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I am extremely grateful for the serious attention that so many distinguished scholars have afforded my article, "Genocide and Atrocity Crimes."[1] I found their commentaries informative, insightful, and constructive. In the spirit of collegial discourse, and with deep respect for my colleagues in this grim but essential profession, I believe it is important to point out the following:

Unifying Terms

I seek terminology that remains faithful to the requirements of international criminal law (particularly in the work of international and hybrid criminal tribunals and of national criminal courts) and at the same time enables timely public discourse (by governments, activists, the media, scholars, and the common man and woman) and that actually stands some chance of leading to greater understanding of what is occurring and how effective responses might be facilitated. The status quo of terminological usage is confusing, misleading, and often inaccurate, and it clearly has great difficulty in contributing to the primary objective of preventing or stopping atrocity crimes. That does not mean, as some commentators erroneously read into my article, that this is a quest for a "magic bullet" in terminology that will overcome all the challenges in preventing or ending the commission of atrocity crimes. Political will is the dominant factor in any governmental action, but it is shaped by many forces, some of which, indeed, are influenced by the force of words.

At the end of the day, we continue to need all of the terms that have become so well known, because each can serve a vital purpose in a criminal trial or in describing particular actions that require precision when being examined in the public arena, particularly in the aftermath. There will continue to be a need, in various circumstances, to describe particular crimes as "genocide" or "crimes against humanity" or "war crimes." There will be times when lawyers and political scientists need to study and apply particular fields of law, such as international humanitarian law or human-rights law or the law of war or international criminal law. But my objective is to address an important question that arises after fifteen years of exponential growth in how various categories of crimes are prosecuted and their importance advanced by criminal tribunals, by international organizations (particularly the United Nations), and by governments: *What is the unifying term?*

Are we to wade forever through the thicket of terms that Payam Akhavan would invite us to endure while elite discussions take place about the true meaning of the status quo?[2] Is every discussion, every resolution, every headline, every rhetorical reference to be truncated (often inaccurately) to the use of "genocide" or burdened with wordy usage of "large-scale human rights violations" and "genocide, crimes against

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humanity, and war crimes" and "international humanitarian law and human-rights law?" The articulation of "atrocity crimes" and "atrocity law" cuts through the complexities that may justifiably concern scholars but which help cripple effective action. There is obviously no guarantee that these terms will lead to the end of such crimes in our time. But their use can help shift the debate (in both legal and public discourse) during the early phases of such crimes, away from a terminological joust among policy makers, lawyers, and scholars and can overcome the frustrated mangling of newsroom editors, thereby standing a better chance of influencing the development of effective responses to massive death, injury, and destruction.

Precursors of Genocide

As I acknowledge in my article, I struggle with the tension between popular usage of the term "genocide" and the more adaptable and accurate usage of the term I am introducing, "atrocity crimes." I could easily have abandoned "genocide" and "precursors of genocide," as Martin Mennecke would prefer, and simplify the exercise by the application of "atrocity crimes."[3] While I appreciate Mennecke's confidence in the latter term, I believe he is mistaken in his dismissal of "precursors of genocide." In reality, there is still a need to communicate to the public, and to policy makers, about, and in the language of, genocide. As William Schabas acknowledges, "the term 'genocide' will not disappear. Its place in the English language (and others, too) is simply too important."[4] It is true that where the word "genocide" has been used, as it was by former secretary of state Colin Powell with respect to Darfur in September 2004, the resulting inaction has revealed the word's impotence. But that is precisely what I am trying to address. The utility of "precursors of genocide" is its use in the very early stages of a looming genocide (not one-and-a-half years after the killing and destruction commence or, for example, at the advanced stages of the Darfur conflict), when putting the starkness of genocide before policy makers and the public, albeit with a qualifier, has a chance of resonating just enough with those audiences to trigger some responsive actions (diplomatic, economic, or even military).

