

## INTRODUCTORY REMARKS

*Alex Hinton\* and Saul Mendlovitz\*\**

ALEX HINTON:

I am Alex Hinton, the Director of the Center for the Study of Genocide and Human Rights, and I am delighted that the Center was able to co-host this event with the Rutgers Law Review. To give you a sense of the scholars who are speaking here today, we have a mix of established “star” experts, but we also have a number of young emerging scholars in the field of genocide studies and international law. Gathered today are people who traveled to Newark from all over the world; we have scholars from Argentina, Canada, and Denmark, amongst other places. Remarkably, participants include four past or present Presidents of the International Association of Genocide Scholars.

Furthermore, many of the people presenting today are renowned activists who work to prevent genocide and mass human rights violations. This includes our keynote speaker, who was, until 2007, a special advisor on the prevention of genocide at the United Nations. Momentously, we will also hear from someone who has lived through the horror of genocide, as well as people who are currently representing the victims of genocide in courts. This gathering is extremely special, and I appreciate everyone who has come here to make it a reality.

Before we begin, Professor Navarro reminded me that today is the 40th anniversary of Dr. Martin Luther King Jr.’s assassination. I would like to pause briefly to remember Dr. King’s contribution to promoting human rights. He once declared that “injustice anywhere is a threat to justice everywhere.”<sup>1</sup> In a world so plagued by violence, especially that which continues in Darfur, his words remain an appropriate and vigilant reminder. Please join me for a moment of silence in remembering Dr. King as well as the victims of injustice in

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1. Dr. Martin Luther King, Jr., “Letter from Birmingham Jail,” *The Estate of Martin Luther King, Jr.*, (Apr. 16, 1963), [http://www.stanford.edu/group/King/popular\\_requests/frequentdocs/birmingham.pdf](http://www.stanford.edu/group/King/popular_requests/frequentdocs/birmingham.pdf).

Darfur.

Now, turning to our first speaker, I am delighted to be able to introduce Professor Saul Mendlovitz, who is the Dag Hammarskjold Professor of Peace and World Order Studies Emeritus at Rutgers–Newark. Professor Mendlovitz obtained his B.A. from Syracuse University and acquired an M.A. and J.D. from the University of Chicago. This broad interdisciplinary background is reflective of Professor Mendlovitz's many accomplishments. He is the founding Director of the World Orders Model Project and Chairman of the International Steering Committee of Global Action to Prevent War, a transnational coalition of individuals, civil society organizations, and states dedicated to promoting a comprehensive political and legal program. The Committee aims to drastically reduce armed violence, war, internal-armed conflict, and genocide over the next three to four decades.

Professor Mendlovitz holds memberships on various boards, including the Arms Control Association, Global Education Associates, the Law & Humanities Institute, and the America-Israel Council for Israeli Palestinian Peace. Personally, I am delighted that he is a Faculty Associate of the Center for the Study of Genocide and Human Rights. Professor Mendlovitz has written and spoken extensively on issues relating to international law and the promotion of a just world order. The classic *On the Creation of a Just World Order* is one of his ten published volumes.<sup>2</sup> His most recent publications include *Preferred Futures for the United Nations*<sup>3</sup> and *A Reader on Second Assembly and Parliamentary Proposals*.<sup>4</sup> Additionally, he has published work advocating for a U.N. international all-volunteer police force. This police force would be specifically devoted to preventing and intervening in genocide and mass human rights violations. I am sure he will talk about that briefly in just a few moments.

Professor Mendlovitz joined the faculty in 1956. I mention this because I once heard rumors that Raphael Lemkin had taught at Rutgers—most people did not know about this—and I mentioned it to Professor Mendlovitz. He sort of chuckled and said, “Well, you know that’s true, and I also took his position here.” When we had the idea for this conference, it was immediately obvious that Professor Mendlovitz was the ideal person to start things off for us. Maybe we can get him to tell, briefly, the story of Raphael Lemkin at Rutgers—

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2. ON THE CREATION OF A JUST WORLD ORDER (Saul H. Mendlovitz ed., 1975).

3. PREFERRED FUTURES FOR THE UNITED NATIONS (Saul H. Mendlovitz & Burns H. Weston eds., 1995).

4. READER ON SECOND ASSEMBLY AND PARLIAMENTARY PROPOSALS (Saul H. Mendlovitz & Barbara Walker eds., 2003).

Newark. I am hoping he will do so, as it seems a very appropriate way to initiate the Conference on the 60th Anniversary of the Genocide Convention.

