusive. Genocidal massacres are frequently used by those intent on ethnic cleansing, as they were in Bosnia, Kosovo, Armenia, and the massacres and resettlement of native Americans. The combination of genocide and ethnic cleansing has been the rule rather than the exception.

4. Others argue as David White does in his extraordinarily miguided Financial Times Commentary, that "the word genocide is too freely used." William Shabas and other minimalists argue that the word should be used very sparingly because it should be reserved for cases when those using it demand international action to stop it, and Schabas argues that nations can't intervene everywhere, so will get tired of hearing the term if it's applied too often. It's the "cry wolf" argument. But the fact is that genocide in part as defined by the Genocide Convention is far more common than many people think. Fortunately, the ICTY rejected Schabas' minimalist interpretation in its opinion upholding the Krstic conviction. As a former

policy-maker, I can say that policy makers don't act because a magic word is applied. And even if a magic word is applicable, if they don't want to act for other reasons, they won't. There has been plenty of evidence of genocide in Sudan over the last twenty years. But the U.S., Britain, China, France, and Russia did not see it in their national interest to intervene militarily to stop it.

5. Finally, it is frequently said that the word genocide is avoided because invoking it would create a legal obligation to act to prevent or stop it by the states that are parties to the Genocide Convention. Those who say this haven't read the Genocide Convention, which, unfortunately imposes only two legal obligations. Article 5 requires states-parties to enact laws outlawing genocide and providing for effective penalities for persons guilty of genocide. Article 7 requires states-parties to grant extradition in accordance with their laws and treaties of indicted perpetrators of genocide. International action to prevent genocide is optional under the Convention: Article 8 says "any contracting party may call upon competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide." Article 1 says that the contracting parties undertake to prevent and to punish genocide, but it leaves the undertaking inchoate, not legally specific enough to be binding. In fact, the only obligation to prevent genocide is moral, rather than legal.

What is chilling about the current review of U.S. policy on Darfur and analysis of whether the atrocities there constitute genocide, is that it is being carried out by the very same lawyers who committed legal malpractice in the State Department in 1994 and dictated the denial that genocide was taking place in Rwanda: Jamie Borek, Ted Borek, George Taft, David Stewart, and Joan Donoghue are still working in the State Department Legal Advisor's office, last I heard, and are still writing on genocide. In the State Department, the consequence of incompetence is not dismissal. It is promotion. Hopefully, the Legal Advisor himself, a different Taft who is a very competent lawyer, will over-rule them and make the correct finding that the atrocities in Darfur constitute both ethnic cleansing and genocide.

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