

Cultural genocide and the conservative approach of the genocide convention

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Genocide is to be considered a radical and aberrant act that fall short of liberal State and society's approval and that shall not be tolerated in any case. Unfortunately, genocide is not an act of horror of the modern ages; instead it is a result of the process of historical development from which the societies have emerged the way they are.

Throughout history the crime of genocide has been committed under different names, since the killings of groups described in the Bible, passing for the Colonization Period where the imposition of certain religion and habits ended up in the destruction of entire groups, until the more recent episodes such as the massacres that took place in Rwanda, in 1994, and in the former Yugoslavia between 1992 and 1995.

The historical claim has been heard as the Convention on the Prevention and Punishment of the Crime of Genocide came into force in 1951, and along with its ratification came as well the international officially recognized definition of the so called crime of the crimes: genocide.

I. GENOCIDE

A) DEFINITION

According to Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, genocide consists of “*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 children of the group to another group”.

The Genocide Convention inspired the way that genocide was addressed in other international documents such as the statutes of the International Criminal Tribunal for Rwanda (Article II)¹, the International Criminal Tribunal for the Former Yugoslavia (Article IV)² and the Rome Statute of the International Criminal Court (Article VI).³

Moreover, according to the Advisory Opinion of the International Court of Justice in Reservations in the Convention on the Prevention and Punishment of the Crime of Genocide, genocide is “*a crime under international law involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations*”.⁴

However, the very first time the term genocide as such was brought into consideration was through the thought of the Polish-Jewish jurist Raphael Lemkin, which among his brilliant academic works, has also partici-

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pated in the works that led to the Genocide Convention.

Lemkin understood genocide firstly as a coordinated plan to make the essential foundations of the life of a group perish so the latter would be eliminated, that being either in times of war or times of peace. For essential foundations he meant political and social institutions, culture, language, national feelings, religion, economic structure, personal security, liberty, health, dignity and the lives of the ones part of the aimed group.⁵

He also emphasized that such crime shall aim at a national group as an entity, and, when aiming on an individual, the perpetrator of genocide shall bear in mind the intent to annihilate the national group that such individual belongs to.⁶

Raphael Lemkin understands that genocide involves mainly the destruction of life, but his view goes further down to say that genocide may as well be committed through the crippling of the group's life through several measures that would not culminate in its people's death.⁷

When he prepared a resolution for the United Nations General Assembly (Resolution 96 (I) of 11 December 1946) he defined genocide as both physical destruction and destruction of a group's cultural identity⁸ Once again, Lemkin was embracing a broader concept of genocide, which, unfortunately, did not influence the international documents above analysed.

Therefore, according to the limited definition adopted in the Genocide Convention, where only biological and physical actions are to be considered, genocide consists on the intentional destruction of any national, ethnical, racial or religious group, and it shall involve the killing of their members, the infliction of serious physical or mental harm, imposition of conditions of life so as to cause their physical destruction, measures to prevent births within the targeted group, as well as the transference of children from one group to another.⁹

B) ELEMENTS

After briefly analysing the general definition of the crime of genocide, we can finally go further to notice its elements, such as the commission of one or more acts listed in Article II of the Genocide Convention; the intent to destroy the group in whole or in part; as well as that the act be directed towards at one of the protected groups.¹⁰

The Trial Chamber of the International Tribunal for Rwanda, when judging Jean Paul Akayesu under the charges of genocide, crimes against humanity and violations of Article III common to the Geneva Conventions committed in the territory of Rwanda throughout 1994, reached the conclusion that the list presented in Article II of the Genocide Convention was not to be deemed solely illustrative. That is, the acts therein printed followed an exhaustive fashion, which did not allow any other act to be considered as an act of genocide.¹¹

On the same judgement the acts enumerated in Article II were analysed one by one. According to it, "killing members of the groups" (paragraph (a)) shall be understood as in homicide committed with the intent to cause death, and not as a more general understanding that would also consider the non intentional killing as a genocidal act.¹²

Also, by "causing serious bodily harm to members of the group" (paragraph (b)), the Trial Chamber was of the opinion that such harm shall not necessarily be permanent and irremediable¹³ and that "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" (paragraph c) shall imply "*methods of destruction by which the perpetrator does not immediately kill the members of the group, but which, ultimately, seek their physical destruction*".¹⁴

The Chamber went on to proceed a brief analysis of the two final paragraphs of Article II of the Genocide Convention. By "imposing measures intended to prevent births within the group" (paragraph d) it considered to involve acts such as "*sexual mutilation, sterilization,*

*forced birth control, as well as separation of the sexes and prohibition of marriages*¹⁵; and that “forcibly transferring children of the group to another group” (paragraph (e)) would not only denote the actual physical transfer, but also the infliction of threats so as to lead to a forcible transfer of children to another group.¹⁶

The judgement of Jean-Paul Akayesu was of great contribution for the interpretation of the acts that characterise the crime of genocide, being considered a reference for authors such as Ratner.

Furthermore, when it comes to the second element of the crime of genocide, the intent to destroy the group in whole or in part, that is the *dolus specialis*, one should recognise the core of genocide. This intent, most of all, distinguishes genocide from other crimes, and without it an act would not be deemed genocide, however outrageous the crime committed might have been.¹⁷

Attention must be paid, though, to the fact that the intent to destroy the group in whole or in part must be prior to the actual perpetration of any genocidal act¹⁸; and that by considering genocide the act perpetrated so as to destroy the aimed group “in whole or in part”, the Convention makes clear that the intent to destroy a group entirely is not required, that is, the annihilation of only part of it would suffice.¹⁹

The Trial Chamber of International Criminal Tribunal of the Former when judging Goran Jelusic for genocide, violations of the laws or customs of war and crimes against humanity, noted that the intention of the perpetrator shall be to destroy either a major part of the group or a fraction that involves important figures such as leaders. Hence, according to the Chamber, “*the phrase ‘in whole or in part’ must be understood to mean the destruction of a significant portion of the group from either a quantitative or qualitative standpoint*”.²⁰

The fact is that until now there has not been a rule establishing the exact proportion of a group that shall be targeted so as the act

be deemed genocide, and for that reason, the amount of victims required shall be analysed on a case by case basis.²¹

Moreover, regardless of the great magnitude of the perpetrator’s intent so as to classify a crime as genocide, such element raises several debates and is to be considered the most difficult feature of the crime to prove in court.²²

Another element of the crime of genocide is that the act shall be directed towards at one of the protected groups, subject which deserves special attention, once it is the bedrock the final dissertation in which this article relies upon. B. Sautman at p. 196

C) PROTECTED GROUPS IN THE GENOCIDE CONVENTION

The Genocide Convention makes clear that the crime of genocide as such is only to be characterised if towards the four groups enumerated in its Article II. Besides presenting a limited row of protected groups, the Convention did not go further so as to provide us with the attributes to define them. For the purposes of the present section, we shall only deal with those protected groups listed within the Convention - national group, ethnic group, racial group and religious group – leaving further criticism and deeper analysis to the following chapter

The definition of each of the four protected groups is not to be deemed something simple nor straightforward. On the contrary, several discussions on the topic have been raised throughout the years and some guidance has arisen within trials such as Akayesu and Jelusic, for instance.

