



**United Nations**  
Office on Genocide Prevention  
and the Responsibility to Protect

# ***MOVING FORWARD, WHILST LOOKING BACK***

## **Reflections on the Effective Implementation of the Genocide Convention**

**75th Anniversary of the  
Convention on the  
Prevention and Punishment of the  
Crime of Genocide**

**2023 - 2024**

**MOVING FORWARD,  
WHILST LOOKING BACK**

Reflections on the  
Effective  
Implementation  
of the Genocide  
Convention

Office of the Special Adviser on the  
Prevention of Genocide (OSAPG)

United Nations

December 2023 - 2024

*The views expressed in the discussions, essays and remarks do not necessarily reflect the position of Office on the Special Adviser on the Prevention of Genocide or the views of the United Nations.*

# INTRODUCTION



2023 marked the 75<sup>th</sup> Anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide. Every year, the United Nations Office of the Special Adviser on the Prevention of Genocide (OSAPG) organizes an event on 9 December, the day the Convention was adopted in 1948, to mark the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime, as well as the anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide.

The word genocide was coined in 1944 by Polish Jewish lawyer Raphael Lemkin in response to past instances in history of targeted actions aimed at the destruction of groups of people on the basis of their identity. Lemkin's efforts led to genocide first being recognized as a crime under international law in 1946 by the United Nations General Assembly in a dedicated resolution. It was codified in international law two years later in the 1948 Genocide Convention.

The Genocide Convention was the first human rights treaty adopted by the

General Assembly, on 9 December 1948, followed, on 10 December 1948 by the adoption of the Universal Declaration on Human Rights.

The theme of the 2023 landmark event was “*A Living Force in World Society: The Legacy of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide*”, placing focus on **its living legacy** and on the need to renew the global commitment to prevent genocide amidst concerning rising risk factors for the perpetration of this crime across the world.

The marking sought to highlight the legacy and impact of the Genocide Convention through practical examples of how it has been utilized at national, regional, and international levels since its adoption to support prevention of and accountability for the crime of genocide. It also highlighted the challenges that remain in the prevention of genocide, while showcasing champions of prevention including civil society, survivors’ groups and other actors working tirelessly to promote the objectives set out in the Convention.

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<sup>1</sup> The following experts contributed to the expert meetings: Dr Amy Carnes, Director of Constituent Affairs and Chief of Staff, USC Shoah Foundation; Dr Chile Eboe-Osuji, Former President, International Criminal Court; Distinguished International Jurist, Lincoln Alexander School of Law, Toronto Metropolitan University, Toronto; Dr Daniel Feierstein, Director, Center for Genocide Studies, National University of Tres de Febrero; Dr Jean-Damascène Gasanabo, Director-General, National Research and Documentation Center on Genocide, National Commission for the Fight Against Genocide, Rwanda;

The booklet in front of you provides an overview of reflections on the effective implementation of the Genocide Convention, stemming from:

- ❖ *three expert meetings organized on the legacy of the Convention, from the perspectives of prevention, punishment and memory;*
- ❖ *expert essays on the topic;*
- ❖ *thematic paper from Yale University students, recalling the University’s connection with Raphael Lemkin, the “Father of the Convention”; and*
- ❖ *expert panel remarks from the high-level event held at the United Nations Headquarters on 8 December 2023.*

Firstly, in the lead up to the International Day, aiming to inform it and to contribute to the 75<sup>th</sup> Anniversary of the Genocide Convention, OSAPG organized three meetings with experts on the legacy of the Genocide Convention from the perspectives of prevention and punishment, as well as on keeping memory alive. The meetings with experts<sup>1</sup> contributed to the identification

Ms Silvia Fernández de Gurmendi, President, Assembly of States Parties to the Rome Statute of the International Criminal Court; Mr Honore Gatera, Director, Kigali Genocide Memorial Remembrance and Learning; Judge Graciela Gatti Santana, President, International Residual Mechanism for Criminal Tribunals; Dr Hikmet Karčić, Research Associate, Institute for the Research of Crimes against Humanity and International Law, University of Sarajevo, Bosnia and Herzegovina; Dr Melanie O’Brien, Visiting Professor, Center for Holocaust and Genocide Studies, University of Minnesota; President, International Association of Genocide Scholars; Ms Hewan Omer,

of legal, regulatory and operational challenges, best practices and lessons learned, potential entry points for ratification and/or domestication, and other issues related to the effective implementation of the obligations set forth by the Convention. The meetings resulted in a compiled set of recommendations to advance the effective and unhindered implementation of the Genocide Convention and, ultimately, support Member States in fulfilling their obligation to protect populations from the crime of genocide. In addition, the Office received inputs from Member States<sup>2</sup> on the theme of the legacy of the Genocide Convention and organized consultation meetings with Member States.

Thus, **the first part** of this booklet provides a compilation of recommendations from the meetings with experts as well as from consultations with Member States and civil society organizations. The recommendations are not exhaustive and aim to inform further discussions and continued efforts to strengthen the implementation of the Convention on the

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Country Director, Free Yezidi Foundation; Mr Christian Ritscher, Special Adviser and Head of the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD); Professor Dr Christoph Safferling, Director, International Nuremberg Principles Academy; Ms Farina So, Principal Deputy Director, Documentation Center of Cambodia (DC-Cam); Dr Gregory Stanton, Founding President, Genocide Watch; Mr Franklin Stebbins, Senior Program Associate, Facing History & Ourselves; Dr Emir Suljagić, Director, Srebrenica Memorial Center; Dr James Waller, Christopher J. Dodd Chair in

Prevention and Punishment of the Crime of Genocide.

The **second part** of the booklet in front of you compiles essays submitted in December 2023 by the experts reflecting on the legacy of the Convention and on the contribution of Raphaël Lemkin, inspired by the 1,000-word statement that Lemkin issued on 12 January 1951, the day the Convention entered into force, reflecting on its potential.

The **third part** of the booklet presents a special thematic paper prepared by the students at the Yale University's Jackson School of Global Affairs seminar "Atrocity Prevention", who drew special connection with the legacy of the Genocide Convention and the time that Raphael Lemkin spent as a lecturer at the

Yale University while advocating for the development, adoption and ratification of the Convention. The paper is presented in its entirety, while a summarized version can be found in the fourth part of the booklet, as presented by prof. David Simon, at the high-level event at the United Nations.

