An account of the theory of genocide

Siswo Pramono

School of Social Sciences, Faculty of Arts
Australian National University

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Abstract

The Genocide Convention is best described as 'paralysis by design'. As states devoured their own subjects, others, who attempted to stop the frenzy, designed a consensus to prevent and punish genocide. But the designers had left open many loopholes which allow an exit strategy for those planning a future policy of genocide. The purpose of this paper is to give an account of the theory of genocide. The premise is: the realist dominated approach to genocide and, hence, its corresponding statist perspective is a main impediment for the repression of genocide. This paper presents a more pluralist argument, insisting that the individualisation of the liability of the crime is a prerequisite for the internationalisation of the status of the crime. In so doing, it will examine some scholarly roots that allegedly sustain the current state centric approach, in an attempt to find a less-statist path. It is in the context of this less-statist path that the (individual) moral element (*mens rea*) of genocide is discussed. And finally, this chapter will present a bigger picture of genocide —beyond its traditional statist frame— and the legal-politico implication which presses on the need for a more critical theory of genocide. As such, the propositions forwarded in the paper are as follows. First, genocide must include *politicide* (the killing of human group because of political affiliation) otherwise the savagery of this new millennium will cast millions of lives into the abyss of 'crime without a name'. Second, the study of genocide must establish linkage between the 'international' and the 'individual' within the national borders so that the international society becomes more responsive to the plea of individual members of the victimised group. Third, the moral element (intent) of genocide must be extended by introducing a standard of knowledge on the course and outcome of genocidal acts. Fourth, the study of genocide must step beyond the statist paradigm.

The purpose of this paper is to give an account of the current legal and political system to combat genocide. As states devoured their own subjects, others, who attempted to stop the frenzy, designed a consensus to prevent and punish genocide. But in so doing the designers had left open so many loopholes as exit strategy for both impunity and policy of future genocide. The legally binding consensus represents collective pledges among sovereign authorities: a pledge not to be cruel to their subjects. It is not a consensus among the victims to challenge the cruelty of their sovereigns.

The premise of this paper is: the realist dominated approach to genocide and, hence, its corresponding statist perspective is a main impediment for the repression of genocide. This paper then presents four proposition. First, genocide must include politicide. Second, the international must not miss the individual. Third, the moral element of genocide must be extended. Fourth, the study of genocide must step beyond statist paradigm.

Genocide must include politicide

Genocide must include politicide —the killing of human group because of political affiliation— otherwise the savagery of this new millennium will cast millions of lives into the abyss of "crime without a name". According to Article II of the Genocide Convention, genocide means "acts committed with intent to destroy in whole or in part, *a national, ethical, racial* or *religious* group, as such" (italics added). The deliberate omission of *political group*, and hence the corresponding politicide, is an irony given that more people are destroyed for political reasons than any other. Nearly 170 million people, excluding war dead, were murdered by governments in the last century but, as a consequence of the current legal definition, "only" about 39 million qualified as genocide (Rummel, 1997: 94). What is then the remaining 131 million dead called? And most importantly, who should be deemed responsible for this "crime without a name", if this is considered a crime at all? Genocide minus politicide is a scandal, if not a conspiracy.

The drafting history (*travaux preparatoir*) of the Genocide Convention, in fact, reveals such a scandal. At the outset, the discourse of genocide was within the domain of international lawyers who argued for genocide that includes politicide; in its later development, diplomats and policy makers nurtured the concept in the spirit of realist politics. The drafting of the Genocide Convention was then a subject of political compromise, developed by legal conferences, and hence, formatted in legal realism. And the legal realists, according to Barnet (1978: 97-98), "are distinctive … in their preoccupation with the process of judicial decisions, with how law is made…. Law is here taken as a social phenomenon, as a decision or process of *authoritative decisions*" (italics added). Among the most important "authoritative decisions" were the exclusion of politicide and elimination of universal jurisdiction from the Genocide Convention. The drafting process was, indeed, "authoritative", because the delegates to the genocide conference in 1948 were equipped with "full power" from their respective governments and thus they made authoritative decisions on behalf of the governments. To save the world from the peril of genocide was then a noble endeavour pursued by these diplomats; underneath, however, their mission was clear: "to insulate political leaders from scrutiny and liability" (Van Schaack, 1997:1). One way of doing this was by defining the term "genocide" to have a narrow meaning that excludes almost everything. Thus, there were about 50 episodes of genocide and politicide from 1945 to 1995 but only four episodes were addressed, with much controversy, by the establishment of two military tribunals in Tokyo and in Nuremberg and two international tribunals, respectively for Rwanda and the Former Yugoslavia. The rest, more than 45 episodes, most of which are politicide cases, remain untouchable and thus most genocidal regimes are sealed with impunity. The exclusionist mission was then accomplished but the debate surrounding inclusionism and exclusionism prevails.

Soviet delegates, whose government had a long record of genocide (*including* politicide), argued during the genocide conference that the exclusion was to be taken to preserve the "scientific" definition of genocide and to avoid inflationary usage of the Genocide Convention which would render it ineffective since it could be applied to political crime of any kind (Destexhe, 1995: 5). The exclusionists, politician and scholar alike, even argue that the current definition is so broad that most categories of international offence (*delicta juris gentium*) can be labelled "genocide".