In Akayesu, the Trial Chamber have begun to analyse the subject matter by advocating that the Genocide Convention’s intent on selecting those four groups basically relies on the group’s stability²³, and that each of them shall be understood as it follows:

“a national group is defined as a collection of people who are perceived to share

a legal bond based on common citizenship, coupled with reciprocity of rights and duties. An ethnic group is generally defined as a group whose members share a common language and culture. The conventional definition of racial group is based on the hereditary traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors. The religious group is one whose members share the same religion, denomination or mode of worship”²⁴

On the same token, William Schabas comes to say that the above four terms end up helping on each other’s definition by operating “as four corner posts that delimit an area within which a myriad of groups covered by the Convention find protection”²⁵, and he goes on stating that the search for autonomous meanings for each of the four enumerated groups would culminate in the weakening of the enumeration overarching sense as a whole.²⁶

Either way, a question that one may bare in mind is how to associate an individual to a group, that is, what makes a person part of a group and what criteria can be used to do so.

Opinions vary from the adoption of objective to the subject criteria, and within the latter one can find two different paths to choose, that is, either a positive or a negative approach.

To adopt the subjective positive approach means that the perpetrator of the crime of genocide distinguishes a group by the characteristics he considers that belongs to it. On the other hand, the negative approach entails the exclusion of individuals from the group of which the perpetrator finds himself a member of and which he considers to have its own characteristics apart from the ones owned by the group to which the individual/victim belong.²⁷

Despite the existence of two different criteria defining if an individual is part of a group, the subjective approach is deserving of greater credibility, once, the status of national, ethnic or racial group is better attributed by considering the point of view of the ones who wish to single that group out from the rest of the

community. Besides that the adoption of the objective approach could certainly lead to a disruptive categorisation of the individuals.²⁸

As one can note, protected groups and their characterisation are a subject that remain controversial and the way it is dealt with will solely rely on the individual point of view of the ones that are enforcing the law.

What can be done for the time being is to keep the discussion alive and try to implement it by the development of the international community doctrine.

II- THE LIMITED SCOPE OF THE GENOCIDE CONVENTION

A) THE CONVENTION

As we have noted in the previous chapter, the chapeau of Article II of the Genocide Convention says that “*genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group*” and then goes on by enumerating the actions that shall constitute genocide.

Other international documents that also foresee genocide do not present any major changes, as they follow the exact words of the 1948 Genocide Convention, and therefore, do not add any sort of development or even contrast to the understanding of the crime of genocide established back then.

There is indeed a range of international documents that prohibit genocide, but they are to be considered a natural development of the very first thoughts on such crime. By that one shall recall to when genocide was envisaged as a merely sub-category of the so-called Crimes Against Humanity. It was categorised as the crime of persecution, being addressed within the Nuremberg Trial as such.

It was not until the Genocide Convention in 1948 that genocide as a specific crime acquired autonomous significance and since then several discussions were raised, which brings us to the main focus of this article: the

protected groups listed on the above Convention as well as the ones that were explicitly excluded from it, giving special emphasis on the so-called cultural genocide.

The criticism that we pose here does not overcome the Convention's merits, such as the establishment of a definition of genocide; the punishment of acts connected with it; and the prohibition of genocide whether in times of war or of peace. What triggers the need for a further analysis is the Genocide Convention's flaws. For instance, a great flaw can be characterised by the enforcement mechanisms presented, that is, according to the Convention, the trials for such crime shall be held before the courts of the State on the territory of which genocide has occurred or before an international one.

In other words, as the most common perpetrators of the above crime are to be territorial State authorities, the national prosecutor may find it hard to bring those people to prosecution.

Moreover, when it comes to the groups enumerated within Article II, other weaknesses are to be noted. First of all, by listing the protected groups in an exhaustive way imply a limited scope of protection offered by the Convention, excluding, therefore, any other group such as political or economic.

As Pieter Drost once stated, "*a convention on genocide cannot effectively contribute to the protection of certain described minorities when it is limited to particular defined groups*"²⁹

Also, the Convention does not present any guidelines so as to make clear the meaning of each of the four groups therein listed, leaving a gap that is to be filled when enforcing it.

These are just some of the imperfections that can be observed in the Genocide Convention, and trying to understand them might require a glance at the works that led to such legal instrument.

B) THE DRAFT

The very first attempt to institute a convention attributing special treatment to the crime of genocide took place within the Secretariat

draft, which, although aiming at a narrow definition so as to avoid genocide to be confused with other crimes as well as to facilitate the ratification process, presented in its Article I a list of groups which included the political one.³⁰

As the works developed, the political groups ended up falling short of the Convention's scope. Lemkin, one of the three experts consulted in the occasion, held his position against the inclusion of the above group, once, according to him, in order to be included in a convention of such magnitude the group envisaged should retain the characteristic of permanency.³¹

In spite of that, Raphael Lemkin advocated pro a wider conception of the term genocide, that is, he considered genocide to involve three kinds of acts: physical biological and cultural. The latter – cultural genocide – was then included in the draft so as to be discussed in further occasion.³¹

However, the inclusion of cultural genocide in the Convention's draft did not go without strong contrary opinions. When commenting on the draft, the United States as well as France made clear that they would rather such type of genocide to be excluded, leaving the Convention's scope limited to physical and biological genocide.³²

Then, from September to December 1947, the General Assembly, through the Sixth (Legal) Committee, held its second session on the subject, where the main issue discussed relied on whether to consider genocide as a crime against humanity or to contemplate it as a specific criminal behaviour.³³

By following the General Assembly Resolution 180 (II) the continuation of the discussions took place through the Economic and Social Council. An Ad Hoc Committee was then established, and, among various subjects, it addressed the issue of the groups to deserve the protection of the Convention, as well as the inclusion of cultural genocide.³⁴

