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Giving Meaning to the Term Genocide as It Applies to U.S. Immigration Policy

Paul John Chrisopoulos

GIVING MEANING TO THE TERM "GENOCIDE" AS IT APPLIES TO U.S. IMMIGRATION POLICY

I. INTRODUCTION

Atrocious acts of genocide have become more and more prevalent in the past three years. During this period, ethnic cleansing in Bosnia caused the death of thousands of innocent Muslims, Croats, and Serbs.[1] In April 1994, gangs of machete-wielding Hutus hunted down members of the Tutsi ethnic group in Rwanda, taking over 500,000 lives.[2] Not since World War II has the world witnessed such dramatic acts of "genocide."

After the persecution and extermination of millions of non-combatants during World War II, the United Nations passed a resolution in hopes of preventing such acts.[3] On December 11, 1948, the General Assembly of the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide ("Convention").[4] The Convention recognized genocide as a crime under international law and provided for its punishment.[5] Unfortunately, the Convention did little either to prevent or to punish these acts.

The problem with the Convention is that it lacks legitimacy in the world community. The law is meaningless unless states actively enforce it. Article XI of the Convention requires ratification by member-states of the United Nations,[6] yet many states took up to fifty years to ratify the Convention.[7] The United States, which prides itself on protecting human rights, did not

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1. Carol J. Williams, *Bosnian Serbs Snub U.N. Chief*, L.A. TIMES, Dec. 1, 1994, at A1. "Two million Bosnians have already been made homeless by the rebels' siege and their practice of 'ethnic cleansing,' and 200,000—most of them Muslims—are dead or missing." *Id.*

2. John-Thor Dahlburg, *U.N. Panel Vows Justice in Rwanda*, L.A. TIMES, Sept. 3, 1994, at A11.

3. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 278 [hereinafter Convention].

4. *Id.*

5. *Id.* at 280.

6. *Id.* at 284.

7. United States: Genocide Convention Implementation Act of 1987, 18 U.S.C. § 1091 (1994) (enabling the United States to become the 98th party to the Convention) [hereinafter Implementation Act].

become a member of the Convention until November 4, 1988, nearly forty years after its adoption.[8]

Shortly after U.S. implementation of the Convention, the United States attempted to further legitimize the Convention by enacting the Immigration and Nationality Act of 1990 ("INA of 1990").[9] This Act considers genocide as an offense punishable by deportation pursuant to U.S. immigration law. No immigration court in the United States has yet been presented with a deportation case under the newly enacted genocide provision. Additionally, the global community lacks a clear and contemporary definition of "genocide." This Comment addresses how a U.S. immigration court should determine which persons are deportable under the genocide provision of the INA of 1990.

Part II of this Comment describes the historical background of genocide and how the global community has dealt with it. The section examines the events that led up to the Convention and the Convention itself. The historical background of the international community's response to genocide provides the foundation for the analysis of the United States' own immigration legislation on genocide. Part III examines existing immigration policy with particular emphasis on the exclusionary provisions for the categories of both Nazi and other genocide participants. It also explains some of the legislative history behind the acts that excluded those participants.

Part IV critiques existing U.S. immigration policy as it pertains to participants of genocide. U.S. immigration policy currently lacks a clear definition of genocide. The U.S. courts must deal with this problem, and also with some related constitutional concerns. Finally, Part V furnishes three proposals intended to remedy the current problems of the INA of 1990, and Part VI concludes that the most effective remedy must derive at the international level.

II. HISTORICAL BACKGROUND

A. Events leading up to the Genocide Convention of 1948

Following World War I, the members of the Preliminary Peace Conference at Versailles appointed the Commission on the

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8. *Id.*

9. Immigration and Nationality Act of 1990 § 212(A)(3)(E), 8 U.S.C. § 1182(a)(3)(E)(ii) (1994) [hereinafter INA of 1990].

Responsibility of the War and on the Enforcement of Penalties ("Commission").[10] The Commission had the authority to inquire into violations of the customs of war.[11] The Commission delineated numerous acts characteristic of genocide, such as murder, massacre, torture, rape, and abduction of women.[12] The Commission recommended the establishment of an international court composed of the victor nations of World War I to prosecute the various offenses.[13] Despite the recommendation, no tribunal convened.

The London Charter established the grounds and procedure to prosecute Nazi war criminals before the International Military Tribunal at Nuremberg.[14] This Charter called for the prosecution of three types of crimes: war crimes, crimes against peace, and crimes against humanity.[15] Article 6(c) of the Charter defines crimes against humanity as "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal."[16]

The Tribunal had its shortcomings. It narrowly interpreted the Charter so that persons could only be convicted of crimes against humanity if they had committed those crimes in connection with or in execution of an aggressive war.[17] One implication of this construction is that crimes committed before the start of the war did not fall within the jurisdiction of the Tribunal.[18] Another

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10. HOWARD S. LEVIE, TERRORISM IN WAR-THE LAW OF WAR CRIMES 23 (1993). Members of the Commission included two representatives each from France, Great Britain, Italy, Japan, and the United States, and one representative each from Belgium, Greece, Poland, Romania, and Serbia. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers and Charter of the International Military Tribunal, Aug. 5, 1945, 89 U.N.T.S. 279 [hereinafter London Charter]. A year later, the Charter for the International Military Tribunal for the Far East accomplished the same for the prosecution of war criminals in the Far East. Charter for the International Military Tribunal for the Far East, Tokyo, Jan. 19, 1946, T.I.A.S. No. 1589.

15. London Charter, *supra* note 14, at 279.

16. M. Cherif Bassiouni, *"Crimes Against Humanity": The Need for a Specialized Convention*, 31 COLUM. J. TRANSNAT'L L. 457, 463 (1994).

