

What is Genocide?

by Martin Shaw, Polity, 2007, 222 pp.

Brian Brivati

Martin Shaw's new study, *What is Genocide*, addresses the question: 'how should we understand the idea of genocide?' He offers a new definition of genocide which he claims represents a return to the spirit of Raphael Lemkin's original formulation of the concept. Shaw states: 'The book argues that genocide studies have lost some of the central insights of their founding thinker, Raphael Lemkin.' [1] In order to recover Lemkin's original meaning, Shaw argues, the idea of genocide needs to be vigorously conceptualised through sociological methodology. He offers a new definition of genocide and I will return to it towards the end of this essay.

For the moment, however, let us consider Shaw's argument that the major problem with the idea of genocide in the contemporary world is the way it is conceptualised. I will argue in this review that, despite some extremely valuable insights and analysis, Shaw's articulation of the major problems with current definitions of genocide is flawed. Definition, in the social science sense of this term, i.e. conceptualisation, has never been the central difficulty the idea of genocide raises. Moreover, 'genocide studies' as a field, which is in its infancy, has seen a remarkably rich conceptual debate. Such debates, have not, it is true, yet settled around either a return to some sort of founding doctrine or a new conception of genocide. The old definition has not been successfully transcended by a new synthesis. The debate has not 'settled' because it does not need to. The problems genocide presents to the world are not primarily problems of definition but problems of prevention and punishment. The political difficulty of defining an event as genocide, for example in Rwanda, was not caused by our inability to understand what the term genocide referred to. The problem was with the implications for action that an acceptance of the fact that the events in Rwanda constituted genocide would have entailed. The problem of prevention was ever thus.

On Lemkin

In 1947 Raphael Lemkin looked back to the moment, in 1933, when he first articulated the concept that would later become the term genocide and, later still, the basis for the first Convention of the United Nations in the field of Human Rights:

The question arose whether sovereignty goes so far that a government can destroy with impunity its own citizens and whether such acts of destruction are domestic affairs or matters of international concern. Practically speaking, should the moral right of humanitarian intervention be converted into a right under international law? If the destruction of human groups is a problem of international concern, then such acts should be treated as crimes under the law of nations, like piracy, and every state should be able to take jurisdiction over such acts irrespective of the nationality of the offender and of the place where the crime was committed. In line with this thought the present writer submitted a proposal to the International Conference for Unification of Criminal Law held in Madrid in 1933 to declare the destruction of racial, religious or social collectivities a crime under the law of nations (*delictum iuris gentium*). There was envisaged the creation of two new international crimes: the crime of barbarity, consisting in the extermination of racial, religious or social collectivities, and the crime of vandalism, consisting in the destruction of cultural and artistic works of these groups. The intention was to declare these crimes punishable by any country in which the culprit might be caught, regardless of the criminal's nationality or the place where the crime was committed. This proposal was not accepted. [2]

The style of the quotation above is typical of Lemkin's prose – clear and precise but with barely concealed outrage and passion. The content of the quotation is important for understanding the nature of the concept of genocide, its origins and the fundamental challenges and problems that we face with the crime today. Lemkin's original formulation of the crimes that would become genocide was submitted as a proposal to the International Conference for Unification of Criminal Law held in Madrid in 1933. It followed the massacre in Iraq on 7 August 1933 of the Assyrian population of the town of Semile. This massacre evoked memories of the Armenian massacres during the First World War and inspired Lemkin to propose that:

Whosoever, out of hatred towards a racial, religious or social collectivity, or with a view to the extermination thereof, undertakes a punishable action against the life, bodily integrity, liberty, dignity or economic existence of a person belonging to such a collectivity, is liable, for the crime of barbarity, to a penalty of . . . unless his deed falls within a more severe provision of the given code. Whosoever, either out of hatred towards a racial, religious or social collectivity, or with a view to the extermination thereof, destroys its cultural or artistic works, will be liable for the crime of vandalism, to a

BRIVATI | Lemkin and Shaw on Genocide

penalty of . . . unless his deed falls within a more severe provision of the given code. The above crimes will be prosecuted and punished irrespective of the place where the crime was committed and of the nationality of the offender, according to the law of the country where the offender was apprehended. [3]

So, Lemkin at first proposed the crime of ‘barbarism’ and a separate crime of ‘vandalism.’ The crime of barbarity entailed the attempt to exterminate a racial, religious or ‘social collectivity,’ through killing but also action against ‘bodily integrity’ i.e., rape, ‘liberty’ i.e., the creation of concentration camps, ‘dignity’ i.e., laws which stigmatised certain identities within a polity and ‘economic existence’ i.e., the ability to earn a living. The crime of vandalism consisted of the destruction of the cultural and artistic works of a group i.e., the burning of books. It is a macabre irony that Lemkin’s 1933 articulation of the concept of genocide predicted almost perfectly the policies the Nazis would enact against the Jews in the decade that followed.