Despite strong objections towards the inclusion of cultural genocide, there were posi-

tive manifestations such as the Soviet Union. The Soviets presented a document entitled “Basic Principles of a Convention on Genocide” endorsing the coverage of cultural genocide by the Convention.³⁵

The discussion relied mostly on the three kinds of genocide that should be included – physical, biological and cultural – being the latter the most controversial, and, therefore, central issue. In the occasion the United States and France presented strong disagreement towards cultural genocide, but, in spite of that, the remaining States adopted a positive approach towards cultural genocide, and such approach was subsequently adopted.³⁶

Furthermore, when it came to the Sixth Committee, an article-by-article analysis took place and several questions were raised. As one of the conclusions, they decided to limit the punishable acts to physical and biological kinds of genocide and by doing so, excluded cultural genocide from the draft.³⁷

The consideration of the draft taken by the Sixth Committee was completed on the early days of December 1948, and the draft resolution and the draft convention were then adopted.³⁸ The Genocide Convention itself was adopted afterwards by fifty-six votes to none, and, since then there have been efforts aiming at its further development, as we can observe within the draft Code of Crimes Against the Peace and Security of Mankind, the ICC statute (the Rome statute), as well as both the ICTR and the ICTY statutes.³⁹

C) CULTURAL GENOCIDE

As noted before, the drafters of the Convention have showed a clear intention to list the protected groups in an exhaustive way, and, although there had been efforts towards a non-exhaustive fashion, article II has remained the same.

By specifying which groups deserve to be protected under the Genocide Convention it deliberately excluded other groups that represent a great deal of genocide victims, and then again, it did not go without major criticism.

The protected group issue has been object of discussion within national legislation, academic writing and cases, such as Akayesu, where, in an attempt to clarify what exactly the Genocide Convention meant by protected groups, the Trial Chamber came to the conclusion that those groups should not be limited to the ones listed, instead, any stable group should deserve that kind of protection.⁴⁰

According to it, “*a common criterion in the four types of groups protected by the Genocide Convention is that membership in such groups would seem to be normally not challengeable by its members, who belong to it automatically, by birth, in a continuous and often irremediable manner*”.⁴¹

In adopting the above-mentioned point of view the real intention of the Convention’s drafters would be met. Nonetheless, important groups are still found to fall outside the Genocide Convention’s scope, such as political, economic and social groups.

Moreover, when Raphael Lemkin first defined the crime of genocide in 1944 in his book “Axis Rule in Occupied Europe”, he also wished to include a cultural kind of genocide, which, according to him, would consist in the deliberate destruction of a group’s cultural way of life, that is, acts performed through “*drastic methods aimed at the rapid and complete disappearance of the cultural, moral and religious life of a group of human beings*”.⁴² Within his work he stated that the attempt to destroy the foundation of the life of groups would as well involve the annihilation of the political and social institutions of culture, language and national feelings.⁴³

Following Lemkin’s thoughts, cultural genocide was strongly discussed through the drafts of the Convention. It was to be included in its Article III, which would take the following shape, as in prohibiting “*any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief such as: 1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circula-*

*tion of publications in the language of the group; 2. Destroying, or preventing the use of, libraries museums, schools, historical monuments, places of worship or other cultural institutions and objects of the group; 3. Subjecting members of a group to such conditions as would cause them to renounce their language, religion or culture”.*⁴⁴

Mr. Katz-Suchy from Poland, during the discussion on the inclusion of article III in the Convention, remarked that *“the genocide convention would only be fully effective if it covered cultural genocide which could be as destructive of the life of a nation as physical extermination”.*⁴⁵

Cultural genocide was also proposed within the Universal Declaration of Human Rights draft, so as to allow minorities the right to have their own schools, cultural or religious institutions, as well as to facilitate the use of their own languages in the press, public assemblies and before courts and state authorities.⁴⁶

Certain countries were of the opinion that the cultural genocide would be better dealt with if included in the declaration of human rights or even in a charter for the protection of minorities.⁴⁷

In the Soviet Union’s opinion such argument should not proceed, once it understood that the human rights declaration would not suffice for the affective protection of cultural features of a group. According to it *“the declaration proclaimed the individual’s right to life, liberty and security of person, which might be interpreted as ensuring his protection against any act of physical genocide; yet no one disputed the need for a convention on physical genocide”.*⁴⁸

In fact, the Convention on Genocide would be a much more effective way on dealing with cultural genocide as the obligations therein established are far more binding than those implicit in the declaration of human rights, that rely solely on its moral force.⁴⁹

Obviously, the will to include cultural genocide in documents other than the Convention would be a result of confusing the aims of the latter with those of the above-mentioned declarations and charters. These could not take cultural genocide as a crime nor provide the necessary measures so as to prevent and punish it.⁵⁰

Moreover, to include cultural genocide in the human rights declaration or in the minorities protection charter would go against the requirements of the resolution 96 (I), which took genocide to the level of a crime under international law that had to be prevented and punished.⁵¹

After long discussions whether or not cultural genocide should be a subject addressed in the Convention, it was excluded as a result of the General Assembly Sixth Committee discussions by 25 votes to 16, with 4 abstentions, 13 delegations being absent during the vote.⁵²

The ones who were contrary to the inclusion of cultural genocide in the Convention advocated either that certain factors of cultural genocide were already covered by other conventions, i.e. the one relating to the protection of minorities; or that it had been foreseen within national legislation, i.e. laws on education and protection of worship.⁵³

The United States of America, for instance, presented two reasons to exclude Article III from the Genocide Convention. According to its representative, cultural genocide had no connection with the physical destruction of a group, and therefore could not be treated as such. He also advocated that the actual protection needed could be obtained from human rights.⁵⁴

If one agrees with those arguments, one might as well consider the whole convention on genocide to be useless, once several acts that constitute genocide can also be found within both national legislation or even in the general framework of the crimes penalised under international criminal law. The reality is that by including cultural genocide in the Convention, one would have facilitated international action.⁵⁵

In spite of that, cultural genocide was not addressed as it should have been, and the significance of one people’s culture was not properly recognized within the Genocide Convention.