17. LAWRENCE J. LEBLANC, THE UNITED STATES AND THE GENOCIDE CONVENTION 24 (1991).

18. *Id.*

consequence is that since World War II, this Charter has not applied in instances of domestic strife. For example, genocide is alleged to have occurred in Turkey against the Armenian people around 1915, in Rwanda in the late 1950s and early 1960s, and in Burundi in the early 1970s.[19] During such periods of domestic turmoil, genocide may very well have occurred even though a state of war did not exist.[20] Because the Charter required the existence of a "state of war," these alleged acts of genocide did not fall under the Charter. Therefore, the U.N. General Assembly sought to establish a convention that would apply whenever the crime of genocide occurred.[21]

B. The Genocide Convention of 1948

On December 11, 1948, the United Nations passed the Genocide Convention.[22] The Convention's passage came after much debate in the U.N. General Assembly. The U.N. Economic and Social Council ("ECOSOC") originally delegated to the U.N. Secretariat the task of drafting the Convention.[23] Upon reviewing the draft, most representatives of the ECOSOC felt that the draft lacked realism.[24] The Australian representative stated that "while speed was essential, it was even more important to ensure that the convention . . . be based on solid legal and moral principles which would command universal respect and would be enforced."[25] Because of the deficiencies of the Secretariat's draft, the ECOSOC created an ad hoc committee consisting of representatives from China, France, Lebanon, Poland, United States, Union of Soviet Socialist Republics, and Venezuela.[26] The Sixth Legal Committee of the General Assembly revised this document, and its final draft was adopted by the General Assembly.[27]

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19. *See* EDWARD ALEXANDER, A CRIME OF VENGEANCE: AN ARMENIAN STRUGGLE FOR JUSTICE (1991); L. KUPER, THE PITY OF IT ALL 170-208 (1977); T. MELADY, BURUNDI: THE TRAGIC YEARS (1974).

20. LEBLANC, *supra* note 17, at 24.

21. *Id.* at 25.

22. Convention, *supra* note 3.

23. LEBLANC, *supra* note 17, at 25. The Secretariat prepared a draft by June 1947 by using experts in international and criminal law as consultants. *Id.*

24. U.N. ESCOR, 3d Sess., 139th mtg. at 146, U.N. Doc. E/447-623 (1948).

25. *Id.* at 141.

26. LEBLANC, *supra* note 17, at 28.

27. *Id.* The committee's deliberations were marked by sharp differences; thus, many of the Convention's provisions were heavily influenced by political and ideological

Several of the Convention's articles are particularly noteworthy. Article I of the Convention states that genocide is a crime under international law and calls for its prevention and punishment.[28]

Article II specifies that a person must intend to destroy a national, ethnic, racial, or religious group.[29] It provides the following examples as evidence of genocide: (1) killing members of a group; (2) causing serious bodily or mental harm to members of a group; (3) deliberately inflicting conditions on the group that will bring about physical destruction; (4) imposing measures upon a group to prevent births; and (5) forcefully transferring children from one group to another.[30]

Article III lists the following acts as criminal: (1) genocide; (2) conspiracy to commit genocide; (3) direct and public incitement to commit genocide; (4) attempt to commit genocide; and (5) complicity in genocide.[31] Article V requires the signatory nations to enact legislation necessary to effectively impose penalties on persons guilty of genocide.[32] Finally, Article VIII allows any signatory state to request that the United Nations take appropriate action to prevent and suppress acts of genocide.[33]

III. EXISTING U.S. IMMIGRATION LAW

A. Overview of U.S. Deportation Procedure

For most of the nineteenth century, the federal government lacked a general deportation statute.[34] Most aliens were permitted to remain in the country for as long as they wished, and it was not until the late nineteenth century that Congress began to restrict

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considerations. Representatives of states with monarchies pointed out that their kings could not be brought to trial, and that the words "heads of State" could not be used. *Id.* at 29. Consequently, the drafters of Article IV of the Convention settled on the words "constitutionally responsible rulers" intending to create an exemption for monarchs who cannot be brought to trial. *Id.* at 30.

28. Convention, *supra* note 3, at 280.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. Convention, *supra* note 3, at 282.

34. THOMAS A. ALEINIKOFF & DAVID A. MARTIN, IMMIGRATION: PROCESS AND POLICY 348 (1985).

the presence of aliens in the United States.[35] In 1913, the Supreme Court upheld the constitutionality of deportation proceedings. Justice Holmes wrote:

> It is thoroughly established that Congress has the power to order the deportation of aliens whose presence in the country it deems hurtful. The determination by facts that might constitute a crime under local law is not a conviction of crime, nor is the deportation a punishment; it is simply a refusal by the Government to harbor persons whom it does not want.[36]

Deportation proceedings begin by issuing an order to show cause that sets forth the factual allegations of the charge, the statutory provisions allegedly violated, and the nature of the proceedings.[37] Prior to the hearing, several informal conferences may be held that could lead to stipulations shortening the hearing.[38] At the hearing, the immigration judge must determine deportability by clear, convincing, and unequivocal evidence.[39] Thus, the provision authorizing the deportation must be clearly laid out so as to allow consistent application. As the U.S. deportation provision on perpetrators of genocide stands now, it lacks the clarity necessary to ensure its proper and consistent application.

B. Background: U.S. Immigration Policy Since World War II

Before examining the current state of U.S. immigration policy, this Comment briefly sets out a historical background of that policy. Congress passed the Displaced Persons Act ("DPA") in 1948, shortly after World War II, as a mechanism to temporarily eliminate restrictive immigration quotas and to allow relief to persons displaced by war.[40] In 1950, Congress amended section 13 of the DPA to expressly bar issuing an entrance visa "to any person who advocated or assisted in the persecution of any person

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35. EDWIN HARWOOD, IN LIBERTY'S SHADOW 2 (1986). The first restrictions came in the way of qualitative and quantitative barriers to immigration under an ideology of "restrictive nationalism." *Id.*

36. Bugajewitz v. Adams, 228 U.S. 585, 591 (1913).

37. ALEINIKOFF & MARTIN, *supra* note 34, at 403.

38. Jack Wasserman, *Practical Aspects of Representing an Alien at a Deportation Hearing*, 14 SAN DIEGO L. REV. 111, 117 (1976).

39. *Id.* at 120.

40. Displaced Persons Act of 1948, ch. 647, § 2(B), 62 Stat. 1009 (1948) [hereinafter DPA].

because of race, religion, or national origin."[41] For the first time, the United States attempted to exclude participants of the Nazi civilian persecutions.

Congressional adoption of the Immigration and Nationality Act of 1952 ("INA of 1952") represented the first comprehensive statement of U.S. immigration policy.[42] Unlike the DPA, the INA of 1952 did not contain a provision explicitly excluding persons who assisted in persecution.[43] Consequently, it created a loophole that allowed Nazi persecutors to enter the United States.

