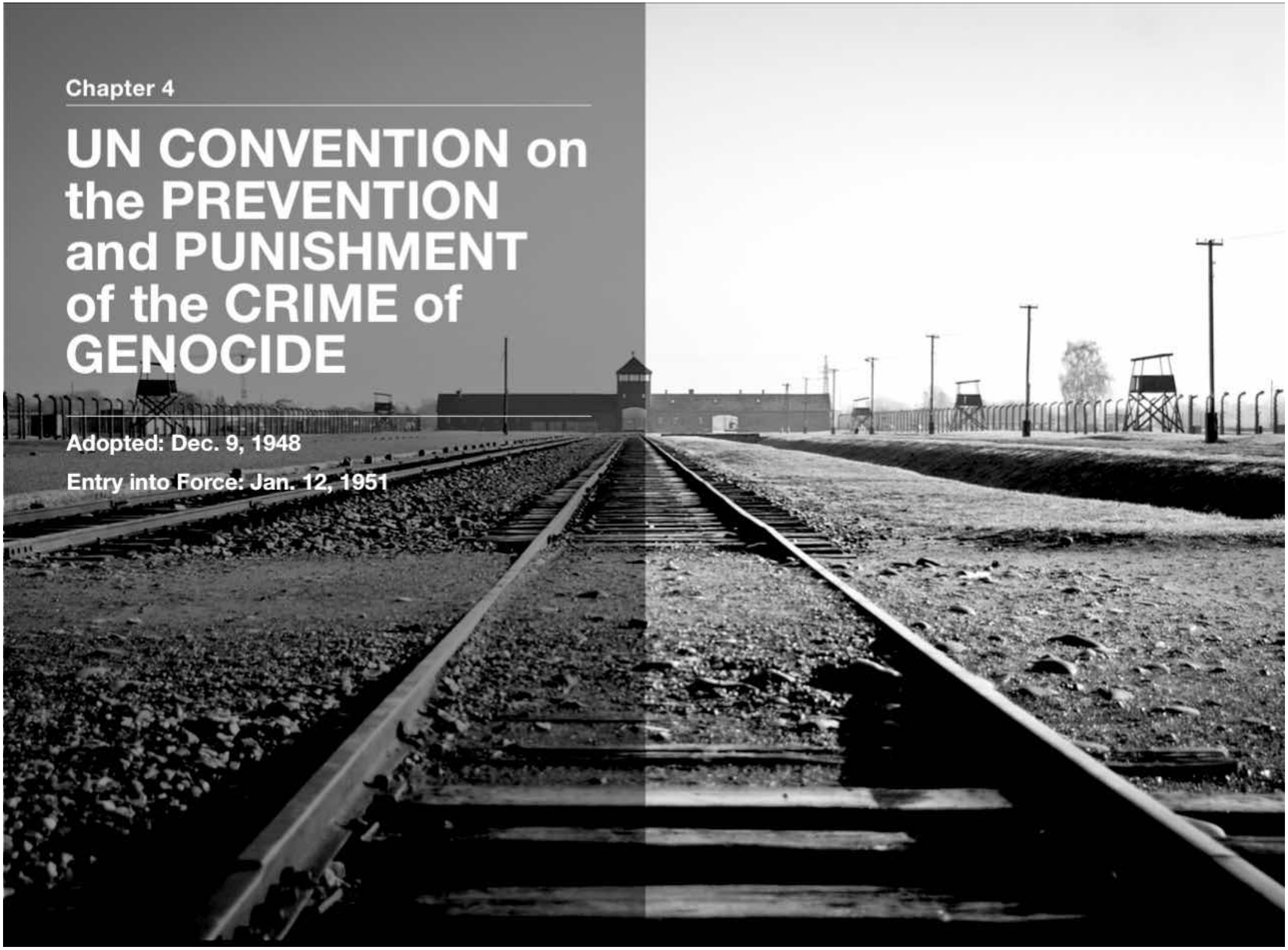


Chapter 4

UN CONVENTION on the PREVENTION and PUNISHMENT of the CRIME of GENOCIDE

Adopted: Dec. 9, 1948

Entry into Force: Jan. 12, 1951



Initial Considerations

Question: What do Cambodia (1975-1979), Bosnia (1991), and Darfur (2003-present) have in common given the three different settings, three different continents, and three different time periods? Answer: The massacre that took place in each location was never officially recognized as genocide, despite the

UN General Assembly having adopted the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) on December 9, 1948.¹ Juxtaposing this, two of the three officially recognized genocides, the Herero and Nama peoples of southwestern Africa (1904-1907), the Holocaust (1938-1945), and Rwanda (1994), occurred prior to the Convention's existence.

Gallery 4.1 History of Genocide



Map of Namibia and the homelands of the Herero and Nama peoples, who experienced genocide from 1904-1907.