The introduction of "atrocity crimes" is not meant to eliminate the term "genocide" entirely. Indeed, informed usage of "precursors of genocide" early in the situation can (a) respond to the predictable questions that will be raised about genocide and (b) advance the public discourse toward the more utilitarian usage of "atrocity crimes" while the focus is more properly placed on preventive action. One can easily join the two and, in public discourse, speak interchangeably about "precursors of genocide" and "atrocity crimes" occurring in real time. The utility of the former is its acknowledgment of unfolding developments that point to the "crime of all crimes"—so perk up—while the convenience of the latter is its applicability throughout the situation to describe a range of crimes that could be occurring and the fact that its usage gives policymakers enough flexibility to discover means to implement, rather than withdraw from, the responsibility to protect. Often the government least impressed with any usage of terms will be the perpetrator government (and Mennecke rightly points to the government of Sudan in this respect), but that fact has little bearing on the task of persuading other governments (and the international community) to respond effectively to the atrocity crimes sweeping across a foreign territory.

This does not mean that terminology alone rules decision making. No one can instantaneously create political will, which is one of the more complex human phenomena. But we know that conventional terminology fails miserably. All the understandable concerns of Akhavan and of Martha Minow[5] about whether use

of the new terminology would make any difference at all still leave us no better off in addressing the core problems. Let us try another approach.

The interesting challenge arises with Mark Levene. He sees the entire exercise as yet another hegemonic thrust into weakened nations. His speculation as to whether I am "willfully amnesiac" about historical trends leading to contemporary crises is a sharp-edged tool used to bolster his theoretical agenda rather than anything grounded in the reality of my own education, experience, or writings.[6] Historical knowledge and understanding should be a vital component of foreign policy making. But Levene would use it to paralyze decision making, particularly in the face of vast human suffering, and simply have the Western powers, particularly the United States, withdraw into an enclave of guilt-ridden isolationism. (I particularly reject his accusation, regarding Kosovo, that "leading international players . . . were as complicit and responsible as Milosevic or Thaci."[7] When it comes to the actual commission of atrocity crimes, this is patently false.) Should we forsake the practical realities and challenges of contemporary policy making so as to indulge in Levene's theories of hegemonic conspiracies while thousands perish?

In any event, Levene overlooks my acknowledgment that, particularly in academic studies, the historical trend lines have employed the term "indicators of genocide . . . to denote the many political, sociological, economic, military, and diplomatic events that occur *long before actual genocide takes place* and which point to trends that may erupt into genocide at some point in the future. This is a vital exercise . . . [which] give[s] the term 'indicators' a far more rigorous lock on a host of factors, some with *long lead time*, leading to genocide."[8] This is precisely where Levene's views and methodology can be applied. I distinguish "indicators" from "precursors" in order to focus, with the latter term, on "those events occurring immediately prior to and during possible genocide that can point to an ultimate legal judgment of genocide but which should be recognized and used in a timely manner to galvanize international action to intervene, be it diplomatically, economically, or militarily."[9] In my government experience, the most practical timeline within which to employ precursors is for periods up to twelve months. Even then, it is often a very tough job to galvanize sufficient attention, much less action, to address what the precursors are warning us about. My article clearly refers to the responsibility of governments and the world—not only the United States—to describe "quickly and publicly the precursors of genocide" and then "react in a timely manner to prevent further destruction of innocent human life."[10] Levene's attempt to align me with those who see the United States "as some sort of global fire brigade, putting out genocidal fires,"[11] fails to understand the broader application of my argument.

Prevention and Intervention

I do not understand how Sévane Garibian arrives at the view that I somehow presuppose "that international intervention is determined by the existence of acts of genocide."[12] In my article I address one significant facet of atrocity crimes—genocide and precursors of genocide—and use the example of Kosovo in 1999 to explore how governments (particularly the United States) can react under certain circumstances. This example does not deny the probability that the occurrence of crimes against humanity or war crimes might equally give rise to the imperative to intervene—diplomatically, economically, or militarily. Further, nothing I write suggests that prevention must be equated with intervention. The whole world lies at our feet in the realm of preventing atrocity crimes, including the policy decisions that build over

decades and which Levene so strongly believes are the core issue to address. I witnessed that prospect repeatedly during my atrocities prevention work in the Clinton administration, although our time frame for preventive action necessarily focused on shorter periods than the many years demanded by Levene. Garibian may have missed what I published in 2002 (and cited in my article), namely, that there is no legal obligation *per se* in the language of art. 1 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (UNCG) that commits states parties to *intervene*, militarily or otherwise.[13] Prevention is one of two key requirements in art. 1 and it can entail countless methodologies. There is no confusion in my mind about the distinction between prevention and intervention.