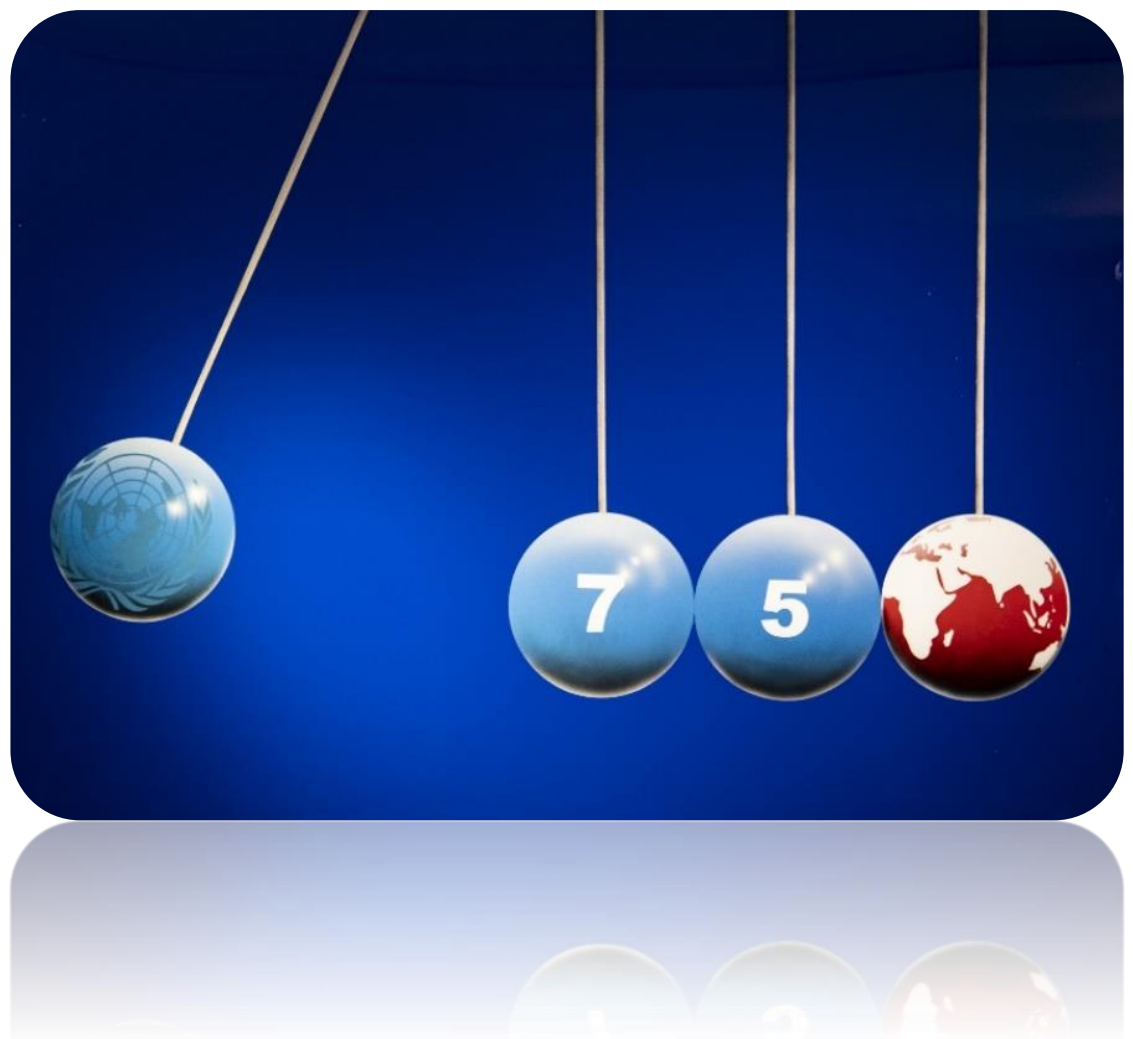
The **fourth and concluding part** of the booklet reminds of the expert remarks as delivered by distinguished high-level

Human Rights Practice, Director of the Dodd Human Rights Impact Programs for the Human Rights Institute, University of Connecticut.

<sup>2</sup> Inputs were received from the following Member States: Republic of Armenia, Austria, Republic of Azerbaijan, Burkina Faso, Republic of Croatia, Germany, Israel, Republic of Poland, Romania, Republic of Slovenia, United Kingdom, and United States.

speakers at the main commemorative, 8 December 2023, event for the 75<sup>th</sup> anniversary of the Genocide Convention. The panels reiterated main gains and challenges in the implementation of the Convention from the prevention, punishment and memorialization aspects.

*“Law of Conservation of Life”, artwork by Arrigo Musti depicts a pendulum calling everyone to action in upholding the principles of the Convention; unveiled for the 75<sup>th</sup> Anniversary of the Convention.*



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# A LIVING FORCE IN WORLD SOCIETY: REFLECTIONS ON 75 YEARS OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

ALICE WAIRIMU NDERITU<sup>3</sup>

Seventy-five years ago, the United Nations came together and passed a unanimous vote to recognize genocide as a crime under international law – whether committed in times of peace or in times of war. Through the Convention on the Prevention and Punishment of the Crime of Genocide, State Parties agreed to prevent and punish this crime.

On 9 December 1948, just a few years after the horrors of the Second World War and the Holocaust, the UN General Assembly adopted its first human rights treaty – the Convention on the Prevention and Punishment of the Crime of Genocide. This was the result of the determined and tireless efforts of Polish lawyer Raphael Lemkin, who first coined the word “genocide”.

Nonetheless, the world shortly came to learn, once again, that words have little significance if they are not put into action. Despite the explicit, formal, and written commitment of prevention in the Genocide Convention, from 1974-1979, the people of Cambodia endured one of

the world’s brutal regimes the Khmer Rouge and their countless vicious crimes, including genocide and the 1994

Genocide in Rwanda against the Tutsi people and the 1995 Genocide in Srebrenica, in Bosnia and Herzegovina, against the Muslim Bosniak people took place. The persistence of root causes, including trends of hate speech along identity lines, that continue to put at risk the existence of protected groups signals the urgent need to reflect on the challenges and opportunities for a more effective, timely and holistic implementation of the Genocide Convention, including in the contexts of prevention, protection, and accountability.

The 2023 commemoration of the 75<sup>th</sup> Anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide focused on its living legacy in world society. It is a milestone date in the quest for the protection of individuals and groups targeted on the basis of nationality, ethnicity, race or religion.

In order to properly reflect on key achievements and to make practical recommendations to ensure the fulfillment of its prevention and punishment obligations, my Office organized a series of meetings with experts. We also consulted with civil society organizations and other key

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<sup>3</sup> Under Secretary General and Special Adviser to the Secretary-General on the Prevention of Genocide.

actors working to build social cohesion and address identity-based grievances which, if not mitigated, could lead to violence and, ultimately, genocide. These insightful and thought-provoking discussions were multi-disciplinary in nature and resulted in a compilation of recommendations that are carried in this document. They focus on the dual obligations of the Convention (prevention and punishment) as well as the imperative of keeping the memory alive as instrumental to prevention and accountability.

Two of these recommendations, stemming directly from the expert discussions, stand out for aiming to ensure that genocide prevention truly becomes a living reality, as Raphael Lemkin wished for.

First, is the suggestion to establish a Treaty Body to monitor the implementation of the Convention, which could be instrumental in strengthening States' fulfilment of their legal obligations in respect to prevention and punishment of the crime of genocide. Unlike other international human rights instruments, such as the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, the Genocide Convention, now ratified by 153 Member States, does not yet have a proper monitoring mechanism to ensure that the contracting parties fulfill their obligations and fully enforce their prevention and punishment responsibilities.

Like existing human rights treaty bodies, the proposed *Committee on the*

*Prevention and Punishment of the Crime of Genocide*, to which my Office would provide Secretariat support, would be composed of independent experts with the specific mandate to monitor, through a reporting process, the implementation of the Genocide Convention. This could include, *inter alia*, considering periodic reports submitted by State Parties on the steps taken at the national level to ensure the implementation of their obligations under the Convention, publishing country-specific concluding observations based on this periodic review, and issuing general comments or recommendations providing guidance, including on the interpretation of specific provisions, to support the unhindered application of the Genocide Convention across the world.

The work of this treaty body would be complementary to and further inform the early warning work of my Office, which is mandated to monitor and raise the alarm to the United Nations Secretary-General, and through him to the Security Council, on the risk factors of genocide and related crimes (war crimes and crimes against humanity). My Office is also mandated to raise awareness on the causes and dynamics and to support Member States and other relevant actors to promote prevention of these crimes. By monitoring the national implementation of the legal obligations set forth by the Genocide Convention and providing guidance on its provisions, the proposed Committee would complement strengthen prevention and punishment of genocide efforts globally.