In fact, a group’s culture represents its very core, its very foundation, that is, one’s people culture actively constructs and re-structures society, and the extermination of a group’s culture shall also imply potentially in its “de-structure”.⁵⁶

The cultural symbols of a community are the materialisation, the representation of it as such and its destruction implies in the destruction of the group. As Raphael Lemkin has advocated, there is a need to protect cultural groups once they cannot do without the “spirit and moral unity” that their culture provides.⁵⁷

One people’s culture represents its very core, and the international community does not turn its back to the seriousness of the subject. The UNESCO’s draft declaration on International Destruction of Cultural Heritage, for instance, recognises that cultural heritage consists in the cultural identity and social cohesion, and that its intentional destruction shall imply in consequences on human dignity as well as in human rights.⁵⁸

As an example one can mention the Bosnian war where there was plenty of what can be called deliberate targeting and consequent destruction of cultural, religious and historic symbols such as the National Library (Around 1.5 million books were destroyed, the largest single incident of book burning in modern history), the Regional Archives, the Academy of Music, the National Gallery, several local and national museums, among others.⁵⁹

Such cultural destruction which took place in Bosnia holds a strong link with the systematic persecution and expulsion of ethnic and religious communities, once ethnic groups are culturally defined, they can be eliminated by the disappearance of their culture, disguise the existence of their physical removal.⁶⁰

By the same token, the Ad Hoc Committee on the draft of the Genocide convention has noted that *“the cultural bond was one of the most important factors among those which united a national group and that was so true that it was possible to wipe out a human group, as such, by destroying its cultural heritage, while allowing the individual members of the group to survive. The physical destruction of individuals was not the only possible form of genocide; it was not the indispensable condition of that crime”*.⁶¹

In fact, cultural genocide goes further than the destruction of physical or biological ele-

ment of a group. According to David Nersesian, it takes place through various ways such as *“the abolition of a group’s language, restrictions upon its traditional practices and ways, the destruction of religious institutions and objects, the persecution of clergy members, and attacks on academics and intellectuals”*. He went on saying that it is characterised when *“artistic, literary, and cultural activities are restricted or outlawed and when national treasures, libraries, archives, museums, artefacts, and art galleries are destroyed or confiscated.”*⁶²

The USSR delegate made clear its opinion in the Sixth Committee that the destruction on one group’s culture is also a way of committing genocide, once it is the intent to “destroy a group in whole or in part”, and that the *“Nuremberg verdicts had shown that the destruction of the culture of certain groups might constitute a method of destroying those groups”*.⁶³

On the same occasion, the Czechoslovak representative, Mr. Zourek, has stated that the disappearance of groups can be either due to physical extermination or due to forcible destruction of its distinctive and permanent characteristics. He went further to illustrate his thoughts with examples of cultural genocide perpetrated by the Nazis upon Czechs and Slovaks, saying that *“those acts were designed to pave the way for the systematic disappearance of the Czechoslovak nation as an independent national entity”*, and that *“such Nazi activity had been accompanied by a thorough attempt to destroy everything that might remind the people of its national past and to prepare the way for complete germanification”*. He concluded by noting that those acts of cultural genocide had had the exact same motives as those of the so called physical genocide, that is, the intent to destroy a racial, national or religious group.⁶⁴

According to the Pakistani delegation, physical genocide would only represent the means by which the end – cultural genocide – would be reached. In other words, *“the chief motive of genocide was a blind rage to destroy the ideas, the values and the very soul of a national, racial or religious group, rather than its physical*

existence. Thus the end and the means were closely linked together; cultural genocide and physical genocide were indivisible. It would be against all reason to treat physical genocide as a crime and not to do the same for cultural genocide”.⁶⁵

In fact, the concept of genocide should not be restricted to physical destruction by the Convention, once the definition presented in its Article II never specifically established that the use of physical means was condition *sine qua non* for the actual destruction of a group. If one reads Article II (e) carefully, he will note that when the Committee included as an act of genocide the “*forcibly transferring children of the group to another group*” it recognized that a group might as well be annihilated although its members remain living without had suffered any physical harm.⁶⁶

Following the exact same understanding that a group may be annihilated without suffering any physical harm, David Nersessian noted that “*by limiting genocide to its physical and biological manifestations, a group can be kept physically and biologically intact even as its collective identity suffers in a fundamental and irremediable manner. Put another way, the present understanding of genocide preserves the body of the group but allows its very soul to be destroyed.*”⁶⁷

What cannot be ignored is that the exclusion of cultural genocide from the acts forbidden by the Convention is a way to act in disagreements with the General Assembly Resolution 96(I), once it mentioned that form of genocide within its preamble⁶⁸. That is, such resolution recognized that genocide “*results in great losses to humanity in the form of cultural and other contributions represented by these human groups*”.⁶⁹

Moreover, the issue of the acts that constitute genocide - physical, biological and cultural - have been analysed not only within the draft discussions, as we have seen, but as well within the case law that followed.

In the Krstic judgement, the ICTY Trial Chamber stated that “*the physical destruction of a group is the most obvious method, but one*

may also conceive of destroying a group through purposeful eradication of its culture and identity resulting in the eventual extinction of the group as an entity distinct from the remainder of the community”.⁷⁰

The Chamber’s statement follows the notion of Genocide as it was conceived in Lemkin’s Axis Rule in Occupied Europe, that is, genocide as all forms of destruction of a group. By adopting such broad approach, one shall find that genocide resembles the crime of persecution. (article 6(c) of the ICTY Statute).⁷¹

According to the Trial Chamber, there is a general opinion established so as to consider that the crime of persecution is not “*limited to the physical destruction of the group but covered all acts designed to destroy the social and/or cultural bases of a group*”.⁷²

By the same token, the Chamber went on by mentioning the Ad Hoc Working Group of Experts report on the human rights violation in South Africa in 1985.⁷³ Despite the Convention’s literal coverage being restricted solely to physical or material acts, it adopted “*a broader interpretation that viewed as genocidal any act which prevented an individual ‘from participating fully in national life’, the latter being understood ‘in its more general; sense’.*”⁷⁴

Despite all the efforts towards a broader understanding of genocide by including its cultural version in the Convention, the more limited approach prevailed.

