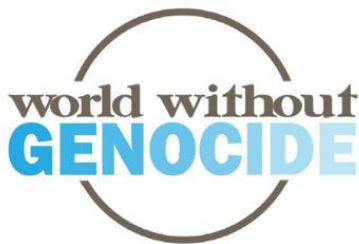




GENOCIDE PREVENTION: A 21ST-CENTURY CHALLENGE

Teaching and Learning Materials



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Genocide Prevention: A 21st-Century Challenge

Teaching and Learning Materials

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Introduction

For more than a decade, we have offered a course titled ***Genocide Prevention: A 21st-Century Challenge*** at Mitchell Hamline School of Law in Minnesota. Students learn about genocides in the past and those occurring today; the challenges of transitional justice; and efforts to bring about positive peace in communities that have been devastated by mass atrocities.

Perhaps of greatest importance is that students learn about individuals and organizations that advocate to protect marginalized populations from discrimination and violence. Many of these ‘upstanders’ have visited our classes over the years. They inspire the students, sharing their personal narratives of standing up in situations that may be difficult or even dangerous. Their message is clear: everyone can become involved in some way to advance and support human rights, ranging from small steps in their own neighborhoods to action on a global scale.

This handbook includes the course syllabus and related teaching materials. We invite you to use the case studies, articles, debates, and suggested topics for teaching and learning in many settings: in schools and universities; in faith communities; in civic organizations; and perhaps even for discussions at the family dinner table.

We envision a world without genocide – and we can all help to make this our shared legacy.

A handwritten signature in black ink that reads "Ellen J. Kennedy". The signature is written in a cursive, flowing style.

Ellen J. Kennedy, Ph.D., Executive Director

I. Syllabus

Genocide Prevention: A 21st-Century Challenge

Mitchell Hamline School of Law

Dr. Ellen J. Kennedy

Course Description

Despite significant developments in international human rights and humanitarian law to protect innocent people, genocides and mass atrocities occurred with great frequency throughout the 20th century, and an estimated 170 million people perished in those conflicts. Major catastrophes continue in the first decades of the 21st century. It is critical to understand the causes of these mass atrocities; the relationship between national and international policies, issues, and events; and the personal and global 'responsibility to protect,' as the international mandate is termed, to prevent future tragedies.

We will study past and present attempts by elites to exterminate targeted civilian groups including the mass murder of the Herero and Nama in Namibia; the Armenians in the Ottoman Empire; the Holocaust of the Jews and the handicapped, Roma and Sinti, gays, political dissidents, and others in Europe; the Communist-led genocide in Cambodia; genocides in Rwanda and Yugoslavia in the 1990s; and 21st-century crises in Ukraine, Myanmar, China, and elsewhere.

We will examine legal structures that supported the persecution of innocent civilians and the failure of civil society and state and global entities to prevent the crises. We will study the permanent and *ad hoc* tribunals that adjudicated accused perpetrators of these atrocity crimes, as they are called, and we will conclude by examining efforts to prevent genocide and to implement 'positive peace.'

Outcomes

- 1) To learn about genocide and its frequency, devastation, and consequences on nations, individuals, cultures, and the environment, much of which is done by legal means;
- 2) to understand the 'receptivity' of ordinary people to support laws and policies of exclusion and violence;
- 3) to examine the transitional justice in post-conflict settings; and
- 4) to understand the limits of the 'responsibility to protect' and the 'will to intervene' to prevent genocide, and to understand our personal responsibility to advocate for human rights.

Class Materials

- Bazylar, Michael, *Holocaust, Genocide, and the Law: A Quest for Justice in a Post-Holocaust World*, Oxford University Press, 2016 (winner, National Jewish Book Award). Print ISBN 13:9780195395693. Bazylar examines trials in the 20th and 21st centuries to hold perpetrators of the Holocaust and other genocides accountable for their crimes.
- *The Justice Project: International Tribunals and Procedures to End Impunity for Genocide, War Crimes, and Crimes against Humanity*, an online book by staff at World Without Genocide.
- Articles from law journals and public media.
- Many students are interested in the history of the Holocaust. I recommend the book *Why? Explaining the Holocaust*, by Peter Hayes, W.W. Norton and Company, 2017. It is not required

but it is a very readable and well-researched book. Professor Hayes teaches at Northwestern University and chairs the Academic Committee of the U.S. Holocaust Memorial Museum.

Course format

Classes will begin with brief discussions of current events related to our topics. You are encouraged to read the *New York Times*, BBC, CNN, *The Economist*, and other news media on a regular basis.

The course includes lectures, discussions, films, in-class activities, and visits from guest speakers including survivors of genocide, legal experts, and human rights advocates. You may invite guests to attend a particular class or speakers' presentations; please check with me at least a week in advance so that I can arrange for guests' online access. Filming and recording of the course are not permitted.

Grading and Evaluation

Evaluation is based on 1) class participation, 2) two short response papers: a case study and a debate, 3) a research paper with a preliminary topic statement, a rough draft, and a final submission, 4) two short written responses to weekly discussion questions, and 5) an open-book final exam.

1) Class participation: You will be evaluated on the *quality and quantity* of your comments in class discussions and your ability to discuss the issues from a critical and thoughtful perspective.

Each week, I'll send out discussion questions or exercises to guide your reading and your approach to the issues. Please note that **discussion is an important part of your grade**. Participation encourages your thoughtful reading, your active engagement in class, and your articulate responses. Although this is a remote class, your presence with camera and microphone turned on is expected and we will try to simulate an in-person class as much as possible. Please contact me if this is a problem.

I also ask that you **schedule an appointment with me during the first three weeks of the course**. This is for an informal conversation about your interest in the course, careers in human rights, etc. You don't have to prepare anything; this is in lieu of casual in-person interactions that typically occur before or after class, in the hallways, etc. I truly enjoy getting to know my students and I look forward to chatting with each of you.

2) Case study response paper: You'll choose **1** of the **8** case studies and submit a written response, not to exceed 800 words (about two pages in 11-point font, single-spaced), to the questions on the case. You'll sign up for the topic you prefer. You will be evaluated on the clarity and comprehensiveness of your answers and on the accuracy and professionalism of your writing.

The written response is due by 9:00 am on the morning of the class to which the case study is assigned.

3) Debate response paper: You'll choose **1** of the **2** debates and submit a written response, not to exceed 400 words (about one page in 11-point font, single-spaced), to the questions on the debate. You'll sign up for the topic you prefer. Again, you will be evaluated on the clarity and comprehensiveness of your answers and on the quality of your writing.

The written response is due by 9:00 am on the morning of the class that the debate is assigned.

4) Written responses to discussion questions: Every Friday I'll send out discussion questions for the following week that are based on the assigned readings for that week. You (or you and a classmate) will sign up for two topics/classes you prefer, and you'll submit short written responses (about 400 words)

to the questions, due by 9:00 am the morning of the class. We encourage you to work with a partner on **either or both** of these discussion question assignments

Final exam questions will be taken from these questions.

4) Research paper: see details at the end of the syllabus.

5) Final exam: The open-book, open-notes exam will be comprehensive, covering the semester's material including class exercises and remarks by guest speakers.

The Topic

The subject of genocide is deeply disturbing. We will talk about the challenges of studying genocide, of hearing and reading words of victim-survivors, prosecutors, and perpetrators, and of confronting images and documents of great horror. People often speak of the importance of 'self-care' when studying or working in this field. I maintain that we must have 'mutual-care,' meaning connections and conversations with others, to maintain personal and psychological well-being.

Please speak to me if you experience problems studying this topic or to request alternative assignments.

Workload

The average time that students are expected to spend in preparation is two hours outside of class for every hour in class. This doesn't account for different reading speeds, study styles, etc. The reading amount varies over the semester, with some weeks' assignments lighter than others.

Course Evaluation Points

Participation in class discussion	100
One 400-word response paper to a debate	50
One 800-word response paper to a case study	100
Two discussion question responses, 50 points each	100
Paper proposal	50
Paper rough draft	75
Research paper	200
Open-book final exam, based on discussion questions	200

Total: 875 points

Grading: 90-100% = A; 80-89% = B; etc. Points on the margins will receive pluses and minuses.

Course Outline

Date Assignment

T, Aug. 16 #1 **Introduction**
Vicarious Traumatization
Read *Dreaming Other People's Nightmares*,
Referral: *Counseling Services* 651-290-8656
Why study genocide?

Lecture: Law and the Study of Genocide

Read Samantha Power, "Why Can't We?" *The Nation*, May 23, 2006

<https://www.thenation.com/article/archive/why-cant-we/>

Read *The Justice Project* (1), 6-8, Universal Declaration of Human Rights (3

pages), online at [http://worldwithoutgenocide.org/wp-](http://worldwithoutgenocide.org/wp-content/uploads/2020/08/Justice-Project-Booklet.pdf)

[content/uploads/2020/08/Justice-Project-Booklet.pdf](http://worldwithoutgenocide.org/wp-content/uploads/2020/08/Justice-Project-Booklet.pdf).

In class video: <https://mn.gov/mnddc/extra/un70th/> UDHR, Eleanor Roosevelt

In class video: <https://www.facinghistory.org/resource-library/video/benjamin-ferencz-watcher-sky> Ben Ferencz

Th, Aug. 18 #2

Genocide: Lemkin - the Term and the Convention

Read Bazylar, Chapt. 2, Naming the Crime: Genocide

Read "Congress seeks to declare Putin's war genocide," *Foreign Policy*,

<https://foreignpolicy.com/2022/06/24/congress-declare-ukraine-russia-war-genocide/>

Lecture: The Convention

In-class Case Study, *The Genocide Convention*

T, Aug. 23 #3

Genocide – The Herero and the Nama

Lecture: The Continuity Hypothesis

Read "Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claims Act, Genocide Case of the Herero of Namibia," Sarkin and Westerman, *Human Rights Review*, Hofstra University School of Law, Legal Studies Research Paper Series, Research Paper No. 08-14, September 2008, 9: 331-360.

<https://www.researchgate.net/publication/225614153>

In-class Case Study: What does Germany owe the Herero and the Nama?

Th, Aug. 25 #4

Genocide of the Armenians

Read "The Armenian Genocide: Review of Its Historical, Political, and Legal Aspects," Vahakn N. Dadrian, *University of St. Thomas Journal of Law and Public Policy*, Vol. 5:1, Fall 2010, Article 5.

<https://ir.stthomas.edu/cgi/viewcontent.cgi?article=1057&context=ustjlpp>

T, Aug. 30 #5

Genocide: The Holocaust

Read Bazylar Ch. 1, The Holocaust: A Legal History

Read Bazylar Ch. 3, Prosecution of Nazi War Criminals at Nuremberg

Lecture, Nuremberg: The Justice Trial and the Nazi Doctors' Trial

In class - Case Study: The Nuremberg Trials: Was the IMT an example of victors' justice?

Th, Sept. 1 #6

Genocide: Prosecuting the Holocaust

Read Bazylar Ch. 4, National Prosecutions of Nazi War Criminals

(Note: Bergen-Belsen is the concentration camp where Anne Frank perished.)

Read *Law Reports: The Belsen Trial* –pages IX-4, 7 -12, 110-112, 117-118, 121-122, 134, 148-149, 153-154.

https://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-2.pdf

Watch video in class, Belsen at liberation

https://www.youtube.com/watch?v=Qu3_Oytc5Qk 2:39

<https://www.youtube.com/watch?v=6QaNCbig82Q> (Dirk Bogarde) 3:36

Read “The Belsen trial: The Trial Before Nuremberg,” Bernice Lerner, *Jewish News Syndicate*, September 2, 2020. (short newspaper article)

https://www.jns.org/opinion/the-trial-before-nuremberg/?FBCLID=IWAR18JNLCH4GVWC2PJ2BOWM_DCUPDKS_1L6TRHRXY86C4SBSLP9RFN1-U

T, Sept. 6 #7

Genocide: Cambodia

Read “Bringing the Khmer Rouge to Justice: The Challenges and Risks Facing the Joint Tribunal in Cambodia,” Katheryn M. Klein, *Northwestern Journal of International Human Rights*, 2006, 4:3.

<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1044&context=njihr>

In class: Film excerpts, trials at the Extraordinary Chambers of the Courts of Cambodia

Speaker: survivor of Cambodian genocide and democracy advocate.

Th, Sept. 8 #8

International Criminal Justice

Read Bazylar, Ch. 8 – Nuremberg’s Legacy: ICTY, ICTR, ICC and

Read Bazylar, Ch. 9 – Prosecuting Genocide

Read “The International Criminal Court is Legitimate Enough to Deserve Support,” Margaret M. deGuzman and Timothy Lockwood Kelly, 397-404, *Temple International and Comparative Law Journal*, 33:2, 2019.

https://sites.temple.edu/ticlj/files/2019/09/33.2_deGuzmanKelley_Article9.pdf

Read *The Justice Project* (5), 33-39, International Criminal Court (7 pgs.)

Read *The Justice Project* (6), 40-45, United Nations Tribunals for Genocide, War Crimes, and Crimes Against Humanity (6 pgs.).

T, Sept. 13 #9

Genocide: Rwanda

Read “Rwanda: Justice after genocide, 20 years on,” *Human Rights Watch*

<https://www.hrw.org/news/2014/03/28/rwanda-justice-after-genocide-20-years#>

Read “Genocide and the Legal Process in Rwanda: From Genocide Amnesty to the Rule of Law,” Augustine Brannigan and Nicholas A. Jones, *International Criminal Justice Review* 2009 19: 192.

<http://icj.sagepub.com/content/19/2/192>

Th, Sept. 15 #10

Genocide: Rwanda

Read “‘I Wanted Them to Be Punished or at Least Ask Us for Forgiveness:’ Justice Interests of Female Victim-Survivors of Conflict-Related Sexual Violence and Their Experiences with Gacaca,” Judith Rafferty, *Genocide Studies and Prevention*, 12:3, 2018.

<https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=1556&context=gs>

Read “From Hate Speech to Incitement to Genocide: The Role of the Media in the Rwandan Genocide,” Hefti and Jonas, *Boston University International Law*

Journal, 38: 1, 2020.

https://www.bu.edu/ilj/files/2020/08/Article_HeftiJonas.pdf

Speaker: Former International Judge for the United Nations.

T, Sept. 20 #11

Genocide: Bosnia

Read Susana SáCouto, "Reflections on the Judgment of the International Court of Justice in Bosnia's Genocide Case against Serbia and Montenegro." *Human Rights Brief* 15, no.1 (2007): 2-6.

<https://digitalcommons.wcl.american.edu/hrbrief/vol15/iss1/1/>

Read "Dealing with Witnesses in War Crime Trials," Patricia Wald, *Yale Human Rights and Development Law Journal*. 5:1, article 8, 2002.

<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1032&context=yhrdlj>

Speaker: Bosnian war survivor.

Th. Sept. 22 #12

Genocide: Bosnia

Watch film, *Women, War, and Peace: – I Came to Testify* (53 minutes)

<https://www.youtube.com/watch?v=ayMCtiVzG2s>

Caution: the content in this film is very disturbing. Please see me if you would like to know more before viewing it.

Read "The Foča 'Rape Camps': A dark page read through the ICTY's jurisprudence," Matteo Fiori, *Hague Justice Journal*, Volume 2, 2007.

[http://www.haguejusticeportal.net/Docs/HJJ-JJH/Vol_2\(3\)/The%20Foca_Fiori_EN.pdf](http://www.haguejusticeportal.net/Docs/HJJ-JJH/Vol_2(3)/The%20Foca_Fiori_EN.pdf)

In class- Case study: What protections should be given to witnesses?

T, Sept. 27 #13

Genocide: Darfur

Read "Why the Killing in Darfur is Genocide," Jennifer Trahan, *Fordham International Law Journal*, 31:4, 2007.

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2107&context=ilj>

Speaker: Minnesotan State Senator.

Th, Sept. 29 #14

Human Rights vs. State Sovereignty

Read "Globalization and the Future of the Law of the Sovereign State," Eric Ip, 2010, Oxford University Press and New York University School of Law.

Debate, State Sovereignty vs. Human Rights

T, Oct. 4 #15

Genocide and Politicide – Argentina

Lecture, Causes of Politicide

Read "New Dirty War Judgments in Argentina: National Courts and Domestic Prosecutions of International Human Rights Violations," Margarita K. O'Donnell *New York Law Review*, 2018, 84:1.