Second, the proposal to establish a Group of Friends of the Convention on the Prevention and Punishment of the

Crime of Genocide, to support its full implementation could also have an encouraging effect, from the United Nations to various other centers of multilateralism, such as regional organizations, and up to national capitals, where negotiations on preventive diplomacy and decisions related to international peace and security are made. Gathering like-minded Member States in support of the full implementation of the Convention on the Prevention and Punishment of the Crime of Genocide, would convey a strong message of commitment to fulfil the twofold obligations established by the Convention and would promote dialogue and peer-to-peer support initiatives aimed at the effective implementation of the Genocide Convention.

Other recommendations stemming from this process include the urgent need for universal ratification of the Genocide Convention and encouraging State Parties to withdraw any existing reservations to its provisions. States can also support legislative efforts at the national level, strengthen early warning mechanisms to ensure early prevention, promote and expand educational initiatives, and support victims and survivors of genocide by ensuring that their rights are protected and promoted across all prevention, punishment, and memorialization efforts. Furthermore, the need to support judicial institutions

and increase the legal precision and outreach of judicial responses to genocide was also highlighted.

Finally, the key role of memorialization initiatives was emphasized, with recommendations to strengthen and expand such efforts and to increase support to archives and to the development of outreach campaigns.

By themselves or ideally combined with other key actions and initiatives, implementing these two recommendations – the creation of a Treaty Body and the establishment of a Group of Friends of the Convention on the Prevention and Punishment of the Crime of Genocide, – could significantly contribute to reducing the risk of genocide globally and effectively protect populations from identity-based targeting and violence. As the embodiment of a global commitment to prevent and punish the “crime of crimes”, the Convention on the Prevention and Punishment of the Crime of Genocide, continues to be a living force in world society. As is evident from all four parts of this publication in front of you.

It is my hope that the words carved in this international legal instrument, from its preamble to its closing article, will continue to inspire the entire world to ensure that its full potential is realized.

# PART I: RECOMMENDATIONS FROM MEETINGS WITH EXPERTS AND CONTRIBUTIONS FROM MEMBER STATES AND CIVIL SOCIETY ORGANIZATIONS

*This part provides a compilation of recommendations from the meetings with experts as well as from consultations with Member States and civil society organizations. The recommendations are not exhaustive and aim to inform further discussions and continued efforts to strengthen the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide.*



## Key Achievements and Challenges

From the **prevention perspective**, the Convention on the Prevention and Punishment of the Crime of Genocide has effectively contributed to preventing genocide in various ways, including through efforts related to universal jurisdiction and the development of international law regarding genocide, as well as through disputes brought by States Parties before the International Court of Justice (ICJ) on the interpretation and implementation of the Genocide Convention. The Genocide Convention has also allowed for the term genocide to be widely known across the world, enhancing awareness about its meaning and prompting attention to the prevention of this crime. Further, the Genocide Convention established a keystone for efforts towards transitional justice and has served as the foundation for the recognition of memorialization efforts and the importance of genocide research and education.

Some of the key challenges identified for the effective implementation of the Genocide Convention from the perspective of prevention included: lack of universal ratification of the Convention; reservations made by State Parties; insufficient domestication of the obligations set forth by the Convention; lack of sufficient national legislation authorizing domestic courts to apply universal jurisdiction and prosecute and punish perpetrators of genocide; and difficulties in measuring prevention efforts.

In relation to the **punishment element**, some of the positive impact of the Genocide Convention includes

increasing efforts by national courts to adjudicate cases of genocide and apply universal jurisdiction around the world, and the significant contribution of the Genocide Convention towards accountability efforts. The issue of the existing gap between the use of the word genocide from a legal perspective against its wider use in other instances, including at the political and social arenas, was also stressed. Another element of concern is the risk of fragmentation of the law caused by different approaches by national courts in comparison with other domestic courts and with international tribunals in the interpretation of the crime of genocide, due to (i) national legislation which does not necessarily reflect international law; or (ii) different interpretation of the elements of genocide.

Reflections further encompassed the different ways in which **memorialization efforts** have contributed to and continue to advance the implementation of the prevention and punishment aspects of the Genocide Convention. It is paramount to recall the importance of a victim-centered approach to memorialization initiatives, from judicial proceedings and reparations to the centrality of victims' testimonies to inform sentencing and preserving memory in accountability efforts. Another key element refers to the role of judicial institutions, including international tribunals and courts, in consolidating and protecting the legacy of their work as part of memory and prevention efforts. Recognizing that documentation is critical to both the prevention and punishment of genocide also means recognizing the importance

of archives, and preservation initiatives, which are also a form of memorialization. Finally, it is important to notice that preserving memory and testimonies further contributes to countering genocide denial.

## Recommendations

### 1. UNIVERSAL RATIFICATION AND DOMESTICATION OF THE GENOCIDE CONVENTION

- Promote the universal ratification of the Genocide Convention.
- Achieve full legislative implementation of the Genocide Convention by ensuring that States Parties adopt the necessary legislation to meet their obligations to prevent and punish genocide, including by criminalizing genocide at the national level. Encourage Member States to adopt national legislation to implement universal jurisdiction for the crime of genocide. In addition, ensure that States Parties to the Rome Statute of the International Criminal Court also adopt national legislation in accordance with their obligations set therein.
- Encourage States Parties to withdraw existing reservations to the Genocide Convention, in particular on Article IX on the jurisdiction of the International Court of Justice.
- Encourage Member States to ratify other international human rights treaties and instruments to

allow for prevention and accountability efforts.

- Promote Mutual Legal Assistance cooperation including through the Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and other International Crimes, which will be opened to signature in February 2024.

### 2. EARLY WARNING, EARLY PREVENTION AND ROOT CAUSES

- Strengthen the role of the United Nations, including by encouraging Member States to enhance their support to the UN Office of the Special Adviser on the Prevention of Genocide.
- Enhance efforts towards early warning and early prevention of genocide and related crimes, including through recognition of early warning signs and indicators of genocide and the importance of monitoring and analysis as well as addressing root causes.
- Focus institutional efforts on situations flagged as medium risk of genocide and at earlier stages, where there is still opportunity to support de-escalation of violence.
- Encourage establishment of national mechanisms for early

warning and response to genocide.

- Support exchange between and support of national mechanisms for genocide prevention.
- Support the creation of a global movement or network on genocide prevention.
- Encourage exchange of information on prevention initiatives as well as national jurisprudence on cases concerning the crime of genocide.
- Recognize the interconnection between human rights and genocide prevention efforts. Understand how the intersectionality of identities impacts the way in which individuals and groups could be targeted in relation to their identities as belonging to a particular group that is not necessarily protected under the strict definition of the Genocide Convention.
- Strengthen utilization of existing mechanisms for addressing indicators of risk and warning signs including the good offices of the Special Adviser on the Prevention of Genocide.
- Strengthen support by Human Rights Council mechanisms and treaty bodies to early warning and response to genocide and related crimes, including through the

engagement of Special Procedures as well as recommendations and engagement through the UPR and treaty bodies.