As the Nazis’ regime developed, Lemkin, who was a leading Polish Jurist, developed his thinking on the nature of the crimes he then termed barbarism and vandalism. Writing in the journal of the United Nations in 1946 he reflected on the policies of the Nazis, not just in the period of the war itself but in the run up to the war between 1933 and 1939. In this phase of the regime the assault on rights directed against the Jews and others by the Nazis was based on the crime of vandalism as much as on the crime of barbarism. These assaults then radicalised into the destruction of the ‘national-biological power of the neighbours of Germany so that Germany might win a permanent victory, whether directly through military subjugation or indirectly through such a biological destruction that even in the case of Germany’s defeat the neighbours would be so weakened that Germany would be able to recover her strength in later years.’ [4] For Lemkin this destruction of a people was not confined merely to killing but encompassed acts to prevent life such as forced abortions and sterilizations and acts that could endanger life; for example, artificial infections, working to death in special camps, deliberate separation of families for depopulation purposes. Etc. But Lemkin argued that, awful as such crimes are in and of themselves: ‘All these actions are subordinated to the criminal intent to destroy or to cripple permanently a human group. The acts are directed against groups, as such, and individuals are selected for destruction only because they belong to these groups.’ [5] This, he argued, was different from other kinds of extreme violence by states and was a new category of crime. This crime needed a new word to describe it.

As we will see a little later, Martin Shaw argues that armed force is central to what the definition of genocide should contain. Lemkin here seems to support this view as he is giving priority to the destruction of life. Nevertheless, we should notice that Lemkin instantly adds to this the word ‘cripple.’ For Lemkin, then, the newness of the crime that he would call genocide was not merely the destruction by armed force of a human group – a description central to Shaw’s characterisation of Lemkin’s perception of genocide – but the crippling of the life of that group by a range of actions not all of which would result in death. As Lemkin put it: ‘... mass murder does not convey the specific losses to civilization in the form of the cultural contributions which can be made only by groups of people united through national, racial or cultural characteristics. The evidence produced at the Nuremberg trial gave full support to the concept of genocide! However, the International Military Tribunal gave a narrow interpretation of its Charter and decided that acts committed before the outbreak of the war were not punishable offences.’ [6] Sir Hartley Shawcross and others agreed with Lemkin’s view that ‘Had the Tribunal punished such acts a precedent would have been established to the effect that a government is precluded from destroying groups of its own citizens.’ [7] In his study of the Axis policies of occupation, in which he first defined and articulated the crime of genocide, Lemkin stated clearly that: ‘genocide is a problem not only of war but also of peace.’ [8] But the crimes of the Nazis in peace did not feature at Nuremberg.

When Lemkin’s book on Axis Occupation policies was published in 1944, it contained a chapter on the crime of genocide. Early reviewers picked up on the nature of the crime that Lemkin had described.

The massacres, the forced labor, the separation of families, the deprivation of free movements – all these discriminations practiced upon the Jews constituted part of a movement designated by Lemkin as ‘genocide,’ a name which he believes should be used to denote something which has gone much farther than the old political and cultural denationalization policies familiar to historians, for ‘genocide’ has embraced political, social, cultural, economic, biological, physical, religious and moral practices. [9]

Another reviewer noted that genocide, as Dr. Lemkin explains, signifies:

a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the

BRIVATI | Lemkin and Shaw on Genocide

groups themselves. After analyzing the German techniques of genocide carried out in the political, social, cultural, economic, and other fields in the occupied countries, Dr. Lemkin concludes that the enemy has embarked upon a gigantic scheme to change, in favor of Germany, the balance of biological forces between it and the captive nations for many years to come. For all the acts committed by the German occupying forces in the occupied countries, Dr. Lemkin holds the entire German people responsible, with which this reviewer, on the basis of his own work in the field, fully agrees. As Dr. Lemkin forcefully points out, 'The present destruction of Europe would not be so complete and thorough had the German people not accepted freely its plan, participated voluntarily in its execution, and up to this point profited greatly there from.' Furthermore, the author rightly emphasizes the significant fact that 'The German techniques of exploitation of the subjugated nations are so numerous, thoughtful and elaborate, and are so greatly dependent upon personal skill and responsibility that this complex machinery could not have been successful without devotion to the cause of the persons in control' (p. xiv). He therefore urges 'that the considerable number of Germans responsible for the carnage and looting should be punished or reduced to a condition in which they may not again be dangerous to the social order and international peace' (p. xii). [10]

Both reviewers are clear that the nature of the crime being described is wide-ranging, encompassing both peace and war, entailing many actions short of murder and carried out by a broad cross section of a society.