<https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-84-1-ODonnell.pdf>

Th, Oct. 6 #16

Ecocide

Read "International Criminal Law and Climate Change," Patrick Keenan, *Boston University International Law Journal*, Vol 37:89, 89-123, 2019.

<https://www.bu.edu/ilj/files/2020/04/Keenan.pdf>

Read “Climate Refugees Refused UN Protection & Denied Rights Under International Law,” Miles Young, *Inter Press Service News Agency*, July 2, 2021.
<http://www.ipsnews.net/2019/12/climate-refugees-refused-un-protection-denied-rights-international-law/>

Read “The Creation of a Climate Change Court or Tribunal,” Scott, Keenan, and Ku, Chapter 4, 66-84, in *Climate Change and the UN Security Council*, Scott and Ku, 2018.

In class - Case Study: Defining Ecocide

T, Oct. 11 #17

Crimes against Humanity: Congo

Read “Conflict Free in the DRC,” Sabrina Reyes, *Santa Clara Journal of International Law*, 2-6-2019, 17:1, Article 3.

<https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1228&context=scujil>

Read “Prosecuting International Crimes in Congo,” Inman and Magadju, *African Human Rights Journal*, 2018, 293-318.

https://www.researchgate.net/publication/327113928_Prosecuting_international_crimes_in_the_Democratic_Republic_of_the_Congo_Using_victim_participation_as_a_tool_to_enhance_the_rule_of_law_and_to_tackle_impunity

In class - Case study: Conflict Minerals in Congo: Legislative Hearings

Speaker: Attorney for international human rights cases

Th, Oct. 13 #18

Genocide and Politicide: The Holodomor in Ukraine

Read “Legal Accountability for the Holodomor-Genocide of 1932–1933 (Great Famine) in Ukraine,” Myroslava Antonovych, *Kyiv-Mohyla Law and Politics Journal* 1 (2015): 159–176.

<file:///C:/Users/kenne/Downloads/52663-Article%20Text-106401-1-10-20151103.pdf>

Read “The War on History is a War on Democracy,” Timothy Snyder, *New York Times*, June 29, 2021.

<https://www.nytimes.com/2021/06/29/magazine/memory-laws.html>

Read *The Justice Project* (7), 46-53, Law and Protection during Conflict: Introduction to International Humanitarian Law (IHL), (7 pgs.).

Speaker: International Humanitarian Law Expert for the American Red Cross.

Fri, Oct. 14, 5:00 pm Paper Topic Proposal due
No class October 18 and October 20– Fall Break

T, Oct. 25 #19

Genocides Today: Ukraine

Read ICMP Ukraine, <https://www.icmp.int/where-we-work/europe/ukraine/> (short section describing current ICMP work in Ukraine)

Read “Law of War, Russia and Ukraine,” *Congressional Research Service*, <https://crsreports.congress.gov/product/pdf/LSB/LSB10710>

Read “Russia’s War in Ukraine: Identity, History, and Conflict,” Jeffrey Mankoff, *Center for Strategic and International Studies*, March 2022

https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/220422_Mankoff_RussiaWar_Ukraine.pdf?tGhbfT.eyo9DdEsYZPaTWbTZUtGz9o2

Speaker: International Commission on Missing Persons staff.

Th, Oct. 27 #20

Genocides Today: Nagorno-Karabakh/Artsakh: The Armenian Genocide legacy

Watch video in class, <https://www.youtube.com/watch?v=YU2v38hRRbg> 9 min.

Read “Illegal: The Recourse to Force to Recover Occupied Territory and the Second Nagorno-Karabakh War,” Tom Ruys, Felipe Rodríguez Silvestre *European Journal of International Law*, 32:4, November 2021, 1287–1297, <https://doi.org/10.1093/ejil/chab108>

In class: Case study, Refugees and Statelessness

T, Nov. 1 #21

Genocide Today: Ethiopia

Read “Ethiopia’s Tigray Conflict,” *Lawfare*, 3-31-2021. (6 pgs.)

Read “Ethiopia accused of human rights violations,” *The Guardian*, 2-8-2022. (2 pgs.).

Read *The Justice Project* (9), 61-67, Regional Human Rights Systems and Courts (7 pgs.).

Speaker: Member, FBI International Human Rights Unit

Th, Nov. 3 #22

Genocide Today: Tibet, Xinjiang, Myanmar

Read “The Persecution of the Uyghurs and Potential International Crimes in China,” *Mills Legal Clinic, Stanford Law School*, 2020, pages 50-64 (14 pgs).

<https://www.justsecurity.org/wp-content/uploads/2020/08/Xinjiang-Report-Version-5.0-Aug.-2020.pdf>

Read *The Justice Project* (11), 72-75, The UN Independent Investigative Mechanism for Myanmar (4 pgs.).

Read *The Justice Project* (12), 76-79, The Uyghur Tribunal (4 pgs).

T, Nov. 8 #23

Genocide and Culpability/Kristallnacht/Challenges in Humanitarian Relief

Read “Complicity and Lesser Evils: A Tale of Two Lawyers,” David Luban, *Georgetown Journal of Legal Ethics*, 2021.

Speaker: Executive Director, Humanitarian Aid agency

Th, Nov. 10 #24

Civil Litigation for Financial Crimes

Read Bazylar, Ch. 5, Civil Litigation for the Financial Crimes of the Holocaust

Read Bazylar, Amicus brief.

Speaker: Prominent Holocaust scholar.

T, Nov. 15 #25

Genocide and Denial

Read Bazylar, Ch. 6, Holocaust Denial and the Law

Read “Irving v. Penguin: Historians on Trial and the Determination of Truth Under English Libel Law,” Dennise Mulvihill, *Fordham Intellectual Property, Media & Entertainment Law Journal* 218 (2001), 18-42.

<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1211&context=iplj>

In class: Debate- The Criminalization of Denial (Holocaust, Rwanda, Armenians)

Th, Nov. 17 #26

Genocide Prevention and Intervention: R2P and R2I

Lecture, EU, NATO, UN, AU, NGOs

Read Executive Summary, *Genocide Prevention Task Force Report*, 2008:

<http://www.usip.org/sites/default/files/file/Report%20Exec%20Summ.pdf>

Read “Positive Peace Report 2022: Analyzing the Factors that Build, Predict, and Sustain Peace,” *Institute for Economics and Peace*.

<https://www.economicsandpeace.org/wp-content/uploads/2022/01/PPR-2022-web.pdf>; Executive Summary and Key Findings, through p.17 on the numbered report.

Read “US Strategy to Prevent, Anticipate, and Respond to Atrocities, 2022,” 4 pages.

M, Nov. 21

Rough draft of papers due

F. Dec. 16

Fina Papers Due

Fall 2022 Papers

Mass atrocities are occurring around the globe. This course gives you a structure for examining causes of genocides and mass conflicts; paths to ‘negative peace,’ which is the cessation of violence; steps in transitional justice; and a framework for long-term and meaningful ‘positive peace.’

Select one of the conflicts given below and prepare a paper that addresses the following:

- Causes of the violence; means by which it occurs, including laws allowing or supporting it; the definition you would use for the crime(s) being perpetrated; and your justification for the definition (genocide, crimes against humanity, war crimes, aggression, or ecocide).
- Support/resistance by the local population and by civil society within the country or the region where the conflict occurs.
- International efforts to intervene militarily, diplomatically, economically, with humanitarian aid, etc. and the effectiveness or failures of those efforts.
- Possible steps for ‘negative peace’ brought about by whom, under which conditions, with which likely outcomes, challenges, and threats.
- Recommendations for transitional justice – retributive justice, restorative justice, vetting, memorialization, lustration, etc., to be implemented by whom, under what conditions, etc.
- Conclusion regarding progress towards positive peace.

The conflicts and issues to choose from include the following:

- Persecution of the **Rohingya** in Myanmar and Bangladesh
- Persecution of **Uyghurs** in western China
- Persecution of **Tibetan Buddhists** in southwestern China
- Persecution of **Hmong** in central Laos
- Persecution of **Muslims** in India
- Persecution of **Hazaras** in Afghanistan
- Current prosecutions of perpetrators of crimes during the junta in **Argentina**
- Conflict in **Yemen**
- Conflict in the **Darfur** region of Sudan
- Civil war in **Syria**
- Climate change and femicide in **Guatemala**
- Conflict in **Nigeria**

- Persecution of the **Roma** in Europe
- Conflict in the **Central African Republic**
- War in **South Sudan**
- Conflict in **Artsakh** (also known as Nagorno-Karabakh)
- Conflict in **Ethiopia**
- Redress for residential boarding school abuses in **Canada**
- Redress for residential boarding school abuses in the **US**
- Reparations for slavery in the **US**
- Cases against **Myanmar** in Argentine national courts and at the International Court of Justice
- Prosecution of ISIS members in U.S. courts for the genocide of the **Yazidis**
- Prosecution of former **Syrian** officials in German courts for crimes against humanity
- War crimes and other mass atrocities perpetrated by **Russia in Ukraine**

Please talk with me if you have another topic you wish to pursue or if your topic would be best addressed with a different outline.

You'll sign up for ONE of the above topics.

You may work with a classmate if you wish (note: if you choose to work with a classmate, all products related to the assignment – proposal, rough draft, and final submission – must be produced collaboratively.)

Details for preparing your paper:

Length: 4,000-5,000 words.

Format: Please use Calibri 12-point font, 1.5 spacing, indented paragraphs, centered headings, and underlined sub-headings at the beginning of a paragraph as appropriate. Include complete **footnotes, not end-notes, numbered with Arabic, not Roman, numerals. Page numbers should appear in the upper-right-hand corner.** Do not use a cover sheet; put your name and paper title on the first page.

Submission: All papers should be uploaded as Word documents.

Sources: You may use legal articles, academic papers, media accounts, and archival sites such as that of the United States Holocaust Memorial Museum. **You must give complete citations for all sources.**

Due date: Friday, Dec. 16, 5:00 pm CT. Outstanding papers will be considered for publication on the World website.

You will first submit a **paper topic proposal** that specifies your topic and the areas you expect to address. It should be **about 300 words and is due Friday, Oct. 14.**

You'll submit a **rough draft no later than Nov. 21.** It will be evaluated for substantive thoroughness, critical analysis, and quality of the writing, with suggestions for the final draft.

II. Case Studies

1. Case Study: The Convention on the Prevention and Punishment of the Crime of Genocide

Overview

This case study invites students to read the Genocide Convention critically and to examine its limitations and challenges in advancing both the 'prevention' and the 'punishment' of genocide. The students prepare their responses to the questions below. The U.S. Reservations, Understandings, and Declarations (RUDs) and the Convention text begin on page 16.

Questions for Discussion

Part 1. Opening statement and Articles 1-3

1. What is ambiguous and problematic in the opening statement, "The Contracting Parties," etc.?
2. **Article 1:** Why is the crime specified as occurring under international law? Why is the occurrence of genocide in both peace and time of war important?
3. **Article 2:**
 - Who is included in the definition of targeted groups? Who is **not** included who should have been included? Why do you think these omissions happened? What is the implication of these omissions?
 - How are the groups to be identified: as a self-defined collectivity or as an externally-identifiable entity? Under what conditions would it matter?
 - How do we measure intent, the ***mens rea*** of this crime?
 - Can genocide be perpetrated if there are no deaths? That is, what is the ***actus rea***?
 - How is 'mental harm' evaluated?
 - What is problematic about 'in whole or in part'?
 - Some scholars maintain that genocide must include state action. What is the counter-argument? Which position should prevail?
4. **Article 3** enumerates crimes that fall short of genocide but that are punishable under the Convention: conspiracy to commit genocide, inciting others to commit genocide, attempted genocide, and complicity in genocide.
 - Why do you think no one has ever been found guilty of conspiracy to commit genocide but innocent of genocide? Why do you think this crime of conspiracy is included in the Convention?
 - What are some of the problematic aspects of defining the crime of incitement?
 - Why has the crime of attempted genocide never been prosecuted?
5. What is 'cultural genocide'? Should it be included in the Convention? Why do you think it was intentionally omitted?

Part 2: Articles 4-6

1. **Article 4:** Why are rulers and officials specifically mentioned as not immune from punishment? What are implications of being unable to escape responsibility? If subordinates refuse to follow orders that would make them culpable of genocide, what happens to military control?
2. **Article 5:** What is the process by which this Convention will go into effect in the United States?
3. **Article 6:** What is problematic about the proposed location of the tribunals?

Part 3: Articles 7-9

1. **Article 7:**
 - Why is genocide not to be considered a political crime?
 - What is the relationship between a political crime and extradition?
 - There is significant variation across states' laws regarding extradition. How can this become a problem in prosecuting genocide?
2. **Article 8:**
 - What does a country do once its leaders have declared a situation to be genocide?
 - The US declared the crisis in Darfur to be genocide. What action did the US take?
3. **Article 9:**
 - What situations will be referred to the International Court of Justice?
 - What are potential problems or issues that might arise with referrals to the ICJ?

Part 4: Reservations, Understandings, and Declarations

In the United States, treaties are negotiated and signed by the President or designee from the Executive Branch of government. To **ratify** a treaty, the Senate must first be consulted for its **advice and consent**, and the Senate must vote to approve the treaty by a two-thirds majority (67 affirmative votes) before sending it to the President for his or her signature and to complete the ratification process.

During this process, the Senate may make a **reservation** to certain treaty provisions, provide a clarification (known as an **understanding**) or a **declaration** regarding the effect of the treaty. These are known as **RUDs**. RUDs change the scope of the treaty provisions only as to the country making the RUD. The US ratified the Genocide Convention with RUDs that appear below.

1. What is the impact of these RUDs on the overall intent of the Convention?
2. Why do you think the Senate generated these RUDs?
3. The Convention was not officially ratified until 1988, 40 years after its passage at the UN and long after most nations had ratified it. Why did it take so long?

**US RUDs, Convention on the Prevention and the Punishment of the Crime of Genocide
Congressional Record S1355-01, Daily Edition, Feb. 19, 1986**

I The Senate's advice and consent is subject to the following reservations:

(1) That with reference to Article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.

(2) That nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

II. The Senate's advice and consent is subject to the following understandings, which shall apply to the obligations of the United States under this Convention:

(1) That the term "intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such" appearing in Article II means the specific intent to destroy, in whole or in substantial part, a national ethnical, racial or religious group as such by the facts specified in Article II.

(2) That the term "mental harm" in Article II(b) means permanent impairment of mental faculties through drugs, torture or similar techniques.

(3) That the pledge to grant extradition in accordance with a state's laws and treaties in force found in Article VII extends only to acts which are criminal under the laws of both the requesting and the requested state and nothing in Article VI affects the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside a state.

(4) That acts in the course of armed conflicts committed without the specific intent required by Article II are not sufficient to constitute genocide as defined by this Convention.

(5) That with regard to the reference to an international penal tribunal in Article VI of the Convention, the United States declares that it reserves the right to effect its participation in any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the Senate.

III. The Senate's advice and consent is subject to the following declaration:

That the President will not deposit the instrument of ratification until after the implementing legislation referred to in Article V has been enacted.

The Convention on the Prevention and the Punishment of the Crime of Genocide

The Contracting Parties,

- Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,
- Recognizing that at all periods of history genocide has inflicted great losses on humanity, and
- Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,
- Hereby agree as hereinafter provided:

Article 1. The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article 2. 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 children of the group to another group.

Article 3. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 4. Persons committing genocide or any of the other acts enumerated in **Article 3** shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article 5. The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in **Article 3**.

Article 6. Persons charged with genocide or any of the other acts enumerated in **Article 3** shall be tried 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 with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article 7. Genocide and the other acts enumerated in **Article 3** shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article 8. Any Contracting Party may call upon the 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 or any of the other acts enumerated in **Article 3**.

Article 9. Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in **Article 3**, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article 10. The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article 11. The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly. The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations. After 1 January 1950,

the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 12. Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article 13. On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article 11. The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession. Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article 14. The present Convention shall remain in effect for a period of ten years as from the date of its coming into force. It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period. Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article 15. If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article 16. A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General. The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article 17. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following: (a) Signatures, ratifications and accessions received in accordance with article 11; (b) Notifications received in accordance with article 12; (c) The date upon which the present Convention comes into force in accordance with article 13; (d) Denunciations received in accordance with article 14; (e) The abrogation of the Convention in accordance with article 15; (f) Notifications received in accordance with article 16.

Article 18. The original of the present Convention shall be deposited in the archives of the United Nations. A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article 11.

