

CALL MYANMAR's CRIMES AGAINST THE ROHINGYA "GENOCIDE"

By Professor Gregory H. Stanton

The US State Department and UK Foreign Office still call the Myanmar government's crimes against the Rohingya "ethnic cleansing" and "crimes against humanity." They refuse to use the G-word: "Genocide." The same reluctance to call ISIS crimes by their proper name was resolved when Congress unanimously called the crimes of ISIS "genocide."

"Ethnic cleansing" is a term invented by Slobodan Milosevic as a euphemism for forced displacement and genocide. It is an insidious term because there is no international treaty law against it. There are international laws against forced displacement and genocide.

"Ethnic cleansing" is not a term used in the Rome Treaty of the International Criminal Court. It has no legal meaning in international law. Another term substituted for "genocide" is "atrocities." Both words avoid the Genocide Convention's duty to prevent genocide.

Genocide consists of acts of genocide intended to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. Genocidal massacres are acts of genocide.

A UN Independent Commission has now concluded that Genocide is precisely what the Myanmar government and Rakhine militias have committed against the Rohingya.

Forced displacement and genocide often go together. Genocidal massacres terrorize a targeted group into fleeing.

Why do US State Department lawyers still avoid calling these massacres "genocide?"

1. State Department, British Foreign Office, and UN lawyers often claim that only a court can invoke the word "genocide." This view is profoundly wrong. It ignores the very name of the International Convention for the **Prevention and Punishment of the Crime of Genocide**. Courts always try perpetrators after the genocide is over, too late to prevent it. Waiting for a court decision makes judges into a high priesthood with the sole right to invoke a sacred word.
2. Lawyers have gutted the word "genocide" of its preventive effect by insisting on the standard of proof for a criminal conviction: proof beyond a reasonable doubt. The proper standard of proof should be the standard used by prosecutors when they indict alleged perpetrators of a crime – the preponderance of the evidence.
3. Calling the crimes "genocide" might upset political relations with the Myanmar government and further embarrass Aung San Suu Kyi, who denies that the crimes are occurring. She has chosen political expediency over moral leadership.
4. Governments and the UN prefer to do nothing, rather than take more forceful action to stop genocide. The default response is hand-wringing, humanitarian aid, and inaction.
5. Many lawyers think using the term "crimes against humanity" is just as serious as using the term "genocide" because both may be punished by imprisonment for life. They are wrong. Calling massacres "Genocide" is necessary to compel forceful action to stop mass killing.

Does history show that it makes any difference whether these crimes are called "ethnic cleansing" or "crimes against humanity" and instead are called "genocide?"

In 2007, three epidemiologists and I conducted a study of the political effect of using the words "ethnic cleansing" rather than genocide in four of the most recent genocides: Rwanda, Bosnia, Kosovo, and Darfur.¹ Our team counted the number of uses of the terms "ethnic cleansing" and "genocide" in The New York Times, UN press releases, leading law journals, and statements by Amnesty International and Human Rights Watch. We noted the dates when the predominant terms turned from "ethnic cleansing" to "genocide." We then traced changes in policies and actions following these shifts. We came to three conclusions:

1. Use of the terms has no relationship to the number of people who have been killed. 8000 killed at Srebrenica was ruled "genocide" by the ICTY. Yet a U.N. Commission of Inquiry ruled that over 50,000 killed in Darfur (now over 500,000) was not sufficient evidence of the specific intent to commit genocide by the government of Sudan.

¹ 2007 Blum, Stanton, Sagi, Richter, 'Ethnic cleansing' bleaches the atrocities of genocide. European Journal of Public Health, Oxford University Press, 1-6. Accessed 7 December 2015 at http://genocidewatch.org/images/By_Stanton_07_05_18_Ethnic_cleansing_bleaches_the_atrocities_of_genocide.pdf

2. Choice of the term to be used is determined by willingness to take forceful action to stop the killing. When the terms “ethnic cleansing” or “crimes against humanity” were used, they indicated unwillingness to take forceful action to stop the crimes. These weak words never motivated the use of force. Indeed, they were probably chosen because the decision not to use force had already been made.