Congress abolished this loophole by enacting the 1978 Holtzman Amendment.[44] Section 103 of the 1978 Amendment expressly excluded individuals who participated in the Nazi persecution.[45] This amendment permanently established within U.S. immigration law the policy provision that originally appeared in the DPA,[46] and became the main device used to exclude or deport Nazi participants from the United States.[47] Unlike other orders of deportation, persons deportable under this provision are ineligible for most forms of relief from deportation.[48]

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41. 1950 Amendment to Displaced Persons Act, ch. 262, 64 Stat. 219, 227 (1950).

42. Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163 (1953) (codified at 8 U.S.C. § 1451(a) (1994)) [hereinafter INA of 1952].

43. Section 340(a) of the INA of 1952 authorized U.S. officials to deport people who gained entrance into the country either illegally, by concealment of a material fact, or by a willful misrepresentation of a material fact. Thus, one who has entered the United States under the DPA by concealing his assistance in the persecution of civilians, is still subject to deportation. *Id.*

44. Immigration and Nationality Act—Nazi-Germany, Pub. L. No. 95-549, 92 Stat. 2065 (1978) (codified at 8 U.S.C. § 1182(a)(3)(E)(i) (1994)).

45. *Id.* The Act explicitly denied entrance to or made subject to deportation

> [a]ny alien who, during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with-
> (I) the Nazi government in Germany,
> (II) any government in any area occupied by the military forces of the Nazi government of Germany,
> (III) any government established with the assistance or cooperation of the Nazi government of Germany, or
> (IV) any government which was an ally of the Nazi government of Germany, ordered, incited, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

Id.

46. H.R. REP. NO. 1452, 95th Cong., 2d Sess. 3 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4700, 4702.

47. *See infra* Part V.A. discussing certain INS trials against alleged Nazi participants.

48. ALEINIKOFF & MARTIN, *supra* note 34, at 642.

C. Immigration and Nationality Act of 1990

1. Legislative history behind the addition of "genocide" as an excludable/deportable offense under U.S. immigration policy

Article V of the Convention states that 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 III."[49] As Article V reflects, the Convention is not a self-executing instrument. Rather, the individual participant states are responsible for implementing the necessary legislation that will give the Convention some credence in the international community. An international treaty cannot deter acts of genocide unless states enforce the treaty through their own domestic laws.

The United States did not become a member-state to the Convention until November 4, 1988, when Congress passed the Genocide Implementation Act of 1987 ("Implementation Act").[50] The purpose of this Act was "to create a new federal offense that prohibits the commission of acts with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial or religious group; and to provide adequate penalties for such acts."[51] This Act set the legislative course for including "genocide" as an excludable offense in the INA of 1990.

While the United States played a leading role in drafting the Convention in 1950, remarkably it did not implement any legislation until some forty years later. President Truman submitted the Convention for Senate advice and consideration on June 16, 1949 and, since that time, each subsequent President, except Eisenhower, called for its ratification.[52] On May 21, 1985, the Senate Foreign Relations Committee voted unanimously to send the Convention back to the Senate floor for further consideration

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49. Convention, *supra* note 3, at 280.

50. Implementation Act, *supra* note 7.

51. S. REP. NO. 333, 100th Cong., 2d Sess. 1 (1988), *reprinted in* 1988 U.S.C.C.A.N. 4156.

52. *Id.*

along with some attached Committee provisions.[53] On February 19, 1986, the Senate voted eighty-three to eleven in favor of its ratification subject to the attached Committee provisions.[54]

A brief overview of the Senate Foreign Relations Committee's provisions is necessary to give a statutory interpretation to "genocide" in the INA of 1990. The Senate attached two reservations and five understandings[55] to the Implementation Act to designate interpretations and clarify obligations as set out in the Treaty text.[56]

> The Senate's advice and consent is subject to the following understandings, which 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 acts 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) The 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

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53. *Id.*

54. *Id.*

55. "According to the State Department memorandum, a *reservation* excludes or varies the legal effect of one or more provisions of a treaty in their application to the reserving state; an *understanding* merely explains or clarifies the meaning of one or more provisions of a treaty but does not exclude or vary their legal effect." LEBLANC, *supra* note 17, at 10.

56. RICHARD G. LUGAR, SENATE COMM. ON FOREIGN RELATIONS, REPORT ON THE INTERNATIONAL CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, 99th Cong., 1st Sess. 16 (Comm. Print 1985) [hereinafter REPORT].

> any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the Senate.[57]

The two reservations included: (1) World Court Reservation and (2) a Constitutional Reservation.[58] The World Court Reservation "gives the United States the option of accepting the jurisdiction of the International Court of Justice in a given dispute under Article IX of the Genocide Convention."[59] The Constitutional Reservation makes it clear that "if any article is construed to require the United States to act in a way barred by the U.S. Constitution, the Committee's reservation will excuse the United States from the obligation."[60]

Despite these five understandings and two reservations, the Committee made no recommendation for amending the scope of "genocide" under the Convention.[61] This is remarkable considering the fact that the Convention has not been revised or updated since its inception in 1948. The Committee rationalized its decision not to make amendments by saying: "Ninety-six other states have ratified the Convention as it was drafted. Thus, Senate approval conditioned on the adoption of an amendment would be tantamount to Senate rejection of the Convention."[62]

2. Existing statement of the Immigration and Nationality Act of 1990

President George Bush signed the INA of 1990 on November 29, 1990, labeling it "the most comprehensive reform of our immigration laws in 66 years."[63] The 1990 Act substantially altered the preference system by: (1) establishing categories of

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57. *Id.* at 27.

58. *Id.* at 18-19.

59. *Id.* at 18. Some dissenting Senators asserted that this reservation suggests that the United States is concerned about the "validity of charges which unfriendly nations might attempt to assert in the World Court." *Id.* at 29.