Article 19. The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

2. Case Study: What, If Anything, Does Germany Owe the Herero and the Nama?

Overview

The German colonial government committed genocide against the Herero and Nama tribes in Namibia from 1904 to 1908. German troops slaughtered 80% of the Herero and 50% of the Nama tribes.¹ This case study will look more broadly at the issue of reparations and the ‘gesture of recognition’ between the German and Namibian governments in 2021.

Context. Today, the government of Namibia is led by SWAPO, the South-West African People’s Organization. This party is controlled by Namibia’s majority Ovambo tribe.² The Herero and Nama represent small ethnic minorities and have little representation or influence in the government.

During the genocide, Herero and Nama were driven off their land and they have not been able to reclaim the stolen territories. Many now live on barren land without paved roads, running water, or access to decent health care and education. They are significantly poorer than the Ovambo or than the white Namibians.³

What are Reparations? Reparations programs include all the actions that a state takes to repair the harm caused in response to their gross and systemic human rights violations. The assumption is that states that grievously abused people’s rights have a moral, political, and legal duty to offer reparation to the victims and their communities.⁴

According to the UN Office of the High Commissioner on Human Rights, reparations programs should include both material and symbolic measures. *Material reparations* refer to direct services, payments, medical care, the restoration of rights, and other tangible benefits. These are important for repairing physical and quantifiable harms. *Symbolic reparations* include memorials, apologies, education, proper burials, and more, measures that address more invisible and emotional harms. While symbolic measures may seem hollow without accompanying material reparations, symbolic measures are often essential to restore trust between victims and the institutions meant to protect them. Victims must feel that perpetrators have been brought to justice, they have accepted responsibility, and they will not repeat their crimes.⁵

Each reparations program is different. According to the International Center for Transitional Justice, “For reparations to have meaning, they must recognize victims’ agency and respond to their specific needs.” Those designing the programs should meet with and listen to the unique stories of victims.⁶

¹ “Germany Acknowledges Genocide in Namibia but Stops Short of Reparations”

<https://www.smithsonianmag.com/smart-news/germany-acknowledges-genocide-namibia-stops-short-reparations-180977886/>; “Herero and Nama Genocide.”

<https://www.ushmm.org/collections/bibliography/herero-and-nama-genocide>.

² “Germany Grapples With Its African Genocide.” <https://www.nytimes.com/2016/12/29/world/africa/germany-genocide-namibia-holocaust.html>

³ Ibid.

⁴ “Rule-of-Law Tools for Post-Conflict States: Reparations Programmes.”

<https://www.ohchr.org/Documents/Publications/reparationsProgrammes.pdf>

⁵ Ibid.

⁶ “In Côte d’Ivoire, Consultations Aim to Ensure Victims Have a Say on Reparations Policy.”

<https://www.ictj.org/news/cote-divoire-consultations-reparations>

The Moral Question. There is consensus among scholars that Germany perpetrated genocide against the Herero and Nama peoples.⁷ However, not all genocides have been followed by reparations.

Under what circumstances is there a moral imperative to pay reparations in the wake of atrocities?

One potential threshold is whether the atrocities have caused continuing harm to victims, or if the perpetrators continue to benefit from their crimes.⁸ Today, the Herero and Nama remain disenfranchised and marginalized in Namibia.⁹ White Namibians of German descent are disproportionately wealthy and live on lands seized during the genocide.¹⁰

However, the Namibian genocide occurred over a century ago, and no direct perpetrators remain alive. It is contested whether descendants of perpetrators are accountable for crimes of their ancestors.¹¹

The Legal Question. The moral question helps to determine whether Germany should voluntarily pay reparations. Regardless of the moral imperative, however, is a legal question as to whether courts can require Germany to pay.

Notably, the crime of 'genocide' was not established until 1948. To judge Germany's actions by today's definition of the crime might be considered retroactive prosecution and would not be permissible.¹²

Nonetheless, scholars have argued that international law in 1904 prohibited Germany from annihilating indigenous African tribes. The claim is based on customary international law and on treaties that Germany had signed,¹³ the legal framework addressed in the article for class.

The Herero and Nama have yet to plead their case before a judge. The Herero brought lawsuits against the German government and German companies on several occasions, but the cases were dismissed on the grounds that relevant international laws were not in existence at the time of the genocide.¹⁴

⁷ Anderson, Rachel J. "Redressing Colonial Genocide: The Hereros' Cause of Action Against Germany." *California Law Review*, 2005; Sarkin, Jeremy. "Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claims Act Genocide Case of the Herero of Namibia." *Human Rights Review*, 2008; Bargeño, David. "Cash for Genocide? The Politics of Memory in the Herero Case for Reparations." *Holocaust and Genocide Studies*, 2012.

⁸ "Why reparations are always about more than money." <https://theconversation.com/why-reparations-are-always-about-more-than-money-162807>

⁹ "Germany Grapples With Its African Genocide" <https://www.nytimes.com/2016/12/29/world/africa/germany-genocide-namibia-holocaust.html>

¹⁰ Bargeño, David. "Cash for Genocide? The Politics of Memory in the Herero Case for Reparations." *Holocaust and Genocide Studies*, 2012.

¹¹ Ibid.

¹² Bargeño, David. "Cash for Genocide? The Politics of Memory in the Herero Case for Reparations." *Holocaust and Genocide Studies*, 2012.

¹³ Anderson, Rachel J. "Redressing Colonial Genocide: The Hereros' Cause of Action Against Germany." *California Law Review*, 2005; Sarkin, Jeremy. "Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claims Act Genocide Case of the Herero of Namibia." *Human Rights Review*, 2008.

¹⁴ "Lawsuit against Germany over Namibian genocide is dismissed in New York." <https://www.reuters.com/article/us-namibia-genocide-germany-idUSKCN1QN2SQ>; "German cos. lawsuit (by Hereros)." <https://www.business-humanrights.org/en/latest-news/german-cos-lawsuit-by-hereros/>; "German

Reparations in the 21st century. While legal avenues have yet to yield results for Herero and Nama advocates, the German government issued its first apology for atrocities in 2004.¹⁵ In May 2021, Germany officially recognized the events as genocide and announced future payment of \$1.35 billion to Namibia. German Foreign Minister Heiko Maas said it was a ‘gesture of recognition’ to provide infrastructure and development for the Namibian descendants of victims. The German government did not label the sum as reparations to avoid opening the door for claims of compensation.¹⁶

The payment is highly controversial. Some see it as positive progress to repair the genocide’s harm. Others are outraged that negotiations took place without input from Herero and Nama themselves. The Namibian government, led by Ovambo people, negotiated on behalf of victims without their consent. Additionally, it is unlikely that the Herero and the Nama will see many benefits from the \$1.35 billion, given their political and social marginalization. They rarely reap the benefits of development projects.¹⁷

The Namibian government has defended the proposal, saying that all Namibians suffered consequences of the war between indigenous peoples and Germany. SWAPO officials claim that all Namibians would be helped through infrastructure projects, as opposed to the awarding of individual reparations.¹⁸

What do the Herero and the Nama want? There is no single demand from the Herero and Nama tribes regarding reparations. Several Herero chiefs and advocates have called for land restitution, in which Germany would buy back stolen land and restore it to the tribes.¹⁹ Others demand payments made directly to Herero and Nama communities to improve the standard of living for direct descendants of genocide victims, as opposed to development aid for Namibia’s majority population.²⁰

Still, such material reparations may feel insufficient without accompanying symbolic measures.²¹ Germany could issue individual apologies and help to restore former concentration camps as memorials to the genocide. During the genocide, the remains of Herero and Nama victims were sold for research around the world; Germany could support efforts to repatriate the remains to their tribes and to give them proper burials.²²

minister says sorry for genocide in Namibia.”

<https://www.theguardian.com/world/2004/aug/16/germany.andrewmeldrum>

¹⁵ Zimmerer, Jürgen. “Colonial Genocide: The Herero and Nama War (1904–8) in German South West Africa and Its Significance,” in *The Historiography of Genocide* (pp 323-343). Palgrave Macmillan, 2008.

¹⁶ “Germany acknowledges colonial-era genocide in Namibia.” https://www.youtube.com/watch?v=4CRlh-wC_D8; “Germany recognizes Herero and Nama genocide.” <https://www.politico.eu/article/germany-recognizes-colonial-herero-nama-genocide/>;

¹⁷ “Germany Acknowledges Genocide in Namibia but Stops Short of Reparations.”

<https://www.smithsonianmag.com/smart-news/germany-acknowledges-genocide-namibia-stops-short-reparations-180977886/>; “Germany Grapples With Its African Genocide”

<https://www.nytimes.com/2016/12/29/world/africa/germany-genocide-namibia-holocaust.html>

¹⁸ Bargeño, David. “Cash for Genocide? The Politics of Memory in the Herero Case for Reparations.” *Holocaust and Genocide Studies*, 2012.

¹⁹ Ibid.

²⁰ “‘Betrayal’: Namibian opposition MPs slam Germany genocide deal.”

<https://www.aljazeera.com/news/2021/6/8/betrayal-namibian-opposition-lawmakers-slam-germany-genocide-deal>

²¹ “Why reparations are always about more than money.” <https://theconversation.com/why-reparations-are-always-about-more-than-money-162807>

²² “Germany Apologized for a Genocide. It’s Nowhere Near Enough.”

<https://www.nytimes.com/2021/07/08/opinion/germany-genocide-herero-nama.html>

More than anything, the descendants of Herero and Nama victims want to be consulted. They will perceive any program as meaningless if it does not address the unique harms their ancestors suffered.²³

Questions for Discussion

1. After World War II and the Cold War, a new international morality seemed to emerge. Racial hierarchies, systematic discrimination, genocide— these all became commonly accepted taboos. While these were clear moral wrongs before that period, these moral issues had not been clarified in law and public discourse until that point, such as in creation of the United Nations and in the passage of the Universal Declaration of Human Rights.

Are there limitations to assessing historic abuses based on today's international morality?

2. The Namibian Genocide occurred over a century ago. There are no direct perpetrators alive today. However, German descendants in Namibia continue to enjoy disproportionate wealth, and the descendants of Herero and Nama victims face disproportionate poverty and disenfranchisement.

Are the descendants of perpetrators morally responsible for the actions of their ancestors? Should Germany as a country be held to account? Why or why not?

3. Consider the arguments made in “Redressing Colonial Genocide: The Hereros' Cause of Action Against Germany” and “Reparations for Historical Human Rights Violations: The International and Historical Dimensions of the Alien Torts Claims Act, Genocide Case of the Herero of Namibia.”

Do the Herero and Nama have a legal basis for demanding reparations from Germany today?

4. *At what point are reparations sufficient to atone for genocide? Can Germany reach a point at which the harm has been fully repaired?*

5. Similar atrocities to those perpetrated by Germany occurred over the course of British, French, and Belgian colonization. If Germany agreed to roll out a formal reparations program, indigenous groups in the US, Rwanda, Canada, Australia, Haiti, and elsewhere might call for their own reparations.

What should be the threshold for reparations in the wake of systematic human rights abuses? Should it be a moral or a legal threshold?

Prepared by Amalie Wilkinson

²³ “Why reparations are always about more than money.” <https://theconversation.com/why-reparations-are-always-about-more-than-money-162807>; “In Côte d’Ivoire, Consultations Aim to Ensure Victims Have a Say on Reparations Policy.” <https://www.ictj.org/news/cote-divoire-consultations-reparations>

3. Case Study: The Nuremberg War Crimes Trials: Victors' Justice?

Overview

Background. Beginning in winter 1942, the governments of the Allied nations announced their intent to punish Nazi war criminals. In October 1943, U.S. President Franklin Roosevelt, British Prime Minister Winston Churchill, and Soviet Premier Joseph Stalin signed the Moscow Declaration of German Atrocities. This Declaration stated that, at the time of the eventual armistice, Germans deemed responsible for atrocities, massacres, or executions would be sent back to the countries where they had committed those crimes and would be judged and punished according to the laws of the nations involved. The Declaration also stipulated that Germans responsible for atrocities that affected more than one country would be punished by joint decisions of the Allied governments.¹

It is unclear whether this decision to hold trials was reached for moral or for political reasons – or perhaps for both.

The Legal Background. The legal and conceptual basis for the Nuremberg prosecutions may be found in the Hague Conventions of 1899 and 1907, and in the Kellogg-Briand Pact of 1928.²

- The Hague Convention of 1899 dealt chiefly with prisoners of war and relations between occupation troops and civilians. It also forbade the use of certain types of military tactics, such as the use of expanding bullets and poisonous gas.
- The Hague Convention of 1907 affirmed and expanded the 1899 Convention, but its scope was essentially the same.
- Following World War I, in 1928 the United States and 15 other world powers signed the Kellogg-Briand Pact. Later, an additional 47 nations followed suit, so the pact was eventually signed by most of the established nations in the world. The Pact provided a legal basis for the International Military Tribunal (IMT): it renounced war as an instrument of national policy. In the end, however, the Kellogg-Briand Pact did little to prevent World War II or any subsequent conflicts. Its legacy is a statement of the idealism expressed by advocates for peace in the interwar period. Frank Kellogg earned the Nobel Peace Prize in 1929 for his work on the Pact.³

The principles in these three accords provided the basis for defining the crimes prosecuted by the IMT, including crimes against humanity, crimes against peace (waging a war of aggression), and war crimes.

On August 8, 1945, the Allies signed the London Agreement and Charter, referred to as the Nuremberg Charter, which created the International Military Tribunal to prosecute German leaders. U. S. Supreme Court Justice Robert H. Jackson was a leading figure in negotiating the Nuremberg Charter. Jackson served as chief prosecutor for the US and gave the opening and closing statements in the trial.

¹ <https://encyclopedia.ushmm.org/content/en/article/international-military-tribunal-at-nuremberg>

² http://www.judicialmonitor.org/archive_winter2011/historic.html

³ [https://history.state.gov/milestones/1921-](https://history.state.gov/milestones/1921-1936/kellogg#:~:text=On%20August%2027%2C%201928%2C%20fifteen,%2C%20Germany%2C%20Italy%20and%20Japan.)

[1936/kellogg#:~:text=On%20August%2027%2C%201928%2C%20fifteen,%2C%20Germany%2C%20Italy%20and%20Japan.](https://history.state.gov/milestones/1921-1936/kellogg#:~:text=On%20August%2027%2C%201928%2C%20fifteen,%2C%20Germany%2C%20Italy%20and%20Japan.)

The tribunal incorporated elements of both the common law system (used in the US and Great Britain) and the civil law system (used in France)⁴ to operate in this international context, since there was no legal precedent for punishing international crimes that had occurred on such a grand scale.

IMT Jurisdiction. The tribunal, which consisted of a judge, alternate, and prosecutors from the United States, the Soviet Union, France, and Great Britain, adjudicated the accused for four crimes commencing with the outbreak of war (but not before) on September 1, 1939:

1. Conspiracy to commit crimes against peace
2. Crimes against peace
3. War crimes
4. Crimes against humanity

The prosecutors used the legal term *genocide*, coined by Raphael Lemkin a year earlier, in the charge of war crimes as the “murder and ill-treatment of civilians” committed by the defendants as “deliberate and systematic genocide, the extermination of racial and national groups,” although the judges did not use the term in their verdicts.⁵

During the trials, which began in November 1945 and concluded in October 1946, 24 German officials and party members⁶ as well as seven organizations were tried. The organizations included the leadership of the [Nazi](#) party, the Reich Cabinet, the SS, the SD, the [Gestapo](#), the SA, and the "General Staff and High Command," comprising several categories of senior military officers.

The accused were represented by German attorneys and their supporting assistants, clerks, and other lawyers. Defense witnesses included several people who were subsequently prosecuted and found guilty themselves.

Outcome. Of the 24 who were indicted, 12 were sentenced to death; seven were sentenced to imprisonment spanning from 10 years to life; three were acquitted; and two trials never proceeded. Martin Bormann, who had been tried *in absentia*, was subsequently determined to have died in Berlin before the end of the war. Adolph Hitler, Heinrich Himmler, and Joseph Goebbels could not be tried because they had committed suicide at the end of the war or shortly afterwards.

⁴ <https://onlinelaw.wustl.edu/blog/common-law-vs-civil-law/> “In civil law countries, judges are often described as “investigators.” They generally take the lead in the proceedings by bringing charges, establishing facts through witness examination, and applying remedies found in legal codes. In contrast, in a common law country, lawyers make presentations to the judge (and sometimes the jury) and examine witnesses themselves. The proceedings are then “refereed” by the judge, who has somewhat greater flexibility than in a civil law system to fashion an appropriate remedy at the conclusion of the case.”