On the contrary the inclusionists argue that a broader interpretation of the existing definition is indeed a necessity, especially due to the rapid development of killing technology. Under this Genocide Convention, argues Kuper (1981: 17, 46), the indiscriminate bombing by allied forces of Hiroshima, Nagasaki, Hamburg and Dresden, which caused massive casualties among the civilians should have been considered as genocide. Chalk and Jonassohn (1990: 25) reject Kuper's argument on the ground that in

an age of total war, all enemy territory, regardless of the presence of civilians, is the theatre of war. As such, for those who accepted this line of thinking, in time of war, carpet-bombing is an act of war; an argument adhered to dearly by the US during the invasions in Vietnam, Panama, and the Gulf. The danger of an all-inclusive approach, according to the exclusionists, is that states can be alleged to have perpetrated crimes of genocide when they have not. In this regard, Yacoubian Jr. (1997: 5) warned academicians to resist "the temptation to group all instances of human affliction into an all-inclusive, non-*scientifically* driven category of "genocide" (italics added)." But, if any, what is the "scientifically driven category of genocide"?

One of the exponents of the scientific approach is John Locke, who argues that through science, scientists can observe regularity in nature and hence discover laws that are universally operative (Cranston, 1973: 12). The idea of formulating a scientifically driven category of genocide is within the general effort of legal positivists, particularly the realists, to "scientisize" or objectify jurisprudence, in an effort to break away from philosophical, "speculative", if not subjective, jurisprudence. For the positivists, law must be empirical, descriptive and morally neutral (value-free). As such, in the positivist perspective, to be "scientific", (empirical) legal study must free itself from the question of ethics or philosophy (Harff-Gurr, 1981: 25). In the extreme, these realists consider that law "is not a body of rules but a collection of facts" (Harff-Gurr, 1981: 31). In other words, morality aside, it is fine to dismiss as genocidal, for instance, the politicide in Indonesia in 1965-66 that claimed about half a million lives, in Pakistan in 1971 that claimed about three million lives, and in Cambodia in 1975-79 that claimed about another three million, simply because these events were politicide, and hence did not represent "the collection of facts" of genocide as codified in Article II of the Genocide Convention. As such, the history of modern genocide reveals the danger of a "scientific" approach, which is morally sterile.

This moral sterilization of law, argues Harff-Gurr, has placed law solely at the disposal of those in power, who view the law from the perspective of imperativism. For the imperativists, "law is seen as the command of a 'sovereign' endorsed by the fact of habitual obedience" (Barnett, 1978: 97-98). If an imperativist view is taken, most genocides were lawful since most of them were committed under the genocidal laws of the genocidal regimes. Yet, the "scientific" approach, which sterilises morality from law, is not designed to answer a question like this: "Should informers who, for selfish ends, procured the imprisonment of others for offences against monstrous statutes passed during the Nazi regime, be punished?" (Hart, 1961: 208). In other words, are evil things permitted by evil rules then in force punishable? Thus, the "scientific" approach aside, argues Harff-Gurr, such a question can only be addressed from a perspective of philosophical jurisprudence (1981: 42).

From the perspective of philosophical jurisprudence, the category of genocide must satisfy the theory of *jus cogens*, anchored in the natural-law notion. *Jus cogens* is "a peremptory norm of international law from which no derogation by states is permissible" (Blay, 1998: 20). While the reality of international law, including those of genocide, is more a reflection of positivism, rather than the natural-law thesis, the international law making process must carefully take *jus cogens* into account. Article 53 of the Vienna Convention on the Law of Treaties rules that a treaty violating *jus cogens* at the time of its conclusion is void. According to Article 64 of the Convention, a treaty, too, becomes void and terminates, if it is contradictive to a peremptory norm of international law newly emerged. Reference to *jus cogens*, however, is not without problems.

What is the *jus cogens* of genocide? If one seeks the answer from the Greek version of natural law, as foreshadowed by Sophocles and Aristotle, the *jus cogens* of genocide is then part of what Cicero called "eternal, unalterable law" that must be revealed cognitively through "right reason, in accordance with nature" (Cranston, 1962: 10-12). One problem is that this statement can lead readers into another circle of Lockean (scientific) interpretation if "right reason" is interpreted as scientific way to discover law from nature. Another problem is that this Greek version of natural law has been transformed through, if not hijacked by, the Augustinian approach to fit Christian doctrine, which has permeated the Western mind about politics and law, and guided the understanding of the West towards the Rest. The natural law is now the divine laws of God of various versions. The problem is, as stipulated by Hoodbhoy (2001: BO4), every religion -Christianity, Islam, Judaism, Hinduism- "is about absolute belief in its own superiority and divine right to impose its version of truth upon others". Even a religion holds different meaning among its believers. It must be noted in advance that this paper is not arguing for a "clash of civilisations", let alone an argument that relations between different belief systems are by nature genocidal. It is arguing that extra miles of effort are needed in the quest of a somewhat convergent perspective. The moral imperative "thou shall not kill", perhaps, represents a cross-cultural perspective.