Nowadays, cultural genocide plays a subsidiary role within the Convention’s understanding of genocide. Cultural considerations have helped out on the establishment of the genocidal specific intent, and, also, cultural characteristics are considered so as to define the protected groups enumerated in Article II of the Convention.⁷⁵

When analysing the discussions on article III, one notices that the main argument pro its inclusion relied on the fact that cultural genocide often represents a preparatory stage for the physical or biological genocide.⁷⁶

Lippman recognized that such kind of genocide shall take place only when it comes together

with the intent of physically destroy a certain group, that is, there is a need of a conjunction of physical and cultural destruction.⁷⁷ Opinion which is shared by William Schabas, according to whom “*it seems impossible to consider acts of cultural genocide as punishable crimes if they are unrelated to physical or biological genocide*”.⁷⁸

Of course, one cannot ignore that the world has changed a lot since the ratification of the Convention in 1948, nonetheless, we are far from reaching an additional protocol prohibiting cultural genocide.⁷⁹

Nonetheless, we can still identify the criminalization of cultural genocide as part of customary international law, that is, the prohibition of cultural genocide is not binding and States are do not have the obligation to prosecute its perpetrators, but it still represents a violation of international law and can be considered binding in some States.⁸⁰

Moreover, one can note that the Convention’s drafters acknowledged the legitimacy of cultural genocide and suggested that the subject shall be addressed by other international documents, as it happened within the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Charter of the European Union, etc.⁸¹

When analysing the composition of the United Nations of the 1940s, one may have a slight sparkle of understanding towards the denial of cultural genocide being internationally criminalized, as the countries that voted against it were mainly the ones that in the past acted in a way that such an inclusion would raise charges against them.⁸²

Yet in no way should one accept the denial of addressing the question of protection against the destruction of a particular culture. The justification for doing so can rely in several arguments, but mainly in the present-day history: the acts perpetrated by the Nazis against cultural or religious life of their aimed groups such as the burning of the synagogues and Jewish libraries; also, within the first World War, the burning of the University of Louvain as well as

the destruction of the cathedral of Rheims.⁸³

Most of all, the history shows that the culture or the religion of certain groups are as eye opening and disturbing as crimes of physical genocide.⁸⁴

Cultural genocide does not lack importance, and its exclusion is surrounded by a range of very serious implications, especially on how some extreme state actions towards the annihilation of certain culture are to be characterized.⁸⁵

III – TIBET

“The situation is that whether intentionally or unintentionally a sort of cultural genocide is happening in Tibet. And if losing independence is acceptable, on the contrary losing one’s culture, accepting the destruction of our spirituality, of Tibetan Buddhism, is unthinkable”

The Dalai Lama⁸⁶

To advocate the inclusion of cultural genocide not only in the Convention, but within any international instrument that would address the subject as it deserves, may seem to be an elementary cause to fight for, specially if one remains in the theoretical domain.

The magnitude of cultural genocide can only be fully understood by the analysis of an actual situation where one’s people culture is being destroyed, and, for that reason, we propose for this chapter a brief analysis of the situation that Tibet finds itself in.

The present scenario in Tibet involves a great forced assimilation of its culture into mainstream communist Chinese society through several acts such as the destruction of monasteries, a public school system where Chinese propaganda, language and culture prevail, as well as the moving of a great number of Chinese into Tibetan territory.⁸⁷

The immigration process of quite a large number of Chinese individuals into Tibet took place so as to make it difficult for the Tibetans’ rise, to break their unity, to spread Chinese

propaganda within Tibet, and, therefore, move towards the extinction of Tibetan's culture.⁸⁸

The charges of cultural genocide, therefore, are focused on the above-mentioned migration of Chinese individuals to Tibet, family planning, as well as political repression.⁸⁹

When it comes to culture, the focus of the acts perpetrated by the Chinese government involves mainly religion and language; and there had been said that various sorts of vices, such as drug use and prostitution, have been promoted within Tibet so as to tear its citizens away from Tibetan's culture.⁹⁰

The focus on religion would mostly concern the freedom to participate in activities, the regulation of monasteries, as well as the so-called efforts to alienate Tibetans from the Dalai Lama.⁹¹

According to Émigré leaders, Tibetans are no longer entitled to undertake routine religious activities, and around 6,000 monasteries have been destroyed or are being used for purposes others than religious ones.⁹²

Tibet has in fact been occupied by China for over five decades, and, throughout this occupation, the cultural identity of Tibet has been gradually affected, heading towards its total annihilation.

The Dalai Lama finds that the Chinese authorities see in Tibet's culture and religion a source of threat of separation, and, therefore, they have adopted policies so as to suppress it.⁹³

Such policies imply, most of all, the denial of the right of self determination for the Tibetans, that is, the Chinese government has been trying to shrink the right of Tibetans to freely determine their political, social, economic and cultural status.

The right of self-determination primarily anchored in Chapter I, Article I of the UN Charter⁹⁴, has been specially recognised by considering the particular situation of Tibet. The United Nations General Assembly Resolution 1723(XVI)⁹⁵ noted that the above right applies to Tibetans and called on the government of China to allow the latter to exercise such right.⁹⁶

Furthermore, among the actions perpetrated by the Chinese government, one has been raising strong fear of cultural genocide within Tibetans, that is, the construction of a railway that will connect Golmud - in the west of China - to Lhasa - the capital of Tibet.⁹⁷

Tibetans consider this railway as a threat, once they are already considered to be a minority within their own territory, and Chinese migration to Tibet would increase greatly from the moment such railway becomes operational, which also means a sudden spike on the mentioned cultural annihilation process, just like it happened in Easter Turkestan and Innes Mongolia.⁹⁸

As cultural genocide is much less obvious than physical genocide, it can be perpetrated through various means, and the Chinese government has also done so through the limitation of Tibet's data.

It is widely known that in order to comply with Chinese legislation, the major search engine Google does not provide certain information when the query originates from a Chinese internet protocol (IP) address.⁹⁹

That becomes even clearer when it comes to Tibetan's culture, that is, Google has agreed to filter out features of Tibetans' life that the Chinese government deems offensive.¹⁰⁰

As we have noted in the previous chapter, cultural genocide takes place without the actual physical destruction of a group by affecting more abstract features of one's people, such as its cultural heritage, and as long as the discriminatory intent is observed.

The main objective of China towards Tibet was never the physical annihilation of its individuals; to the contrary, it aimed in its people assimilation and subordination; in the deliberated undermining of Tibetan's culture.¹⁰¹

Even for those that disregard genocide without physical destruction, still one shall not find hard to recognized what is happening in Tibet as cultural genocide, once there has been limitations of births among Tibetans imposed by the Chinese government, and such act can be found in Article II(d), according to which geno-

cide can also rely on acts “*imposing measures intended to prevent births within the group*”.¹⁰²

By the same token, the Dalai Lama has found that the measures imposed by China included a forced strict family planning rules so as to make the Tibetans a minority in their own land.¹⁰³

Of course that the birth control issue that takes place in Tibet does not rely on an unanimous point of view, once there are scholars that strongly deny the genocidal intent within such Chinese act.

Moreover, there are the people who advocate the inaccuracy of the cultural genocide claim in Tibet, and that point of view should be respected. Still, the five decades of Chinese migration, disrespect for Tibetan’s religion, culture and way of life must not be seen as a simple result of the natural changes of time and humanity.