3. Only when the term “genocide” became dominant was force used to stop the killing.

This occurred three months into the genocide in Rwanda when the US State Department finally acknowledged on 10 June 1994 that “acts of genocide” in Rwanda were the same as “genocide.” This declaration came after the US and UK had voted in the UN Security Council to pull UNAMIR troops out of Rwanda on 21 April 1994.

The US, UK, and UN recognition of “genocide” came too late. 800,000 Rwandans were slaughtered. The US, UK and other world powers were not willing to risk the life of a single soldier to protect them. On 8 November 1994, the UN Security Council invoked the word “genocide” for the first time in its history, in UNSC Res. 955.² A court, The International Criminal Tribunal for Rwanda (ICTR,) finally convicted the first head of state for genocide. It convicted over sixty leaders of genocide. Courts in Rwanda have convicted thousands more.

The same denial emerged in Bosnia, as the world press and US and UK governments called the massacres “ethnic cleansing” from 1991 until the Srebrenica massacre on 11-13 July 1995. That massacre provoked a NATO conference on 21 July 1995, which resulted in NATO bombing of Serb forces beginning 30 August 1995. The bombing brought Serbia to Dayton to agree to a ceasefire, division of Bosnia, NATO peacekeeping, and the end of the Bosnian war. The International Criminal Tribunal for the former Yugoslavia and the International Court of Justice ruled that the massacre at Srebrenica was genocide.

Kosovo was called “ethnic cleansing” until US War Crimes Ambassador David Scheffer noted “indicators of genocide” on 7 April 1999. His statement was followed immediately by bombing of Belgrade, which brought Serb surrender and NATO occupation of Kosovo. Six Serb leaders were convicted by the ICTY. The Kosovo Tribunal has convicted others.

Regarding Darfur, following a careful empirical survey of evidence of genocide among Darfur refugees, on 9 September 2004, US Secretary of State Colin Powell declared, “Genocide has occurred and may still be occurring in Darfur. We believe the evidence corroborates the specific intent of the perpetrators to destroy “a group in whole or in part.” Unfortunately, he also said, “However, no new action is dictated by this determination.” A decision had been made by the US President not to involve US or NATO military forces in stopping the genocide. The US rejected its duty to prevent and stop genocide.

The UN appointed its own Commission of Inquiry, which enumerated “crimes against humanity” in Darfur, but refused to call them “genocide.” All that followed were ineffective increases in the African Union monitoring force, but no forceful intervention by UN peacekeepers, NATO or other military forces. Since 2005, 450,000 more Darfuris have died.

Although the International Criminal Court has charged Sudanese President Omar al-Bashir and two others with genocide in Darfur, they have never been arrested and brought to trial. Sudan has four active genocides today. It is an example of the failure of the UN to stop genocide, and of the African Union and states-parties to the ICC Treaty to enforce international criminal law.

When the term “genocide” is used to describe crimes against humanity, use of force is possible. When the crimes are only called “ethnic cleansing” or “crimes against humanity,” it is a sure indicator of lack of political will to take forceful action to stop them. The term “atrocities” is shorthand for crimes against humanity, war crimes, and genocide. But “atrocities” also has no status in international law. It has become another indicator of absence of will to take forceful action to stop genocide.

Even if the US, UK, and UN decide not to protect the Rohingya so they can return to Myanmar, and even if no court tries anyone for these crimes, Congress and the US State Department should call these genocidal massacres by their proper legal name: Genocide. The US should increase its aid to Rohingya refugees and provide financing to resettle the Rohingya in Malaysia or other nations where they are welcome.

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² S/RES/955 (1994) 8 November 1994. UNSC resolution 955 was drafted by Prof. Stanton.