"Thou shall not kill", for Harff-Gurr (1981: 68), represents more the basic human *right to life* than a mere universal moral value. This is because the right to life -and hence "thou shall not kill"- is the precondition of all other values. The so-called "human being" is first identified as a "living being", and then comes along other inherent values such as the right to continued existence and human dignity. For Harff-Gurr (1981: 69), the basic human right to life -and hence no genocide- is the *jus cogens* of genocide.

This basic human right to life, as the *jus cogens* of genocide, has been elaborated further through ensuing norms, which are also established by general consensus among states

(*opinio juris*). The general consensus indicates states' consent to be bound by a particular norm, which may owe its origin to a customary international law established through repeated state practices or to a declaration acclaimed in a global forum such as the United Nations (Higgins, 1994: 21-23). It is, in fact, through a unanimous Resolution of the United Nations General Assembly in 1946 that the world condemned genocide in a more inclusionist -rather than exclusionist- manner. The Resolution, representing the general consensus of the majority states, stipulates, firstly, the right to life is the *jus cogens* of genocide. Secondly, this *jus cogens* is the basis of other norms which protect *all* human groups from the crime of genocide committed on religious, racial, *political* or *any* other ground. As such, the Resolution called for a more inclusive concept of genocide, in which politicide must be included.

Conversely, the ensuing concept under the Genocide Convention is reductionist and exclusive in nature. The human groups who are supposed to be protected by the Genocide Convention are strictly limited to national, ethical, racial and religious groups, leaving aside the political groups to the mercy of genocidal regimes. Thus, according to Van Schaack (1997), the exclusionist ("scientific") approach that successfully excludes politicide from the Genocide Convention represents a blatant violation of *jus cogens*. And, hence, Van Schaack (1997: 2) infers that when faced with politicide, domestic and international adjudicatory bodies should apply the *jus cogens* prohibition of genocide and invoke the Genocide Convention vis a vis signatories only insofar as it provides practical procedures for enforcement and ratification.

Even the perpetrators of genocide will agree with Van Schaac's inclusive concept, in which genocide includes politicide. Indication of such agreement is that once a perpetrator has committed politicide, she or he will try desperately to justify the act or commit the offence clandestinely (Frost, 1996: 105-106). Thus, there is an inherent understanding among the individual perpetrators that by committing politicide, they put themselves in ethical confrontation against the rest of the world, whose general consensus considers politicide as an international offence. Thus, the question at hand now is how to relate the "international" offence to the "individual", instead of (statist) collective, liability of the perpetrators?

The international must not miss the individual

To account for individual liability of the perpetrators and individual remedy to the victims, the study of genocide must establish linkage between the "international" and the "individual" within the national borders. With such a linkage, the international society becomes more responsive to the plea of individual members of the victimised group. As such, the international laws become more relevant to individual perpetrators and victims of genocide. Article 1 of the Genocide Convention rules:

> The Contracting Parties confirm that genocide whether committed in time of peace or in time of war, is a crime under international law which they undertake *to prevent* and *to punish* (emphasis added).

Under the notion of customary international law, this legal obligation to prevent and punish genocide binds non-state parties as well.

This legal obligation has in fact complicated the politics of the international law of genocide, which is dominated by realist paradigm. For the realist, the political reality of international relations is the one in which law and norms play only a marginal role in global politics. International law is made by states and is, therefore, a mere tool for the pursuit of states' political objectives (Greig, 1976: 5). Consequently, "international law cannot exist in isolation from the political factors operating in the sphere of international relations" (Greig 1976: 1). As such, the fulfilment of a state's legal obligation to prevent and punish genocide is subject to the national interests as defined by a state's political elites. And in most cases, as previously discussed, the national interest means the cover-up of the state crime with a seal of impunity.

A fundamental change of the state-centric approach was triggered by the Nuremberg Trials, of which Article 6 © of the Nuremberg Charter counted personal responsibility for crimes committed in the name of state. Robert Jackson, the then US Supreme Court Justice acting as a prosecutor at the trials concluded: "[the] idea that a state, any more than a corporation, commits crimes, is a fiction. Crimes always are committed only by persons…." (cited in Robertson QC, 1999: 205). Thus an attempt has been made to view genocide from an individualist new angle: criminology of international crime.

Ironically, Nuremberg's call has been impeded by a lack of interest of criminologists in the study of international crime. For instance, only less than half a percent (0.5) of the papers presented at the annual meeting of the American Society of Criminology (ASC) between 1993 and 1996 were devoted to discussing aspects of international crime (Yacoubian Jr.,

1997:1). Out of a total of 938 articles published from 1990 to 1997 in five outstanding periodicals which were dedicated to promoting the study of criminology (*Criminology*, *Journal of Criminal Justice*, *Journal of Research in Crime and Delinquency*, *Justice Quarterly*, and *Law and Society Review*), only one was devoted to the study of international crime (Yacoubian Jr., 1997: 2).