Although it ended up not being included on the final Convention on genocide, Article III of the draft recognized cultural genocide as “*any deliberate act committed with the intent to destroy the language, religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief*”.

Various examples demonstrate the need to prohibit cultural genocide within an international legal document - as noted on the previous chapter - and because of the struggle that Tibet has been going through the past five decades, seeing its very soul, its identity, fading slowly in the hands of the Chinese, one must not turn his face to the opposite direction.

The problem has to be dealt as its magnitude requires, not with complacency nor with any sort of radicalism. What is needed is the simple recognition that a people can and will continue to be victimised in its own territory not necessarily through physical destruction, but mostly by the disappearance of its culture.

IV – CONCLUSION

From the colonisation period until the present days genocide has been an issue that has been dealt in several ways. First within the Nurem-

berg Trials where it was treated as one of the crimes against humanity, then from the work of Raphael Lemkin where the actual term genocide originated, until the draft work towards a genocide convention on the late forties, which led to the Convention on the Prevention and Punishment of the Crime of Genocide, being approved on 9 December 1948 and coming into force on 12 January 1951.

Throughout the process of drawing a convention on the above topic various arguments have taken place, over whether or not political groups should be included in Article II as one of the protected groups, and whether cultural genocide should be considered genocide at all.

As one can easily observe, the discussions relied on a political bedrock, as the western countries were mainly against the inclusion of cultural genocide, and they were the ones that in the past relied upon the imposition of their way of life throughout the colonization period, as noted in chapter one.

On the other hand, eastern European countries, such as Poland, that in the past suffered greatly from actions that amounted to cultural genocide perpetrated by the Nazis, were the ones that favoured the inclusion of such crime in the Genocide Convention.

But the discussions on cultural genocide did not stop in the Genocide Convention’s draft, to the contrary, it went on within the international community and even within international tribunals’ decisions, such as the ICTY and the ICTR. Nonetheless, cultural genocide is still not considered genocide by most of the scholars nor has been included in any sort of international document.

Although cultural genocide might not be considered as heinous as the physical destruction of a group, it still represents a real danger for human groups, which leads to the need of its designation as a crime in international law, and, therefore, be suppressed by a quite effective international system.¹⁰⁴

The arguments against cultural genocide rely mostly on grounds of the lack of physical destruction of a group, which can be consid-

ered a quite narrow point of view to adopt.

It was made clear through this article that physical or biological acts are not the sole ways to annihilate a group. Once the intent to destroy a group in whole or part, the means to do so may as well involve the destruction of cultural features of a people.

Society is structured upon one's people culture and to destroy the latter shall imply the de-structure of the society itself.¹⁰⁵ More than that, the cultural symbols of a community are the materialisation of it as such, and it could simply not do without its "spirit and moral unity".¹⁰⁶

As we have noted before, it is possible to wipe out a human group without actually killing its members, that is, by destroying its language and religious institutions and objects, restricting traditional practices, persecuting clergy members and intellectuals, in short, by vanishing its cultural heritage.¹⁰⁷

By that one can understand that the deliberate destruction of a group's cultural characteristics through drastic methods used so as to vanish any trace of cultural, moral and religion life of that group is indeed considered able to annihilate the latter.¹⁰⁸

Once again, we should not close our eyes to the lack of protection against cultural genocide. The examples are clear throughout history and to ignore those is to deny the protection of fundamental human rights to those who most need it.

NOTES

1 Article II. Of the ICTR 1. (...) 2. 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 children of the group to another group

2 Article IV of the ICTY statute: 1. (...) 2. 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 children of the group to another group

3 Article VI of the Rome Statute: For the purpose of this Statute, "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 children of the group to another group

4 ICJ Rep. 1951, 15 at 23 quoted in K. Kittichaisaree. "International Criminal Law". Oxford University Press. 2001

5 . Raphael Lemkin, cited in y S. Ratner and J Abrams. "Accountability for Human Rights Atrocities in International Law. Beyond the Nuremberg Legacy". Second Edition. Oxford University Press. 2001 at p. 26/27

6 Ratner at p/ 26/27

7 B. Brivati. "What is Genocide?" Polity, 2007. Available at http://www.democratiya.com/review.asp?reviews_id=95 Last accessed 30 August 2007 at p. 3

8 Brivati at p. 4

9 Article II of 'The Genocide Convention

10 Ratner at p.29

11 International Criminal Tribunal for Rwanda. The Prosecutor v. Jean -Paul Akayesu. Case No. ICTR-96-4-T (1998) at para 499

12 International Criminal Tribunal for Rwanda. The Prosecutor v. Jean -Paul Akayesu. Case No. ICTR-96-4-T (1998) para 500/501

13 International Criminal Tribunal for Rwanda. The Prose-

- cutor v. Jean –Paul Akayesu. Case No. ICTR-96-4-T (1998) para 502 Schabas p. 60
- 14 International Criminal Tribunal for Rwanda. The Prosecutor v. Jean –Paul Akayesu. Case No. ICTR-96-4-T (1998) para 505 35 Schabas at p. 61 citing the UN Doc. A/622 and p. 62 citing UN Doc. E/AC.25/2
- 15 Akayesu at para 507 36 Schabas p 63 citing UN Doc. E/AC.25/7
- 16 Akayesu at para 509 37 Schabas at p. 66 citing UN Doc. E/AC.25/SR.10, at. 5, and UN Doc. E/AC.25/SR.15, at p.1
- 17 Ratner at p. 35/36 38 Schabas at p. 73
- 18 K. Kittichaisaree. “International Criminal Law”. Oxford University Press. 2001 39 Schabas at p. 79 citing UN Doc. A/C.6/SR.132
- at p. 73 citing Kayishema and Ruzindana 40 Schabas at p.80/81
- 19 Ratner at p. 38 41 Akayesu
- 20 International Criminal Tribunal of the former Yugoslavia. The Prosecutor v. Goran Jelusic. Case No. IT-95-10 14 (1999) at para.81 42 Akayesu
- 21 Ratner at p. 39 43 Draft Convention on the Crimes of Genocide, U.N. ESCOR, 5th Sess., at 6-7, U.N. Doc. E/447(1947) at p. 27
- 22 Ratner at p. 36 44 P. Condappa. “Cultural Genocide in Bosnia Hezegovina; Destroying Heritage, Destroying Identity”. Available at <http://metamedia.stanford.edu/projects/CulturesofContact/admin/download.html?attachid=14883> Last accessed 30 August 2007
- 23 Akayesu at para 101 45 B. Sautman. “Cultural Genocide and Tibet” (2003) 38 Tex. Int’l L.J. 173 at p.182 citing the Summary Record of Meetings, U.N. ESCOR, 7th Sess., Supp. No. 6, U.N. Doc E/1/SR.175-225 (1948) & Summary Record of the Fourteenth Meeting of the Ad Hoc Committee on Genocide, U.N. ESCOR, 6th Sess., 14th mtg., U.N. Doc. E/AC.25/SR.14 (1948)
- 24 Akayesu at para 102 46 U.N GAOR, 3rd Sess., at 842, U.N. Doc. A/810 (1948)
- 25 Schabas at p. 111 47 Sautman at p. 10
- 26 Schabas at p. 112 48 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 194
- 27 Kittichaisaree at p 70/71 49 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and So-
- 28 Jelusic at para 70
- 29 P. N. Drost, “The Crime of State”, Vol. 2, Genocide, Leyden: A. W. Sijthoff. 1959 at p. 122/123
- 30 Schabas at p.53 citing the UN Doc. E/447
- 31 Schabas at p. 53, citing the UN Doc. E/447
- 32 Schabas at p. 53, citing the UN Doc. E/447
- 33 Schabas at p. 57 citing UN Doc. A/401/Add.3. and Un Doc. A/401
- 34 Schabas p. 58, citing the UN Doc. A/A.6/39 -42 and