60. *Id.* at 20. The dissenting Senators believe that this reservation "will seriously compromise the political and moral prestige the United States can otherwise attain in the world community by unqualified ratification." *Id.* at 31. This reservation basically implies that the Convention is ratified insofar as we find no violation of the Constitution in the future. *Id.*

61. REPORT, *supra* note 56, at 17.

62. *Id.*

63. Statement by President George Bush Upon Signing S. 358, 26 WEEKLY COMP. PRES. DOC. 1946 (Dec. 3, 1990).

employment based on immigration and redefining "immediate relatives"; (2) changing the definitions of many nonimmigrant categories; (3) establishing temporary protected status programs; (4) redefining and broadening laws concerning criminal aliens; (5) substantially raising the level of INS fines; and (6) altering court procedures.[64] The most significant change for purposes of this Comment was the addition of "genocide" as an excludable and deportable offense.

The addition of genocide as an excludable and deportable offense to the current immigration policy illustrates the U.S. desire to deal effectively with the problem of genocide. Not coincidentally, the addition of genocide to immigration law occurred just two years after the signing of the Implementation Act. Clearly, this 1990 amendment is in accordance with Article V of the Convention as "necessary legislation to give effect to the provisions of the present Convention."[65]

Section 212(a) of the Act excludes persons who committed genocide under the general category of exclusion on "security and related grounds."[66] Section 212(a) excludes "[a]ny alien who has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide."[67] This same category excludes Nazi participants.[68] Unfortunately, the section 212(a) language represents the extent of the legislative guidance on interpreting who is a participant of genocide. No mention of genocide exists in the legislative history of the 1990 amendment. Thus, one can only look to the Convention itself, and possibly examine Nazi deportation proceedings, for guidance.

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64. IRA J. KURZBAN, KURZBAN'S IMMIGRATION LAW SOURCEBOOK 8 (1994).

65. Convention, *supra* note 3, at 277.

66. INA of 1990, *supra* note 9.

67. *Id.*

68. *Id.* The title of category (E) of the INA of 1990 is "Participants in Nazi Persecutions or Genocide." *Id.* The language for the exclusion of Nazi participants is identical to that in the Holtzman Amendment of 1978.

IV. CRITIQUE OF EXISTING U.S. IMMIGRATION POLICY ON GENOCIDE

A. No Clear Universal Definition of Genocide

The main problem with the language of the INA of 1990 is its failure to clearly define "genocide." The only guidance it gives is its reference to the Convention, which is over forty years old. The Convention's definition is not only vague, more importantly, it is inapplicable to today's world. Consider the context in which the global community implemented the original Convention. World War II just ended and the world had witnessed the systematic genocide of millions of Jews and individuals of other ethnicities. Few dispute that the Nazis committed genocide, regardless of its disputable definition. In the past few years, the world has witnessed many atrocities which could be viewed as genocide. Nevertheless, the global community has done little to combat these atrocities or even label them as genocide under the Convention.

The most recent example is the massacre of some 500,000 Rwandans.[69] Despite the horrific number of deaths, little has been done to prosecute this massacre as a crime of genocide under the Convention.[70] This delay is due in part to the lack of clarity in the Convention itself. Unlike Nazi Germany, Rwanda appears to be in a state of civil war between competing tribes, the Hutus and the Tutsis. Many of the murders in Rwanda were committed in an atmosphere of chaos. Thus, unlike World War II, in Rwanda there was no apparent systematic plan or explicit intent to exterminate. This situation, while not analogous to the Nazi persecutions, still could be characterized as genocide. A U.N. official commented on the difficulty of investigating this crime:

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69. *UN Panel Charges Genocide in Rwanda*, CHI. TRIB., Oct. 4, 1994, at 4.

70. On February 22, 1995, the United Nations and the government of the United Republic of Tanzania decided that the International Tribunal for Rwanda will have its seat at Arusha. U.N. SCOR, 50th Sess., 3502d mtg. at 1, U.N. Doc. S/RES/977 (1995). On April 24, 1995, the Security Council established a list of potential candidates for this International Tribunal. U.N. SCOR, 50th Sess., 3524th mtg. at 1, U.N. Doc. S/RES/989 (1995). These two steps will hopefully lead to the prosecution of individuals responsible for the Rwandan atrocities.

"We need a minimum of 147 independent investigators in Rwanda .... We need $10 million for six months of work."[71]

Another example is the current conflict in Bosnia. On May 25, 1993, the U.N. Security Council adopted Resolution 827.[72] This Resolution established an international tribunal at the Hague to investigate and prosecute persons responsible for violations of humanitarian law in the former Yugoslavia.[73] Additionally, the Resolution called for the cooperation of all member states to implement its provisions.[74] Despite the strong rhetoric of Resolution 827, little has been done to curtail the atrocities in that country.[75]

As in Rwanda, one of the main impediments to stopping the Bosnian murders is a lack of uniform global recognition that acts of genocide are occurring in the former Yugoslavia. Nazi Germany is the only prior example of mass genocide the international community uniformly recognizes in this century. Major distinctions between the circumstances of Nazi Germany and Bosnia contribute to this pervasive lack of will within the international community. For example, the victors in Bosnia are primarily responsible for the policy of "ethnic cleansing." Yet any apparent U.N. peace agreement would probably require some form of immunity provision for the Serb leaders. The Convention loses its legitimate force and deterrent effect when the global community seeks peace even at the cost of failing to bring these war criminals to justice. Consequently, "the U.N. and the E.C. negotiators

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71. Christopher McDougall, *Trials Urged for Rwanda War Crimes*, PHILA. INQUIRER, Sept. 17, 1994, at D15.

72. *Security Council Resolution on Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia,* U.N. SCOR, 48th Sess., 3217th mtg. at 1, U.N. Doc. S/RES/827 (1993).

73. *Id.*

74. *Id.* Point four of the Resolution states that "all states shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution . . . all states shall take any measures necessary under their domestic law to implement the provisions of the present resolution." *Id.*

75. *The World This Week: Politics and Current Affairs*, ECONOMIST, Nov. 12, 1994, at 6. The Hague Tribunal did not issue its first indictment until November 1994. The indictment was against Dragan Nikolic, a former Bosnian Serb concentration camp commander. *Id.* The Tribunal issued its first mass indictments on February 13, 1995, "charging 21 Serbs with murdering, raping and torturing Muslim and Croat inmates at the notorious Omarska prison camp." Jon Henley, *Serb Jailers Charged with Murder, Rape and Torture*, GUARDIAN, Feb. 14, 1995, at 9, *available in* WESTLAW, INT-NEWS.

have lent them some legitimacy, despite the fact that war crimes have been perpetrated under their leadership."[76]

Another distinguishing factor is that the conflict in the former Yugoslavia does not involve the systematic plan of extermination present in World War II. The press does not broadcast images of gas chambers, mass grave sites, and egregious concentration camps each night. One may also argue that modern society has become desensitized to these deplorable acts of terror. Thus, deprived of the globally recognized images associated with genocide, no uniform public consensus acknowledges the existence of genocide in Bosnia. This apathy can only be eliminated by a contemporary definition of genocide that can be applied in today's changed environment. Earnest revision of the Convention or a new Genocide Convention is needed to educate the world that genocide can occur in any part of the world and it does not have to resemble the murderous scheme of Nazi Germany.