With respect to intervention, I agree with Garibian that the occurrence of atrocity crimes can be "deemed a threat to international peace and security, within the meaning of chapter 7 of the UN Charter."[14] This is where so much of the discussion about the principle of a responsibility to protect has resided and where governments have embraced the centrality of the UN Security Council's role.[15] Again, however, Levene mistakenly reads my proposal to infer that the United States must be on "some sort of constant stand-by to intervene unilaterally in each and every one"[16] of a dozen countries where precursors of genocide may exist. Nowhere do I advocate such a simplistic position. My article consistently applies my proposal to "governments," points to "the political and legal obstacles to a humanitarian intervention," and yet rightly argues that the "pathway to action against genocide must be simplified."[17] I write in the article that "the legality of any particular humanitarian intervention or action to protect is a separate debate."[18] And indeed it is.

Finally, I am disappointed in Minow's perhaps inadvertent criticism that I have undertaken this effort at all.[19] I teach, write, and engage on many other issues and projects at all times, so spending some time trying to fix the terminological chaos in the realm of atrocities is an endeavor I gladly undertake. As much as I admire Raphael Lemkin's contribution to the discipline, I actually was not inspired by his life or work, and I would never compare myself to him. My inspiration came from very different sources, including the "intimate face of suffering" described by Akhavan. If Schabas is right, that the likely determination on "atrocity crimes" and "atrocity law" will be made by the editors of the *Oxford English Dictionary*,[20] then I yield to the wisdom of others.

Notes

1. David Scheffer, "Genocide and Atrocity Crimes," *Genocide Studies and Prevention* 1 (2006): 229–50.
2. Payam Akhavan, "Proliferation of Terminology and the Illusion of Progress," *Genocide Studies and Prevention* 2 (2007): 73–80.
3. Martin Mennecke, "What's in a name? Reflections on Using, Not Using, and Overusing the 'G-Word,'" *Genocide Studies and Prevention* 2 (2007): 57–72.
4. William A. Schabas, "Semantics or Substance? David Scheffer's Welcome Proposal to Strengthen Criminal Accountability for Atrocities," *Genocide Studies and Prevention* 2 (2007): 31–36.
5. Martha Minow, "Naming Horror: Legal and Political Words for Mass Atrocities," *Genocide Studies and Prevention* 2 (2007): 37–42.
6. Mark Levene, "David Scheffer's 'Genocide and Atrocity Crimes': A Response," *Genocide Studies and Prevention* 2 (2007): 81–90, 83.
7. Ibid., 84.
8. Scheffer, "Genocide and Atrocity Crimes," 232 (emphasis added).

9. Ibid.
10. Ibid.
11. Levene, "David Scheffer's," 86.
12. Sévane Garibian, "A Commentary on David Scheffer's Concepts of Genocide and Atrocity Crimes," *Genocide Studies and Prevention* 2 (2007): 43–50, 45.
13. *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, 78 U.N.T.S. 277, art. 1. See David Scheffer, "The Future of Atrocity Law," *Suffolk Transnational Law Review* 25 (2002): 389–432, 419–20: "[Article I of the UNCG] does not necessarily mean use of military force. A whole range of tools is available, including diplomatic initiatives, economic sanctions, and, if required and permitted, military force. Many would argue that the requirements of the UN Charter must be strictly complied with prior to the use of force in response to genocide. No state would have ratified the Genocide Convention if there was an obligation to use military force."
14. Garibian, "A Commentary," 46.
15. See *Outcome Document of the 2005 World Summit*, UN Doc. A/RES/60/1 (24 October 2005), para. 139; International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001), http://www.iciss.ca/report-en.asp (accessed 12 January 2007); Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (New York: United Nations, 2004), http://www.un.org/secureworld/(accessed 12 January 2007); *In Larger Freedom: Towards Security, Development and Human Rights for All*, report of the Secretary-General of the United Nations for decision by Heads of State and Government in September 2005, http://www.un.org/largerfreedom/(accessed 12 January 2007).
16. Levene, "David Scheffer's," 89.
17. Scheffer, "Genocide and Atrocity Crimes," 235.
18. Ibid., 247.
19. Minow, "Naming Horror," 37.
20. Schabas, "Semantics or Substance," 36.