This lacuna in the study of international crime suggests the paradox of the development of the study of genocide; a paradox between the legally declared internationality of the offence and the individuality of the perpetrators who commit the crime or the victims who suffer from the crime. In other words, genocide is considered as an international crime but the study of international crime is very much underdeveloped and outside the main interests of criminologists. Consequently, the study of genocide has been entrusted to students of international law and international politics, the majority of whom are adherents of the realist paradigm and its corresponding state-centric approach. As such, the individual victims are left at the mercy of the perpetrators, who act freely in their territory securely fenced by state borders traditionally recognised by the Westphalian state system. Thus, the expected protection and remedy from the international mechanisms, legal and political, have only a limited relevance to the individual members of the victimised groups. And yet the international mechanisms fail to account for the individual perpetrators. In the system of states, the international misses the individual.

The fingerprint of the realists, and other state-centric proponents, is not only apparent in the artificially set-up obstacles to the implementation of the Genocide Convention in international relations, but also to the very substance of the Convention. Thus, if the realist emphasises "the *intention* of the statesmen" as a determinant of the course of international relations outside state's borders (Burchill, 1996: 86, italic added), inside the borders, too, the *intention* of the statesmen, according to the Genocide Convention, is a main determinant whether a state commits genocide against its own subjects. The requirement of specific moral element (intent) as a determinant of genocide turns to be a legal-politico trap in the adjudication process.

Moral element (intent) of genocide must be extended

The requirement of genocidal *intent* (of the statesmen and other perpetrators) as the main determinant of genocidal offence provides a loophole for the perpetrators to avoid individual liability. This section will suggest instead an end-oriented alternative by

introducing a standard of knowledge on the course and outcome of genocidal acts. According to a legal theory (Schabas, 2000: 151), elements of the offence consist of a moral element (*mens rea*) and a material element or criminal acts (*actus reus*). For a genocidal offence, the moral element is hard to determine and hence subject to protracted debates. Lord Goddard argues that "the court should not find a man guilty of an offence against the criminal law unless he has a guilty mind" (*Brend v. Wood*, 1946, 62 TLR 462 at 463). Thus, a suspected perpetrator must not be charged with genocide in the absence of the genocidal moral elements.

In the wording of Article II of the Genocide Convention, the genocidal moral element is the *intent* to destroy in whole or in part, a national, ethical, racial or religious group, as such. The Rome Statute of the International Criminal Court (hereafter called the Rome Statute) declares a wider scope of genocidal moral element, encompassing *knowledge* and *intent*. Here, the genocidal intent has more practical, if not broader, meaning. According to Article 30 (2) of the Rome Statute, a person has intent where, in relation to conduct, that person means to engage in the conduct; and in relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events. Definition of intent aside, Greenawalt (1999: 2264) infers that "the prevailing interpretation assumes that genocide is a crime of specific or special intent, involving a perpetrator who specifically targets victims on the basis of their group identity with a deliberate desire to inflict destruction upon the group itself". As it concerns individual liability, this legal understanding provides a political loophole in the Genocide Convention.

Sociologists questioned how to find an individual intent in a world where individuals are increasingly dominated by anonymous forces such as market mechanism, bureaucracy, and remote decision making processes by unknown committees or foreign parliaments. In other words, anonymous and formless structural forces have dictated the character of the modern world in such a way that the issue of intentionality is hard to locate. This situation, argue Wallimann and Dobkowski, leads to

> the neglect of those processes of destruction which, although massive, are so systemic and systematic, and that therefore appear so "normal" that most individuals involved at some level of the process of destruction may never see the need to make an ethical decision or reflect upon the consequences of their action (1987: xvi).

The requirement of genocidal intent has complicated the issue of subordinate responsibility. Eichmann case depicted such an issue.

Adolf Eichmann's trial in Jerusalem depicted how the banality of evil cast a shadow in this intent theory. Eichmann was the head of Bureau IV-B-4 in the SS (*Schutzstaffel*, or guard detachment) who coordinated the transportation of Jews in the Final Solution to the Jewish question. In his defence, Eichmann consistently considered himself as a cog in a large bureaucratic machine, claimed his innocence because he acted under order. But the District Court of Jerusalem, taking the precedent of the Nuremberg Tribunal that broadened the scope of "intent" to include "knowledge" (Conot, 1983: 493) rejected the plea of superior order on the ground that the nature of the order required Eichmann to incur a specific genocidal intent, which can be inferred from "the very wide compass of his activities" (36 I.L.R., 1968: 228). In other words, the Court argued that Eichmann's pivotal role as transport "coordinator" of the Final Solution to the Jewish problem could not be accomplished without directing himself towards, and hence his "knowledge" about, the ultimate genocidal purpose (Greenawalt, 1999: 2281). As the Eichmann case revealed difficulties in determining individual intent, attempts to uncover governmental intent is even more problematic. The case of US policy on Vietnam War is an example of such a problem.

US war practices in Vietnam during the 1960s and 1970s, especially when it resorted to indiscriminate bombings and chemical weapons, which inflicted massive "collateral damages" on civilians and the environment, had attracted condemnation and charges that the US was waging genocidal war (Basso, 1967: 650). The point is: if Vietnam war was a genocide, then, how to detect the US genocidal intent that marked the shift in the character of the conflict, from war to genocide?

