



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

**Commemoration of the 69th Anniversary of the Convention on the
Prevention and Punishment of the Crime of Genocide and the International
Day of Commemoration and Dignity of the Victims of the Crime of
Genocide and of the Prevention of this Crime**

**Delivered
by
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I am honoured to have the opportunity to be a panellist in this event commemorating the 69th anniversary of the Genocide Convention and the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime.

I wish to speak today about the crucial role that international law has played in the fight against genocide.

I.

But before I delve into the discussion of the intersection between international law and the prevention and punishment of genocide, as this is an anniversary commemoration, allow me to recall the history of genocide under international law. Genocide is one of those legal terms which underwent some unusual developments right after it was formulated for the first time in 1944.

Raphael Lemkin first introduced the term genocide in his academic work *Axis Rule in Occupied Europe*. From an international law perspective, what is unusual is that shortly after, Lemkin's doctrinal creation very quickly became a recognised international legal category.



Lemkin himself, in the run-up to the Nuremberg trials, had championed for the need for genocide to be recognised as the prevailing crime committed by the Nazis. He failed. Although the word appears in the drafting history of the Charter of the International Military Tribunal, the final text of that instrument decided to go for Hersch Lauterpacht's category of "crimes against humanity", and genocide did not appear in the final Nuremberg judgment of 1946.

The failure of the International Military Tribunal in this regard prompted immediate efforts within the United Nations General Assembly. General Assembly resolution 96 (I), adopted on 11 December 1946, affirmed "that genocide is a crime under international law which the civilized world condemns". It is interesting to note that this first resolution was silent as to whether the crime could be committed in peacetime. Resolution 96 (I) mandated the preparation of a draft convention on the crime of genocide and kick-started the process.

The United Nations Secretariat together with, once again, Raphael Lemkin, as well as Vespasian Pella and Henri Donnedieu de Vabres prepared a compendium of concepts to assist the General Assembly. On 9 December 1948, the final text of the Convention on the Prevention and Punishment of the crime of Genocide was finally adopted by the General Assembly.

II.

Let's now come back to the present. During the next few minutes, I would actually like to reflect on the modernity of a Convention which, when adopted, was a pioneer in many regards.

First, article I of the Convention clarifies that genocide can be committed "in time of peace or in time of war", distinguishing it from crimes against humanity, which, in 1948, still suffered from significant doubt regarding their application absent an armed conflict.



That provision also links the concepts of prevention and punishment, which is now at the heart of any discussion on peace and justice under the auspices of prevention and accountability. I will note in this regard that almost 60 years later, the International Court of Justice noted the connection in its judgment of 26 February 2007 on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (between Bosnia and Herzegovina and Serbia and Montenegro)*. In an interesting part, the Court said that not only was genocide prevented because of the deterrent effects of punishment, but that the duty to prevent genocide had its own autonomous scope which was both “normative and compelling”.

Second, the crime of genocide was defined in the Convention. As we all know, genocide is, according to Article II of the Convention, a crime of intentional destruction of a national, ethnic, racial and religious group, in whole or in part. This provision has been reproduced without change in other important international legal instruments, such as the statutes of the United Nations *ad hoc* tribunals for the former Yugoslavia and Rwanda and the Rome Statute of the International Criminal Court.

It is interesting to note that the 1948 definition of genocide was never modified in the subsequent legal instruments, probably because it was able to capture the essence of the crime. At the same time, the category of crimes against humanity has been increasingly filling gaps, in order to include acts perpetrated to a broad range of groups.

Accordingly, the judicial interpretation of article II of the Genocide Convention has remained relatively faithful to the intent of the drafters of the provision, as the ICTR and ICTY jurisprudence have confirmed. In this regard, let me remind that we will be witnessing the closure of the ICTY in the coming days. The creation of the ICTY was truly a ground-breaking moment for a number of reasons, one of which was being the first international criminal tribunal that recognized individual criminal responsibility for genocide.



Third, the Convention requires State parties to enact legislation to give effect to the Convention's provisions, and to ensure that effective penalties are provided. As of today, many State parties have accordingly enacted the relevant texts of the Convention within their own criminal codes.

Last but not least, the Convention contains an innovative provision on jurisdiction. Article VI, a controversial provision, then and now, says that genocide will be punished either by a competent tribunal of the State in the territory of which the act was committed, or by "such international penal tribunal as may have jurisdiction". In addition, State parties to the Convention are obliged to grant extradition in accordance with their laws and treaties in force.

In the recent years, there has been some State practice regarding an actual implementation of this provision and it appears that State parties are beginning to genuinely consider themselves obliged to facilitate extradition when genocide charges are involved.

Talking about jurisdiction, I wish to note that the International Court of Justice, in its judgment of 2007 mentioned earlier, confirmed that not only individuals but also States could commit genocide, and that the International Court of Justice could adjudicate the issue pursuant to article IX of the Convention.

III.

This brings me to my conclusion.

Allow me to reiterate the Secretary-General's appeal for the universal ratification of the Genocide Convention by its 70th anniversary in 2018. I would like to call upon all States who have yet to ratify the Genocide Convention to do so, in order to join us in the fight against the "crime of crimes". The prevention and punishment of genocide does not allow for exceptions and is the responsibility of the international community as a whole.