I am sure Raphael Lemkin would think it appropriate for someone like Professor Mendlovitz to begin the conference. In many ways Professor Mendlovitz has carried on Raphael Lemkin's tradition of the scholar-activist. Please join me in giving Professor Mendlovitz a warm welcome.

SAUL MENDLOVITZ:

I have five children. My fighting weight is 160 and I weigh 182—it is not easy to overcome those obstacles. Raphael Lemkin, whom I never met, was my immediate predecessor here. He was born in 1900 and was of Polish-Jewish origin. He was a lawyer and a public prosecutor. He was a linguist who spoke and read nine languages. In addition to being a lawyer and a prosecutor, he also obtained a Ph.D. in linguistics. He actually tried to introduce the notion of “ethnic cleansing”—though he did not use that term—under the old League of Nations in Madrid, back in the 1930s. Unfortunately, he was unable to convince those present that they ought to do something about it.

At the outbreak of World War II, he spent some time with the Polish underground, a group then called the Partisans. He then went on to Denmark, and finally came to the United States where he taught at Duke, Yale, Rutgers, and Princeton. I didn't know him personally, but I have heard stories. He used to lie down on his couch—I have followed that precedent—and wave the students inside. He would then go into some discourse about matters that they did not understand. Sometimes, he did it in his own language! Often, he spoke Yiddish to feel more at home.

Raphael Lemkin has an extraordinary bibliography. The one most commonly pointed to is the *Axis Rule in Occupied Europe*.<sup>5</sup> At the beginning of chapter nine, he wrote that “[n]ew conceptions require new terms”—and he coined the term “genocide.”<sup>6</sup> That word was not part of any language until the Canadian Government published the book in 1944. He took the word “geno,” of the Greek “genus,” and created the term “genocide,” which came to mean the desire and willingness to do away with an ethnic or cultural group.

When he came to the United Nations, he must have come across as one of the most annoying people to ever live. I know, because I am considered an annoying person, and I do not have his energy. But if

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5. RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS* (1944).

6. *Id.* at 79.

there was ever a person who was a single motivator for getting something done, he was that person for the Genocide Convention. It was his promotion of that Convention at the United Nations. He saw every mission—first it was fifty-one, then it became fifty-six, and by 1948, there may have been about sixty. Finally, in 1948, there was a unanimous adoption of the Convention, and it was entered into force in 1951.<sup>7</sup> Globally, there were enough ratifications that Ronald Reagan, in the final days of his second administration, was forced to agree to the ratification of the Genocide Convention. His people returned from various human rights meetings throughout the world to tell him that the United States was “constantly being beleaguered by other societies saying, ‘what kind of a human rights country are you that you can’t even ratify the Genocide Convention?’” As a result, Reagan submitted it to the Senate in November of his final year, and it was adopted the following February.<sup>8</sup> Thus, we, the United States, are now a signatory of that Convention. Lemkin’s ghost was obviously a part of this. Presently, there are approximately 135 countries who have ratified the Convention with another forty signatories, and forty more who still might decide.

Genocide is the hate crime of international criminal law. Indeed, if I could write a title for this symposium, I would call it “Eradicating Genocide and Crimes Against Humanity.” I believe we have made a mistake in downplaying crimes against humanity. There are twelve crimes against humanity, including extermination, murder, and enslavement.<sup>9</sup> Also included is a catch-all, which punishes those responsible for a crime generally considered “so bad” under the umbrella of crimes against humanity.<sup>10</sup> It is true that the International Criminal Tribunal for both Yugoslavia and Rwanda have used crimes against humanity as well as genocide in identifying, apprehending, and convicting people who have committed those crimes. Nevertheless, people seem to want crimes against humanity to stand separately—and below—the crime of genocide. For example, in the recent Darfur discussion at the Security Council, the Sudan felt that the resolution castigating them was a victory because they were not condemned for genocide, but rather only for crimes against humanity.

I believe we should try to upgrade crimes against humanity. Crimes against humanity are terrible. One of the difficulties of genocide is that you have to prove specific intent—you have to show

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7. See Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277.

8. See Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1091 (2000).

9. Rome Statute of the International Criminal Court art. 7, July 17, 1998, 2187 U.N.T.S. 90.

10. *Id.*

that the persons involved in genocide had the specific intent to rid, in whole or in part, the particular group that is targeted.<sup>11</sup> On the other hand, in crimes against humanity, you must only prove the knowledge that groups or individuals are being identified for certain kinds of atrocious behavior, but you do not have to show specific intent—the intent to destroy them in whole or in part.<sup>12</sup> Though the burden of proof is less, it does seem to me that crimes against humanity are sufficiently important that they should be upgraded.