⁵ <https://encyclopedia.ushmm.org/content/en/article/international-military-tribunal-at-nuremberg>

⁶ Hermann Göring, Rudolf Hess, Joachim Von Ribbentrop, Robert Ley, Wilhelm Keitel, Ernst Kaltenbrunner, Alfred Rosenberg, Hans Frank, Wilhelm Frick, Julius Streicher, Walter Funk, Hjalmar Schacht, Gustav Krupp Von Bohlen Und Halbach, Karl Dönitz, Erich Raeder, Baldur Von Schirach, Fritz Sauckel, Alfred Jodl, Martin Bormann, Franz Von Papen, Artur Seyss Inquart, Albert Speer, Constantin Von Neurath, and Hans Fritzsche, individually and as members of the groups or organizations named.

https://www.cvce.eu/en/obj/indictment_presented_to_the_international_military_tribunal_nuremberg_18_october_1945-en-6b56300d-27a5-4550-8b07-f71e303ba2b1.html

On October 16, 1946, ten of those sentenced to death were hanged, then cremated at a cemetery in Munich and their ashes dropped into the Isar River.⁷ Goering committed suicide the night before, and four of the Nazi party organizations were found to be criminal organizations.⁸

Questions and Criticisms

1. The IMT has been criticized for a ‘retroactive’ or *ex post facto* creation of international law. As noted above, there was no existing international law to prosecute those who were indicted, so a new crime was created: ‘crimes against humanity.’ Some scholars and even the Chief Justice of the United States Supreme Court at the time, Harlan Fiske Stone, claimed that the trials were a “[lynching party](#).”⁹

The principle of legality covers both prohibited criminal conduct and sanctions for it. “This means that an act can be punished only if, at the time of its commission, the act was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached.”¹⁰

Were the Allies justified in establishing the IMT and in prosecuting the crimes that were enumerated? If so, on what grounds, and if not, why not?

2. One of the punishments enacted by the IMT, and also by the Twelve Subsequent Nuremberg Trials, was the death penalty. The Second Optional Protocol to the International Covenant on Civil and Political Rights, entered into force in 1991, bans the use of the death penalty except in times of war. Do you support the use of the death penalty at IMT as appropriate?

3. Critics of the IMT assert that the crimes of the Allies were never brought to justice, such as the atomic bombing of Hiroshima and Nagasaki, the carpet-bombing of Dresden, and the incendiary bombing of Tokyo.¹¹ This *tu quoque* charge, or ‘you also,’ leads to claims that the IMT was illegitimate and offered only victors’ justice. What is your response?

4. The IMT indicted individuals and organizations. What has been the impact of this ‘reach’ to prosecute organizations both within the United States and internationally?

5. The IMT highlights the contrast between state sovereignty versus the power of international law over the state. At a fundamental level, the IMT also raises the question of the role and definition of ‘law.’

A **positivist** interpretation suggests that because aggressive warfare had not been defined before World War II, individuals could not be prosecuted for initiating it. If an act is not criminalized, a person cannot be held responsible for committing it retroactively, thus safeguarding persons from arbitrary and capricious charges. It is important to note that almost everything that the Nazis did in the persecution and extermination of Jews and other ‘undesirables,’ as well as in the conduct of the war itself, was done within the state’s legal system through enactment of legislation, rulings by courts, and by actions of administrative agencies at all levels.

⁷ <https://museums.nuernberg.de/memorial-nuremberg-trials/the-nuremberg-trials/the-international-military-tribunal/verdicts/>

⁸ <https://encyclopedia.ushmm.org/content/en/article/international-military-tribunal-at-nuremberg> op. cit.

⁹ https://www.supremecourt.gov/publicinfo/speeches/sp_05-17-04a.html

¹⁰ <https://www.legal-tools.org/doc/f9b453/pdf/>

¹¹ <https://www.history.com/this-day-in-history/firebombing-of-tokyo> Nearly 100,000 people perished during the fire-bombing “in the worst single firestorm in recorded history.”

The *naturalists* would argue that the principle of 'public conscience,' or innate morality, is inherent in all we do. Positive law, by contrast, is enacted, and is therefore vulnerable to social forces that can contravene this innate morality.¹²

How do you view the law? Was the IMT a case of 'victors' justice' based on your view of the law?

6. Finally, why do you think the Allies decided to hold these trials? What were the geopolitical advantages and disadvantages?

¹² <https://academic.oup.com/ejil/article/21/4/1085/418156>

4. Case Study: What Protections Should be Given to Witnesses?

Overview

“The impact of crime on the people affected by it can be profound,” begins a UN document about victim assistance and protection.¹ The harms that genocides’ and atrocities’ victims, witnesses, and their families endure through violence, threats, and financial harms may never be recovered or restored. For some, these harms are so grave that victims and witnesses are unwilling or, indeed, even unable to testify against their perpetrators, yet their participation is critical to ending impunity for these grievous crimes.

One of the most challenging criminal areas to address is sexual assault, which is at epidemic levels around the world during both mass atrocities and at the micro-level of domestic assaults. In the US, rape alone affects hundreds of thousands of new victims each year. Less than 20% of rapes committed against adults are reported to law enforcement, and less than 40% of reported rapes result in criminal prosecutions; in other words, less than 8% of rapes committed against adults are criminally prosecuted.²

Part of the impunity is due to the victims’ trauma, apprehension about re-traumatization at engaging with the criminal justice system, and the very real fear of intimidation and reprisal.

Rape during genocide is, in many ways, unique. The words of lawyer Katharine McKinnon³ are eloquent.

Like all rape, genocidal rape is particular as well as part of the generic, and its particularity matters. This is ethnic rape as an official policy of war in a genocidal campaign for political control. That means not only a policy of the pleasure of male power unleashed, which happens all the time in so-called peace; not only a policy to defile, torture, humiliate, degrade, and demoralize the other side, which happens all the time in war; and not only a policy of men posturing to gain advantage and ground over other men. It is specifically rape under orders. This is not rape out of control. It is rape under control. It is also rape unto death, rape as massacre, rape to kill and to make the victims wish they were dead. It is rape as an instrument of forced exile, rape to make you leave your home and never want to go back. It is rape to be seen and heard and watched and told to others; rape as spectacle. It is rape to drive a wedge through a community, to shatter a society, to destroy a people. It is rape as genocide.

Please respond to the following questions.

Questions

1. Consider the difficulty in defining rape as a ‘crime against humanity.’ What obligations, burdens, and additional difficulties did the women face to provide evidence of rape to meet the definition of this crime?
2. The defendants were also charged with torture and with war crimes. What is achieved by categorizing rape in multiple ways?

¹ <https://www.unodc.org/unodc/en/organized-crime/witness-protection.html#:~:text=The%20impact%20of%20crime%20on,even%20be%20made%20against%20lives.>

² <https://law.lclark.edu/live/files/11775-allowing-adult-sexual-assault-victims-to-testify>

³ Catharine A. MacKinnon, *Rape, Genocide, and Women's Human Rights*, 17 HARV. WOMEN'S L. J. 5, 11-12 (1994), cited in https://genderandsecurity.org/sites/default/files/Russell-Brown_-_Rape_as_an_Act_of_Genocide.pdf

3. The women who testified showed great courage. What were some of the many obstacles that they faced before, during, and after the trials? What might be some of the challenges they face living in Bosnia today?
4. Why do you think the women who testified chose to come forward?
5. What procedures should be in place to encourage victims and witnesses to come forward? Who should bear responsibility for those procedures – the State, NGOs, the Court, or another entity?
6. There has been a 'sea change' in efforts to hold perpetrators accountable for sexual violence during mass atrocities, as evidenced by the Rwandan tribunal and proceedings and policies at the International Criminal Court. Why are changes happening so slowly in the United States to address the public health crisis of violence against women and girls?

5. Case Study: Defining Ecocide

Overview

Brief History of the Crime of Ecocide. The Rome Statute that established the International Criminal Court (ICC) provides the basis for international criminal law. It includes four international crimes: genocide, crimes against humanity, war crimes, and crime of aggression.¹ For decades, legal scholars and environmental advocates have proposed a fifth crime: *ecocide*.

The term ‘ecocide’ combines ‘oikos’, the Greek word for house or habitat, with ‘cide’, the Latin word meaning to kill.² While specific definitions vary, *ecocide* refers to the mass destruction of the environment. ‘Ecocide’ was first used by Professor Arthur Galston in 1970, at the Conference on War and National Responsibility in Washington, to characterize the ecological damage caused by American troops’ use of the chemical Agent Orange during the Vietnam War.³

In 1973, Richard Falk, **former UN Special Rapporteur and Professor Emeritus of International Law at Princeton University**, made one of the first serious proposals for the international criminalization of ecocide.⁴ Falk defined *ecocide* as acts committed with the intent to destroy a human environment. He saw ecocide as harm to the environment that directly impacts humans, such as the massive use of defoliants that damage farmland and cause disease or birth defects among local populations.⁵

In 2010, Scottish barrister Polly Higgins produced a more radical definition of ecocide. Higgins’ definition of ecocide included acts that harm nature, even if they do not directly cause human harm.⁶

Definition of Ecocide, 2021. In late 2020, the Stop Ecocide Foundation convened a panel of independent experts to develop an international legal definition of ecocide. The goal was to propose this definition as the fifth international crime under the Rome Statute. Panel members included highly regarded jurists, barristers, institute directors, and professors from around the globe. The panel published their definition in June 2021.⁷ It reads:

1. ***“For the purpose of this Statute, “ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.***

2. *For the purpose of paragraph 1:*

¹ “Rome Statute of the International Criminal Court.” <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>

² “Independent Expert Panel for the Legal Definition of Ecocide: Commentary and Core text, June 2021.” <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>

³ “... and a Plea to Ban ‘Ecocide’.” <https://www.nytimes.com/1970/02/26/archives/and-a-plea-to-ban-ecocide.html>; “History.” <https://ecocidelaw.com/history/>

⁴ “History.” <https://ecocidelaw.com/history/>

⁵ Falk, Richard. “Environmental Warfare and Ecocide – Facts, Appraisal, and Proposals.” *Bulletin of Peace Proposals*, 1973.

⁶ Higgins, Polly. *Earth is our Business changing the rules of the game*. Shephard-Walwyn (Publishers) Ltd, 2012.

⁷ “Independent Expert Panel for the Legal Definition of Ecocide.” <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>

- a. **“Wanton”** means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
- b. **“Severe”** means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;
- c. **“Widespread”** means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
- d. **“Long-term”** means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time; and
- e. **“Environment”** means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.”⁸

Prohibited Conduct

This proposal establishes two thresholds for prohibited conduct.

1. There has to be a **substantial likelihood** that the conduct, whether this be an **act or omission**, will result in **‘severe’ and ‘widespread’ or ‘long-term’** damage to the surrounding environment. In every case it must be severe, but it can either last a significant period of time or occur throughout a vast area.⁹
2. Conduct must be either unlawful –already prohibited by some pre-existing statute— or wanton, meaning in reckless disregard for the damage it causes.¹⁰

Proving Ecocide

In order to prove that an international crime was committed, prosecutors must prove *mens rea*, the intent to commit a crime, and *actus reus*, the physical act.¹¹

The panel proposed a threshold of intent different from the default *mens rea* in the Rome Statute.¹² Unless otherwise specified, the Rome Statute dictates that a person has intent where “that person means to engage in the conduct” or “that person means to cause that consequence or is aware that it will occur in the ordinary course of events.”¹³ In other words, the prosecution must prove that the perpetrator meant to commit atrocities or knew with absolute certainty that they would occur. In the case of ecocide, perpetrators often know that they are contributing to highly likely environmental harms, but these environmental harms are not their primary goal. The destruction of nature often occurs as a consequence of resource extraction, military tactics, or other objectives. Consequently, the

⁸ “Independent Expert Panel for the Legal Definition of Ecocide.”

<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>

⁹ Ibid.

¹⁰ Ibid.

¹¹ Marchuk, Iryna. *The Fundamental Concept of Crime in International Criminal Law: A Comparative Law Analysis*. Springer, 2014. <https://www.corteidh.or.cr/tablas/r32691.pdf>

¹² “Independent Expert Panel for the Legal Definition of Ecocide.”

<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>

¹³ “Rome Statute of the International Criminal Court.” <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>

panel proposed the *mens rea* standard of recklessness, known as *dolus eventualis*. Perpetrators have intent if they act with the knowledge that their actions are highly likely to cause an ecocide.¹⁴

Actus reus refers to the physical element of a crime, either an act or an omission.¹⁵ The panel proposed that the physical element of ecocide be determined by the ‘principle of endangerment’ rather than by material results. Several crimes in the Rome Statute are crimes of endangerment. For example, an individual can be found guilty of genocide if they take specific actions with the intent to destroy a group; there is no requirement that the individual must succeed in destroying that group. Similarly, an individual could be guilty of ecocide if they take certain actions or commit omissions that significantly endanger the environment, regardless of whether complete environmental destruction in fact occurs.¹⁶

Adopting the Crime. For the proposed definition to be adopted as a fifth international crime, it would need to be approved as an amendment to the Rome Statute of the International Criminal Court. This process has several stages:

- 1) A member state of the International Criminal Court must propose the definition to the UN Secretary-General. The Secretary-General circulates the proposal to all states that are party to the Court. At present there are 123 State parties.
- 2) The proposal must be approved by a majority of Court members in a vote, which must occur at least three months after States are notified of the amendment. The vote takes place at the annual Assembly of State Parties. If it is approved, the proposal proceeds to a process of debate and amendment.
- 3) The process of debating and amending the definition can take years, after which members of the Court vote on whether to ratify the final proposal. If consensus is not reached, the amendment requires a two-thirds majority vote to be adopted.
- 4) The law enters into force one year after being adopted. Only states that have ratified the amendment are bound by the new amendment.¹⁷

The island nations of Vanuatu and the Maldives, which are threatened by rising sea levels, have expressed interest in proposing the amendment.¹⁸ France, Belgium, Finland, Spain, and Luxembourg have given preliminary support.¹⁹

Potential Benefits. Extending the ICC’s jurisdiction to encompass ecocide has several potential benefits. It would:

¹⁴ “Independent Expert Panel for the Legal Definition of Ecocide.”

<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>

¹⁵ Marchuk, Iryna. *The Fundamental Concept of Crime in International Criminal Law: A Comparative Law Analysis*. Springer, 2014. <https://www.corteidh.or.cr/tablas/r32691.pdf>

¹⁶ Independent Expert Panel for the Legal Definition of Ecocide.”

<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf>

¹⁷ “Rome Statute of the International Criminal Court.” <https://www.icc-cpi.int/nr/rdonlyres/add16852-ae9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf>

¹⁸ “Is it time for “ecocide” to become an international crime?”

<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/603d0ce758b15d5dd4efdd8c/1614613736215/Ecocide+Economist+revised.pdf>

¹⁹ “European Parliament Votes to Take Ecocide Law Seriously.” <https://www.stopecocide.earth/press-releases-summary/european-parliament-votes-to-take-ecocide-law-seriously>

- **Draw international attention to the severity of the climate crisis.** The law would place environmental destruction on the same level as genocide, highlighting the severity of the climate crisis and guaranteeing international scrutiny.²⁰
- **Catalyze national laws and prosecutions.** The international law would provide a legal precedent for countries to implement national laws criminalizing ecocide. Currently, only a handful of countries have ecocide laws, including Armenia, Moldova, and Georgia.²¹
- **Enable the prosecution of ecocide outside of national jurisdictions.** Legal barriers often prevent foreign companies from being held accountable for climate destruction abroad. The ICC could fill in these gaps in prosecuting environmental crimes.²²
- **Create rights for the environment.** The crime would not require human harm to be prosecuted, giving a legal voice to the environment.²³

Challenges.

Issues with the ICC

Even if the crime is adopted, however, key jurisdictional issues with the International Criminal Court may inhibit the effective prosecution of ecocide.²⁴ Notably, the ICC has no jurisdiction for crimes in states that are not party to the Court, including the United States, China, and other major polluters. Companies such as Exxon Mobil and Chevron, for example, are accused of environmental destruction and are based in the US.²⁵ It would not be impossible for the Court to prosecute these companies. The heads of multi-national corporations based in the US or China could likely be tried for perpetrating crimes of ecocide abroad, in States that *are* party to the Court.