Following the publication of this study, Lemkin, by now in the United States, prepared a resolution for the newly formed United Nations general assembly. The preamble to the resolution echoed the theme that had first been introduced in the 1933 submission to the Madrid conference – the destruction of racial, religious and national groups both in the sense of their physical destruction and the destruction of their cultural identity. It stated that genocide was 'a denial of the right of existence to entire human groups in the same sense as homicide is a denial to an individual of his right to live.' The resolution went on to call on the UN 'to declare genocide an international crime, to insure international cooperation in its prevention and punishment; and to recommend that genocide be dealt with by national legislation in the same way as other international crimes such as piracy, traffic in women and children, and others.' [11]

Lemkin's resolution was sponsored at the second part of the first session of the General Assembly at Lake Success by Cuba, India and Panama. It was adopted as Resolution 96 (I) on 11 December 1946. The Economic and Social Council instructed the Secretary General to prepare a draft convention on genocide which should be considered by the Commission on Development and Codification of International Law. The General Assembly, at its second session, reaffirmed the former resolution by Resolution 180 (11) of November 21, 1947, and requested the Economic and Social Council to continue the work. The Council later appointed an Ad Hoc Committee, composed of the representatives of only seven Members, to draft a convention. The Ad Hoc Committee met from April 5 to May 10, 1948. It abandoned the former draft and adopted a proposal by China as the basic text. This Committee unanimously adopted a draft convention and transmitted it to the Council. By Resolution 153 (VII) of August 26, 1948, the Council decided to transmit the draft convention to the third session of the General Assembly. On 8 December 8, 1948, this Committee adopted the draft resolution. The next day the General Assembly rejected several Soviet amendments and adopted the resolution with the annexed convention, as submitted by the Sixth Committee, and two accompanying resolutions. The vote was 55 to 0, no abstentions; Costa Rica, El Salvador, and the Union of South Africa were absent. [12]

In the debates that followed, discussion quickly turned to the problem of enforcement. While, as Kunz put it, genocide by a state against its own citizens 'was morally condemned, it was generally recognized that a state is entitled to treat its own citizens at discretion and that the manner in which it treats them is not a matter with which international law, as such, concerns itself.' In describing the very first debate on the genocide convention, the real problem surfaced right away. In considering humanitarian intervention and intervention to prevent genocide, a central plank after all of the convention as drafted, 'there is general agreement that, by virtue of its personal and territorial supremacy, a state can treat its own nationals according to discretion.' The main texts of international law backed up the limited scope of support for the notion of humanitarian intervention. Kunz argued that:

...in the previous editions of Oppenheim the view was expressed that 'whether there is really a rule of the Law of Nations which admits such intervention may well be doubted.' Lauterpacht, in the latest edition, also recognizes that states had a disinclination to take responsibility for a humanitarian intervention and that, on the other hand, it has been abused for selfish purposes.

BRIVATI | Lemkin and Shaw on Genocide

Kunz concludes, somewhat optimistically, that the Convention, ‘therefore creates in this and other points new law binding only on the states which have ratified it.’ The innovations in the Convention as originally drafted went further. ‘The crimes referred to in Article II and III which hitherto if committed by a government in its own territory against its own citizens, have been of no concern to international law, are made a matter of international concern and are, therefore, taken out of the ‘matters essentially within the domestic jurisdiction of any State,’ of Article 11, paragraph 7 of the United Nations Charter.’ Although only contracting parties can invoke Articles VIII and IX of the Convention, United Nations organs are called to intervene.’ Kunz concludes, writing in 1949: ‘This confirms our construction of the Convention. Individuals are criminally liable for genocide in a domestic court under domestic law, but they are not internationally liable. States alone are, under the general conditions of state responsibility, internationally responsible, but under international law, not under criminal law; only this international state responsibility includes – and here lies the innovation – genocide committed by a state against its own citizens. Article VIII gives to any contracting party the right to call upon the competent organs of the United Nations to take such action under the Charter as they consider appropriate for the prevention and suppression of the crimes named in Articles II and III.’ [13] The only problem is that no state has ever succeeded in doing so.