B. Constitutional Concerns Over Current Immigration Procedure

Lack of a clear definition of genocide raises certain constitutional concerns for U.S. immigration courts. Due process, equal protection, and Eighth Amendment claims are prevalent whenever courts have little or no precedent to follow. Because no U.S. court has yet excluded a person on the basis of the genocide provision of the INA of 1990, courts may manipulate and interpret the provision in any manner. This lack of precedent might lead to great injustice for the individual defendants.

The U.S. Constitution states that no person within its jurisdiction shall be denied equal protection under the laws.[77] Lack of judicial precedent and legislative guidance could lead to equal protection concerns. Too much court discretion might lead to inequitable application of the laws. Especially in this age of immigrant hostility, a court may be unsympathetic to a recent immigrant defendant. Also, the U.S. legal system as a whole must develop a consistent application of the genocide provision. The law should not be interpreted differently from courtroom to courtroom.

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76. Jeri Laber & Ivana Nizich, *The War Crimes Tribunal for the Former Yugoslavia: Problems and Prospects*, 18 FLETCHER F. WORLD AFF. 7 (1994).

77. U.S. CONST. amend. XIV.

The Constitution also guarantees due process stating that no person shall be deprived of "life, liberty, or property, without due process of law."[78] Due process is essential to protecting the opportunity to establish a livelihood within the United States. This requires that the United States follow certain procedures before deporting an individual. One of the most obvious procedures is the right to be heard in a court of law. How formal this hearing ought to be, however, remains unclear. Many questions remain unanswered. How much fact-finding is the court required to do? Can the court just accept the verdict of the United Nations, or some other country for that matter? Must a U.S. court honor any U.N. immunity clauses concerning particular war criminals? U.S. courts must be given more guidance on the interpretation and application of the genocide provision to ensure that each individual gets due process of law.

Finally, the Eighth Amendment prohibits inflicting "cruel and unusual punishment" upon any defendant.[79] It is not immediately apparent how a deportation hearing implicates this Amendment. When a state deports an immigrant, a possibility exists that some kind of punishment awaits him in his state of origin. Many states convict defendants even in absentia, giving those individuals no opportunity to be heard.[80]

One case in particular, *United States v. Linnas*,[81] implicated the cruel and unusual punishment clause. A New York federal district court revoked Linnas' citizenship upon discovery that he headed a Nazi concentration camp at Tartu, Estonia.[82] Shortly thereafter, an administrative law judge of the Immigration and Naturalization Service set Linnas' deportation date, which the Second Circuit affirmed.[83]

Although Linnas' case was not criminal, it had criminal implications because a death sentence awaited him in the former

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78. *Id.*

79. U.S. CONST. amend. VIII.

80. The former Soviet Union tried people in absentia. *See, e.g.*, Theresa M. Beiner, *Due Process for All?, Due Process, the Eighth Amendment and Nazi War Criminals*, 80 J. CRIM. L. & CRIMINOLOGY 293 (1989).

81. 527 F. Supp. 426 (E.D.N.Y. 1981), *aff'd*, 685 F.2d 427 (2d Cir. 1982).

82. *Id.* at 428.

83. Linnas v. INS, 790 F.2d 1024 (2d Cir. 1986), *cert. denied*, 479 U.S. 995 (1986), *reh'g denied*, 479 U.S. 1070 (1987).

Soviet Union.[84] The constitutional guarantees in the Soviet criminal process differed greatly from those in the United States.[85] Presumably Linnas would not have received the same due process protection as he would have in the United States. Thus, it is imperative that U.S. deportation proceedings take special measures to safeguard a defendant's constitutional rights here in the United States.

As was the case with Linnas' deportation under the Nazi provision, deportations under the genocide provision of the INA of 1990 implicate Eighth Amendment concerns. Many governments still try people in absentia, allowing criminal sentences to stand until the United States deports them. Deporting war criminals under the genocide provision is the equivalent of an extradition.[86] Yet war criminals may be deported to countries with whom the United States does not have an extradition treaty because of the INA.[87] Deportation hearings of war criminals, under the Nazi and genocide provisions, must provide a more thorough fact-finding mission in order to safeguard their rights under U.S. laws. "Genocide," therefore, must be more clearly defined in U.S. immigration policy.

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84. Beiner, *supra* note 80, at 293. A Soviet court sentenced Linnas to death in absentia. *Id.* Karl Linnas died on July 2, 1987, of "acute cardiovascular, renal and hepatic insufficiency" while awaiting execution. William J. Eaton, *Deported War Criminal Dies in Soviet Hospital*, L.A. TIMES, July 3, 1987, at 1.

85. The arrested person in the most serious cases in the Soviet system may not receive any visitors, letters, or telephone calls during his confinement. Thus, arranging appropriate legal representation is very difficult. Beiner, *supra* note 80, at 295 n.17. Also, the Soviet criminal system is based on Romanist tradition, which employs a "preliminary investigator" who conducts an investigation in secrecy. *Id.* at n.20.

86. The Supreme Court has defined extradition as "the surrender of one nation to another of an individual accused or convicted of an offense outside its own territory . . . which, being competent to try and to punish him, demands the surrender." Terlinden v. Ames, 184 U.S. 270, 289 (1902).

87. *See* 18 U.S.C. §§ 3181, 3184 (1994). These statutes allow for the extradition of any person "[w]henever there is a treaty or convention for extraditions between the United States and any foreign government." 18 U.S.C. §3184 (1994). Thus, the United States may extradite persons to states that are party to the Genocide Convention even though no separate extradition treaty exists between that state and the United States.