### 3. EDUCATION

- Support and promote multi-disciplinary educational initiatives on culture of peace, human rights and genocide prevention, at all levels, across various sectors of society (schools, universities, public and government institutions, private sector, regional and international organizations) and through various means (social media, gaming, sports) to enhance capacities to identify and report on early warning signs aimed at early prevention, and to promote peaceful societies. These initiatives should include all sections of society, both formal and non-formal initiatives, and involve communities, religious and traditional leaders, civil society and other actors and organizations.
- Promote the role of documentation of genocide and memorialization efforts, as well as the importance of disseminating stories of survivors and victims of this crime.
- Develop educational curriculum and materials on past instances of genocide and related crimes,

including the process that led to their commission. Recognize the importance of inter-generational dialogue to share stories and enhance self-reflection, empathy, and critical thinking and to counter and address Holocaust and genocide denial.

- Promote access to information and documentation related to past instances of genocide and related crimes to facilitate research and learning.
- Promote exchange and peer learning among scholars on prevention of genocide and related crimes.

#### *4. HATE SPEECH AND THE ROLE OF TECH AND SOCIAL MEDIA COMPANIES*

- Support media literacy initiatives to promote critical thinking and counter and address hate speech that could lead to public and direct incitement to genocide or incitement to discrimination, hostility or violence.
- Ensure that social media companies implement policies to address hate speech and effectively remove content that amounts to incitement.
- Ensure accountability for tech and social media companies that disseminate incitement to genocide, violence, hostility and discrimination, including through financial settlements as a form of compensation for victims and in

support of prevention mechanisms and initiatives.

- Implement whole-of-society policies and programmes at national level to tackle hate speech including its root causes, in accordance with international human rights law, in particular freedom of opinion and expression.

#### *5. NATIONAL COURTS AND JUDICIAL INSTITUTIONS*

- Promote ways to reduce the gap between domestic and international courts in their judicial interpretation of the Genocide Convention. This could include training for national judges, promoting cooperation between international tribunals, mechanisms, and domestic courts, and providing independent and impartial teams of experts with extensive experience to support national investigations of genocide.
- Tribunals (international and domestic courts) should ensure that judicial findings reach the affected communities, including victims and survivors, in a clear, non-legal language, guaranteeing effective access to information and understanding of the status of decisions and proceedings as well as next steps.
- Ensure access to information on judgments and judicial findings



from the early stages of the proceedings.

- In outreach campaigns, emphasize aspects related to impartiality, fair trial and independence of judges to promote a better understanding of the judicial institutions and build trust (in particular in relation to international tribunals).
- Undertake outreach campaigns, including through social media, to disseminate judicial decisions and findings with tailored language adapted to the wider audience.
- Ensure that victims are included in judicial proceedings not only to obtain testimonies as legal evidence, but also to hear their voices and concerns.

#### *6. MEMORIALIZATION INITIATIVES*

- Recognize the symbolic and historic value of memorial sites in keeping memory alive and as an important tool of transitional justice.
- Ensure that the stories of victims are recorded, preserved, and placed at the center of every memorialization initiative (including formal and non-formal educational initiatives). Include documentation of the stories of victims also before they were victims of genocide. Ensure recognition of victims' voices, history, and agency.

- Engage genocide scholars and researchers to cultivate research and scholarly work and encourage publications on genocide. Ensure that genocide research is widely disseminated and accessible through various means, including through public-friendly resources and language.
- Ensure that proper media attention is given to commemoration events to convey the message to victims, survivors, and affected communities.
- Develop social media campaigns with focus on victims and their testimonies to keep memories alive.
- Enhance efforts to combat genocide denial through memorialization initiatives.

#### *7. ARCHIVES AND LEGACY MATERIAL*

- Enhance efforts to preserve archives, considering their important role as a source for an extensive range of physical documentation, artifacts, and testimonies.
- Allocate sufficient human and financial resources to preserve and maintain records and archives.
- Ensure public access to archives and records containing documents, artifacts, testimonies, judicial findings, and

other information on past genocides, including through the establishment of information centers.

#### *8. VICTIMS AND SURVIVORS*

- Ensure that victims and survivors are placed at the center of every post-genocide initiative, accountability and memorialization efforts.
- Incorporate initiatives that address the situation of victims and survivors after a genocide has occurred, looking at their present and future, including future generations. For example, marginalized communities that continue to face discrimination and violence, or that have been displaced from their homes.

## PART II: 1,000-WORD EXPERT ESSAYS

as inspired by Raphael Lemkin's 1,000-word statement issued on 12 January 1951, the date the Genocide Convention entered into force

*Illustration of Lemkin by Ms. Dana Walrath, for 75<sup>th</sup> anniversary of the Genocide Convention*



# REFLECTIONS ON THE PROSECUTION OF GENOCIDE

## MR. SERGE BRAMMERTZ<sup>4</sup>

Genocide is often called the “crime of crimes” because of the ultimate horror of what it represents. To destroy a human group is to diminish all of humankind. It is not only the unbearable loss of life, but also the attack on our collective diversity. As much as we must condemn the perpetrators of genocide, we must also recognize that it can only occur as a result of our collective failure as individuals and as a world community to prevent it.

The Genocide Convention, whose 75th anniversary we mark today, was adopted in the wake of a total breakdown of humanity. It was, and remains, an important recognition of the failures of the past. It also represents a solemn promise to the future, to prevent such horrors from ever recurring. Sadly, we have failed again and again.

It was not until the late 1900s that the tide began to turn. Three decades ago, we watched as genocide devastated Rwanda and the former Yugoslavia. The images are etched in our common memory. The whole world knew what was happening, but stood by.

Yet though the suffering was not prevented, we honored our commitment

to punish the perpetrators. The Security Council, acting unanimously, established the *ad hoc* criminal tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY), and tasked them to investigate, prosecute and hold accountable those most responsible for the crimes. This historic mandate was successfully realized. We showed that it is possible for criminal tribunals to determine the truth and to fairly judge those alleged to be responsible.

This was the work of justice, not vengeance. We sought to vindicate the victims and survivors, to give them some measure of solace for their suffering. But we did so in accordance with human rights and fair trial standards, in public courts of law where the accused had equality of arms to present their defence. It is fair to say that the record of what we achieved has exceeded all expectations.

For Rwanda, fifty-three génocidaires were convicted and sentenced, including senior political and military officials, as well as business, religious, and media leaders. It was established that certain facts are beyond dispute: most notably that between 6 April and 17 July 1994, there was a genocide in Rwanda against the Tutsi ethnic group. Important legal

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<sup>4</sup> Prosecutor of the International Residual Mechanism for Criminal Tribunals.

precedents were set, including that rape can constitute genocide and that hate speech can amount to direct and public incitement to genocide.

For the former Yugoslavia, among 161 persons indicted, eighteen were convicted and sentenced for crimes during the Srebrenica Genocide, including the highest political and military leaders. Victims and survivors were able to tell their stories and confront those who had eliminated their loved ones. Critically, it was established that the killings of men and boys and expulsion of women, girls and elderly were part of the same plan to destroy the group by preventing it from reconstituting itself.

The United Nations has also demonstrated the strength of its determination to punish the perpetrators of genocide, particularly by never wavering in the commitment to support the search for fugitives. From the arrests of Radovan Karadžić in 2008 and Ratko Mladić in 2011, to the arrests of Félicien Kabuga in 2020 and Fulgence Kayishema in 2023, the message has been clearly sent that the hunt for fugitives will not stop until all are accounted for. In 2024, the International Residual Mechanism for Criminal Tribunals, the successor of the ICTY and ICTR, accounted for the last fugitive that had been indicted by the ad hoc Tribunals.