For those who exclude political groups from the Genocide Convention, the US never committed genocide because, while it committed politicide against the Communists, it had no intention to destroy any national, ethnical, racial or religious group in Vietnam. Rather than waging war against the whole nation, in Vietnam the US took side with the South regime in its civil war against the North, both of which in fact share the same national, ethnical, racial, and perhaps, religious traits (see Bassiouni. 1979. International law and the Holocaust, 9 *CAL. W. L. REV*. 274). But there is a contending argument.

For Sartre (1968: 57-85), however, the quest for US genocidal intent was made possible by observing the facts of atrocities and the changing mood of war in the battlefields. First, argues Sartre, the genocidal intent of the US government was identifiable with its war strategy. To respond to the famous guerrilla notion of "fish in the water", the US was to "empty the sea of its water" —the civilian population (Sartre, 1968: 66). Second, the nature of the US war in Vietnam was ideological (reactionary) genocide. The US believed that the killing of a communist nation in Indochina would present a good example and an effective

warning to all leftist guerrilla movements challenging US influence in the Third World, particularly in Latin America. To Che Guevara who said, "We need several Vietnams," the US government answered, "They will all be crushed the way we are crushing the first" (Sartre, 1968: 70-71). Third, the US war in Vietnam shifted to racist violence. For instance, after a comrade was killed by a booby-trapped artillery, a US company deliberately killed as many as 370 men, women and children at My Lai (*Philadelphia Bulletin*, December 2, 1969). The presence of racist element was strong in this case. For a GI, a good Vietcong was a dead Vietcong; a dead Vietcong was a dead Vietnamese; a dead Vietnamese was a dead Vietcong. As such, for Sartre, the three points were the evidence of US genocidal intent in Vietnam. War story aside, genocidal intent is also hard to detect in peaceful time, when genocide is committed against groups of people who happen to be "in the way" of progress.

Between 1962 and 1972 about fifty percent of Paraguay's Northern Aché Indians were killed when the Paraguayan government cleared up the Aché territory for the sake of economic development (Münzel, 1976: 37-38). While admitting the attacks on the Aché nation, the government of Paraguay denied the accusation that it had committed genocide as ascribed by the Genocide Convention. The government of Paraguay argued, first, it did not have "intent to destroy" the Aché as a nation. Instead, it argued, that the intent of the campaign was to promote economic development in the territory (Münzel, 1976: 39-41).

But the fact was that the Indians were on the brink of extinction through manhunts, slavery, separation of children from parents, and harsh living conditions in the Indian reservation camps (Münzel, 1976: 20-24,29). All of these inflicted woes matched the qualification of genocidal acts ascribed in the Genocide Convention. The Indian groups were destroyed because they were in the way of "economic projects" being carried out by the government to facilitate the operation of *estancias* (big farms specializing in stock farming) and foreign companies. Thus, it was quite "unfortunate" that the Indians inhabited the forests, which were the sources of precious commodities such as timber, tannin, palmetto and oil (Münzel, 1976: 39-40). The Brazilian government then copycatted the Paraguayan practice.

The Brazilian government took the same argument to repel accusation of committing genocide against its indigenous people when Brazil adopted a specific model of economic development that destroyed the habitat of the indigenes, the rain forest ecosystem of the Amazon Basin. The Brazilian economic model, supported by the World Bank and spearheaded by the US, Italy, and Germany-based multinational companies has rocketed agribusiness industries (particularly the cattle ranching) in the Amazon. Immediate economic gain aside, the model has had a devastating impact on the Amazon and its

Indian inhabitants. The forest was cleared up with heavy machineries and chemicals; and the six million Indians destroyed, some by guns, and the rest by influenza, tuberculosis and measles organisms (Davis, 1977: 10-13, chapter 8). One scholar commented that machine guns and gas chambers, which were used to exterminate six million Jews, are bad for public relations, "but if the Indians die of 'natural causes', who will complain?" (Price, 1989:49).

The point is: the detection of genocidal intent in both wartime and peacetime genocide is and has always been difficult. The complexity, if not impossibility, of accurately detecting the genocidal intent has called for a more practical approach. Greenawalt (1999: 2288) suggests an end-oriented alternative in which intent should be inferred from the knowledge of the expected outcome of actual acts:

> In [the] case where a perpetrator is otherwise liable for a genocidal act, the requirement of genocidal intent should be satisfied if the perpetrator acted in furtherance of a campaign targeting members of a protected group and knew that the goal or manifest effect of the campaign was destruction of the group in whole or in part.

As such, Greenawalt has attempted to move the emphasis of the genocidal offence from genocidal intent (the mental element or *mens rea* of genocide) to a standard of knowledge in the furtherance of genocidal acts (the knowledge of material elements or *actus reus* of genocide). In the wording of Article II of the Genocide Convention, any of the following acts is a genocidal act:

a) Killing members of the group;
b) Causing serious bodily or mental harm to members of the group;
c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d) Imposing measures intended to prevent births within the group;
e) Forcibly transferring children of the group to another group."