V. RECOMMENDATIONS

A. Analogizing Genocide Cases with Nazi Deportation Hearings

No court has defined the genocide provision of the INA of 1990. Thus, nothing in the way of U.S. or international tribunal case precedent exists. When courts are required to adjudicate such a case in the future, they should compare the analysis to one of the many Nazi deportation hearings. This method of analysis is legitimate for two reasons. First, the Nazi persecutions of World War II were acts of genocide. Thus, when an immigration court concludes that an individual was involved in the Nazi persecutions, one could also label him as a participant to genocide. Second, both provisions fall under the same category of "Exclusion on security and related grounds."[88] Thus, one can assume that the judicial inquiry for each should be similar. Two cases in particular, *Fedorenko v. United States*[89] and *Petkiewytsch v. INS*,[90] are helpful in defining the scope of who is punishable as a participant of genocide.

1. *Fedorenko v. United States*

Fedor Fedorenko was a member of the Russian Army in 1941, but the Germans captured him shortly thereafter.[91] Initially, the Germans sent him to a camp in Travnicki, Poland, to train as a concentration camp guard; later they assigned him as a guard for the Nazi concentration camp in Treblinka, Poland.[92] The Germans provided him a rifle and uniform, and he served as a guard during 1942 and 1943.[93] In August 1943, the Germans transferred Fedorenko to a labor camp at Danzig and then to a prisoner-of-war camp at Poelitz, where he continued to serve as an armed guard.[94] Shortly before the British forces entered the city in 1945, he discarded his uniform to pass as a civilian.[95]

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88. INA of 1990, *supra* note 9.
89. 449 U.S. 490 (1981).
90. 945 F.2d 871 (6th Cir. 1991).
91. Fedorenko v. United States, 449 U.S. at 494.
92. *Id.* The district court described the Treblinka concentration camp as a "human abattoir" at which several hundred thousand Jewish civilians were murdered. *Id.*
93. *Id.*
94. *Id.*
95. Fedorenko v. United States, 449 U.S. at 494.

Fedorenko applied for admission to the United States in 1949.[96] He lied on his visa application by stating that he was a farmer in Poland when the Germans abducted him and forced him to work in a factory until the end of the war.[97] His false statements were not discovered, and he was admitted under the DPA.[98] In 1969, he applied for naturalization. He again lied about his wartime activities during sworn testimony, and the United States granted him citizenship.[99]

The government filed a district court action to revoke Fedorenko's citizenship because he procured his naturalization illegally by misrepresenting material facts.[100] At trial, Fedorenko admitted his service as an armed guard, but claimed that he was forced to serve and denied any personal involvement in the atrocities at the camp in Treblinka.[101] He also conceded that he made false statements to procure the visa.[102] The district court entered judgment in favor of Fedorenko, finding that: (1) he was forced to serve as a guard; (2) the false statements were not material; (3) the government had not met its burden in proving that he committed war crimes or atrocities at Treblinka; and (4) even assuming misrepresentation of material facts, equitable and mitigating circumstances permitted him to retain his citizenship.[103] The Justice Department appealed to the Fifth Circuit Court of Appeals, which reversed the district court.[104]

The Supreme Court affirmed the decision of the court of appeals.[105] Justice Marshall wrote for the majority, stating that "an individual's service as a concentration camp armed guard—whether voluntary or involuntary—made him ineligible for

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96. *Id.* at 496.
97. *Id.*
98. *Id.*
99. *Id.* at 497.
100. Fedorenko v. United States, 449 U.S. at 498.
101. *Id.* at 500.
102. *Id.*
103. *Id.* at 501, 503.
104. United States v. Fedorenko, 597 F.2d 946 (5th Cir. 1979). The court of appeals held that the district court erred as a matter of law because the government merely had to "prove by clear and convincing evidence that disclosure of the true facts would have led the government to make an inquiry that might have uncovered other facts warranting denial of citizenship." *Id.* at 951. The government presented expert testimony stating that any visa applicant who had served as a concentration camp guard was ineligible as a matter of law for a visa. *Id.* at 952.
105. Fedorenko v. United States, 449 U.S. at 490.

a visa .... Under traditional principles of statutory construction, the deliberate omission of the word 'voluntary' from § 2(a) compels the conclusion that the statute made all those who assisted in the persecution of civilians ineligible for visas."[106] The Supreme Court also held that "district courts lack equitable discretion to refrain from entering a judgment of denaturalization against a naturalized citizen whose citizenship was procured illegally or by willful misrepresentation of material facts."[107]

The Supreme Court's analysis in *Fedorenko* can be applied to deportation cases based on the genocide provision. Most importantly, the Court held that even involuntary service as a Nazi guard is within the congressional intent to deport Nazi participants. Thus, in a genocide case, a participant may not use involuntary service as a defense. This is significant in the context of Bosnia. If a person's actions of that war are considered genocide, he can be excluded from the United States despite the fact that he may have been required to follow the orders of his military superiors. Comparatively, members of the forces fighting in the former Yugoslavia may not have been "forced" or coerced to the same extent as Fedorenko was by the Nazis.

The other important holding of the *Fedorenko* Court was its declaration that the district court lacked equitable discretion to refrain from entering a judgment against deportation. In other words, once a court determines that an individual either participated in Nazi persecutions or acts of genocide, the court has no choice but to deport the individual. A court cannot examine such mitigating factors as duration of citizenship in the United States and familial ties in the country. This demonstrates the strong U.S. policy against admitting individuals who have committed such atrocities.

2. *Petkiewytsch v. INS*

Leonid Petkiewytsch was captured and assigned to a labor-education camp in Kiel, Germany, to serve as a civilian guard.[108]

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106. *Id.* at 512.