I think I may lose that argument because people are fond of the genocide concept. There is, as you probably know, this constant discussion or argument between those people who want to limit the concepts of genocide and the Holocaust to the six million Jews—people who will not include the gypsies or other groups—and those who want to use genocide for what is happening in Harlem or for what is happening in Colombia. Thus, while the American Jewish community tries to narrow the definition, other groups try to expand it. This is not an unimportant matter; those of us who are lawyers know that when one is able to characterize a particular behavior in a certain way, one is then able to bring action against it.

The term “crimes against humanity” was first used when the English, the French, and the Russians issued a declaration condemning the Turkish government for what they called a “massacre” of the Armenians.<sup>13</sup> Not so incidentally, Henry Morgenthau Sr. was an ambassador to Istanbul (not Constantinople at that time) who argued for action to alleviate the horror. The State Department, believing that they should not interfere, and perhaps thinking of what might happen if the United States raised the matter—other states would point to our treatment of Afro-Americans—did nothing about it. Thus, Henry Morgenthau Sr. resigned from his position as ambassador and spent the remainder of his life traveling the United States in a *noblesse oblige*,<sup>14</sup> trying to involve people in what most today, some even in Turkey, call genocide.

It is important to address what I would call the legacy of

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11. Statute of the International Tribunal for Rwanda art. 2, Nov. 8, 1994, 33 I.L.M. 1602.

12. M. Cherif Bassiouni, *The Permanent International Criminal Court*, in JUSTICE FOR CRIMES AGAINST HUMANITY 173, 189-90 (Mark Lattimer & Philippe Sands eds., 2003).

13. Alan Kramer, *The First Wave of International War Crimes Trials: Istanbul and Leipzig*, 14 EUR. REV. 441, 442 (2006). Note that the terminology used is “massacre” and not “genocide” because the term genocide was not yet invented.

14. A SUPPLEMENT TO THE OXFORD ENGLISH DICTIONARY 1219 (Vol. II, 1976) (defining *noblesse oblige* as a “phrase suggesting that noble ancestry constrains (to honourable behavior); privilege entails responsibility”).

Nuremberg. I think one of the most highly underrated legal procedures in our history is what occurred in Nuremberg between the end of 1945 and autumn of 1946. Nuremberg is frequently thought of as a victor's justice—that the victors prosecuted these people and proceeded to kill them. Let me remind you that in Italy during May of 1945, a group referred to as partisans picked up Benito Mussolini, strung him up over a tree limb, and hung him upside down as he died. I do not know anyone who memorializes that occasion.

At the original Nuremberg trials, before Spencer Tracy got into it, there were twenty-two indicted criminals. Ten of those criminals were executed by hanging. One of them defeated the hanging by committing suicide. About four or five were given life sentences, and a few of the others were given five to ten year sentences. Two of them were acquitted. There were nine months of the most extraordinary legal proceedings, and the reason Nuremberg is still mentioned, and is no longer thought of as victor's justice, is that there was actually due process. This was a trial that any court in the world could have presided over, and it stands as a monument to world legal theory. It is something worth going back to, looking at, and even reading the opinions. In fact, the only one who dissented from the acquittals was the Russian, the great Soviet motherland judge at that time, and it is even worthwhile reading his contributions.

Genocide, incidentally, or not so incidentally, was not mentioned in the indictment at Nuremberg. The term was used four times in the indictment that lead up to the crimes against humanity, but it was not used *as* a crime. It was not mentioned in the trial as a crime, and the reason it was not mentioned in the indictment was because the United States insisted that it was not a permissible term, it not being mentioned in the Oxford English Dictionary. In Tokyo, the term was not used as all—nobody mentioned it. The fact that it has now become a major crime, the hate crime, seems to me a very important matter. It legitimizes and necessitates the Nuremberg tradition. The Nuremberg tradition has the following major impact in international law: it equates to using *Brown v. Board of Education*<sup>15</sup> to overturn *Plessy v. Ferguson*,<sup>16</sup> as well as the Thirteenth and Fourteenth Amendments.

Prior to Nuremberg, all officials could hide behind the notion that they were acting on behalf of the sovereign. No matter what they did, they were free from prosecution. The Kaiser hid behind his emergency powers; Napoleon answered to the Council of the Elders. It was not permissible to apprehend individuals and try them because they were merely puppets of the sovereign state. Nuremberg

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15. 347 U.S. 483 (1954).