Thus, in Greenawalt's perspective, if a perpetrator commits any of the above acts with knowledge that the act would result in the destruction -in whole or in part- of the group qua group, she or he is guilty of genocide. Greenawalt's alternative is in line with the knowledge reasoning adopted by the District Court of Jerusalem in the Eichmann case and reflects the broader approach of the Rome Statute, which includes knowledge in the mental element of crime.

The mental element of crime, either intent or knowledge, is nevertheless a legal desideratum which is hard to demonstrate. Churchill (1986: 416-417) then proposes a multi-layered gradient of criminality based on the clarity of genocidal intent to loose the stringency of the Genocide Convention mental element. The Churchill proposal, however, limits the genocidal mental element solely to the intent. A better approach would be to combine Churchills' and Greenawalts' to attain a broader approach of the genocidal mental element and hence to narrow the possible obfuscation by the (prospective) perpetrators. As such, first, if the genocidal mental element —either intent or knowledge— is evidently clear, the furtherance of genocidal acts (*actus reus*) qualifies as first-degree genocide. This applies to most cases of direct genocide. Second, if the genocidal mental element *per se* is unclear, while the genocidal acts (*actus reus*) are evident, the crime qualifies as second-degree genocide. This qualification would help to detect genocide during wars or armed conflicts of any kind. Third, if the genocidal mental element and genocidal acts are lacking, but due to recklessness and negligence, a group or more is inevitably destroyed —in whole or in part— the corresponding acts qualify as third-degree genocide. This would help detect genocide as a "by-product" of such policies as economic development or global capitalism. The following table hopefully helps clarify the gradient of genocidal criminality.

Table 1: Gradient of genocidal criminality

	First Degree	Second Degree	Third Degree
Mental Element (intent or knowledge on genocide)	+	-	-
Material Elements (genocidal acts)	+	+	-
Destruction of a human group in whole or in part	+	+	+

Note: + = existence of clear evidence; - = lacking of clear evidence

The discussion of the mental and material elements of genocide depicts the legal and political desideratum of genocide on the micro level. It is now time to view the effort of some scholars, who have produced various typologies of genocide and politicide, in attempts to map the broader features of genocide.

The study of genocide must step beyond statist paradigm

The central argument in this section is that the state-centric approach of genocide, while it might be useful to explain some pragmatic types of genocide, cannot comprehend the complex nature of ideological genocide, either progressive or reactionary, which permeates across borders. Each scholar has developed her or his own typology of genocide including politicide. Despite many differences on the disciplinary emphasis, a red line can be drawn to map the typologies, especially those developed by Helen Fein (an historical sociologist), Kuper (a sociologist), Harff and Gurr (both are political scientists, while Harff has a PhD degree in law), and Chalk and Jonassohn (an historian and a sociologist). Table 2 shows the various typologies of genocides and politicides.

Table 2: Typology of genocides and politicides

Fein	Kuper	Harff and Gurr	Chalk and Jonassohn
Developmental	Against indigenes	Hegemonic	Removal of real or potential threats
Despotic	Decolonisation	Repressive	Terror to real or potential enemies
Retributive	Struggle for power	Retributive	Acquisition of economic wealth
Ideological	Hostage groups	Revolutionary	Execution of belief, theory, ideology
		Xenophobic	

This study borrows from Du Preez's method of classification to group the various typologies into two clusters: ideological and pragmatic.

Ideological genocide

How do the scholars account for ideological genocide? It is not easy to determine which genocide under these various typologies should be qualified as ideological. For Fein (1982, 18-20), ideological genocide is inevitably victimisation in the course of attaining purified nation-states, or to perpetuate totalitarian ideology, or to secure the objective of a revolution. Kuper's "genocide against a hostage group" is also ideological in nature

(Kuper, 1982: 35-39). For Kuper, Tukish genocide against the Armenians and German genocide against the Jews and Gypsies epitomise ideological genocide. The ideological tenet, in Kuper's explanation, is, however, more apparent in the case of the Holocaust for the following reasons. The intent of the German perpetrators was to destroy the Jews qua group in Germany and beyond. The genocide was a consequence of the exportation of Nazi ideology across Europe. And the long history of Christian anti-semitism in Europe, as also confirmed by Goldhageen (1996: 39), contributed to the severeness of the genocidal damage. Chalk and Jonassohn (1990: 39-40) agree with Kuper and then add genocide following the Russian revolution, Communist revolution in China, and Cambodian genocide under Pol Pot's regime as ideological. Harff and Gurr (1988: 363) who define "revolutionary politicide" as elimination of class or political foes "in the service of new revolutionary ideologies" also consider revolution as a possible source of genocide and politicide. Thus, by comparing these scholars' work a red line can be drawn to connect their view of ideological genocide.