Despite this potential innovation – the response to which I will explore in a moment – debates gradually watered down the convention. The jurist, Kunz writes, borrowing the words of the Belgian philosopher of law, Jules Dabin, ‘is primarily an artist of definitions; and good definitions are in no field more essential than in criminal law.’ Article 11, giving the definition of genocide, is, therefore, ‘the heart of the convention. The Sixth Committee decided on a definition by way of enumeration. The five types of acts enumerated cover physical and biological genocide.’ Gradually these types of genocide were amended. Mental harm was diluted. Then all forms of cultural genocide were eliminated from the convention. [14] There then followed the elimination of the protection of political groups from the scope of the convention.

The American Bar Association responded to this development with a ringing condemnation: ‘The excluded groups are the only ones that are presently in the process or common danger of extermination. Compromise on a matter of principle is tantamount to abandoning the principle.’ [15] The American Jurists’ assault on the Convention was wide ranging. They attacked the basic principles on which

it was drafted and the possibility of it being enforced. [16] They argued that the convention would fail to prevent a repetition of the crimes of Nazi Germany because its approach 'is that of individual crime and not of persecutions instigated by governments...It foresees the eventual establishment of an international court, but for the purpose of trying individuals.'

The failure at the heart of the convention was the inability of the United Nations assembly to face up to the protection given to genocidal states by the limits of the legal remit of the prosecution dimension of the convention, let alone the prevention ambition. Mass killing could only take place with the approval of governments. The crime of genocide referred to acts affecting many thousands. Therefore the crimes which the convention is designed to prevent and to punish, can only take place with the considerable mobilisation of the state – a point Lemkin was at pains to stress in his study of the Axis Occupation policies. How, the Bar Association asked in 1949, 'can it be expected that a government engaged in such a policy will voluntarily turn over its officials or citizens to any other government or international court for punishment for carrying out that policy? To take the accused by force would require an act of war. The Genocide Convention is an attempt to carry over into time of peace the so-called Nuremberg principle under which captured enemies were held personally liable for acts of aggression and crimes against humanity; but the Nuremberg Tribunal had the physical custody of the persons whose condemnation was demanded.'

The US lawyers were also highly critical, as mentioned above, of the selectivity of the groups covered by the terms of the convention: 'The Convention is selective among the groups it would protect in whole or in part. Those singled out for preferred consideration are national, ethnical, racial and religious groups "as such." Political and economic groups were apparently not considered as needing or worthy of protection.' They concluded that 'The Genocide Convention as submitted would not apply to many such cases. The Soviet Government and its Communist satellites, should they accept the Convention, which they have not done up till now, may liquidate property owners and others who believe in private enterprise on the ground that they are political enemies of the state and therefore are not covered by the Convention.' [17]

The Convention, eventually signed by 41 states and ratified by 133 around the world, was a watered down version of Lemkin's original conception of the crime of genocide. It was more limited in scope and did not take into account the

BRIVATI | Lemkin and Shaw on Genocide

destruction of the cultural identity of a group during peacetime and extent to which political groups could be included. It was true to Lemkin's vision in the sense that, in contrast to the American Bar Association, he believed in the possibility of extending international law to encompass this new crime and for this crime to be based on the bringing of charges against an individual. Though he was unsatisfied with this he did not propose the end of national sovereignty.

On Shaw

Martin Shaw's arguments need to be considered in this context. Shaw's central argument (which could have been stated in a long article and is stretched and repeated in book form) needed saying and he says it, several times, extremely well. There is a need to recover aspects of Lemkin's original concept of genocide. We do not require a plethora of terms for the types of mass killing that take place but we do need a proper use of the term genocide. We need better answers to the questions of which groups are defined by the convention and how the convention can be made to operate. On this later question, which surely matters above all others, Shaw has little constructive to say. Where he is much more convincing is presenting the idea that we should look at genocide from a social group perspective and examine the 'conflict structure' of the context in which genocide takes place, seeing this as a relationship which is two-sided rather than a one-sided relationship in which the victims are killed by the perpetrators. Thinking about genocide in this way is useful but Shaw takes it too far. He wants us to abandon the idea that genocides are one-sided conflicts between unarmed groups and militarised ones. Even if the victim group does fight back against overwhelming odds and with the certainty of destruction, as in, for example, the Warsaw Ghetto, Shaw wants us to think about this as a power relation in which force on both sides can be compared. Shaw also argues that few genocidists set out to kill all members of the victim group. [18] Shaw argues this position because he sees one of the main problems with the genocide studies field – dominated as he sees it by lawyers and historians [19] – spends too much time thinking about the intentions of the perpetrators and the meaning of their actions.