Thirty years after the events, justice continues to be sought and achieved. However, the primary responsibility now lies with national authorities. The *ad hoc* international tribunals have handed responsibility over to national courts—in Rwanda, the states of the former

Yugoslavia and third countries—which have achieved immense results. In this work, they are greatly assisted by my Office and the United Nations. But with thousands of perpetrators from Rwanda and the former Yugoslavia hiding in third countries and still to be prosecuted, every Member State has the responsibility and opportunity to play their part.

Reflecting back on this experience, three key lessons emerge. First, our obligations under the Genocide Convention to punish the perpetrators have no expiration date. Just as trials for crimes committed during the Holocaust continue today, so too will prosecutions for crimes in Rwanda and the former Yugoslavia need to continue for many years to come. And for genocide crimes committed now, even if punishment may seem distant, we must maintain our commitment and honor our obligations, if not today then tomorrow.

Second, we as the international community share those obligations in common. No one country alone can be expected to shoulder the burden to bring justice to the victims and survivors of genocide. That means that effective multilateral cooperation is essential to achieve accountability for crimes past, present and future.

Third, we must also recognize that denial is the final act of genocide. Denial erases both the victims and the crimes. In important ways, denial is the opposite of justice. Instead of seeking the truth, denial distorts and hides it. So as much as we must continue to seek out and punish the perpetrators, it also falls to



each of us to ensure that the truth is defended and promoted.

As we look forward, we can and must do better. Through the horrors of the past, we have gained valuable insight into how to identify risk factors for genocide. We understand how propaganda and denial can work together to resurrect ancient hatreds or to kindle new ones. We know how systematic human rights violations and armed conflict can create the

conditions where genocide violence can emerge. And it is our individual and collective responsibility to use this knowledge to preserve humanity, in all of its diversity.

The Genocide Convention is a contract between States. But we all have a collective responsibility to do everything in our power to prevent and repress Genocide, the crime of crimes.

# PUNISHMENT FOR AND PREVENTION OF GENOCIDE, 75 YEARS LATER

DR AMY CARNES<sup>5</sup>

In the 1940s, a Polish Jew who managed to escape the clutches of Nazi terror in his native Poland coined a term that would define a historical watershed moment in the 20<sup>th</sup> century – genocide. By giving a name to systematic mass murder, Raphael Lemkin altered the history of human rights and provided a framework to understand the utterly incomprehensible. He also opened a pathway for considering a victim-centered approach alongside the punishment of perpetrators. Seventy-five years later, this duality remains as crucial as ever. We can commit to remembering the crimes of the past by valorizing the voices of survivors while also enforcing accountability for those responsible for the crimes.

The Convention on Genocide was adopted on December 9, 1948, followed by the Universal Declaration on Human Rights (UDHR) on December 10. This sequence is telling: before the international community officially acknowledged the individual rights guaranteed to every human being, the UDHR, they first adopted what might be considered the absolute violation of all of them – the Convention on the Prevention and Punishment of the Crime of Genocide. Both of these documents emerged out of the ashes of the horrors of the Holocaust. They passed in rapid succession. And the order in which they appeared is evocative of an ethos that we should return to in order to recommit

to the spirit of Raphael Lemkin's desire for a peaceful world without genocide.

Reflecting on this, 75 years later, I am struck by the ways in which this sequence actually mirrors the structure of the Convention itself. The adoption of the Convention on Genocide provided a mechanism for punishing the newly coined crime of genocide. The adoption of the UDHR defined parameters for preventing such a crime from ever occurring again: punishment and prevention.

The punishment emphasis in the aftermath of the Second World War is not surprising, but the primacy of the adoption of the Genocide Convention also underscores an emphasis on the collective that global society has moved further and further away from since 1948. The Convention on the Prevention and Punishment of the Crime of Genocide was a reminder that nations should bear responsibility for serious crimes, and that the community of nations has the right and the obligation to hold them to this. It affirms the power and responsibility of the collective.

The only way for individual rights to be guaranteed – the only way that the UDHR has meaning – is through this collective emphasis. In the shadow of the Second World War, the global community agreed first on the definition of the absence of rights and how to manage that void, and

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<sup>5</sup> Director of Constituent Affairs and Chief of Staff, USC Shoah Foundation.

then found a way to articulate all of these rights. This duality maintained focus on accountability for the collective while at the same time empowering the rights of the individual.

The crime of genocide is foundational to our understanding of human rights. We owe so much to Raphael Lemkin – himself a victim of Nazi persecution.

Geopolitics has altered this immediate post-Second World War landscape and its dual emphasis on collective accountability and individual rights. The erosion of this collective responsibility was obvious in Rwanda in 1994, when the international community retreated when its obligation to intervene was most acute as Rwandans fell victim to genocide. The persistence of genocidal violence in places like Sudan and Myanmar further highlights this tendency. How do we bring back this embrace of both the individual and the collective?

What if we really listened to the messages of Holocaust survivors and other genocide survivors who plead with us to use their stories for prevention?

Seventy-five years after the adoption of the Genocide Convention, there are millions more victims and survivors of genocide. On days of commemoration, we listen to the stories of survivors and hold space in moments of silence for the victims. We write articles to remember the family members that we hear about in survivor testimony and try to imagine the ways our world would be enriched if they had lived their lives to their natural end. But none of this means anything without the communal perspective of international support for building a culture of peace around the world.

What else can we do? We can lead with survivor voices and let memory occupy the spaces where it is most needed. We need survivor voices in the halls of the United Nations, in public space, and in college and high school classrooms. Survivor voices can change attitudes and the behavior of policy makers. Let's commit to embracing survivor-centered approaches and listen to the wisdom that lived experience brings with it. Let us follow their lead.

Seventy-five years after the adoption of the Genocide Convention, the international community has much to learn. We can learn from the memorial practices in geographies that have experienced genocide. These memorial practices can become genocide prevention practices.

In large ceremonies it is easy to point to the great figures of the past, like Raphael Lemkin or Eleanor Roosevelt, whose commitment to human rights ultimately delivered the UDHR. But prevention really begins with everyday acts and in small gestures. As Ms. Roosevelt herself stated on the occasion of the 10<sup>th</sup> anniversary of the adoption of the UDHR: *"Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person."* Understanding the world of the individual person – especially those who survived genocide – is key to the successful punishment and prevention of the crime of genocide.



# ATROCITY CRIMES EDUCATION IS THE BEST PREVENTION

YOUK CHHANG<sup>6</sup> AND FARINA SO<sup>7</sup>

Over 75 years ago, Raphael Lemkin created the word “genocide” to describe the heinous, deliberate destruction of mankind that had been committed in countless episodes of history. This word carried important meaning that would evolve into the Convention on the Prevention and Punishment of Genocide that the international community commemorates today. The legal definition of genocide reflects the international community’s agreement on the crime of genocide and mankind’s responsibilities to act to prevent and punish these crimes. However, reflecting upon the 75<sup>th</sup> anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide, it is hard not to realize that so many of the obligations the Convention imparts remain unfulfilled today. Indeed, the words of the Convention retain value only in so far as they are realized in human action, and the global community has unquestionably great space between the words in the Convention and the commitments as demonstrated on the ground.