For Du Preez (1994: 66) the intent of perpetrators of ideological genocide is to impose their vision on the world. For the perpetrators, it is not enough to change the composition of society; they want to change the significance of it. In the old manner, ideological genocide may proceed by faith (i.e. the enforced conversion of global society to a particular religion, or a belief system, in an effort to attain ideal human world). In the modern, it might proceed by reason (i.e. a Marxist struggle to attain a classless global society). Du Preez (1994: 78) subsumes, progressive genocide, namely genocide to attain a Marxist-Leninist "classless" society, and reactionary genocides, namely genocide to attain a "racially pure" society, under the cluster of ideological genocide. This chapter will add in this cluster an ideological (reactionary) genocide as the consequence of the internal structure of capitalist democracy (Sartre, 1968: 62), which, according to McKinley (1998), has proceeded by faith rather than reason.

For McKinley (1998), Neo Liberalism is a belief system implemented to change the world. If one considers McKinley's criticism on the religious character of Neo Liberalism (and its very core Neo-Classical Economics), then the US crusade against the global communism (i.e. the containment policy that dictated the US genocidal war in Vietnam) or, to some extent, the Paraguayan, Brazilian and other Latin American genocidal policy against the Indians and the Leftists (in a narrow sense, however, these Latin American genocides could be pragmatic), were genocidal offering to the "God the Market" as brutally enforced through the "universal Church", developed by (or through) the Uruguay Round of the GATT and, ultimately, the World Trade Organisation (WTO). In other words, genocide must be understood in terms of faith to "efficiency" by eliminating unwanted human groups who are in the way of what Fukuyama (1989: 18) believes is the "common

marketisation” of international relations. And the attainment of such belief is “juridically inhuman, politically oppressive and reactionary, and scandalously anti-intellectual” (McKinley, 1998: 16). After all, these constitute the character of those committing ideological genocide; the character of a prince(ss) or a leviathan who considers her or himself as *homo economicus*, and who is guided by the instinct of efficiency (and thus, she or he does not hesitate to annihilate the infidel “others” who happen to stood in her or his path) in the grand effort to change the human world according to her or his own image. The resonance of McKinley’s criticism is also found in the case of pragmatic genocide.

Pragmatic genocide

The other cluster, pragmatic genocide, according to Du Preez (1994: 67), refers to genocide that lacks of vision. For the purpose of this work, the discussion of pragmatic genocide will be limited to three types of genocide and politicide, namely: hegemonic, retributive, and developmental. Fein’s (1982: 8-9) “developmental genocides”, Kuper’s (1982: 32-33) “genocide against indigenes”, Harff and Gurr’s (1988: 363) ‘“hegemonic -or to some extent xenophobic- genocide”, and Chalk and Jonassohn’s (1990: 36-37) “genocide for economic wealth” all qualify as developmental genocide. Here, these scholars talk about “backward” human groups who were killed because they stood in the way of progress and economic exploitation. They also talk about indigenous groups who vanished with the destruction of their habitat, or as a result of “new” disease or way of life brought in by the more civilised human groups. In concrete terms, they mostly talk about victimisation of the indigenes of the Americas, Australia, New Zealand, South Africa, and East Europe. It should be noted, however, that Harff and Gurr’s “hegemonic genocide/ politicide” convey meaning beyond “developmental”. For them, “hegemonic” is also meant to be political hegemony in a broader sense.

Hegemonic genocide, in the words of Harff and Gurr (1988: 363;), is “mass murders which occur when distinct ethnic, religious, or national groups are being forced to submit to central authority…”. Harff and Gurr use the term “hegemonic” in alternation with the term “repressive”. In their view, the term “hegemonic” refers to a genocide, the victims of which were selected based on their racial, ethnical, and religious characteristics; whereas the term “repressive” revers to genocidal victimisation due to political affiliation (Du Preez, 1994: 75). Fein’s (1982: 10-11) “despotic genocide”, Kuper’s (1982: 34-35) genocidal “struggles for power or for greater autonomy”, Chalk and Jonassohn’s (1990: 35-36) genocidal “terror to real and potential enemy” can be clustered under hegemonic genocide. Under this qualification, these scholars have agreed that the intent of the

perpetrators is to show "who's boss" to the real or potential (if not imagined) enemy, and hence repression, terrorism, and "token lessons" (hang some men and rape some women) are effective ways to convey the warning. All of the scholars, too, seem to have agreed that, while the destruction of the whole targeted group might not be the intent of the perpetrators, hegemonic genocide could go out of control and result in a massive victimisation. This is particularly true when the perpetrators consider the repressive-military means are no longer effective and hence measures of "population adjustment" (i.e. ethnic cleansing) are deemed necessary (Du Preez, 1994: 74). But what is worrying is that the sporadic attacks on the targeted group could incite retributive genocide from the once victimised group, particularly when the central authority is weakening, and thus perpetuating the cycle of genocide.