The problem with Shaw's approach is that it does not match the facts of at least two of the most clear-cut cases of genocide of the last century – Hitler's war against the Jews and the Huti genocide against the Tutsi. In these two cases there is no problem of definition and no one denies that what happened was genocide. Few writers on these two genocides would suggest that the power relationship between the two

was balanced enough to describe the conflict as being anything other than one-sided. Even fewer would suggest that the genocidal intent was anything other than to kill all members of the victim group wherever they could be found. The heart of understanding genocide is to move beyond Shaw's formulation – '...the killing of all members of any large-scale group is inconceivable; some will always survive, either by losing their group identity or by moving beyond the reach of genocidal power.' [20] Such killing is not inconceivable to the genocidists and that is why so much attention has been paid to trying to understand them. Grasping the audacity of their intent is central to an understanding of the nature of genocide compared to other kinds of repression.

Despite my reservations about the ramifications of some of Shaw's arguments, Shaw has presented a new definition of genocide that, is worth taking seriously even if we do not adopt it. His definition is:

Genocide is a form of violent social conflict, or war, between armed power organisations that aim to destroy civilian social groups and those groups and other actors who resist this destruction.

The type of action carried out needs also to be defined. So he defines genocidal actions as:

Action in which armed power organisations treat civilian social groups as enemies and aim to destroy their real or putative social power, by means of killing, violence and coercion against individuals whom they regard as members of the group.

The strength of Shaw's new definition is that it emphasises that genocide is not outside normal social phenomena – or indeed history – and that it is a form of conflict and war. Its first main weakness is that it attempts a 'radical break with the ideas of 'one-sidedness' and 'helplessness.' And it also stresses that genocide, even in peacetime, is a form of war. There are problems with both these last two features. The one-sidedness thesis is flatly contradicted by evidence from important cases. The argument about genocide being a feature of war is already generally accepted. How best to evaluate the usefulness of Shaw's definition? Let us compare Shaw's definition with the text of the main elements of the genocide convention as it was eventually passed.

BRIVATI | Lemkin and Shaw on Genocide

The first article of the convention states that: '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.' This article conforms to Lemkin's view that the crimes of the Nazis before 1939 should be included and is clearly stated. The acceptance that genocide can be a feature of peace as well as war is not clearly stated in Shaw's definition though it is mentioned in his elaborations of the definition. [21] This is major issue of contention. What is a 'time of war' and what is a 'time of peace.' In terms of the operation of international law and the force of jurisdiction differences in these states of affairs matter in terms of law and reality. The current case in Darfur is of course a case in point. The government of Sudan is not at war but neither is it a state at peace. Moreover, acts by a state in terms of social and cultural groups have never been seen as part of the genocide debate. They are, however, central elements in the study of the possibility of prevention. Acts against political, ethnic or national groups before conflict begins are recognised as being signposts on the road to the physical destruction of those groups. Identifying actions against specific groups that go outside human rights norms, and then stopping governments from extending them, are vital parts of prevention. Prevention is given equal weight in the formation of this article in the convention. In these respects the existing definition in the convention is actually truer to the spirit of Lemkin's intent and potentially more useful in terms of prevention than Shaw's definition.

The second article states that in the 'present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (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.' This is the 'definition by way of enumeration.' The problems with the enumeration we have already discussed. Political groups are excluded. Lemkin's hope that cultural assaults could be included was rejected. The much debated 'mental harm' clause survived. But here again the meaning is quite clear and the intention of the Article transparent. Even the omissions do not detract from the potential of the Article and the definition is clear and in many ways clearer than Shaw's definition and closer to Lemkin's intent. Having established the nature of the crime, the Convention sets out the acts that will be punished (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to

commit genocide; (e) Complicity in genocide. It then defines who will be held accountable in Article 4.

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

This definition of crimes and those responsible has no ambiguity about it and because it is designed to be connected to actions is clearer and more analytically useful than Shaw's definition, especially when this is read without the elaboration. The rest of the Convention goes beyond definition and deals with the real nature of the problem with genocide. These are the key Articles:

Article 5. 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.