Another issue is that the Court is chronically underfunded and overburdened with cases.²⁶ There is little reason to believe that a significant number of environmental perpetrators will be held to account. Nonetheless, while the Court lacks the capacity to try many perpetrators, even a handful of high-profile ecocide charges or convictions could bring the climate crisis into international consciousness.²⁷

Political Will

Political will constitutes another key issue for the criminalization and prosecution of ecocide. The establishment of new international laws requires sovereign states to cede some of their power and sovereignty to the ICC. States are often reluctant to do so, especially when this loss of power could put members of their own governments or key corporate leaders at risk of prosecution. Further, while the

²⁰ **"Lawyers Are Working to Put 'Ecocide' on Par with War Crimes. Could an International Law Hold Major Polluters to Account?"** <https://time.com/5940759/ecocide-law-environment-destruction-icc/>

²¹ **"Ecocide law in national jurisdictions."** <https://ecocidelaw.com/existing-ecocide-laws/>

²² **"Lawyers Are Working to Put 'Ecocide' on Par with War Crimes. Could an International Law Hold Major Polluters to Account?"** <https://time.com/5940759/ecocide-law-environment-destruction-icc/>

²³ Ibid.

²⁴ "Ecocide as an International Crime: Key Considerations." <https://www.youtube.com/watch?v=VT50At89zT8>

²⁵ **"Lawyers Are Working to Put 'Ecocide' on Par with War Crimes. Could an International Law Hold Major Polluters to Account?"** <https://time.com/5940759/ecocide-law-environment-destruction-icc/>

²⁶ "As The International Criminal Court Faces More Challenges, We Need It More Than Ever." <https://www.forbes.com/sites/ewelinaochab/2020/09/13/as-the-international-criminal-court-faces-more-challenges-we-need-it-more-than-ever/?sh=6e8710e31468>

²⁷ "'Ecocide' movement pushes for a new international crime: Environmental destruction." <https://www.nbcnews.com/news/world/ecocide-movement-pushes-new-international-crime-environmental-destruction-n1263142>

issue of the climate crisis has gained traction in recent years, environmental progressives face major political opposition in almost every country.²⁸

Nonetheless, support for an international ecocide law is gaining momentum. The movement is endorsed by public figures including Greta Thunberg, Jane Goodall, and Pope Francis.²⁹ Experts have suggested that the crime could address major oil spills, carbon emissions, Amazon deforestation, the killing of protected species, and more.³⁰

The climate emergency threatens life as we know it. Polly Higgins said it best: “This is a story with two possible endings: one is fertile and abundant with life; the other is arid and speaks of death.” Such evocative and provocative statements are designed to increase political will.

Questions for Discussion

1. Falk’s proposed law required harm to ‘human ecosystems’ for an occurrence to be considered ecocide. Higgins’ law would criminalize harm to any ecosystem or territory, regardless of whether there was direct human harm. Should ecocide include harm to nature, or should it criminalize harm to the environment only as it directly causes harm to humans? Explain your answer in some detail.
2. Review the definition of ‘ecocide.’ Acts must be both ‘severe’ and either ‘widespread’ or ‘long-term.’ Is this threshold justified for an international crime? Is the bar for prosecution too high or too low?
 - a. Why would it be concerning if the threshold of acts for ecocide were set too low?
 - b. Why would it be concerning for the threshold to be set too high?
3. This definition of ecocide requires a *mens rea* of *dolus eventualis* and is a crime of ‘endangerment.’ Do you agree with the requirements? Discuss the merits and disadvantages of:
 - a. *Dolus eventualis* as the threshold for intent.
 - b. Endangerment as opposed to material harm as the standard for *actus reus*.
4. Why is there little political will to stop the climate crisis? Why is international support for the ICC low?
5. The Genocide Convention has not ended genocide. Will adopting the international crime of ecocide have any major impact on stopping environmental destruction and climate change?
6. In your opinion, should this proposal be adopted by the ICC? Consider the following:
 - a. How would this affect the Court’s prosecution of other crimes?
 - b. What would be the impact of criminalizing ecocide on an international level?
 - c. What groups might oppose the proposal? Why?
 - d. What groups might support the proposal? Why?

Prepared by Amalie Wilkinson

²⁸ Keenan, Patrick J. “International Criminal Law and Climate Change.” Boston University International Law Journal, 2019. <https://www.bu.edu/ilj/files/2020/04/Keenan.pdf>

²⁹ “European Parliament Votes to Take Ecocide Law Seriously.” <https://www.stopecocide.earth/press-releases-summary/european-parliament-votes-to-take-ecocide-law-seriously>

³⁰ “Legal experts worldwide draw up ‘historic’ definition of ecocide.” <https://www.theguardian.com/environment/2021/jun/22/legal-experts-worldwide-draw-up-historic-definition-of-ecocide> ; “Lawyers Are Working to Put ‘Ecocide’ on Par with War Crimes. Could an International Law Hold Major Polluters to Account?” <https://time.com/5940759/ecocide-law-environment-destruction-icc/> ; Higgins, Polly. *Earth is our Business changing the rules of the game*. Shepherd-Walwyn (Publishers) Ltd, 2012.

6. Case Study: Conflict Free Minerals and Legislative Hearings

Overview

The eastern region of the Democratic Republic of the Congo ('Congo') has been torn by violence since the aftermath of the Rwandan genocide in 1994. Although there are many causes, one of the most intractable is the presence of armed militias fighting for control over land and resources in the area. Congo is affected by a 'resource curse,' great mineral riches and other priceless assets below the ground, but the country is essentially a failed state whose leaders cannot control extra-judicial killings, extreme poverty, and the destruction of the natural environment.

In 2010, in an attempt to mitigate some of Congo's violence, regulations for the clean-sourcing of 'conflict minerals' (tin, tungsten, tantalum, and gold, or t-t-t-g) were included in the Dodd-Frank Wall Street Reform Act. Section 1502 of the Act required publicly-traded American companies to report the mines and smelters from which they purchased their minerals.

For the past decade, this disclosure process has been helpful in reducing violence in the region.

In addition to national-level reporting, states and organizations have raised awareness about conflict minerals and have encouraged purchases only from those companies that are known to be 'conflict-free.' In the state of Minnesota, World Without Genocide advocated for a legislative mandate in 2016 and again in 2019 to support state purchases of small electronics only from those companies that clean-source their supply chains.

The bills passed in House and Senate committee hearings in both 2016 and 2019 but failed to pass into law. However, the State Office of Procurement took on the issue, and as a central national clearinghouse for small electronics purchasing, included the conflict minerals issue in the RFPs for state contracts, essentially providing a greater 'win' than if the state bill had passed.

This case includes the Committee testimonies of key advocates:

- Rep. Phyllis Kahn, the lead House sponsor
- Sen. Sandy Pappas, the lead Senate sponsor
- Dr. Ellen Kennedy, Executive Director, World Without Genocide
- Dr. Edwige Mubonzi, gynecologist, Panzi Hospital, Congo
- Rachel Carlson, J.D., Benjamin B. Ferencz Fellow in Human Rights and Law, World Without Genocide
- Sarah Schmidt, J.D., Associate, World Without Genocide

Review the testimonies below and respond to the questions at the end of the case.

Legislative Testimonies, 2016 and 2019

Representative Phyllis Kahn Government Operations Committee Conflict-Free Minerals Bill, 4-7-2016

Our world is increasingly inter-connected in almost every way. For several years I've been involved with the work of World Without Genocide, a human rights organization located at Mitchell Hamline School of Law in St. Paul. One of the hallmarks of the organization is the connection that gets made between global issues and their impact on communities here in Minnesota.

The bill we're discussing today is about conflict minerals in Congo. We'll have testimony from three people about the situation in Congo and the way it involves every one of us here, and an opportunity for state purchasing of electronics to have a positive impact.

Dr. Ellen Kennedy, executive director of World Without Genocide and an adjunct law professor at Mitchell Hamline, will explain the bill and its context.

Dr. Edwige Mubonzi is a physician from the Democratic Republic of Congo. She worked in northeast Congo, where there is a battle for control over the region's valuable minerals. Rape is being used as a tool of war in this conflict. Dr. Mubonzi performs reparative surgery for women whose bodies have been traumatized by rape. Her patients range in age from three months to 76 years. Rapes in Congo occur at such an alarming rate that Congo is called 'the rape capital of the world.' After threats on her life, Dr. Mubonzi fled from Congo and she now lives in St. Paul, where she advocates for laws and policies to prevent these atrocities.

The final speaker is **Rachel Carlson**, a third-year student at Mitchell Hamline School of Law. Rachel is a Benjamin B. Ferencz Fellow in Human Rights and Law, a program run by World Without Genocide, and she has worked on the conflict minerals issue for the past three years.

Conflict Minerals Bill Senate Hearing, March 30, 2016 Senator Pappas

State and Local Government Committee

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**Conflict Minerals Bill
House Hearing, 2016
Ellen Kennedy
Government Operations Committee**

Thank you for the opportunity to talk about HF 3213, a bill about conflict minerals.

You’ve all heard of diamonds that were used in the 1980s to finance brutal conflict in parts of Africa. They were called ‘blood diamonds.’

Today a similar tragedy is occurring with minerals that are in all of our small electronics: phones, laptops, computer games, music players, and more.

Every time your cell phone vibrates, it’s because of a mineral called coltan. Eighty percent of the world’s coltan comes from the Democratic Republic of the Congo. Since 1996, more than 6 million people have been killed in Congo because of coltan and other valuable minerals. Brutal militia groups are fighting over these nearly priceless resources, labeled ‘conflict minerals.’ Innocent people, especially women and girls, are the victims, as these militias attempt to gain control of the land and the riches.

My phone and my laptop have coltan, tin, tungsten, and other materials taken from under the ground in Congo.

In 2010, the US government passed the Dodd-Frank Wall Street Reform Act. Part of this bill requires publicly-traded US electronics companies like Apple, Intel, and Motorola, to report to the Securities and Exchange Commission annually where they buy these resources that they use in their products. If any of the conflict minerals originated in Congo or a neighboring country, the company must describe the due diligence measures taken to determine the source of the minerals.

Dodd-Frank does not require the companies to divest from Congo or to source their minerals only from conflict-free mines. The law only requires companies to report on their mineral sourcing and due diligence practices.

The idea is that by having a transparent supply chain, the manufacturers will choose their materials from mines that use good practices.

Here in Minnesota, the city of Edina adopted a resolution several years ago requiring that city electronics purchases be made only from companies that are compliant with Dodd-Frank. Last year the Minnesota State Bar Association did the same.

Two states, California and Maryland, have passed legislation requiring that state electronics come only from companies that comply with Dodd-Frank.

A recent analysis shows that this simple process of transparency has improved the situation in Congo significantly.

In 2008, the Minnesota legislature and Governor Pawlenty passed a bill to divest our state public pension fund from companies complicit with the Darfur genocide. The global is local. Minnesotans didn't want their tax dollars here used to support genocide on the other side of the world.

Today I ask you to take a similar step. Support transparent purchasing of electronics by our state government here. This bill is non-partisan, requires no money, and assures that, going forward, Minnesotans do the right thing. Each of us is responsible – because of the phones in our pockets. And it makes a difference in the lives of innocent people far away.

Thank you.

**Conflict Minerals Bill
Senate Hearing, March 30, 2016**

Dr. Edwige Mubonzi

State and Local Government Committee

Thank you, Madam Chair and members of the committee. I am very thankful for this opportunity to share my story with you. My name is Edwige Mubonzi. I am a medical doctor from the Democratic Republic of Congo.

In my country I worked in the Panzi Hospital mobile clinic that went to rural areas to find and treat women victims of rape and mutilation. Rape is used as a weapon of war in Congo. The war is about controlling our mineral resources – especially coltan, which is used for cell phones and computers all over the world. 80% of the world's supply of Coltan comes from the eastern part of the Congo where I am from. Since 1998 more than 400,000 women and girls have been raped in this war. Today my country is called "*the rape capital of the world*".

Rape is an effective war strategy, and it is destroying my community. Usually women are raped in front of their husbands and children. This destroys the whole family and enables militias to control populations and therefore the mineral resources.

After raping a woman, soldiers and militia members often insert an object such as wood, knives, guns, or fire into the vagina. This practice destroys a woman's body--often causing leakage of bodily fluids from the vagina and the inability to have children--and it completely destroys her spirit.

I would like to share a story of one of my patients:

One day during my night shift at Panzi Hospital, I received a woman whom I knew because I had treated her before. She was a victim of rape and became pregnant from that rape. She came with her 6-month-old baby, and I was afraid that she had been raped again. But she told me that she had not come for herself, she had come for her baby. Her baby, *born of rape*, was raped at 6 months old. This has become an intergenerational problem. The baby had her vagina destroyed and the liquid was coming from her stomach through her vagina. All the physical findings were heartbreaking. This was the reason why I decided that besides treating my patients, I also had to advocate for them. This is the reason why I am here today.

We all know the close connection between the exploitation and illegal trade of natural resources and how this finances armed groups and massive human rights violations.

We cannot continue to only repair the consequences of violence. We must treat the root causes of this violence to put an end to these horrific crimes. Minerals from Congo need to be mined in a lawful

manner that respects the lives of all people. That is why I am here engaged in a plea for peace, justice and respect for human rights.

It is urgent to act. The solutions exist and require real political will.

Madam Chair and members of the committee – The vote in support of this bill would be a victory for human rights and stability in my country, DRC.

With humility and hope, I now urge this committee to support this legislation to help transform blood minerals into minerals for development and peace. This is an opportunity to solve the real problem of Congo and we need your support. Thank you very much for allowing me to speak.

**Conflict Minerals Bill
Senate Hearing, March 30, 2016
Rachel Carlson**

State and Local Government Committee

Dr. Kennedy mentioned that improvements have been made in Congo since the implementation of Dodd Frank at the federal level. I'd like to share some of those advancements.

Congolese officials, the United Nations, and the International Conference on the Great Lakes Region have developed a conflict-free certification process and 166 mines have been designated 'conflict free.' This is like the Kimberly process that was used to certify diamonds thirty years ago, the 'blood diamonds' campaign. Minerals sold from mines without this certification are appraised at much less than minerals from certified mines. This means that the armed militia groups responsible for the horrific violence throughout the eastern region of Congo.

Steps have been taken at the smelting and refining levels of the supply chain to ensure that minerals leaving the affected region are conflict free. More than half of these operations have improved significantly.

These positive changes exist solely as a result of the transparency reporting measures of Dodd Frank.

There is so much that still must be done.

During 2012, the first year of Dodd Frank reporting, over 1,300 companies worked towards supply chain transparency. This number keeps increasing. An estimated 1,000 of the companies that reported in 2014 have gone beyond the required reports and have voluntarily submitted conflict minerals analysis documents. Almost half of them created plans to become entirely conflict free, a sign that companies' managements want to ensure that making their products does not support the devastations in Congo.

State bills limiting contract procurement only to companies that are abiding by Dodd-Frank increases the industry's overall commitment to transparency.

This bill increases Minnesota's dedication to transparency in government spending. This is only good fiscal policy – and it is also good ethics. I worked on this issue for my entire three years in law school. Like every twenty-something, I use my phone all the time. I know that unless the situation continues to improve, women and girls in Congo will suffer – so that women and girls like me, in safe places like Minnesota, can use cell phones and other electronics without even thinking about the consequences. But I think about those consequences, and I urge you to think about those consequences, too. We can make a difference in Congo – right here from Minnesota.

Thank you.

SF 3064, Conflict Minerals Bill
Remarks for Senator Sandy Pappas
Senate floor vote

We all have heard of diamonds that were used in the 1980s to finance brutal conflicts in parts of Africa. They were called 'blood diamonds.' Today a similar tragedy is occurring with minerals that are in all of our small electronics: cell phones, laptops, music players, and computer games.

These minerals are called 'conflict minerals.' Every time a cell phone vibrates, it's because of a conflict minerals called coltan. Ninety percent of the world's coltan is found under the ground in northeast Congo.

Since 1996, more than 6 million people have been killed in the fighting over these minerals. Government armies, militia groups, and ordinary citizens perpetrate terrible acts of violence to force people off the land. These armed groups then extract and sell the minerals to purchase more weapons to gain control of the area.

