

## **An open letter to Ambassador David Scheffer concerning his IHT Op-Ed “Defusing the Lexicon of Slaughter”**

Dear David,

I read your February 23, 2012 Op-Ed in the International Herald Tribune, "Defusing the Lexicon of Slaughter", with concern.

Your campaign to redefine all atrocity crimes together is commendable on a practical level, because I know that your goal is to stop the useless debate at the UN and among academic, State Department, and other lawyers about whether atrocities constitute "genocide," as though only such a finding would justify international intervention and the responsibility to protect.

Genocide Watch takes the broad view of genocide that Raphael Lemkin took -- any mass murder is horrifying enough to demand action to prevent it. We commend your use of the word "genocide" to characterize the killings in Kosovo when you were the US Ambassador at Large for War Crimes Issues, a statement for which you received much criticism, whether the number of dead was 10,000 or more. I believe your statement helped mobilize the response required by the US government and NATO, and saved the lives of thousands of Kosovars.

Genocide Watch takes the broad view of genocide that Raphael Lemkin took -- any "atrocity crime", including massacres or forced deportations, demands action to prevent it. It is why Genocide Watch never engages in debates about whether mass murder meets the legal criteria of the Genocide Convention.

I think you are also correct that legislation outlawing denial of genocides is self-defeating because it violates freedom of speech. Enforcement of such laws simply diverts debate away from the truth or falsehood of assertions about the atrocities into a debate about freedom of speech.

However, one of your statements is problematic, and I think is wrong.

*"Politicians should use the term "genocide" only when historians and jurists have determined, based on evidence and analysis, that a genocide — a specific crime defined according to narrow factual and legal criteria — has indeed occurred. It is the responsibility of historians to establish the facts of distant events and of jurists to determine whether these were a genocide, crimes against humanity, war crimes, human rights abuses, political repression or other crimes against civil or political rights."*

If politicians wait to use the word "genocide" until historians and jurists have made their judgments, it will never be used at all until the killing is over. Lemkin's purpose for creating the new word "genocide"-- to sound an alarm against this especially horrible 'crime of crimes' would be lost. The preventive purpose of the "International Convention for the Prevention and Punishment of the Crime of Genocide" would be paralyzed.

In the case of the genocide against Armenians and other Christians by the Young Turk regime, your Op-Ed ignores the judgment of both historians and jurists.

Every non-Turkish historian not holding a chair financed by the Turkish government (and Turkish historians like Taner Akcam) have concluded that the Young Turk regime committed genocide against Armenians and other Christians in Anatolia from 1915 - 1922. And a Turkish Military Tribunal tried the three main conspirators who planned the massacres in 1919 and found all three guilty of "crimes against humanity." The term "genocide" did not exist in 1919, but the facts proven at trial would certainly have justified a verdict of genocide against all three, who were sentenced to death. (See the entire Spring 2010 issue of the University of St. Thomas Journal of Law and Public Policy, particularly the articles by William Schabas and Vakahn Dadrian.)

Those facts are the basis on which the International Association of Genocide Scholars resolved unanimously in 1997, and on numerous occasions since, that the Young Turk regime committed the crime of genocide against Armenians and other Christians in Anatolia between 1915 and 1922. These are settled judgements by historians and jurists, as you advocate.

Reduction of the charges -- sort of an historical plea bargain -- from "genocide" to "atrocious crimes" will not change the proven facts about the crimes the Young Turk regime committed.

As you know, I have the greatest respect for all you have done to combat atrocious crimes. But let us not for diplomatic reasons whitewash the facts of the Armenian genocide. Someday, Turks will acknowledge the genocide, just as Americans have finally acknowledged many of the crimes against humanity and genocides our ancestors committed against African-Americans and Native Americans.

Best wishes,

Greg

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David Scheffer's article:

## **Defuse the Lexicon of Slaughter**

By DAVID SCHEFFER  
The International Herald Tribune  
February 23, 2012

<http://www.nytimes.com/2012/02/24/opinion/defuse-the-lexicon-of-slaughter.html?pagewanted=all>

Legislators play a dangerous game using the word "genocide." In trying to appease millions of victims, they needlessly pit nations against one another. They should leave it to others to sift through the evidence and determine what killings occurred when and which ones amount to what crimes. Political judgments distort the search for truth and for justice.