Article 6. Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article 7. Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article 8. Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III.

Article 9. Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the

BRIVATI | Lemkin and Shaw on Genocide

other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

We know what the crime of genocide is. We know who commits it. We know who the victims of the crime are. We know who the bystanders are. We have seen it too often since 1945 not to be pretty good at recognising it, though it can always be debated. Shaw has taken on one of the vital debates about definition in his book by ensuring that the one-sidedness of the conflict does not present an obstacle to defining acts as genocide. He does this because of Darfur and the violence from the rebel groups against government forces. The problem with this is that the victims in Darfur are not the rebel groups, some of whom have now been joined by Arab tribes, but the civilian populations of the African villages that have been attacked. Those fights are one-sided, even if the overall conflict is not. Shaw's intentions are noble but not necessary. Clearly the events in Darfur meet the definition of genocide in the convention and even more those of the original writings of Lemkin. The problem is translating what we know about this crime and its occurrence into prevention. On this question Martin Shaw takes us no further and his purpose to be fair was not to do so. He set out to enrich our conceptual thinking about genocide and he has done this. But definition and conceptual thinking about genocide have never really been the problem.

The frustration is that we have known the major problem since the Convention was drafted. Let me repeat the words of the American Bar Association from 1949: 'How can it be expected that a government engaged in such a policy [genocide] will voluntarily turn over its officials or citizens to any other government or international court for punishment for carrying out that policy?' The question the world faces is not 'What is genocide?' The question is 'How do we prevent Genocide?' Martin Shaw's takes us a little closer to being able to think better about genocide, and his book will be near the top of my reading lists for that reason, but it takes us no closer to answering the real question.

Brian Brivati is Professor of Contemporary History at Kingston University. An advisory editor of *Democratiya*, his new book *The End of Decline: Blair and Brown* in power will be published in September 2007. He is a member of the Iraq Commission, an independent, cross-party group tasked with producing a blueprint for Britain's future commitment to Iraq.

References

- Finch, George A., 1949, 'The Genocide Convention,' *The American Journal of International Law*, Vol. 43, No. 4, pp. 732-8.
- Horniker, Arthur Leon 1945, (review) *Military Affairs*, Vol. 9, No. 1, pp. 69-73.
- Kunz, Josef L 1949, 'The United Nations Convention on Genocide,' *The American Journal of International Law*, Vol. 43, No. 4, pp. 738-46.
- Lemkin, Raphael 1944, *Axis Rule in Occupied Europe*, Carnegie Endowment for International Peace.
- Lemkin, Raphael 1946, 'The Genocide Convention,' *Journal of the United Nations*, No. 41.
- Lemkin, Raphael 1947, 'The Crime of Genocide,' *The American Journal of International Law*, Vol. 41, No. 1, pp. 145-151.
- Mander, Linden A, 1945, (review) *The American Historical Review*, Vol. 51, No. 1, pp. 117-120.
- Shaw, Martin 2007, *What is Genocide?*, Polity: London.

Notes

- [1] Shaw 2007, p. 4
- [2] Lemkin 1947.
- [3] Lemkin 1947, p 146.
- [4] Lemkin 1946, p. 52.
- [5] Lemkin 1946, p. 52.
- [6] Lemkin 1946, p. 52.
- [7] Lemkin 1947, p. 148.
- [8] Lemkin 1944, p. 93.
- [9] Mander 1945, pp. 117-20.
- [10] Review by Arthur Leon Horniker in *Military Affairs*, Vol. 9, No. 1. (Spring, 1945), pp. 69-73.
- [11] Lemkin 1947, p. 149.
- [12] Kunz 1949.
- [13] Kunz 1949, p. 746.
- [14] Kunz 1949, quoting Oppenheim-Lauterpacht, *International Law*, Vol. I (7th ed., London, 1948), p. 583. Cf. also, 'N e i propri territori la libertd di ciascun Stato B illimitata verso I propri cittadini secondo il diritto internaionale generale,' in G. Balladore Pallieri, *Diratto Internaionale Pubblico* (5th ed., Milan, 1948), p. 382. and Oppenheim-Lauterpacht, op. cit., p. 279.
- [15] Kunz 1949, p. 746.
- [16] All quotes from the American Bar Association from Finch 1949.
- [17] Finch 1949, pp. 732-738.
- [18] Shaw 2007, p. 108.
- [19] Shaw 2007, p. 37-96.
- [20] Shaw 2007, p. 108.
- [21] Shaw 2007, pp. 155-6.