In 2010, the US passed the Dodd-Frank Wall Street Reform Act. One part of this act, Section 1502, requires that American electronics companies that are publicly traded report their mineral purchases from Congo to the Securities and Exchange Commission. This simple act of transparency in purchasing is helping to reduce the human rights violations in the mining regions.

Two states, California and Maryland, have passed bills requiring that their state electronics purchases come only from companies that are in compliance with Dodd-Frank and this reporting requirement. The city of Edina, Minnesota and the Minnesota State Bar Association have taken similar action.

SF 3064 would do the same for Minnesota.

One of the most horrific acts of violence is rape, and Congo has become known as the 'rape capital of the world.' Women and girls are raped in Congo with a brutality that is beyond belief.

In the Local and State Government Committee hearing, where the bill passed unanimously, we heard testimony from Dr. Edwige Mubonzi, a physician who works in Congo. She spoke about a woman she had treated at her clinic who had been raped. The woman came back months later, and this time she had a baby with her, a 6-month-old daughter born of that rape. Dr. Mubonzi feared that the woman had been raped again. But it was the baby who had been raped. The infant's body had been torn apart inside and fluids were leaking through the baby's vagina. Dr. Mubonzi described the horror of this problem and what is now becoming intergenerational rape.

This bill, which our Department of Administration feels has no negative cost or impact on our state purchases, is the moral thing to do. Our insatiable desire for electronics makes us responsible. We can take a small step towards enhancing safety for women and girls in Congo by passing SF 3064.

Every time I use my cell phone, I think of that baby.

Conflict Minerals Bill
House Government Ops Committee Hearing
Sarah Schmidt
March 11, 2019

Chair Freiberg, members of the Committee: My name is Sarah Schmidt.

Dr. Kennedy mentioned that improvements have been made in Congo since the implementation of Dodd Frank. I'd like to share some of those advancements.

Congolese officials, the UN, the US, and a number of organizations developed a conflict-free certification and audit process. This is modeled on the Kimberly Process Certification Scheme that reduced trading in blood diamonds and the conflict surrounding the diamond trade 15 years ago.

In 2010, before Dodd Frank, no mines were certified as conflict-free. Today, 495 mines are verified to be 'conflict free.' How does this work, and why is it working?

Publicly-held companies like Apple and Motorola buy minerals. If those minerals originate in Congo or adjoining countries, the companies must report to the Securities and Exchange Commission which mines, smelters, and refineries they buy them from. The reports must also be made public on the companies' websites.

The mines undergo audits by reliable organizations to determine if they are conflict-free. The audits are conducted in accordance with auditing standards that apply to other SEC auditing requirements and in accordance with standards established by the Comptroller General of the United States. A conflict-free mine receives certification to that effect.

That's how the process works. Now why does this help to reduce violence?

Minerals sold from mines without this certification are appraised at much lower values than minerals from certified mines, because companies don't want to buy from uncertified mines. Armed militia groups responsible for the violence in eastern Congo make less from minerals from uncertified mines and also find it increasingly difficult to sell minerals from uncertified mines.

Steps have been taken throughout the entire supply chain to ensure that minerals leaving the affected region are conflict-free, with audits happening not only of the mines, but also of the smelting and refining operations.

A year ago, in March 2018, the Trump administration adopted new standards for federal purchasing of electronics such as computers and monitors. These standards include conflict mineral provisions, including due diligence, whether the company is helping to build the conflict-free trade in Congo and the region, and whether the company is sourcing from audited, conflict-free suppliers. This reinforces and strengthens the Dodd-Frank legislation. The Federal Environmental Protection Agency (EPA) has adopted these criteria for federal purchasers to the United States, as well as others around the globe, who are now required to procure products that meet this standard.

As of the most recent study by the International Peace Information Service in 2016, 79% of 3TG miners did not work under the control of armed actors.

We want states to be in line with the federal government. States should limit procurement to companies that abide by Dodd-Frank. This increases transparency and reduces violence.

This bill increases Minnesota's dedication to transparency in government spending. This is good fiscal policy – and it is also good ethics.

I want to share words from a Congolese community leader working in the mining areas. He said, "As a native of Congo, I have seen first-hand what things are like on the ground – gang-rape, modern child slavery, and other human rights violations on a massive scale. Some people may not understand how a U.S. law related to corporate supply-chain sourcing practices could help stop this horrific, decades-long conflict. However, the Dodd-Frank Act has done much to reduce violence in my country. It is one of the main reasons why armed groups no longer wield the power they once enjoyed."

We use our phones all the time. Unless the situation continues to improve, women and girls in Congo will continue to suffer – so that women and girls like me, in safe places like Minnesota, can use cell phones and other electronics without even thinking about the consequences. But I think about those consequences, and I urge you to think about those consequences, too.

We can make a difference in Congo – from Minnesota. I urge your support for this bill.

Thank you.

Conflict Minerals Bill
House Government Operations Committee, March 11, 2019
Ellen Kennedy

Chair Freiberg, committee members, thank you for the opportunity to talk about HF 1861, a bill about conflict minerals.

You've all heard of diamonds that were used in the 1980s to finance brutal conflict in parts of Africa. They were called 'blood diamonds.'

Today a similar tragedy is occurring because of minerals in our small electronics: phones, laptops, computers, and more. The minerals are called 3TGs – tantalum (also known as coltan), tin, tungsten, and gold.

Every time your cell phone vibrates, it's because of coltan. Eighty percent of the world's coltan comes from the Democratic Republic of the Congo. Brutal militia groups are fighting in eastern Congo over these nearly priceless resources, labeled 'conflict minerals.' Innocent people, especially women and girls, are the victims. Since 1996, more than 6 million people have been killed in Congo because of coltan and other minerals. This is the deadliest conflict since World War II.

In 2010, the US government passed the Dodd-Frank Wall Street Reform Act. Section 1502 of this bill requires that publicly-traded electronics companies like Apple, Intel, and Motorola must report to the Securities and Exchange Commission annually where they buy the minerals that they use in their products. If any of the conflict minerals came from Congo or a neighboring country, the company must describe its due diligence to determine the source of the minerals.

Dodd-Frank doesn't require companies to divest from Congo or to source their minerals only from conflict-free mines. The law only requires companies to report on their mineral sources and the due diligence that they practice.

The idea is that by having a transparent supply chain, Apple and other companies will buy from mines that use good practices – because the company's reports are public.

The city of Edina, Minnesota adopted a resolution in 2012 requiring that city electronics be purchased only from companies that are compliant with Dodd-Frank. In 2014, the Minnesota State Bar Association, an organization of 17,500 lawyers throughout the state, did the same.

California, Maryland, and Massachusetts have passed legislation requiring that their state electronics come only from companies that comply with Dodd-Frank. A similar bill is now pending in Oregon. A total of 6 cities and 26 colleges and universities have taken this action.

In 2008, the Minnesota legislature and Governor Pawlenty passed a bill to divest our state public pension fund from companies complicit with the Darfur genocide. Minnesotans didn't want their tax dollars here used to support genocide on the other side of the world. The global is local.

In 2016 this bill about conflict minerals came before the Minnesota legislature. It passed unanimously in both the House and the Senate committees, and it passed on the Senate floor because, once again, Minnesotans didn't want their money spent on products that were complicit with unspeakable violence. However, the bill in 2016 was not brought to a vote in the House.

We are here today because the crisis is not over. People are still being murdered and women and girls face unspeakable sexual brutality.

Today I ask you to support transparent purchasing of electronics by our state government. Each of us is involved – because of the phones in our pockets. Every time we use our phones, it's a reminder of our complicity – and our opportunity to make a difference.

Last October Dr. Denis Mukwege from Congo was awarded the Nobel Peace Prize. He received it for his efforts to end the use of sexual violence as a weapon of war and armed conflict in Congo. The most important person we'll hear today is someone who worked alongside Dr. Mukwege in Congo. She has seen the violence first-hand and her life has been forever touched by the victims. It's my honor to introduce Dr. Edwige Mubonzi from Congo, colleague of Nobel Prize recipient Dr. Mukwege.

Questions for Discussion

1. The bills passed unanimously in Committee hearings in both 2016 and 2019. Why do you think the bills were not successful in either year?
2. What can be done to enhance the likelihood of passing legislation at the state level?
3. What can ordinary citizens do to advocate for legislation?

7. Case Study: China's Belt and Road Initiative and the Genocides of the Uyghurs, Tibetans, Hmong, and Rohingya

Background of the Belt and Road Initiative

In 2013, Chinese President Xi Jinping launched a global development project known as the “Belt and Road initiative.” The BRI, a vast network of pipelines, highways, railways, and port cities throughout the world, as shown in Figure 1 below, is intended to expand China's economic and political influence on a global scale, including to Europe and North America. The goals of the BRI are so central to China's future that they are now included in an updated version of the country's constitution.¹

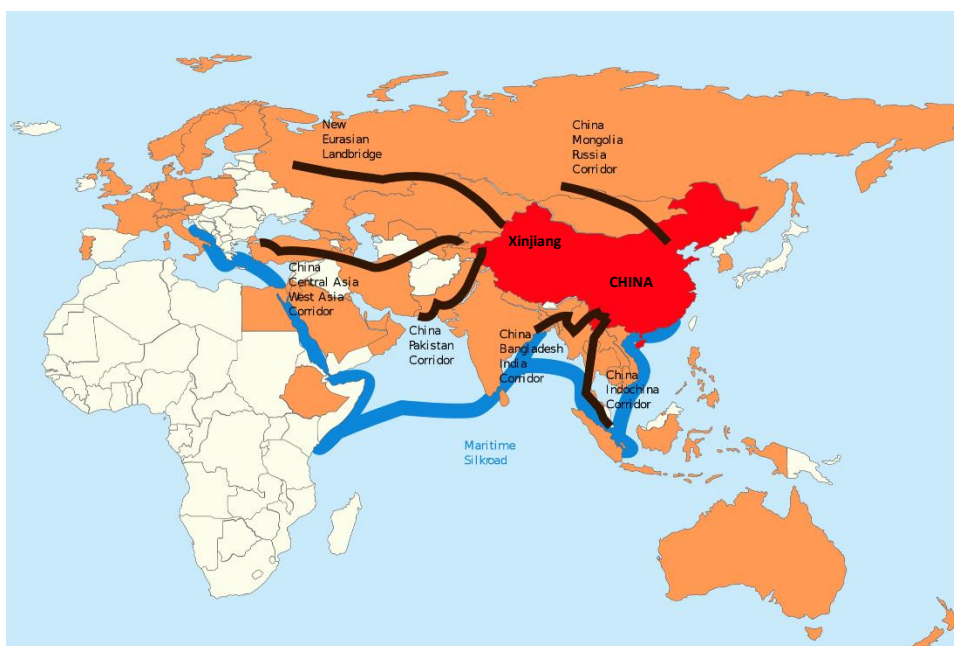


Figure 1. BRI Global Infrastructure

Image by [Mathildem16](#), licensed under [CC BY-SA 4.0](#)

The map above illustrates China's global network. The stated BRI goal is a “structural interconnectivity” with China at the hub of six economic corridors. The corridors expand China's economic influence outward, and they increase the flow of raw materials and resources inward, back to China. More than 140 countries (as of January 2021) are currently part of the BRI.²

Control over China's western Xinjiang Province is crucial for successful expansion of the BRI. **Three of the six BRI economic corridors** - the New Eurasia Land Bridge Economic Corridor, The China- Central Asia - West Asia Economic Corridor, and the China- Pakistan Economic Corridor - connect to China through the northwestern region of Xinjiang.

¹ <https://www.forbes.com/sites/wadeshepard/2017/10/25/why-china-just-added-the-belt-and-road-initiative-to-its-constitution/?sh=6f2abfb442ab>

² <https://green-bri.org/countries-of-the-belt-and-road-initiative-bri/>

The BRI and the Genocides of the Uyghurs, Tibetans, Hmong, and Rohingya

What does the BRI mean for the Uyghurs, a Muslim minority in China? The Uyghurs, very simply, are in the way. They are in the way in the physical sense – they are in Xinjiang, on the land, and potentially obstructing Chinese development. Not only are they an obstacle for the BRI, but the Chinese Communist Party, or CCP, wants that land because of what is under the ground in Xinjiang.

Xinjiang produced 35 million tons of crude oil by the end of 2020, a million barrels of oil a day. Xinjiang also has China's largest coal reserves - an estimated 40 percent of China's national total, and the country's largest natural gas reserves. The total oil and gas resource in Xinjiang's Junggar Basin is 10.7 billion tons, including 8.68 billion tons of oil and 2.5 trillion cubic meters of gas.³

The Uyghurs are sitting on these resources.

The Uyghurs are in the way in a political sense as well, as an ethnic minority over whom the Chinese Communist Party (CCP) seeks control. Uyghurs constitute the majority of the population in the Xinjiang region, yet they are a small minority, only 0.3%, in the country.⁴

Genocide of the Uyghurs. As a consequence of these factors, the CCP has taken many steps to control the Uyghurs, including rounding them up into massive detention centers; using forced sterilization techniques to limit population growth; outlawing all cultural and religious practices; implementing immigration of Han majority people into Xinjiang; relocating Uyghurs throughout the country into slave-labor settings; forcibly removing children from families and placing them in boarding schools; and other policies that have been labeled as 'genocide' by human rights organizations and governments around the world.⁵

Genocide of the Tibetans. Similar securitization of an ethno-religious minority has been occurring for decades against China's Tibetan Buddhists. Figure 2 below shows the locations of China's provinces, with arrows marking Xinjiang in the northwest and Tibet in the southwest, both of which as border provinces are potentially more likely to experience political volatility.

Tibet has been the original testing ground for cultural genocide, political indoctrination, and forced labor.⁶

The International Commission of Jurists (ICJ), a human rights organization composed of 60 eminent lawyers and jurists, has investigated the situation in Tibet. ICJ has documented China's effort to gain total control of Tibet.

³ https://en.wikipedia.org/wiki/Junggar_Basin#/media/File:Location_of_junggar_basin.svg

⁴ <https://www.news18.com/news/world/curse-of-being-uyghur-muslims-in-chinas-xinjiang-2964011.html>

⁵ <https://www.cfr.org/backgrounder/chinas-repression-uyghurs-xinjiang>

⁶ https://www.washingtonpost.com/opinions/global-opinions/chinas-atrocities-in-tibet-are-growing-too-big-to-ignore/2020/12/24/ba9d5c4e-4624-11eb-b0e4-0f182923a025_story.html China's atrocities in Tibet are growing too big to ignore



Figure 2. Map of the People Republic of China, with Province Names in English.

Image created by [PhiLiP](#) and translated to English by [Peter Potrowl](#), licensed under [CC BY-SA 3.0](#)

The CCP's practices have included massive use of forced labor resulting in the deaths of thousands of Tibetans; forced sterilization of the women; destruction of agricultural lands and irrigation systems creating widespread famine; destruction of trade and commerce, devastating the livelihoods of thousands of Tibetans; systematic religious persecution; forced indoctrination into Communist ideology; large-scale aerial bombing and massacres; removal and deportation of males between the ages of 15 and 60 to prevent protests; confiscation of property from monasteries, private individuals, and former Tibetan officials; imprisonment, deportation, and murder of thousands of resisters; transfer of Han majority people into the region; extrajudicial and arbitrary executions; intensive re-education; and widespread torture.

The reasons are the same for both the Uyghurs and the Tibetans: China wants to control the regions. The Tibetans and the Uyghurs have historically attempted to reclaim their original autonomy from China's long and heavy arm, and China's response has been massive, military, and violent.

The Tibetans are in the way of Chinese economic development and control in Tibet, just as the Uyghurs are in the way in Xinjiang. BRI networks in Tibet are directed toward the three neighboring countries of Nepal, India, and Bhutan. Further connections will run from Tibet to the Bangladesh-China-India-Myanmar Economic Corridor. Tibet also has natural resources that China needs; over 30 percent of China's hydro-electric power comes from Tibet. Additionally, China is the world's largest producer of copper, the third most widely-used metal on the planet,⁷ and a sixth of the world's copper is in Tibet.⁸

Genocide of the Hmong.⁹ China and Laos share a border as well as Communist-style governments. Over the last decade, Chinese investment in Laos increased dramatically as part of the BRI. China invested in a railway, a hydroelectric power plant, schools, roads, military hospitals, and mining and tourism projects.