107. *Id.* at 517. After his deportation, Fedorenko "was sentenced to death by a court in the Crimea in the Soviet Ukraine in June, 1986, on charges of treason and taking part in mass executions at the Treblinka death camp." William J. Eaton, *Soviets Execute Ex-Nazi Guard Deported by U.S.*, L.A. TIMES, July 28, 1987, at 1. The official news agency Tass reported that he was executed on July 27, 1987. *Id.*

108. Petkiewytsch v. INS, 945 F.2d at 872.

The petitioner was issued a Gestapo SS uniform, given a rifle, and instructed on how to escort prisoners to and from work sites and how to clean and load his rifle.[109] His primary responsibility was to prevent prisoners from escaping, and he was under orders to shoot anyone attempting to escape.[110] During his eight-month service as a guard, the petitioner never used his rifle nor inflicted any physical abuse on the prisoners.[111]

Petitioner applied for entrance into the United States in March 1948, under the DPA.[112] He was denied entrance because of his stated service as a civilian guard at the labor-education camp.[113] The petitioner reapplied and was granted an admission visa in 1955 under the INA of 1952, which then contained no provision denying admission to those who participated in the Nazi persecutions.[114]

In July 1985, the U.S. Immigration and Naturalization Service ("INS") issued an Order to Show Cause stating that Petkiewytsch was deportable under the Holtzman Amendment of 1978, for "assisting or otherwise participating in Nazi persecution."[115] The court ruled against deportation because the petitioner had not personally engaged in any persecutional acts and that his "wrongful conduct, at most, was his acceptance under duress of his duties as a civilian labor-education camp guard."[116]

The INS appealed the decision to the Board of Immigration Appeals. The Board focused on the issue of whether "the 'objective effect' of the petitioner's conduct controlled and that the 'objective effect' of his service as civilian guard was to assist the Nazis in their persecution of those within Kiel-Hasse by preventing their escape."[117] Consequently, the Board answered this issue in the affirmative, thereby reversing the immigration judge's decision. Thus, whether the petitioner himself engaged in any sort of physical abuse or persecution was irrelevant. The court based its decision merely on Petkiewytsch's duties as a guard at a facility

109. *Id.*
110. *Id.*
111. *Id.* at 873.
112. Petkiewytsch v. INS, 945 F.2d at 873.
113. *Id.*
114. *Id.*
115. *Id.* at 874.
116. *Id.*
117. Petkiewytsch v. INS, 945 F.2d at 874.

"where persons were persecuted based upon race, religion, national origin, or political opinion."[118]

The Sixth Circuit Court of Appeals reversed the Board's decision by focusing on the personal involvement of the petitioner.[119] This court concentrated on "whether particular conduct can be considered assisting in the persecution of civilians."[120] Subsequent to the *Fedorenko* decision, lower courts had great difficulty determining what type of conduct constituted "assisting the persecution of civilians."[121] The court of appeals found that the petitioner did not assist in the Nazi effort to the extent of the petitioner in *Fedorenko*.[122]

The Sixth Circuit in *Petkiewytsch* concentrated on the extent of personal involvement when interpreting the "Nazi participation" under U.S. immigration law. Likewise, one may be deemed a "participant of genocide" based on the extent of their personal involvement in the atrocities. Applying this to the context of Bosnia, one can see how certain members of the military may or may not be "participants to genocide," depending on their duties. This inquiry still leaves significant discretion to the lower courts in deciding where the lines should be drawn.

B. Using the Existing Convention's Language

Thus far, it appears that Congress intends to use the language of the Convention to give meaning to the term "genocide" as it appears in the INA of 1990. This, however, should not preclude immigration courts from looking to the Nazi deportation proceedings to aid in the statutory interpretation of the INA of 1990.

The most valuable legislative guidance on interpreting the Convention appears in the 1987 Genocide Implementation Act and the attached Committee provisions.[123] According to the Senate Committee on Foreign Relations Report, the Convention had two

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118. *Id.* at 875.

119. *Id.* at 871.

120. Fedorenko v. United States, 449 U.S. at 512.

121. Petkiewytsch v. INS, 945 F.2d at 877. *See generally* Schellong v. INS, 805 F.2d 655 (7th Cir. 1986); United States v. Kairys, 782 F.2d 1374 (7th Cir. 1986); Laipenieks v. INS, 750 F.2d 1427 (9th Cir. 1985); Maikovskis v. INS, 773 F.2d 435 (2d Cir. 1985).

122. Petkiewytsch v. INS, 945 F.2d at 877. In *Fedorenko*, the petitioner deliberately concealed his involvement as a guard in his application for a visa and for citizenship. *Id.* Fedorenko also admitted to shooting in the general direction of escaping prisoners during his guard service. *Id.*

123. REPORT, *supra* note 56, at 17.

purposes: "To codify international law respecting the crime of genocide . . . [and] to require the parties to the Convention to deter acts of genocide and punish, pursuant to their municipal laws, individuals who commit genocide."[124]

If one views the inclusion of genocide to the U.S. immigration law as a municipal law, which seeks to deter acts of genocide, then one must enforce that provision with that purpose in mind. This means that an immigration judge must determine whether deporting a particular defendant, suspected of participating in genocide, would further the goal of deterrence. The judge can accomplish this by looking at both the individual's mens rea, or state of mind, and actus reus, or acts.

Thus, the particular defendant's state of mind at the time of the alleged events is relevant. With the current analysis, the United States will deport only those individuals who possessed the specific intent to commit genocide. Thus, only those with specific intent will be deterred by U.S. deportation proceedings. One of the Committee understandings emphasized that "intent to destroy . . . in Article II means the specific intent to destroy."[125]

Using this rationale, one can see how "forced military service" would not constitute a defense to deportation on the grounds of genocide. The mere fact that someone may have coerced another into committing genocide atrocities does not eliminate the mens rea of that person.

As in the Nazi immigration hearings, courts must continue to draw lines in determining what constitutes the actus reus, "participating or assistance in genocide." In order to further the goal of deterrence, immigration judges must target individuals who played a significant personal role in the genocide. For example, deterrence is not furthered when the United States deports an individual who was merely an army cook. The United States lacks both the financial and personnel resources to investigate and bring suit against every possible person who may have had some attenuated nexus with a group that committed genocide.

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124. *Id.* at 1.
125. *Id.* at 27.

C. Change at the International Level

1. Reformation of the Genocide Convention

The most effective yet most difficult way to clarify the term "genocide" is to amend the Convention itself. Amending the Convention is vital in that many states are implementing similar domestic legislative measures and they refer back to the Convention's definition of genocide for guidance.[126] Thus, in order to limit varying interpretations of the Convention among the members of the global community, the Convention itself must be revised according to today's changed political, social, and economic environment.