In fact, the word *genocide* itself did not exist when the Herero, Nama, and Jews were being brutalized and killed. Why, then, are some situations deemed to be genocide and others not? Such conundrums surrounding genocide, illustrated by the situations identified above, furnish the context for some core considerations herein. What constitutes genocide? What role might motivation play in determining genocide? And, perhaps most perplexingly, why has our shared sentiment that emerged from World War II—“Never Again!”—not yet been realized?

Raphael Lemkin, a Polish jurist and legal scholar, introduced the term genocide in his post-World War II analysis of the Holocaust. To quote from his original article on the subject:

Would mass murder be an adequate name for such a phenomenon? We think not, since it does not connote the motivation of the crime, especially when the motivation is based upon racial, national or religious considerations. An attempt to destroy a nation and obliterate its cultural personality was hitherto called denationalization. This term



seems to be inadequate, since it does not connote biological destruction. . . . These considerations led the author of this article to the necessity of coining a new term for this particular concept: genocide. This word is made from the ancient Greek word *genos* (race, clan) and the Latin suffix *cide* (killing). Thus, genocide in its formation would correspond to such words as tyrannicide, homicide, patricide. (Lemkin, 227)

The relevancy of Lemkin's thoughts is manifest in two ways. First, as is most often noted, he created the term *genocide*. The second relevancy stems from his specific language regarding motivation. To reiterate, the phrase *mass murder* "... does not connote the motivation of the crime, especially when the motivation is based upon racial, national or religious consideration." (Ibid) While definitional dynamics and the significance of motivation are distinctive aspects of genocide, they are inherently entwined and, hence, will be discussed in tandem.



Raphael Lemkin, Polish-Jewish lawyer who coined the term 'genocide'

Key Elements

Turning to the language of the Genocide Convention itself, Article II states, in part, that: "In the present Convention, genocide means any of the following acts committed with an intent to destroy, in whole or in part, a national, ethnical, racial or religious group," The stipulation of four types of group identity—national, ethnical, racial, or religious—simultaneously establishes a foundation for the definitional and motivational aspects of genocide. It is noteworthy that Lemkin, perhaps inadvertently, provided key language for Article II. Three of the four group types included in the Convention (national, racial, and religious) were previously named by Lemkin; ethnical expanded the list to four. Thus, definitionally, the group identity qualification distinguishes genocide from mass murder. The armed conflicts in Colombia and Liberia, for example, or the attacks in the U.S. on Sept. 11, 2001, clearly resulted in mass murder; they are just as clearly not genocide given that the victims were not targeted because of their national, ethnical, racial, or religious affiliations.

A second phrase from the above quoted Article II, "... with an intent to destroy, in whole or in part, ..." (Ibid) gives rise to motivational facets. The people being targeted do not actually have to be annihilated in toto for a determination of genocide to be made. Further, bringing Article I into our discourse, the timing/setting of the activity also does not affirm or negate it from being genocide. "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 punish." (emphasis added) War or armed conflict cannot excuse or justify acts of genocide. In sum, Article II's stipulation of four types of groups, conjoined with Article I's inclusive language regarding war and peace, creates a framework for preventing and punishing the crime of genocide. Yet, our consideration of motivation is incomplete. Are there other identifiable groups that the Genocide Convention omits that ought to have been included?

“War or armed conflict cannot excuse or justify acts of genocide.”

Turning to the Holocaust again, indeed, people were forced into the concentration camps for reasons other than being Jewish. Also among the persecuted were those protesting Hitler's pogroms, gay men and lesbians, and people with physical or mental challenges; they became targets for those very reasons. Gay men and lesbians were forced to wear a pink or black triangle, respectively, analogous to the yellow star for Jewish individuals. Political prisoners wore red triangles while Jehovah's Witnesses wore purple ones.

Kennzeichen für Schutzhäftlinge in den Konz. Lagern

Form und Farbe der Kennzeichen

	Politisch	Berufs-Verbrecher	Emigrant	Bibel-forscher	Homosexuell	Asozial
Grund-farben						
Abzeichen für Rückfällige						
Haftlinge der Strafkompanie						
Abzeichen für Juden						
Besondere Abzeichen	 jüd. Waffe schänder	 Waffe schänderin	 Flucht- verdächtig	 Häftlings- Nummer	 Ersport	
	 Jude	 Ketze	 Wehrmacht Angehöriger	 Häftling Ia		

Nazi concentration camp badges

In the Buchenwald concentration camp, for example, separate barracks were created just for political dissidents. [Insert photo of barracks—I have one from when I was there] But the Genocide Convention remains silent regarding political affiliation, sexual orientation, and physical characteristics/abilities. Arguably, the distinction between involuntary associations (race, ethnicity, etc.) and voluntary associations (political allegiance/parties, etc.) may be critical to differentiating between genocide and mass murder. Such delineations, however, do not necessarily clarify the issue as they give rise to new sets of questions. For example, is sexual orientation or gender identity a basis of voluntary or involuntary association? Moving forward, the international community needs to be cognizant of such omissions from the Convention when making determinations of genocide.

