The International Criminal Tribunal for the Former Yugoslavia and the Application of Genocide

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As a lawyer and an advocate, it is a challenge for me to impersonally discuss issues that are so basic to the rawness of humanity. In this arena we can relate to each other in a professional workshop working together in a quest for answers to the historic riddle of our self destruction. The mere words, “extermination”, “ethnic cleansing” and “genocide”, stir our innermost hidden needs to understand ourselves. How can we view these images in dry legalisms? We cannot. These terms placed in the context of the history of the last twenty years are not unrealistic, however, put in the context of where we have been, where we are, and where we are going, we are trying to isolate these terms by confronting, analyzing and anticipating their impact on our futures.

As a defense advocate for the International Criminal Tribunal for the Former Yugoslavia, I have tried two cases from front to back. In the Celebici Case, I represented a young Muslim man accused of war crimes. In the Srebrenica Case, I represented a Bosnian Serb officer accused of war crimes. I have been an advocate for two of the three sides involved in the Balkan Wars (1992–1995).

When I began as a defense counsel at the ICTY, we were the first multi-defendant war crimes trial since Nuremburg. We were the third trial in history to begin under the auspices of the United Nations, and this time the proceedings were not a “victors” tribunal but a court within the international community with a conscience. For the first time in history, independent states bonded together to create a body that will bring to justice those who challenge our humanity. This crime is being applied for the first time . . . the crime of genocide.

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2 There are those specializing in anthropology and other social sciences that speculate that it is all part of an evolutionary plan to secure our survival on this planet.
A Crime Without a Name

In August 1941, the British Prime Minister, Winston Churchill, in a broadcast on BBC recognized:

“The whole of Europe has been wrecked and trampled down by the mechanical weapons and barbaric fury of the Nazis . . . As his armies advanced, whole districts are exterminated,” Churchill had thundered. “We are in the presence of a crime without a name.”  

What is this crime? Although we have all been bystanders to its occurrence throughout this century. Raphael Lemkin purposefully invented the word after losing his family during the holocaust. There simply were no precedents in regard to either the nature or the degree of the crime. Raphael Lemkin, the Polish-born adviser to the United States War Ministry, saw that the world was being confronted with a totally unprecedented phenomena and the “new conceptions required new terminology.” In his book, “Axis Rule in Occupied Europe”, published in 1944, he coined the word “genocide”, constructed, in contradiction to the accepted rules of etymology, from the Greek “genos” (race or tribe) and the Latin suffix “cide” (to kill). According to Lemkin, genocide signifies “the destruction of a nation or of an ethnic group” and implies the existence of a coordinated plan, aimed at total extermination, to be put into effect against individuals chosen as victims purely, simply and exclusively because they are members of the target group.

Lemkin captured a crime in a word that connotes something truly unique and evil in all of us. He proffered that his meaning of “genocide” was that of “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 law relating to genocide as prepared by Lemkin would prohibit the destruction of nations, races, and religious groups. The law hinged on what he called “universal repression,” a precursor to what today is called “universal jurisdiction”. The instigators and perpetrators of these acts should be punished wherever they were caught regardless of where the crime was committed, or the criminals’ nationality or official status. He challenged the “blind world” and found that it wasn’t blindness that inflicted us. It wasn’t apathy. It was a conspiracy of guilt laden, fear driven silence. We are still living in the “twilight between knowing and not knowing”. Our propensity for incredulity weighs upon the whole of humanity.

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3 Samantha Power, A Problem From Hell, Perrenial, 2003.
4 Raphael Lemkin, Axis Rule in Occupied Europe, 1944.