The new convention, first and foremost, should define genocide more broadly so that it protects a greater variety of people. Currently, the Convention of 1949 protects groups defined on a "national, ethnic, racial, or religious" basis.[127] Today, groups are defined by a wider range of characteristics and the Convention should also protect these groups. For instance, a new convention should protect groups based on sexual orientation, political affiliation, economic status, and gender. This would improve the current Convention, which takes a myopic view in its protection of groups by defining them merely by nationality, ethnicity, race, or religion.

Article II of the Convention only covers acts committed with specific intent against those specifically designated groups.[128] One scholar on humanitarian violations suggests that a new convention should not just be limited to situations of specific intent.[129] He suggests that it is illogical "to have a legal scheme

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126. Former Canadian Prime Minister Brian Mulroney established a commission in 1985 to examine the handling of war criminals in the country. The Deschenes Commission identified some eight hundred persons in Canada who may have committed war crimes, most of them Nazi war criminals. Among the options the Commission suggested were the extradition or denaturalization of war criminals or criminal prosecution. The government chose to pursue criminal prosecution, but "[w]hile not rejecting the other two options—extradition and denaturalization/deportation—the government chose to reserve those processes for cases in which criminal prosecution was not viable." Symposium, *Holocaust and Human Rights Law: The Sixth International Conference*, 12 B.C. THIRD WORLD L.J. 199, 206 (1992).

127. Convention, *supra* note 3, art. II, at 280.

128. *Id.*

129. Bassiouni, *supra* note 16, at 477.

whereby the intentional killing of a single person can be genocide and the killing of millions of persons without intent to destroy the protected group in whole or in part is not an intentional crime."[130] This argument makes sense if the purpose of the Convention is effective deterrence and conviction. Many other crimes are committed with a lower intent level such as recklessness or gross negligence. It is difficult for courts to convict people of genocide because of the high intent level now required. A lower mens rea, or intent, is needed to effectively prosecute participants in genocide.

Finally, the new convention should provide procedural guidelines for states to follow when they try to implement their own domestic laws prosecuting genocide participants. A revised definition of genocide is not enough to effectively deal with this problem without the appropriate procedural steps.

2. Creation of a Permanent International Tribunal

a. Benefits of a Permanent International Tribunal

In addition to a clear definition and interpretation of the term "genocide," effective prosecution of genocide perpetrators requires creation of a permanent international tribunal. Such a tribunal will make it easier for countries, such as the United States, to exclude people on a more consistent basis because of their participation in acts of genocide. Resolution 827 requests that "all states shall take any measures necessary under their domestic law to implement the provisions" of the Hague Tribunal.[131] States cannot easily implement effective and consistent domestic laws punishing genocide when such international tribunals are formed only after certain crises and for a short period of time.

A permanent tribunal will aid in the consistent application of the genocide provision of the INA of 1990 for a number of reasons. First, a permanent body will help establish consistent case law on the subject. As it stands now, no international precedent exists on how genocide should be interpreted. Instead, it is left to the discretion of the individual countries. International case law would be given strong precedential value in the United States to limit any abuse of discretion by the immigration courts. Second,

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130. *Id.*
131. U.N. Doc. S/RES/827, *supra* note 72, at 2.

the tribunal can establish procedural guidelines for domestic courts to follow when adjudicating their own trials. This would correct the problems related to lack of consistent constitutional safeguards for war criminals.

A permanent international tribunal also will provide more of a deterrent effect on the commission of genocidal acts. Establishing such a tribunal would send a united message that the international community will not tolerate perpetrators of genocide. Such a body also would be more effective in monitoring the actions of countries and intervening before mass genocide occurs.

b. Organizational Structure of a Permanent International Tribunal

To add legitimacy to any tribunal, members of the permanent international tribunal should be representative of a wide range of countries. A tribunal consisting only of the economic superpowers would fail to gain respect from the rest of the world because it would be viewed as elitist. The most effective way to ensure diverse and qualified membership is to form a special committee within the U.N. that will nominate and interview potential justices. The committee will conduct the initial screening process of candidates, and it should be free to investigate each candidate's education, experience, and track record. Finally, the U.N. General Assembly should confirm the tribunal justices to ensure that every member-state will play some role in the selection.

The justices should serve lengthy terms and be independent of any political pressures. Five to ten-year terms, for example, will ensure consistent enforcement and punishment of war criminals. Political independence will enable the justices to investigate and fairly try alleged perpetrators of genocide.

A permanent international tribunal should have two purposes: prevention and prosecution. One branch of the tribunal will act as watchdog. It will serve to identify potential situations of genocide. Once a country is identified, the investigating tribunal can present its findings to the U.N. and ask that it step in to quell the crisis before it escalates. One of the primary weaknesses of the U.N. today is that it endeavors to resolve a crisis only after it has escalated beyond control.

The other branch of the tribunal will conduct any punishment of participants of genocide. Here, the domestic immigration laws of participant nations play an important role. Today, a significant

obstacle facing the Hague Tribunal is that alleged war criminals are hiding out in countries all over the world. The new tribunal should have the power to indict alleged perpetrators in absentia, and pressure domestic deportation policies to turn over these individuals to the tribunal so that they may stand trial. Consequently, the international community must give clear guidance to individual countries as to who is deportable as an alleged participant in genocide.

VI. CONCLUSION

The world has not learned from its past mistakes. After the deaths of millions of innocent persons at the hands of the Nazis during World War II, one would expect the states of the world to have implemented a consistent policy of dealing with genocide. This is not the case. Rwanda and Bosnia are just two contemporary acts of genocide committed by individuals who go unpunished.

The only way to punish these acts of inhumane violence is through effective and consistent enforcement of the laws criminalizing genocide. The United States has taken a bold step in adding "genocide" as a deportable offense under its current immigration policy. To date, however, this step has not been tested. A uniform method for interpreting genocide is essential for adequate enforcement of the Convention's provisions. More importantly, procedural changes must occur at the international level, so that all countries may refer to a contemporary, coherent, and cohesive document when implementing their own domestic laws on genocide.

Paul John Chrisopoulos[*]

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* J.D. candidate, Loyola Law School, 1996; B.A. University of California, Los Angeles, 1993. This Comment is dedicated to the entire staff of the LOY. L.A. INT'L & COMP. L.J. and to my family and friends for their continued love and support. Thanks Dad, Mom, Stelios, Alexander, and Angie.