16. 163 U.S. 537 (1896).

established the notion that individuals would be tried for their behavior. This notion applied to any person, no matter how high an official, and was an extraordinary change in the history of international law.

Presently, the International Criminal Court includes—in its statute for international criminal law—both genocide and crimes against humanities as two of the crimes of war crimes. (There is no crime of aggression because of major disagreements as to what constitutes aggression.) It is time to move on to see what we can do to apprehend criminals involved in crimes against humanity and in genocide throughout the world.

The public health community, for at least fifty years, has thought of armed conflict as a public health problem. If you search the encyclopedia, public health appears under genocide; if you search for genocide in the *British Journal of Medicine*, there are many people in positions of social responsibility who have written about public health. It makes a difference to understand the concept; the emphasis of public health is not on the casualties occurring in actual armed conflict. It is not on the soldiers. It is on civilians who are killed, maimed, wounded, or scarred. Researchers have begun to identify information on where these kinds of things occur. How many people have been wounded and maimed? How many people have been starving? They also ask how many medical personnel have been kidnapped. They have a series of categories that are really quite extraordinary and very good comparative sociology. If you are doing a case in that area, go to a medical sociologist. Each side says occasionally—each side being the international organization and the medical groups in the area—that there should be more collaboration, and then, of course, they never collaborate. However, there is a wealth of information to be obtained by collaborating more with those interested in public health.

There is another concept besides public health, something called R2P—the responsibility to protect—involved in this discussion. The R2P is the product of a Canadian government initiative that emerged about four years ago. The notion is that governments do not have sovereignty only to prevent other governments from intervening in their territorial jurisdiction, but also to protect their citizens from massive attacks and ethnic cleansing. And, if a government is unwilling or unable to provide that protection, it is the duty of the international community to intervene. That terrible word—intervene—emerges when we talk about sovereignty. Unfortunately, the responsibility to protect has not yet been exercised, although some protests have been mounted under it. One reason it has not been exercised is because the so-called developing societies of smaller states claim that this concept is purely a hegemonic effort to

rationalize the intervention of the superpowers, or those in Western Africa, China, and Tibet. There is an Indian scholar, Ramash Thakur, who was part of the responsibility to protect drafting group who now teaches in Canada. In his writings on the responsibility to protect, he has stated that the notion that southern societies do not want this responsibility is highly overstated. He provides at least a half dozen interviews in which officials or high-level society citizens demand that the responsibility to protect be used to protect the weak people in their own societies. We have not heard the end of the responsibility to protect, a concept that is another arrow in our quiver.

I wish now to discuss this notion of an independent U.N. force. In fact, everything that I have said before leads up to this concept. I am a political activist for a group called the United Nations Emergency Peace Service (UNEPS). We are a group of academics, activists, and diplomats who decided some four years ago that we would take upon ourselves the promotion of the creation at the United Nations, of an independent force run by the United Nations. This force would be composed of individually recruited personnel. They would be subject only to the U.N. authority. They would not be seconded and therefore could not be brought back home to their state of national origin. UNEPS would be used to deal with genocide and crimes against humanity. We deliberately left out any other kind of armed violence; for example, armed violence that crosses boundaries. Suppose Colombia gets into a war with Venezuela—UNEPS would not be used there. It would be confined to genocide because these crimes are of major magnitude. They so shock the conscience of humanity, and we feel it should be limited to those crimes. As indicated above, we began UNEPS four or five years ago, and now, the transnational coalition has developed to a point where we are going public.

There is also some movement occurring on the political scene. There is House Resolution 213, which is in the House Military Committee.<sup>17</sup> Twenty-nine co-sponsors in the Congressional House endorse UNEPS, and hope to bring it to the floor as soon as we have a democratic president. My guess is that it will probably pass as a resolution.

I would like to close with the following: I believe that the legacy of Raphael Lemkin is part of all this activity. If he had not made genocide such an extraordinarily important matter, many of our current activities would be much more difficult to pursue. The establishment of the UNEPS is a way to prevent, apprehend, and then perhaps actually try people who have been engaged in that major crime. I invite you, if you would like a copy of this book called

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17. H.R. Res. 213, 110th Cong. (2007).

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the *United Nations Emergency Peace Service*,<sup>18</sup> and you promise to at least open it, I will go upstairs and get one for you.

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18. WORLD FEDERALIST MOVEMENT, *A UNITED NATIONS EMERGENCY PEACE SERVICE: TO PREVENT GENOCIDE AND CRIMES AGAINST HUMANITY* (2006).