cial Council [a/633] at 205

50 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] . Mr. Tsien Tai, China representative at p. 198

51 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 194

52 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 194

53 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 206

54 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 196

55 In the words of the American representative: “there were in fact grounds for asking whether it was more important to protect the right of a group to express its opinion in the language of its choice or to protect its rights to the free expression of thought, whatever the language used, If the object were to preserve the culture of a group, then it was primarily freedom of thought and expression for the members of the group which needed protection. Such protection came within the sphere of human rights. If the individual’s fundamental right to use his own language, to practice his own religion and to attend the school of his choice were protected, that would be tantamount to protecting the group of which the individual was a member” Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 203

56 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 196

57 P. Condappa at p. 4

58 Lemkin, Axis Rule in Occupied Europe, at 90-95

59 P. Condappa at p. 5

60 P. Condappa at p. 8/9

61 P. Condappa at p. 12

62 Sautman at p. 10 citing Summary record of the Fifth Meeting of the Ad Hoc Committee on Genocide, U.N. ESCOR, 6th Sess., 5th mtg., U.N. Doc. E/AC25/SR.5(1948)

63 D. Nersessian. “Rethinking Cultural Genocide Under International Law. Human Rights Dialogue: ‘Cultural Rights’ “(Spring 2005) April 22, 2005. Available at http://www.cceia.org/resources/publications/dialogue/2_12/section_1/5139.html Last accessed 24 July 2007

64 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 206

65 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 205/206

66 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 193

67 Opinion of the Venezuelan representative Mr Pérez Perozo in the Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and So-

cial Council [a/633] at 195

68 D. Nersessian

69 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 193

70 United Nations General Assembly Resolution 96

71 International Criminal Tribunal of the former Yugoslavia. The Prosecutor v. Radislav Krstic. Case no. IT-98-33-T (2001) at para 574

72 Krstic at para 575

73 Krstic at para 575

74 Violations of Human Rights in Southern Africa: Report of the Ad Hoc Working Group of Experts, UN Doc. E/CN.4/1985/14, 28 January 1985, paras 56 and 57

75 International Criminal Tribunal of the former Yugoslavia. The Prosecutor v. Radislav Krstic. Case no. IT-98-33-T (2001) at Para 575)

76 D. Nersessian

77 J. Morsink at p. 21

78 M. Lippman, "The 1948 Convention on the Prevention and Punishment of the Crime of Genocide: Forty-Five Years Later" (1999), 8 TEMP. INT'L & COMP. L. J. 1, 38 at p.77 and Sautman at p. 184

79 Schabas at p. 187

80 J. Morsink at p. 47

81 Corte Superior de Justicia Nueva Loja, Ecuador. Legal Analysis: María Aguinda y Otros vs Chevrontexaco Corporation. Available at

http://www.texacotoxico.org/eng/index.php?option=com_content&task=view&id=292&Itemid=116&PHPSESSID=579b2a7e9ac8fa1556d0d75922aee372 Last accessed 30 August 2007

82 D. Nersessian

83 B. Sautman. "Cultural Genocide and Tibet" (2003) 38 Tex. Int'l L.J. 173 at p. 12

84 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 196

85 Summary Record of Meetings, U.N. General Assembly Official Records 6th Committee., 3d Session., Eighty-Third Meeting. Continuation of the consideration of the draft convention on genocide [E/794]: report of the Economic and Social Council [a/633] at 196

86 B. Sautman at p. 13

87 Cultural Genocide. Available at <http://www.historywiz.com/cultgenocide.htm> Last Accessed 04 August 2007

88 Cultural Genocide. Available at <http://www.historywiz.com/cultgenocide.htm> Last Accessed 04 August 2007

89 B. Sautman at p. 197

90 B. Sautman at p. 207/208

91 B. Sautman at p. 207/208

92 B. Sautman at p. 210

93 B. Sautman at p. 211/212

94 B. Sautman at p. 197 citing the Dalai Lama in his Speech of His Holiness the Dalai Lama to the European Parliament (Oct. 24, 2001), at http://www.tibet.ca/wtnarchive/2001/10/24_1.html (last visited Sept. 23, 2002)

95 Charter of the United Nations. Chapter I. Purposes and Principles. Article 1. The Purposes of the United Nations are: 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace; 2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; 3. To achieve international co-

operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and 4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

96 United Nations General Assembly Resolution 1723 (XVI) on Tibet. New York, 1961. The General Assembly, Recalling its resolution 1353 (XVI) of 21 October 1959 on the question of Tibet, Gravely concerned at the continuation of events in Tibet, including the violation of the fundamental human rights of the Tibetan people and the suppression of the distinctive cultural and religious life which they have traditionally enjoyed, Noting with deep anxiety the severe hardships which these events have inflicted on the Tibetan people, as evidenced by the large-scale exodus of Tibetan refugees to the neighboring countries, Considering that these events violate fundamental human rights and freedoms set out in the Charter of the United Nations and the Universal Declaration of Human Rights, including the principle of self-determination of peoples and nations, and have the deplorable effect of increasing international tension and embittering relations between peoples, 1) Reaffirms its conviction that respect for the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of law; 2) Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination; 3) Expresses the hope that Member States will make all possible efforts, as appropriate, towards achieving the purposes of the present resolution

97 Hear Tibet! Self-Determination on the Tibetan People. Available at <http://www.heartibet.org/selfdetermination.html>. Last accessed 23 August 2007

98 T. Dargyal. "Bombardier and the Tibetan cultural genocide". May 30th, 2006. Available at <http://www.savetibet.org/news/newsitem.php?id=983>. Last accessed 8 August 2007

99 T. Dargyal

100 http://www.cultdeadcow.com/cDc_files/cDc-0409.php. Last accessed 8 August 2007

101 http://www.cultdeadcow.com/cDc_files/cDc-0409.php.