⁷ <https://tradingeconomics.com/commodity/copper>

⁸ <https://www.minnpost.com/community-voices/2020/09/china-tibet-and-the-uyghurs-a-pattern-of-genocide/>

⁹ This information is taken from [www.worldwithoutgenocide.org/](http://worldwithoutgenocide.org/) <http://worldwithoutgenocide.org/wp-content/uploads/2021/06/Genocides-and-Conflicts-Final-1.pdf>

The Lao government is seeking to develop natural resources around Phou Bia Mountain in the Xaisomboun Province of central Laos. This isolated region is inhabited by ethnic Hmong whom the government continues to distrust as a legacy of the Secret Army during the Vietnam War. The Congress of World Hmong People has accused the Lao government of uncompensated land grabs and forced displacement to make way for Chinese-funded development projects.

In 2021, the Lao government sealed off the area around Phou Bia Mountain and launched a military clearance operation. A recent report by the Unrepresented Nations and Peoples Organization (UNPO) describes massacres and hunger. Many Hmong have surrendered, only to be ‘resettled’ in military-controlled camps. Upon arrival in the camps, men are often detained and interrogated for several months. Women report sexual slavery by law enforcement officers. Families lack safe drinking water and cultural rights, and they must barter labor for bare necessities.

In 2020, nine UN Special Rapporteurs and the UN Working Group on Enforced Disappearances wrote a letter of concern over the situation to the government of Laos.¹⁰ There is increasing fear among the Hmong and the international community that the government will move towards more exterminatory actions.

Genocide of the Rohingya. The United Nations calls the Rohingya, a Muslim minority population in western Myanmar’s Rakhine province, “the most persecuted people on earth.”¹¹ The genocide of the Rohingya has a direct connection to the BRI as well.

In 2004, the South Korean company Daewoo discovered **4.5 trillion cubic feet of gas reserves** off Rakhine state’s coast.¹² This sparked China’s interest, and China’s state oil company got permission from the Myanmar military government to buy gas from the Shwe reserve in Rakhine’s offshore basin. China’s goal was to extract gas from Rakhine state and transport it directly from Myanmar to China. In 2013 this became a reality.

There is also oil in Rakhine state. China constructed an oil pipeline, parallel to its gas pipeline in the state. The pipelines transport **12 million tons of crude oil and 12 billion cubic meters of gas a year** into China from Rakhine’s port.

Myanmar is one of the focal points of China’s ambitious plan. With a pipeline crossing Rakhine, oil from Abu Dhabi, Iraq, Iran, and Saudi Arabia will get to China faster than going through the Malacca Strait.

China has invested US \$2.5 billion in the oil and gas pipeline projects and plans to invest US \$10 billion into a special Economic Zone in Rakhine that includes a deep-sea port and an industrial park, turning the area into a maritime economic hub.¹³

The Rohingya are in the way. The CCP cares a lot about Myanmar – for the oil, the gas, the strategic location, and China’s economic and political future.

¹⁰ <https://unpo.org/article/22110>

¹¹ <https://www.unrefugees.org/emergencies/rohingya/>

¹² <http://www.businesskorea.co.kr/news/articleView.html?idxno=24739>

¹³ Hong Kong Trade Development Council and Nomura Global Economics

Since the early 1990s, the Rohingya have fled waves of violence in Myanmar. Their largest and fastest exodus began in August 2017. More than 742,000 people were forced to seek safety in neighboring Bangladesh. The majority of these refugees are women and children. Today, nearly a million Rohingya are in Bangladesh's Cox's Bazar region, one of the largest and most densely populated refugee camps in the world – in the midst of a global pandemic.

The situation for the Rohingya has long been labeled genocide.

The leaders of the Myanmar government and military are currently on trial at the United Nations International Court of Justice (ICJ) in The Hague, Netherlands for genocide in a case brought by Gambia and backed by the 57 member nations of the Organization of Islamic Cooperation. The case is “state-to-state” litigation between UN member states governed by legal provisions in the UN Charter, the ICJ Statute, and the Genocide Convention.¹⁴

A second case is underway in Argentina using universal jurisdiction.¹⁵ A third case is in preliminary investigation at the International Criminal Court in The Hague.¹⁶

The U.S. Response to the BRI. U.S. efforts to counter the BRI in the past, such as President Obama's Trans-Pacific Partnership, have repeatedly faltered. In June 2022, however, the US and partners in the G7 unveiled an ambitious global infrastructure investment initiative, **the Partnership for Global Infrastructure and Investment (PGII)**, as an alternative to China's BRI. According to the announcement, G7 countries will invest \$600 billion (of which the US will contribute \$200 billion) in infrastructure projects in low- and middle-income countries over the next five years.

Unlike the BRI, which has focused on ports, railways, and other “hard” infrastructure, the PGII will prioritize projects that boost clean energy, improve healthcare, enhance gender equality, and develop digital technology. For instance, it will allocate \$2 billion for a solar project in Angola, \$600 million to build undersea telecommunication cables, \$50 million to the World Bank's Childcare Incentive Fund, and \$3.3 million in technical assistance for development of a vaccine manufacturing facility in Senegal that could produce COVID-19 vaccines and others.¹⁷ Whereas the BRI mainly involves loans from Chinese state-controlled banks, the PGII will combine government funding with private investment from pension funds, private equity funds and insurance funds, among others.¹⁸

Questions for Discussion

1. An effort in Spain's national courts to use universal jurisdiction to prosecute China's leaders for Tibet's genocide ground to a halt in 2014.¹⁹ Spanish law suddenly changed, making it impossible for the case to go forward. A 2015 legal analysis suggests that Spain succumbed to *realpolitik's* pressures exerted by

¹⁴ <https://www.hrw.org/news/2019/12/05/questions-and-answers-gambias-genocide-case-against-myanmar-international-court>

¹⁵ <https://thewire.in/rights/argentina-universal-jurisdiction-myanmar-rohingyas>

¹⁶ <https://www.icc-cpi.int/bangladesh-myanmar>

¹⁷ <https://www.npr.org/2022/06/26/1107701371/biden-announced-a-600-billion-global-infr>

¹⁸ <https://www.economist.com/china/2022/07/07/the-g7-at-last-presents-an-alternative-to-chinas-belt-and-road-initiative>

¹⁹ <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2300&context=sulr>

China and withdrew the case. Coincidentally, China is Spain's largest economic partner outside of the European Union.²⁰ How can law proceed in the face of economic and political reality?

2. Today, China wields great weight at the United Nations because of its significant economic investment in many countries and their resulting reluctance to criticize their big benefactor. China has used this influence and the country now heads four of the 15 main UN agencies and has its deputies in nine other agencies,²¹ successfully keeping the UN and other watchdog groups from monitoring the genocide of the Uyghurs and other targeted populations. How could or should the UN respond?

3. What options exist for the United States to try to protect human rights for the vulnerable minorities in these four cases? Consider actions that could occur in the three branches of U.S. government: legislative, executive, and judicial.

4. What can NGOs do?

5. China owns \$2 billion worth of US farmland.²² Chinese investors own 25% of foreign investment in U.S. residential real estate, and leading U.S. companies have poured trillions of dollars into goods, products, and resources in China. China Radio International owns ten radio stations in major media markets in the US.²³ Overall, Chinese financial interests have acquired more than \$120 billion of assets in the U.S. economy since 2002.²⁴ What does this suggest for the U.S. likelihood to address human rights abuses in China?

6. Do you think the PGII will be successful? Explain your answer.

Prepared by Amalie Wilkinson and edited by Hung Le

²⁰ <https://www.oboreurope.com/en/spain-europe-bri/>

²¹ <https://economictimes.indiatimes.com/news/international/world-news/china-dominates-un-by-controlling-several-un-bodies-report/articleshow/83080526.cms?from=mdr>

²² Laws in Minnesota and several other states prohibit the sale of farmland to foreign investors.

²³ <https://qrius.com/china-owns-us-how-the-chinese-are-buying-up-america/>

²⁴ <https://www.citizen.org/article/chinese-investment-in-the-united-states-database/>

8. Case Study: Refugees and Statelessness: The Holocaust, Syria, and Ukraine

Overview

We are now witnessing the highest levels of **forced migration** on record. In May 2022, the Office of the UN High Commissioner for Refugees (UNHCR) reported that the number of people forced to flee due to persecution, conflict, violence, human rights violations, and events seriously disturbing public order had surpassed **100 million**. This means that one **in every 78 people** on earth has been forced to flee, including nearly **40 million refugees and asylum seekers** and **60 million internally displaced persons (IDPs)**, those uprooted by conflict and persecution but who did not cross an international border).¹

Additionally, more than **4 million** people globally are **stateless**. They have lost or are denied their nationality, are without citizenship or other documentation, and have few rights. They include the Biharis in Bangladesh, the Rohingya in Myanmar, the Bedouins throughout the Middle East, Kurds in Syria and Iraq, the Roma in Europe, Muslims in India, and many others.²

The 1930s Jewish Refugee Crisis and the Evian Conference

International laws concerning refugees are a 20th century development, but forced migration has had a long history. States in every region of the world have used mass expulsion to deal with unwanted ethnic, national, racial, and religious minorities.

In particular, Jews have been subjected to large-scale persecutions and expulsions. One of the most consequential forced movement of Jews took place prior to World War II and the Holocaust. Between 1933 and 1942, the Nazi regime sought to make Germany 'Judenrein' ("cleansed of Jews") by making life so difficult for German Jews that they would be forced to emigrate,³ including with the 1935 Nuremberg Laws that rendered them stateless in their own country. By 1938, about 150,000 Jews had left Germany. Jewish emigration increased sharply following Germany's annexation of Austria (the "Anschluss") and the subsequent rise in anti-Jewish violence under the Third Reich.

As Jewish refugees attempted to enter other countries, they encountered both anti-immigrant and antisemitic sentiment throughout the West. In the US, the Immigration Act of 1924 severely limited the number of immigrants from groups deemed less racially or ethnically desirable, including Jews from southern and eastern Europe. The Act also effectively barred all immigration from Asia.

In 1938, the Roosevelt administration called for an international conference on the question of Jewish refugees to be held in the French resort town of Evian.⁴ Delegates from 32 countries attended the Evian conference in July 1938.

It was a complete failure. One after another, the delegates expressed sympathy for the refugees but reaffirmed their government's unwillingness to accept more Jews. The lone exception was the Dominican Republic, which offered to accept up to 100,000 Jewish refugees. This plan never

¹ "100 Million People Forcibly Displaced," UNHCR Refugee Statistics, accessed September 28, 2022, <https://www.unhcr.org/refugee-statistics/insights/explainers/100-million-forcibly-displaced.html>.

² Gil Loescher, *Refugees: A Very Short Introduction* (Oxford: Oxford University Press, 2021).

³ "Emigration and the Evian Conference," USHMM, accessed September 28, 2022, <https://encyclopedia.ushmm.org/content/en/article/emigration-and-the-evian-conference>.

⁴ "Evian Conference," Encyclopedia of America's Response to The Holocaust, December 27, 2014, <http://enc.wymaninstitute.org/?p=190>.

materialized, however, as the Roosevelt administration feared that Jewish refugees who arrived in the nearby DR might seek to enter the US.⁵

Jewish emigration from Nazi Germany increased significantly between 1938 and 1940 after the horrors of *Kristallnacht*, massive pogroms throughout Germany and Austria on November 9 and 10, 1938. By 1940, more than 60% of German and Austrian Jews had left those countries, with approximately 282,000 Jews emigrating from Germany and 117,000 from Austria.⁶ Of these, about 95,000 moved to the US, 60,000 to Palestine, 40,000 to Great Britain, and about 75,000 to Central and South America. Over 18,000 Jews settled in China, in Japanese-occupied Shanghai,⁷ while the Philippines, then under U.S. occupation, accepted 1,300 refugees.⁸

However, the number that were admitted was far below the number seeking refuge. Although the US admitted more Jewish refugees than any other nation, the majority of the **300,000 Jews** who sought to enter the country before 1940 were denied entry.⁹ As a result, hundreds of thousands of Jews were unable to find refuge and perished in the Holocaust.

International Laws on Refugee and Statelessness

By the late 1940s, the newly-established United Nations recognized that existing international agreements and institutions concerning refugees and stateless people needed to be expanded to deal effectively with post-war refugee situations and to avoid a repetition of the Jewish emigration crisis. This led to the development of core principles and institutions to ensure legal rights and protections for refugees and stateless people.

In 1948, the UN adopted the Universal Declaration of Human Rights. Article 14 states that “everyone has the right to seek and enjoy in other countries asylum from persecution.” Article 15 states that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

The 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees are the two key documents of international refugee law. The Convention defines a refugee as a person who

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country (Article 1).¹⁰

⁵ “Evian Conference.”

⁶ “German Jewish Refugees, 1933–1939,” USHMM, accessed September 7, 2022, <https://encyclopedia.ushmm.org/content/en/article/german-jewish-refugees-1933-1939>.

⁷ “German Jewish Refugees, 1933–1939.”

⁸ “Remembering Our Humanitarian Legacy with ‘Safe Haven: Jewish Refugees in the Philippines,’” UNHCR Philippines, accessed September 7, 2022, <https://www.unhcr.org/ph/17553-jewish-refugees.html>.

⁹ “Refugees,” USHMM, accessed September 28, 2022, <https://encyclopedia.ushmm.org/content/en/article/refugees>.

¹⁰ “Convention Relating to the Status of Refugees,” OHCHR, accessed September 20, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees>.

The 1951 Convention restricts the geographic and temporal scope of this definition to Europeans who had fled their home countries due to events occurring before 1951.¹¹ The 1967 Protocol removes these restrictions and incorporates all of the definitions and obligations in the 1951 Convention.¹²

The 1951 Convention also outlines the rights of refugees and the legal obligations of states to protect them. The most important right is *non-refoulement* (from the French *refouler*, to drive back or to repel): refugees cannot be involuntarily returned to a country where they may face physical harm of persecution (Article 33).

Non-refoulement is now a principle of customary international law, as it applies even to states that are not parties to the 1951 Convention or to the 1967 Protocol.¹³

The UNHCR. In December 1950, six months before the adoption of the 1951 Convention, the Office of the UN High Commissioner for Refugees was established to ensure protection and solutions for refugees.¹⁴

Since its creation, UNHCR has interpreted its mandate in increasingly broader terms in response to displacement crises brought on by wars, persecution, political upheavals, civil conflicts, genocides, and natural disasters. In addition to refugees, UNHCR also provides protection and assistance to stateless persons, IDPs, and the emerging category of “environmentally displaced people.”

The 1954 Convention on Statelessness and the 1961 Convention on the Reduction of Statelessness formed the international legal framework for the protection of stateless persons.

The 1954 Convention defines stateless person as “a person not recognized as a national by any State under the operation of its law.”¹⁵ Many of its provisions are identical to those of the 1951 Convention. These include provisions on religious freedom, juridical status, employment, welfare, freedom of movement, issuance of travel and identity documents, and an obligation to facilitate assimilation and naturalization.¹⁶

The 1954 Convention also prohibits expulsion of stateless persons ‘save on grounds of national security or public order.’ While it encourages the naturalization of stateless persons, the Convention does not obligate a state to grant nationality to a stateless person.¹⁷

The 1961 Convention aims to prevent statelessness and reduce it over time. It requires states to establish safeguards in their nationality laws to prevent statelessness at birth and later in life. Most importantly, the Convention establishes that children are to acquire the nationality of the country in which they are born if they do not acquire any other nationality (the principle of ‘jus soli’). It also sets out safeguards to prevent statelessness due to loss or renunciation of nationality and state succession.¹⁸

¹¹ “Convention Relating to the Status of Refugees.”

¹² “Protocol Relating to the Status of Refugees,” OHCHR, accessed September 20, 2022, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-relating-status-refugees>.

¹³ “The 1951 Refugee Convention,” UNHCR, accessed September 20, 2022, <https://www.unhcr.org/1951-refugee-convention.html>.

¹⁴ Loescher, *Refugees*.

¹⁵ “UN Conventions on Statelessness,” UNHCR, accessed September 22, 2022, <https://www.unhcr.org/un-conventions-on-statelessness.html>.

¹⁶ “FAQs,” United Stateless, accessed September 22, 2022, <https://www.unitedstateless.org/faqs>.

¹⁷ “FAQs.”

¹⁸ “UN Conventions on Statelessness.”