Genocide Permutations

Two other related concepts need to be included in any discussion of genocide: *ethnocide* and *gendercide*. The first of these has been characterized as “genocide on the installment plan.” (Bay 1989) Ethnocide results in the elimination of a person’s or group’s identity through the oppression of cultural practices, language, etc. In U.S., Canadian, and Australian history, the forced removal of indigenous peoples’ children to boarding schools exemplifies ethnocide.² Boarding schools were the preferred mechanism for forced assimilation of indigenous peoples’ children. Government sanctioned methods of

oppression included prohibiting use of the mother language, denial of spiritual and cultural practices, and severe physical punishment for infractions.

Gendercide refers to the targeted persecution of both women and men as such. Regarding women, female infanticide is perhaps the most obvious example. Some research suggests that civilian populations of men could be considered a targeted group for genocidal persecution, particularly in situations of armed conflict.³ Civilian males roughly between the ages of 12 and 50 are perceived to be potential enemy fighters and thus are first to be eliminated by an attacking force. As a result, the term gendercide is emerging as a new area of research related to genocide. What seems to be missing from gendercide discussions are non-binary identities. That is, individuals who identify as gender queer, non-conforming, intersex, etc. to date have been excluded in the analysis. Clearly, at the time of the drafting and adoption of the Convention against Genocide, such distinctions not only were not recognized or accepted, but were seen as abnormal and/or a disease. However, that does not explain the lack of such considerations in contemporary scholarship.

Conclusions

Where, then, does genocide ‘fit’ in the broader context of global human rights considerations? Human rights are typically

categorized as civil and political or, alternatively, economic, social and cultural. Concurrently, as described in the introductory chapter, human rights may be individual or collective, universal or relative. Genocide can arguably be seen as targeting the individual; it nonetheless targets a group/community. Therefore, as such (and again arguably) that community/collective targeting places it in the context of collective rights. Most appropriately, however, genocide belongs to the class of human rights known as crimes against humanity. Crimes against humanity, conceptually, date back to the Hague Convention of 1907 and have been codified in international human rights law at various times since then.⁴ When perpetrated "... as part of a widespread or systematic attack directed against any civilian population, ..." (Rome Statute, Article 7) crimes against humanity also include (but are not limited to): murder, extermination, enslavement, deportation or forcible transfer of population, torture, sexual violence (including rape, sexual slavery, and forced pregnancy), and enforced disappearance. Thus, genocide is first and foremost a *crime against humanity*.

As these comments illustrate, the concept of genocide is immensely complicated. Its prevention and punishment, therefore, become highly contested despite the seemingly obvious egregious nature of the crime. So, why are some situations acknowledged as genocide and not others?⁵ In the end, Article I, among others, requires action on the part of states should a determination of genocide be made. Thus, appreciating

the geopolitical context of specific instances may shed light on the willingness and/or reluctance of the international community to make that assessment.



Barracks at Flossenbürg concentration camp (1945)

Convention on the Prevention and Punishment of the Crime of Genocide

Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948

Entry into force: 12 January 1951, in accordance with article XIII

Preamble

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I

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.

Article II

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.

Article III

The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV

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.

Article V

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 VI

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 VII

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 VIII

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 IX

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 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.

Article X

The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a procès-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII

The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

Article XVIII

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Signatories

Tap [here](#) to view the voting record for the Convention on the Prevention and Punishment of the Crime of Genocide.

Discussion Questions

1. Should the definition of genocide in Article II of the Convention be modified or expanded in any way? If so, what changes would you suggest and what are the possible consequences of such changes?
2. How might motivation or intention be identified when determining if a situation constitutes genocide? That is, what specific activities or characteristics could be used to determine, for example, if “[direct]and public incitement to commit genocide” (Article III (c)) has transpired?
3. Does the language of Article I—“... which they undertake to prevent and punish”—require the Contracting Parties (those states that have signed and ratified the Convention) to engage in specific responses when genocide has occurred? If so, is that a possible reason why so few contemporary situations have not been officially recognized as genocide?
4. Regarding jurisdiction over trials for genocide, do you think persons charged with that crime under the Convention should be tried within the territory where the genocide occurred (see

Article VI)? Or, should all genocide trials take place in a regional international court or the International Criminal Court?

5. Is your country a State party to the Convention? In what ways has it either helped to prevent or contributed to genocide?

Interactive 4.1 Terms & Concepts Crossword Puzzle



Tap on the thumbnail above to test your knowledge of terms and concepts from this chapter.