Last accessed 8 August 2007

102 B. Sautman at p. 196

103 (B. Sautman at p. 202

104 B. Sautman at p. 203 citing the Tibet Issue "Alive and Kicking" Says Dalai Lama, ASSOCIATED PRESS, Sept. 13, 1987, WL 3175091

105 P. Condappa at p. 4

106 Lemkin, Axis Rule in Occupied Europe, at 90-95

107 B. Sautman at p. 10 by citing Summary record of the Fifth Meeting of the Ad Hoc Committee on Genocide, U.N. ESCOR, 6th Sess., 5th mtg., at 2-3, U.N. Doc. E/AC25/SR.5(1948)) and D. Nersessian

108 Raphael Lemkin on the Draft Convention on the Crimes of Genocide, U.N. ESCOR, 5th Session at 6-7, U.N. Doc. E/447(1947) at 27

BIBLIOGRAPHY

LAWS :

Convention on the Prevention and Punishment of the Crime of Genocide

International Criminal Court Statute

International Criminal Tribunal for Rwanda Statute

International Criminal Tribunal for the former Yugoslavia Statute

United Nations Charter

United Nations General Assembly Resolution 1723 (XVI) on Tibet. New York, 1961.

United Nations General Assembly Resolution 96

Violations of Human Rights in Southern Africa: Report of the Ad Hoc Working Group of Experts, UN Doc. E/CN.4/1985/14, 28 January 1985

CASES:

International Criminal Tribunal for Rwanda. *The Prosecutor v. Jean –Paul Akayesu*. Case No. ICTR-96-4-T (1998)

International Criminal Tribunal of the former Yugoslavia. *The Prosecutor v. Goran Jelisic*. Case No. IT-95-10 14 (1999)

International Criminal Tribunal of the former Yugoslavia. *The Prosecutor v. Radislav Krstic*. Case no. IT-98-33-T (2001)

BOOKS:

P. N. Drost, “The Crime of State”, Vol. 2, *Genocide*, Leyden: A. W. Sijthoff. 1959

A. L. Hinton, , “Genocide: An Anthropological Reader”, Introduction in A,L. Hinton (eds.) 2001. London. Blackwell

K. Kittichaisaree. “International Criminal Law”. Oxford University Press. 2001

M. Levene. “Genocide in the Age of the Nation-State, Volume 1: The meaning of Genocide” . Published by I. B. Tauris & Company, Limited. 2005

S. Ratner and J Abrams. “Accountability for Human Rights Atrocities in International Law. Beyond the Nuremberg Legacy”. Second Edition. Oxford University Press. 2001

W. Schabas.. “Genocide in International Law: the crimes of crimes”. Cambridge University Press. 2000

United Nations Official Records of the Third Session of the General Assembly, Part I. Legal Questions. Sixth Committee. Summary Record of Meetings. 21 September – 10 December 1948. Palais de Chaillot, Paris. 1948

ARTICLES:

M. Lippman, “The 1948 Convention on the Prevention and Punishment of the Crime of Genocide: Forty-Five Years Later” (1999), 8 *TEMP. INT’L & COMP. L. J.* 1, 38

J. Morsink. “Cultural Genocide, the Universal Declaration, and Minority Rights” (1999), 21 *Hum. Rts. Q.* 1009

B. Sautman. “Cultural Genocide and Tibet” (2003) 38 *Tex. Int’l L.J.* 173

ELECTRONIC RESOURCES:

B. Brivati. “What is Genocide?” Polity, 2007. Available at http://www.democratiya.com/review.asp?reviews_id=95 Last accessed 30 August 2007

P. Condappa. “Cultural Genocide in Bosnia Hezegovina; Destroying Heritage, Destroying Identity”. Available at <http://metamedia.stanford.edu/projects/CulturesofContact/admin/download.html?attachid=14883> Last accessed 30 August 2007

Corte Superior de Justicia Nueva Loja, Ecuador. *Legal Analysis: Maria Aguinda y Otros vs Chevrontexaco Corporation*. Available at http://www.texacotoxico.org/eng/index.php?option=com_content&task=view&id=292&Itemid=116&PHPSESSID=579b2a7e9ac8fa1556d0d75922aee372 Last accessed 30 August 2007

Cultural Genocide. Available at <http://www.historywiz.com/cultgenocide.htm> Last Accessed 04 August 2007

J. Docker. “ Raphael Lemkin’s History of Genocide and Colonialism”

Paper for United States Holocaust Memorial Museum, Center for Advanced Holocaust Studies. Washington DC, 26 February 2004. Available at <http://www.ushmm.org/conscience/analysis/details.php?content=2004-02-26> Last accessed 29 May 2007

J. L. A. Filho,. “Genocídio”. Available at http://www.dhnet.org.br/direitos/anthist/nuremberg/genocidio_oquee.htm Last accessed 30 August 2007

P. Gavin. "The History Place. Genocide in the 20th Century". Available at <http://www.historyplace.com/worldhistory/genocide/> Last accessed 30 August 2007

Hear Tibet! Self-Determination on the Tibetan People. Available at <http://www.heartibet.org/selfdetermination.html>. Last accessed 23 August 2007

H. A. Lukasiewicz. "Raphael Lemkin". Available at <http://www.wagingpeace.org/menu/programs/youth-outreach/peace-heroes/lemkin-raphael.htm> . Last accessed 14 August 2007

D. Nersessian. "Rethinking Cultural Genocide Under International Law. Human Rights Dialogue: 'Cultural Rights' "(Spring 2005) April 22, 2005. Available at http://www.cceia.org/resources/publications/dialigue/2_12/section_1/5139.html Last accessed 24 July 2007

T. Dargyal. "Bombardier and the Tibetan cultural genocide". May 30th, 2006. Available at <http://www.savetibet.org/news/newsitem.php?id=983>. Last accessed 8 August 2007
http://www.cultdeadcow.com/cDc_files/cDc-0409.php. Last accessed 8 August 2007