Between 1975 and 1979, Cambodia suffered extraordinary destruction of its

civilization. The Khmer Rouge regime attempted to implement a radical Maoist form of communist ideology, which was implemented through a spectrum of horrific policies and practices that defy the imagination. Cambodian people were imprisoned, tortured, and killed. Ethnic and religious communities were targeted, and the entirety of the Cambodian people was terrorized by the most egregious forms of inhumanity. It is estimated that over 2 million out of 7 million Cambodian people died during the Khmer Rouge regime (1975-1979). The Extraordinary Chambers in the Courts of Cambodia (a United Nations-Cambodian court) ultimately found that senior leaders of the Khmer Rouge committed war crimes and crimes against humanity, in addition to genocide against the Vietnamese and Cham Muslim people. Even though the genocidal Khmer Rouge regime fell over 40 years ago, one can still see the significant effects of this period in Cambodia’s history and its people – from mental trauma and physical disabilities in survivors to the damage done to the civil service, civil society, and cultural institutions that have to this day not fully recovered.

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<sup>7</sup> Principal Deputy Director, Documentation Center of Cambodia (DC-Cam).

The Documentation Center of Cambodia (DC-Cam) represents the world's largest rare archive of historical artifacts and documents of the Khmer Rouge regime and, in coordination with the Royal Government of Cambodia and the crucial support from the United States Agency for International Development, it has been implementing its genocide education programme (also known as atrocity crimes education) across the country for nearly 20 years – supporting the 5 million survivors of the Khmer Rouge period, the next generation, and a country still struggling with its horrific past. DC-Cam's grassroots work with survivors has given it an informed perspective on the meaning of the Genocide Convention.

Many Cambodians still ask the question why did Cambodian (Khmer) people kill Khmer? In nearly every public forum, training, or engagement event, this question comes up, not only from the youth who were born decades after the genocide, but even from survivors. It is a legitimate question that has no complete answer because no matter how many stories are collected, research conducted, or analysis completed, the question cannot be satisfied by human analysis or conclusions of the past. Questioning the past is crucial; in fact, it is paramount. But studying the past must be part of a demonstrated commitment to the present and future.

Atrocity crimes education in all its forms, including formal and informal education, is atrocity crimes prevention. Education is the single most efficient and effective way of preventing the conditions and catalysts to atrocity crimes in the future. Successful education requires hard work by governments as much as civil society.

In addition, education requires resources and a demonstrated commitment that exceeds what mankind has historically given to response, prosecution, and punishment of these crimes.

Education also requires imagination. Educational curricula focusing on atrocity crimes prevention should include exercises in the imagination that challenge learners to think about how society could have been different if atrocity crimes had not occurred, how society would be affected if they occurred today, and how prevention looks like in the future when we can imagine a world that truly lives up to the statement "Never again."

DC-Cam calls on all states to integrate atrocity crimes education into all mandatory high school curricula at the national level. All military forces should also be required to include atrocity crimes education as a mandatory component for professional military education of officers and senior leaders. And most importantly, atrocity crimes education should be written into all international development policy – requiring that bridges, roads, and other development aid are conditioned on the implementation of a credible atrocity crimes education programme. Conversations about education should not be incidental to post-conflict development; they should begin with these issues, if only because international aid is the primary vehicle for building in the components and mechanisms for preventing atrocity crimes in the future. The words of the Convention demand action, not only in the interest of complying with law, but also for ensuring our promise to future generations.

## REFLECTIONS ON THE 75TH ANNIVERSARY OF THE CONVENTION AGAINST GENOCIDE

DR CHILE EBOE-OSUJI<sup>8</sup>

Seventy-five years after the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, there is no doubt that it has enjoyed both a reverent stature and applied vigour in international law. The last major occurrence that gave that profile to the Convention was the 1994 genocide against the Tutsi in Rwanda. The work of the International Criminal Tribunal for Rwanda (ICTR)—established in the year of that genocide in 1994—deserves much credit for that. More than 90 persons were indicted by that tribunal, including high-ranking officials, soldiers, businessmen and priests of the 1990s era of Rwanda. Almost all of them were charged with the crime of genocide. The resulting jurisprudence famously included the proposition that acts of genocide are not limited to homicide committed against a racial, ethnic, religious, or national group with intent to destroy the group (as such) in whole or in part. In the *Akayesu* case (the first judgment of an international tribunal that ever tried a case of genocide), an ICTR Trial Chamber held that sexual violence can be an act of genocide, as part of inflicting physical or mental harm upon a convention catchment group with intent to destroy the group in whole or in part. The ICTR's sister tribunal, the

International Criminal Tribunal for the former Yugoslavia, also made notable contributions to the jurisprudence of genocide, though not to the same extent as the ICTR.

But both the 1994 genocide against the Tutsi in Rwanda and the equivalent conduct in the former Yugoslavia have exposed yearning limitations of imagination in ways that can seriously impede prevention as a cardinal object of the Convention. Here, it is important to stress that the blame lies not on the drafters of the Convention, but with its interpreters.

Those limitations of imagination begin with the construction which argues that when the Convention contemplates the error of intent to destroy a group in whole or "in part," what was contemplated was not only "in part" but "in *substantial part*." Notably, the Convention itself contains no such formulation. Yet, over the years, the jurisprudence of both the ICTR and the ICTY has proceeded with that extra-textual construction. That interpretive enterprise derived impetus from US federal legislation known as the Proxmire Act (1988) that the US Congress passed 40 years after the adoption of the Convention. In the

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Proxmire Act, the US Congress specified that for purposes of US law, genocide must implicate a minimum of intent to destroy a group “in substantial part.”

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Soon enough, the world saw the limitations of the requirement of minimum of intent to destroy a group in “substantial” part. That limitation became clear when the 1994 genocide against the Tutsi in Rwanda in which Hutu and others who opposed it were killed was in full flow; and the US Government refused to recognise that a genocide was happening. That failure contributed significantly to the related failure of the United Nations to recognise the genocide as such while it was in progress. In the result, the organised international community did not take the needed political action to stop the genocide. Four years later, in March 1998, President Clinton flew to Kigali and apologised on behalf of his country for failing to call the “genocide” by its name as it was happening. On the occasion, he called it “genocide.” But, by then, approximately 800,000 human beings had been literally butchered. By March 1998, the military wing of the Rwandan Patriotic Front had managed to stop the genocide—four years earlier—on their own with no help at all from the UN or the international community.

As a press conference of the US State Department revealed in June 1994, an evident reason (without prejudice to any other reason) that the Clinton administration could not call the killings genocide at the time was because of a certain legal “definition” that posed a problem. Without a doubt, that definition was the Proxmire Act’s requirement of a minimum intent to destroy a group “in substantial part.” As of June 1994, the Clinton administration had not seen

enough evidence to support the conclusion that the murderers who were killing their fellow human beings harboured intent to destroy the victim group “in substantial part.” But how does that kind of evidence reveal itself in the middle of an ongoing genocide before political action is engaged to stop a genocide? Therein lies a serious limitation of imagination that would undermine the preventive purpose of the Convention.