Harff and Gurr (1988: 363) define retributive politicides as "mass murders which are targeted at previously dominant or influential groups out of resentment for their past privileges or abuses". This definition is derivative of Fein's "retributive genocide" and Kuper's theory of "decolonisation of a two-tier structure of domination". Both Fein (1982: 11-13) and Kuper (1982: 33-34) argue that retributive genocide is likely to happen in a plural society in which the competing groups each considers themselves as potential victims of the others. For Kuper, one of the roots of retributive genocide is the ethnic politics —divide and rule— imposed by the colonial power by electing a favoured ethnic group into power. The decolonisation process strips the power of the colonial regime and hence the colonial protection of the ruling group. According to Fein, if the solidarity between the ruling group and the ruled groups is weak, then the power vacuum encourages the groups to anticipate the much worried about but simplistic security dilemma. The ruling elite might consider a pre-emptive "self defence" as the way to address the real or imagined retributive attacks from the ruled. It is not really a matter of who first pulls the trigger, but once a genocidal attack materialises, the genocidal cycle begins. As such, in the words of Chalk and Jonassohn (1990: 33-35), both sides are engaged in the struggle to remove the real and potential threats to their respective groups. To sum-up this discussion, Table 3 (in appendix) depicts the bigger picture of genocide.

Genocide, either ideological or pragmatic, is not only the product of a particular state's policy, but also the consequence of global politics of its time as construed by the dominant paradigms. Thus, it was the global politics of the Cold War that induced the progressive genocide in China (1950-51, 1966-76 against class enemies of the Revolution), North Vietnam (1953-54, against the middle class peasants and landlords), Kampuchea (1975-79, against "bourgeoisie" and old regime loyalists); the retributive genocide in Chile (1973-76, against leftists); and hegemonic genocide in Indonesia (1965-66, against communist cadres). Quite similarly, it was the ideology of, or the faith in, a market economy that

induced reactionary genocide by the US against the Communist Vietnam (1961-73), and reactionary genocides in Paraguay (1962-72) and Brazil, both were (and are) against the Indians who stood in the way of "common marketisation" process.

Conclusion

The current political and legal system to deal with genocide is best described as 'paralysis by design'. The understanding of genocide is simplistic and thus the corresponding treatment to genocide is poor. It is indeed an half-hearted effort to deal with a gigantic, complex crime in which, unfortunately, those who supposed to repress it were or are involved in its commission. As such if a top-down approach led by states (i.e through diplomatic conference) to combat genocide is hart to attain, an alternative bottom-up resistance against this crime must be organised and pursued by civil society.

Such resistance must develop a new understanding, a reformed theory-as-practice, to shape social behaviour towards genocide. The development of a new understanding of genocide must account the following priorities. First, and foremost, the protection against genocide must be extended to include politicide. Re-conception of genocide is thus a pressing need. Second, the moral element of genocide must be extended to account various gradient of genocidal criminality. Re-conception of the moral element to intent or knowledge must be simplified by end/ result oriented approach. Third, there is also a pressing need to link the individuals or people to the international system of protection. Re-conception of perpetrators, victims, and bystanders is a necessity. In other words, there should be an intensified attempt to personalise the crime and its accountability. Fourth, the study of genocide must be inclusive, comprehensive, and ready to step beyond the statist paradigm. This will demand re-conception of various typology of genocide.

Appendix: Table 3: The mapping of genocides/politicides

GENOCIDE/POLITICIDE									
IDEOLOGICAL (To achieve utopia)				PRAGMATIC (Practical aims: power, domination, revenge)					
PROGRESSIVE (Towards the 'classless' society)		REACTIONARY (Towards the 'racially pure' state or 'common marketisation' of the world)		DEVELOPMENTAL (Eliminating 'backward' peoples and their economies)		RETRIBUTIVE (Taking revenge)		HEGEMONIC (Seizing and holding power)	
USSR:	kulaks (1929-33)	Ottoman:	Armenians (1915)	SWA:	Herero (1904)	Rwanda:	Tutsi (1963-64)	Burundi:	Hutu (1972)
PR China:	class enemies of the Revolution (1950-51; 1966-76)	Nazi:	Jews, Gypsies (1940-45)	USSR:	Chechens, Ingushi, Karachai, Balkars, Kalmycks (1943-57)	Algeria:	Harkis, OAS supporters (1962)	China:	Taiwanese nationalists (1947)
Ethiopia:	political opposition	The U.S.:	Vietnamese (1961-73)	Meskhetians:	Crimean Tatars (1944-68)	Chile:	Leftists (1973-76)	USSR:	Ukrainan nationalists (1947-49)
N.Vietnam	rich and middle-class peasants; landlords (1953-54)	Paraguay:	Aché Indians (1962-72)					Malaya:	Chinese (1948-56)
Kampuchea:	oldregime loyalists, urban dwellers ('bourgeois') (1975-79)	Brazil:	Indians of Amazon Basin (continuing)					Indonesia:	Communist cadre, Chinese (1965-66)
								Sudan:	Southerners (continuing)
								Pakistan:	Baluchi tribesmen (1958-74)
								PRChina	Tibetan nationalist, land-owners, Buddhists (1959)
								Pakistan:	Bengali nationalists (1971)
								Indonesia:	East Timor nationalists (1975-1999)
								Iran:	Kurds (continuing)
								Bosnia:	Muslim (1992-1994)

Note: this table is adapted and extended from Du Preez, P. 1994. Genocide, The Psychology of Mass Murder. *London: Boyars/ Bowerdean, p.77-78.*

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