U.S. Ratification. As of 2022, 149 countries are parties to either the 1951 Convention or the 1967 Protocol. The U.S. government did not sign the 1951 Refugee Convention, but **it did sign and ratify the 1967 Protocol relating to the Status of Refugees, thereby taking on the 1951 Convention’s obligations as well.**¹⁹

In 1980, Congress passed the Refugee Act, which brought U.S. law into compliance with the 1951 Convention and the 1967 Protocol by incorporating the convention’s definition of refugee and codifying the principle of *non-refoulement*.²⁰ This step is required to make accession to conventions part of U.S. law.

The US has not become a signatory of either the 1954 Convention on Statelessness or the 1961 Convention of the Reduction of Statelessness. Congress has never passed a law specifically on statelessness.²¹ Therefore, there is currently no consistent legal framework for recognizing stateless persons or ensuring protection and a path to lawful permanent residence or citizenship for stateless people residing in the US.

Refugee Crises in the 21st Century: Syria and Ukraine

The Syrian Refugee Crisis is one of the worst humanitarian crises of our time. In 2021, **6.8 million** refugees were from Syria, while **6.9 million** people are displaced internally within Syria.

The vast majority of Syrian refugees remain in the Middle East, having fled by land and sea to Turkey, Lebanon, Jordan, Iraq, or Egypt. More than **3.6 million** Syrian refugees are in Turkey.²²

Desperate families have also tried to flee to Europe, risking their lives to cross the Mediterranean Sea in small, overcrowded boats. In 2015, over **one million** Syrian refugees crossed the Mediterranean into Europe. Nearly 4,000 people died on the way, including many children.²³

Causes. The Syrian refugee crisis is a consequence of the Syrian Civil War. This conflict began in 2011 after the Arab Spring across the Middle East and North Africa led to peaceful pro-democracy protests in Syria. The Syrian government responded with violence, killing, and the arbitrary imprisonment of Syrian civilians. The violence continued as thousands took to the streets to protest the regime, leading to all-out civil war that continues today.²⁴

The Syrian conflict and displacement crisis also demonstrated the ways in which the climate crisis acts as a ‘force multiplier’ of pre-existing political and socio-economic issues. From 2006 to 2011, Syria experienced its worst drought on record. 85% of the country’s livestock died and 75% of farmers

¹⁹ “American Courts and the U.N. High Commissioner for Refugees: A Need for Harmony in the Face of a Refugee Crisis,” Harvard Law Review, accessed September 20, 2022, <https://harvardlawreview.org/2018/03/american-courts-and-the-u-n-high-commissioner-for-refugees-a-need-for-harmony-in-the-face-of-a-refugee-crisis/>.

²⁰ “An Overview of U.S. Refugee Law and Policy,” American Immigration Council, November 18, 2015, <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>.

²¹ “The Problem,” United Stateless, accessed September 22, 2022, <https://www.unitedstateless.org/problem>.

²² “Syria Refugee Crisis Explained,” unrefugees.org, accessed September 23, 2022, <https://www.unrefugees.org/news/syria-refugee-crisis-explained/>.

²³ “Syria,” World Without Genocide, accessed September 23, 2022, <http://worldwithoutgenocide.org/genocides-and-conflicts/syria>.

²⁴ “Syria.”

experienced total crop loss. This persistent drought forced over 1.5 million Syrians to leave their homes for overcrowded cities in search of work, thereby exacerbating social and political tensions.²⁵

The 2022 Ukrainian Refugee Crisis. As a result of the 2022 war in Ukraine, nearly one-third of Ukrainians have been forcibly displaced from their homes, **the worst displacement crisis in the world today.**

As of September 2022, UNHCR estimated that over **7.4 million** people from Ukraine have fled to neighboring countries such as Poland, Hungary, Romania, Slovakia, and Moldova.²⁶ Nearly **7 million** Ukrainians are internally displaced by the conflict.

In March 2022, the EU activated the **Temporary Protection Directive**, granting refugees from Ukraine the right to reside and work in the EU for up to three years. As of September 2022, over **4 million** arrivals from Ukraine have registered for this or similar national protection plans in Europe.

Non-Ukrainian and stateless refugees from Ukraine. Not all refugees from Ukraine are Ukrainian nationals. Since the invasion, over **275,000 third-country nationals** and as many as **100,000 Roma people** (many of whom are stateless) from Ukraine have crossed the borders into EU countries. Many non-Ukrainian refugees have reported discriminatory treatment at border crossings and in their new host countries. Several EU countries have also excluded third-country nationals and stateless persons from the Temporary Protection Directive. This means that many non-Ukrainian and stateless refugees from Ukraine must go through the lengthy application process for asylum or visas to stay in these countries.²⁷

Questions for Discussion

1. The 1951 UN Refugee Convention defines a refugee as a person who

owing to **a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion**, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country (Article 1).²⁸

Is this an adequate definition of refugee? Explain your reasoning.

Consider the following:

(a) Given the historical context when the Convention was adopted, which groups of people were designated for protection?

(b) Beside persecution, what other major factors may cause people to flee their country?

(c) Can this definition reasonably be extended to people not explicitly under threat of persecution on grounds of race, religion, nationality, membership of a particular social group, or political opinion?

2. The principle of *non-refoulement* is enshrined in Article 33 of the Refugee Convention

²⁵ "Syria."

²⁶ "Ukraine Refugee Situation," data.unhcr.org, accessed September 25, 2022, <https://data.unhcr.org/en/situations/ukraine>.

²⁷ "Russia's Invasion of Ukraine: The Treatment of Non-Ukrainian Refugees," World Without Genocide, accessed September 25, 2022, <http://worldwithoutgenocide.org/genocides-and-conflicts/ukraineconflict/refugees>.

²⁸ "Convention Relating to the Status of Refugees."

No Contracting State shall expel or return (*'refouler'*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Consider the following cases:

1-The EU-Turkey refugee deal: In 2016, the EU entered into an agreement with Turkey to limit the number of Syrian arrivals in the EU. Under the agreement, undocumented migrants seeking to reach Greece would be returned to Turkey, and Turkey's government would prevent the creation of new migration routes. In return, the EU would resettle Syrian refugees from Turkey on a one-to-one basis, eliminate visa constraints for Turkish nationals, provide €6 billion (\$5.8 billion) in assistance to Turkey, and reactivate discussions on Turkey's application to the EU.²⁹

2-U.S. Asylum Cooperative Agreements: Under the Trump administration, the US signed Asylum Cooperative Agreements with El Salvador, Guatemala and Honduras. These agreements required Central American asylum seekers to first seek refuge in those countries before applying in the United States. It also allowed for asylum seekers who are already in the US to be sent back to these countries. These agreements were terminated by the Biden administration.³⁰

3-The UK-Rwanda asylum plan: In 2022, the governments of the UK and Rwanda signed the UK and Rwanda Migration and Economic Development partnership. Under this plan, the UK will send undocumented migrants and asylum seekers from the UK to Rwanda while their claims are being processed in the UK. They may then be granted refugee status to stay in Rwanda, but they are barred from returning to the UK.³¹

In each case, officials claim that their policy does not violate the *non-refoulement* rule since asylum seekers are not sent to "territories where his life or freedom would be threatened" but to "**safe third countries.**"

Consider each case. Are these claims convincing? Why or why not?

3. From the refugee crisis of the Jews in the 1930s to today's treatment of Ukrainian refugees, how do race, nationality, ethnicity, and religion influence international responses to refugees and statelessness?
4. An emerging category of displaced persons is that of **environmentally displaced people, or "climate refugees."** The UNHCR estimates that 20 million people worldwide have already been forced to leave their homes due to environmental changes (such as floods, hurricanes, droughts, desertification, and sea-level rise), a number likely to increase sharply in the coming decades.³² Environmental change also acts as a 'force multiplier' for other causes of displacement. It exacerbates poverty, socio-economic

²⁹ "What Is the EU-Turkey Deal?," International Rescue Committee, accessed September 27, 2022, <https://eu.rescue.org/article/what-eu-turkey-deal>.

³⁰ "Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras," U.S. Department of State, accessed September 27, 2022, <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras/>.

³¹ "What Is the UK's Plan to Send Asylum Seekers to Rwanda and How Many Could Go?," *BBC News*, September 7, 2022, <https://www.bbc.com/news/explainers-61782866>.

³² "Climate Change and Disaster Displacement," UNHCR, accessed September 27, 2022, <https://www.unhcr.org/climate-change-and-disasters.html>.

disparity, and resource scarcity, which leads to increased internal displacement, competition for dwindling resources, and conflicts.

The threat of large-scale human displacement due to environmental change has led to an understanding that international protections will need to go beyond the protection of those displaced by conflict and persecution. Some scholars and activists have proposed that an amendment to the 1951 Convention or the creation of a new international agreement to address the problem, while others maintain that current policies are adequate and only need to be expanded.

Can those who have to flee their country due to the adverse effects of the climate crisis be recognized as “refugees” under the 1951 Convention’s definition (see above)?

Prepared by Hung Le

III. Debates

1. State Sovereignty vs. Human Rights

Debate Question

Should the international community intervene when states are unwilling or unable to protect the human rights of their citizens?

Overview

The international system relies on the premise that states are the sole sovereign authority. The UN Charter protects this premise by establishing that the international community shall not intervene in matters of domestic jurisdiction. The norm of respecting state sovereignty helps protect small or new states from neo-colonial predatory intervention from stronger regimes. It also legitimizes the state in the eyes of its own citizens and residents, which strengthens domestic order.¹

This guarantee of non-intervention, however, can be overridden by the United Nations Security Council (UNSC) when there is a threat to peace or a breach of the Convention on the Prevention and Punishment of the Crime of Genocide. In addition, the international community has established the Responsibility to Protect (R2P), a doctrine safeguarding civilians from gross and systematic human rights abuses. It clarifies that national sovereignty is not an excuse for states to violate human rights.²

However, optimism regarding international human rights interventions has deteriorated since 2011. The UNSC endorsed intervention in Libya, which helped to topple Muammar al-Qaddafi's regime. This raised the issue of whether domestic political objectives often underlie or are masked as humanitarian intervention.³ States have also raised questions about the legitimacy of the UNSC to determine when intervention is necessary. The UNSC has been accused of being subject to 'financial blackmail,' under-representing developing nations, being paralyzed by vetoes from the five permanent members (France, US, UK, China, and Russia), and failing to intervene in grave human rights violations such as the Rwandan and Srebrenica genocides.⁴

Consider the following questions during the debate:

- Does the international community have a moral duty to protect universal human rights? If so, who defines 'moral duty'?
- Who decides whether international intervention is legitimate?
- Have human rights interventions been effective? If not, does this suggest that they should not be used? What is the cost, in moral, human, and economic terms, of failed interventions?

¹ Ayoob, Mohammed. "Humanitarian Intervention and State Sovereignty." *The International Journal of Human Rights*, 2002; "The Dilemma of Humanitarian Intervention." <https://www.cfr.org/background/dilemma-humanitarian-intervention>

² "The Dilemma of Humanitarian Intervention." <https://www.cfr.org/background/dilemma-humanitarian-intervention>

³ <https://www.cfr.org/background/dilemma-humanitarian-intervention>

⁴ "Importance of State Sovereignty, Need to Address Human Rights Violations, Council Reform, Discussed in Assembly." <https://www.un.org/press/en/1999/19991008.ga9633.doc.html>; "The Dilemma of Humanitarian Intervention." <https://www.cfr.org/background/dilemma-humanitarian-intervention>; Ayoob, Mohammed. "Humanitarian Intervention and State Sovereignty." *The International Journal of Human Rights*, 2002.

Motion.

The international community should intervene where states are unwilling or unable to protect the human rights of their citizens and residents.

Debate Structure

- 1) **Preparation.** 5 minutes of preparation with teams.
- 2) **Speeches – groups presenting their arguments.**
 - 3-minute speech, Side 1, support of the motion – **YES to intervention; protection of human rights.**
 - 3-minute speech, Side 2, opposition to the motion – **NO to intervention; protection of state sovereignty.**
- 3) **Preparation.** 2 minutes of preparation with teams for rebuttals.
- 4) **Rebuttals.**
 - 1 minute for rebuttal, Side 1.
 - 1 minute for rebuttal, Side 2.
- 5) **Deliberation.** 2 minutes for judges to deliberate on a decision.
- 6) **Decision and comments.** 2 minutes for judges to provide their decision, reasons for decision, and comments.
- 7) **Debrief.** The whole class will discuss the debate and give any additional comments.

Prepared by Amalie Wilkinson

2. The Criminalization of Denial

Debate Question

Under what circumstances, if any, is it justified to criminalize genocide denial?

Overview

Genocide denial occurs when someone distorts or rejects a documented and legally-determined genocide. Denial occurs in many forms. Some denialists reject that a genocide took place, while others argue that atrocities don't satisfy the definition of 'genocide.' They downplay the number of casualties, justify genocidal policies, claim there was no intent to commit genocide, or assert that there were equivalent acts on all sides. Motivations for denial can be personal, political, or even intellectual. Academic denialists see themselves as the 'other side' of a historical 'debate.'¹ Whatever its form, genocide denial can revictimize survivors, inhibit justice, and it may even lead to more violence.²

One approach to limiting denial is criminalization. As of 2017, eleven countries criminalized Holocaust denial and nine criminalized the denial of other genocides.³ European countries that were occupied by the Nazis in World War II tend to have the strictest laws prohibiting denial.

Denial of the 1995 genocide perpetrated by Bosnian Serbs against Bosnian Muslims is widespread among the Serbian population and Serb government officials. In 2021, Bosnia's highest international official took executive action to outlaw genocide denial. Domestic advocates and international actors hailed the decision, which enraged Bosnian Serb politicians. There are doubts about whether officials will implement the law and, therefore, there are doubts about its effectiveness.⁴

Those who support laws against denial claim that they help to protect the victims of genocide from being invalidated and re-victimized, and that they preserve historical facts. Critics worry that prosecuting deniers may inadvertently give them media attention and spread their arguments.⁵ Additionally, denial laws may limit free speech. Russia, Rwanda, and other countries have been accused of wielding laws against genocide denial as political weapons to imprison opponents, write a convenient national history, etc.⁶

¹ Bazylar, Michael. "Holocaust Denial and the Law" in *Holocaust, Genocide, and the Law: A Quest for Justice in a Post-Holocaust World*. Oxford University Press, 2016; Charny, Israel. "A classification of denials of the Holocaust and other genocides." *Journal of Genocide Research*, 2003.

² Pruitt, William. "Understanding Genocide Denial Legislation: A Comparative Analysis." *International Journal of Criminal Justice Sciences*, 2017; Staub, Ervin. "Reconciliation after Genocide, Mass Killing, or Intractable Conflict: Understanding the Roots of Violence, Psychological Recovery, and Steps toward a General Theory." *Political Psychology*, 2006.

³ Pruitt, William. "Understanding Genocide Denial Legislation: A Comparative Analysis." *International Journal of Criminal Justice Sciences*, 2017.

⁴ "Top international official in Bosnia bans denial of genocide"

<https://www.denverpost.com/2021/07/23/international-official-bosnia-bans-genocide-denial/>

⁵ Bazylar, Michael. "Holocaust Denial and the Law" in *Holocaust, Genocide, and the Law: A Quest for Justice in a Post-Holocaust World*. Oxford University Press, 2016.

⁶ "First They Came for the Holocaust Deniers, and I Did Not Speak Out"

<https://foreignpolicy.com/2016/10/02/first-they-came-for-the-holocaust-deniers-and-i-did-not-speak-out/>

Consider the following questions during the debate:

- Is criminalization an effective way to prevent genocide denial?
- Are there other ways in which governments can combat denial?
- Do these laws violate free speech? Consider why limitations on free speech may be more acceptable in countries that have been affected by genocide.

Motion.

Denial of the Holocaust and other genocides should be criminalized.

Debate Structure

1. **Preparation.** 5 minutes of preparation with teams.
2. **Speeches – groups presenting their arguments.**
 - a. 3-minute speech, Side 1, **support of the motion.**
 - b. 3-minute speech, Side 2, **opposition to the motion.**
3. **Rebuttal preparation.** 3 minutes of preparation of rebuttals.
4. **Rebuttals.**
 - a. 1 minute for rebuttal, Side 1.
 - b. 1 minute for rebuttal, Side 2.
5. **Deliberation.** 2 minutes for judges to deliberate on a decision.
6. **Decision and comments.** 2 minutes for judges to provide their decision, reasons for decision, and comments.
7. **Debrief.** The whole class will discuss the debate and give any additional comments.

Prepared by Amalie Wilkinson