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Apparently oblivious to the lessons described earlier, the judges of the ICTR and the ICTY continued with the repeated chant of the extra-textual mantra of requiring the minimum intent to destroy a group “in substantial” part, notwithstanding the absence of that qualifier in either the Convention or the statutes of their tribunals into which had been copied (verbatim) the relevant texts of the Convention. As they did so, they also reasoned that “there is no numeric threshold” by which that requirement was to be measured. But, how do you require a “substantial” quantum, with no indication of what the numeric threshold should be? By throwing judicial oracle pebbles from case to case? The concern here does not suggest it an error to require no numeric threshold. It is only to underscore the problem of brushing aside the actual conventional requirement of minimum intent to destroy a group as such “in part” (for which no numeric threshold works well), while embracing the extra-textual imposition of a minimum intent to destroy the group “in substantial part” (which defies objective determination without a numeric threshold). But, it was a matter of time before the risky dissonance came home to roost. And it came in the judgment of the ICTY case of *Mladić* handed down by the Appeals

Chamber of the tribunal's residual mechanism in 2021. Reprising the jurisprudence of "substantial part", the majority of the Appeals Chamber decided that targeting 6.7 per cent of the victim group for destruction did not satisfy the requirement of intent to destroy the group "in part". The disheartening implications of that reasoning become apparent when one considers that 6.7 per cent of the population of India in 2023 is estimated at 95.5 million, for the US it is 22.4 million, and 15 million for Nigeria. According to the majority of the judges in the *Mladić* appeal judgment, targeting such number of Indians, Americans or Nigerians for destruction would not meet the minimum threshold for genocidal intent.

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Beyond the misprisions of jurisprudence as revealed in the *Mladić* appeal judgment, there is a more fundamental difficulty with leaving the achievement of the entire objects or purposes of the Convention in the hands of judges. People who believe in the rule of law are generally impressed when politicians refuse to express a legal opinion on guilt or innocence of criminality, preferring to "leave it to the judges". Without a doubt, there is much value in that attitude, but only as regards one of the two objects of the Convention—punishment. There is, however, another equally important object of the Convention. It is textually and normatively the first object of the Convention. It is the object of prevention.

As amply demonstrated by the American refusal to call the Rwandan killings a "genocide" as it was happening, the object of prevention of genocide is unsuitable to be left to the courts. There is hardly a court of law in the world

which—operating the proper procedures of fair trial—could answer the genocide question in time to enable political action to be taken to stop an ongoing genocide.

Happily, the International Court of Justice recognised that limitation. In the *Case concerning the Application of the Convention against Genocide (2007)*, the ICJ stressed that the preventive purpose of the Convention is no less important than the punitive purpose. And, the Court insisted, while it is true that in some cases the preventive purpose can be achieved through the punitive purpose, it does not mean that the preventive purpose has no separate scope of its own apart from the punitive purpose. The two purposes have their own separate values and must be pursued with equal vigour if the true objects and purposes are to be realised.

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The Convention on the Prevention and Punishment of the Crime of Genocide has received a robust workout in its punitive purpose. The new direction of emphasis needs now to turn to the neglected purpose of prevention. That purpose is not for judges. It is for statesmen and women. And, yes, it is possible in any given case for them to conclude that a "genocide"—calling it "genocide"—is happening or about to happen, in order to mobilise action to stop it. In calling it "genocide" for purposes of political action, it will not be necessary to pronounce upon individual criminal responsibility of the actual culprits. That will be a task for judges. But that judicial function does not stop politicians from doing their part in preventing an ongoing or imminent genocide. That is what the drafters of the Convention intended, in order to meet its dual objectives.

## LEARNING FROM THE PAST, LOOKING TO THE FUTURE

DR JEAN-DAMASCÈNE GASANABO<sup>9</sup>

### Introduction

Raphael Lemkin coined the term 'genocide' in 1944. More importantly, he used his intellectual energy to persuade leaders of the world to adopt an international law to prevent the destruction of certain groups of population, based on ethnicity, race, religion and nationality. With the adoption of the UN Convention on the Prevention and Punishment of the Crime of Genocide the International Community committed itself to a slogan of "Never Again," hoping that atrocities seen during the Second World War would never be seen again anywhere across the world. Since the UN Convention on Genocide Prevention was adopted, crimes recognized by the UN as genocide include the 1994 Genocide against the Tutsi in Rwanda, the 1995 Srebrenica Genocide and to genocide against the Vietnamese and Cham Muslim people in Cambodia. Researchers at the international level have also qualified other crimes in Sudan (since 2004) as genocides. On this anniversary, there is much to reflect on in terms of achievements of the Convention and the challenges that remain.

### Achievements in Legislation

Over the past 75 years, the United Nations has adopted various international instruments on the protection of human beings. Well-established legal obligations to prevent atrocities can be found in the Genocide Convention; the International Human Rights Law; the International Humanitarian Law; the Customary International Law; and The Rome Statute. Since 2009, the Office of the UN Special Adviser on the Prevention of Genocide has put in place the Framework of Analysis to assess the risk of the crime of genocide from an early warning perspective. The Framework is used to analyze the risk of genocide, crimes against humanity and war crimes. Finally, in 2019, the UN launched the Strategy and Plan of Action on Hate Speech and proclaimed 18 June as the International Day for Countering Hate Speech.

All of these actions must continue to be supported by UN Member States for the benefit of their populations.

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<sup>9</sup> Director-General of the National Research and Documentation Center on Genocide, National Commission for the Fight Against Genocide, Rwanda.

## Key Challenges

Despite measures to prevent genocide, the vow “Never Again” – that such atrocities will not happen – has not been upheld by the international community. There are several mechanisms through which genocide manifests. First, the dehumanization of the “other”, often starting in classrooms, plays a role in developing hate and exclusion that can result in extermination. Second, there is a persistence of the ideology of hate that manifests itself through hate speech which needs to be tackled. The existence of the UN Strategy and Plan of Action on Hate Speech is commendable but has to be disseminated among the youth. A final problem stems from bad governance and political extremism. In cases where atrocity crimes are committed, those who have power often play a direct role in the planning and execution of those crimes, and this is a problem that continues to require attention.

## For the Future 75 Years

Since time eternal, we have known humans to be capable of good and evil. The preamble to the UNESCO Constitution reads: “Since wars begin in the minds of men, it is in the minds of men that the defenses of peace must be constructed.” In an interconnected world where people, especially youth, are sharing their lives through media, it becomes paramount to put in place tools which counter the spread of hate. How do we help youth to learn to respect those they see as different from them?

## Education

The phenomena of racism and dehumanization in modern societies are real, and the consequences that they can have on young people, in particular minority groups, can be irreversible. An education system that takes into account diversity, values the cultural and social skills of young people, and integrates all students into the school environment, acts as a means to fight racism and dehumanization expressed through hate speech. Supporting and valuing personal and collective initiatives will strengthen the ability of these young people to exist and be recognized.

Genocide prevention is a process that lasts a lifetime. It does not begin or end at school. The whole of society incorporates education, which works towards a culture of peace, the eradication of social intolerance and the ideology of genocide. Efforts to inculcate tolerance through education can only succeed if they reach all age groups and are deployed everywhere: at home, at school, in the workplace, in law enforcement and legal training, in games and recreation, and in the media.

In terms of academic research and the presence of genocide studies at university level, efforts have been made in Europe and North America. However, with the support of the UN Office of the Special Adviser on the Prevention of Genocide, higher learning institutions in the southern regions of the globe must create genocide studies and university programs, teach and conduct research on atrocity crimes. Even introductory courses at the bachelor’s level could help students to learn to identify and fight

hate speech and discrimination. Additionally, the UN Office of the Special Adviser on the Prevention of Genocide could collaborate with UNESCO to create anti-genocide curricula, textbooks, and training and guidance manuals for educators, institutions, leadership, and partners in global south education.

### The Digital Era and Hate Speech

Today, young people are using social media to connect and interact with each other, but many are unaware of the consequences of hate speech. How to help them to use social media to prevent genocide and other atrocity crimes?

Video awareness campaigns, for example a series of Tiktok videos on genocide prevention, could teach youth about the harms and consequences of their actions. These campaigns could

involve influencers and persons of authority, such as politicians, educators, religious leaders, law enforcement or military personnel, or even respected businessmen. In their messages, they could teach young people about practices and language which can be deployed to fight hate speech and genocide. Their short written or recorded messages could add to the impact that a book or a class may have.