Millions of people live with the memories that their ancestors were slaughtered out of prejudice. They demand that the story of their people's past be confirmed for posterity and that the perpetrators be condemned. But judging such facts, especially many years, perhaps even centuries, after they occurred, requires the discipline of historians and, if surviving suspects can be prosecuted, of jurists.

Some nations have outlawed Holocaust denial to avoid stoking the violence bred by anti-Semitism. Such intentions may be sound, but too often the results are problematic. Legislators and governments have variously decreed or denied that given mass atrocities were genocides in order to satisfy certain interest groups or national agendas.

[France](#) and Turkey are now at loggerheads, for example, over how to characterize the deaths of some 1.5 million Ottoman Armenians nearly a century ago and whether to criminalize any refusal to call those atrocities a genocide. The French Parliament says “genocide” and wants to criminalize its denial; Turkey rejects the term and prosecutes those who use it. The Turkish prime minister has threatened sanctions against France and countered that France committed a genocide of its own in Algeria between 1830 and 1962.

Mass atrocities were indeed committed against the Armenians, but deciding to call them a “genocide” — or refusing to — is a dangerously divisive political game. It heightens tensions between countries and sows confusion about what really happened.

Politicians should use the term “genocide” only when historians and jurists have determined, based on evidence and analysis, that a genocide — a specific crime defined according to narrow factual and legal criteria — has indeed occurred. It is the responsibility of historians to establish the facts of distant events and of jurists to determine whether these were a genocide, crimes against humanity, war crimes, human rights abuses, political repression or other crimes against civil or political rights.

Using the word “genocide” loosely can be tragically ineffective or self-defeating. It can intimidate powerful nations from reacting quickly enough to prevent further atrocities.

The United Nations and key Western governments failed to act in Rwanda and the Balkans in the early 1990s partly because their policy makers were searching for terminological certainty about the nature of the killings. The false notion arose that invoking “genocide” would require immediate military intervention. (The 1948 Genocide Convention does not demand this; the requirement that parties to the treaty “prevent” genocide can take military, political, diplomatic or economic forms.) And while the politicians pondered, thousands of civilians continued to die.

When in 2004 Secretary of State Colin Powell declared the killings in Darfur a genocide, he wasn’t committing to United States to send the 82nd Airborne into western Sudan. He was simply trying to prod the U.S. government to take some action, ideally with others, to stop the atrocities. But others in Washington and several Western capitals froze at the use of the g-word.

Politicians would be better off using the phrase “atrocities crimes” — a term with no pre-existing connotations or legal criteria — to describe any combination of genocide, crimes against humanity or war crimes, leaving it to historians and jurists to determine, free of political influence, which atrocities crimes belong to which category. In the face of ongoing mass killings, this would allow policy makers to concentrate on what needs to be done to end a slaughter rather than debate how to define it. The Obama administration is rightly creating the Atrocities Prevention Board to free up decision-making from any confining lexicon.

France, as well as the United States and Israel — both of which are considering similar genocide legislation — could call what occurred to the Armenian people a century ago atrocities crimes. (Turkey might even tolerate that.) And Turkey could condemn what the Algerians suffered at the hands of the French as atrocities crimes.

If the United States, the European Union and the Arab League declared that the Syrian government was currently committing atrocities crimes against its own people, they would have an easier time getting the U.N. Security Council to refer Syria’s leaders to the International Criminal Court for investigation, leaving it to the prosecutor to determine what crimes to list in an indictment. Rather than veto such a move, Russia and China might abstain from voting on it and give justice a chance.

By forgoing “genocide,” politicians would no doubt disappoint interest groups determined to use the label to describe the suffering inflicted on their ancestors. The Armenians, in particular, would find this compromise hard to accept. But their strongest case rests with the historians and the jurists now — not with the politicians whose loose indictments trigger the very tensions that can ignite prejudice among peoples and nations. Shifting to “atrocities crimes” in government speech, meanwhile, would focus the efforts of officials on getting more unified international responses to ongoing massacres.

**David Scheffer**, the U.S. ambassador at large for war crimes issues from 1997 to 2001, is a law professor at Northwestern University. His new book is *“All the Missing Souls: A Personal History of the War Crimes Tribunals.”*

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