Even after the immediate threat of genocide is addressed, achieving sustainable peace remains a significant challenge. Rebuilding trust, fostering reconciliation, and addressing the underlying issues that contribute to conflict are complex challenges. To this end, investing in anti-genocide education is a crucial arena which demands our ongoing attention.



# A BOSNIAN PERSPECTIVE ON THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

DR HIKMET KARČIĆ<sup>10</sup>

2023 marks a significant milestone in the realm of international law and human rights – the 75<sup>th</sup> anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). This convention emerged as a crucial response to the horrors of the Holocaust and the Second World War. It represents a global commitment to combating the atrocity of genocide. This essay delves into the enduring impact and significance of this vital convention, with a particular focus on Bosnia and Herzegovina, a nation deeply scarred by genocidal violence during the 1990s.

The term 'genocide' was coined by Raphael Lemkin, a Polish-Jewish lawyer who championed the necessity of an international legal framework to prevent and punish such heinous crimes. The Convention defines genocide explicitly and mandates signatory nations to prevent and penalize such acts, marking a pivotal advancement in international human rights law at the time.

The experience of Bosnia and Herzegovina during the war launched

against it by Serb nationalists (1992-1995) underscores the continued relevance of the Genocide Convention. The war, characterized by severe mass atrocities and egregious human rights violations (such as the protracted siege of the capital, Sarajevo), culminated in genocidal violence being committed against the Bosniak (Bosnian Muslim) communities in the small towns of Višegrad, Prijedor and in Srebrenica, where in July 1995, over 8,000 Bosnian Muslim men and boys were systematically executed by the Bosnian Serb army. These events, characterised by their extreme brutality and the failure of the international community to intervene, highlighted the urgent need for robust international mechanisms to help both enforce the Convention and build upon it to prevent and address such acts in future.

The Convention on the Prevention and Punishment of the Crime of Genocide significantly influenced the development of international law, particularly in establishing the International Criminal Tribunal for the former Yugoslavia (ICTY). This institution played a crucial

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role in prosecuting perpetrators of the Bosnian genocide. High-profile cases against individuals like Bosnian Serb leader Radovan Karadžić and Bosnian Serb Army general Ratko Mladić have been milestones in applying the Convention's principles in practice, demonstrating the potential of international law to hold individuals accountable for grave crimes.

Another positive impact was that through the Convention on the Prevention and Punishment of the Crime of Genocide, national courts were able to prosecute war crimes and genocide. The German judiciary's prosecution of war criminals for atrocities committed in Bosnia and Herzegovina, including genocide, is significant. The case of Nikola Jorgic, a Bosnian Serb military leader convicted by a German court for his involvement in the Bosnian genocide, showcases Germany's commitment to upholding the principles of the Convention on the Prevention and Punishment of the Crime of Genocide and the successful application of the principle of universal jurisdiction in prosecuting such crimes.

For Bosnia and Herzegovina, the Convention on the Prevention and Punishment of the Crime of Genocide holds immense significance. The country's efforts to seek justice and reconciliation are underpinned by the Convention. The lawsuit initiated by Bosnia and Herzegovina against Serbia at the International Court of Justice (ICJ) represents a crucial moment in the history of international law and the global

pursuit of justice for acts of genocide. The lawsuit, alleging violations of the Genocide Convention, was an important moment in highlighting the responsibilities of states under the Convention and the potential for legal redress in cases of genocide.

This significant legal action, grounded in the principles of the Convention on the Prevention and Punishment of the Crime of Genocide aimed to hold a state accountable for its alleged involvement in genocidal acts. Through this lawsuit, Bosnia and Herzegovina not only sought justice for the horrors endured during the Bosnian War but also emphasized the responsibility of states under international law to prevent and punish genocide. The case underscored the effectiveness of the Convention on the Prevention and Punishment of the Crime of Genocide as a mechanism for legal recourse by nations victimized by genocide and reinforced the ICJ's role in resolving disputes related to grave international crimes.

Beyond its legal implications, the lawsuit symbolized a broader quest for acknowledgement and reconciliation, providing an opportunity for the international community to recognize the suffering of the victims and survivors of the Bosnian genocide. The proceedings and subsequent judgments of the court contributed significantly to the development of international jurisprudence concerning genocide, shaping the methods and standards used to address accusations of such a severe nature. Additionally, the case

illuminated the complexities and challenges in establishing state responsibility for genocide, setting a critical precedent for future legal actions in similar international contexts.

The role of education in preventing genocide is crucial. Raising awareness about the Convention on the Prevention and Punishment of the Crime of Genocide and the history of genocidal acts, like those in Bosnia and Herzegovina, is vital in fostering a culture of respect for human rights. Integrating this history into educational curricula in Bosnia and Herzegovina is a vital step in healing and building a society that values peace and justice. Teaching that tools such as the Convention on the Prevention and Punishment of the Crime of Genocide are available to prevent genocide, is also critical, empowering

youth to go forward and see that it is applied.

As we commemorate the 75<sup>th</sup> anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide, reflection on its historical significance and contemporary relevance, especially for countries like Bosnia and Herzegovina, is imperative. The Convention has laid the essential groundwork for the global fight against genocide, but its effectiveness depends on the ongoing commitment of the international community. For Bosnia and Herzegovina, the Convention symbolizes past struggles and is a beacon of hope for a future free from the scourge of genocide. This anniversary serves as a call to reaffirm our collective resolve to prevent genocide and ensure justice and dignity for all.

# STATE COMPLIANCE WITH THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE'S OBLIGATION TO PUNISH GENOCIDE

DR MELANIE O'BRIEN<sup>11</sup>

75 years ago, the Convention on the Prevention and Punishment of the Crime of Genocide ([Genocide Convention](#)) was adopted. In the 75 years of its life, the Convention on the Prevention and Punishment of the Crime of Genocide has had a mixed history of implementation. It has [153 state parties](#), so it is unfortunately not universally ratified, but we have progressed significantly since the mere five states that ratified the Convention in 1949.

[Article VI](#) of the Genocide Convention provides jurisdiction for international penal tribunals over persons charged with genocide; and [Article IX](#) delegates disputes under the Convention to be adjudicated by the International Court of Justice (ICJ). This essay will touch on some examples of how states have implemented the obligation to punish genocide ([Article I](#) of the Convention) through the establishment and use of international courts and tribunals.

International and hybrid criminal courts and tribunals have convicted perpetrators of genocide, apportioning individual criminal responsibility for the crime. For example, the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted multiple

perpetrators of genocide, including [General Ratko Mladić](#), former Commander of the Main Staff of the army of the Serbian Republic of Bosnia and Herzegovina, who was sentenced to life in prison for crimes including genocide of the Bosnian Muslim population of Srebrenica (Bosnia) in 1995. The International Criminal Tribunal for Rwanda (ICTR) also convicted multiple perpetrators of genocide committed in Rwanda in 1994, including the seminal conviction of [Jean Paul Akayesu](#), a former bourgmestre (mayor), also sentenced to life in prison and in whose judgment the ICTR confirmed that rape constitutes genocide. The Extraordinary Chambers in the Courts of Cambodia (ECCC) convicted [Nuon Chea and Khieu Samphan](#), two high-level leaders of the Khmer Rouge, of genocide against the Vietnamese and Muslim Cham minorities in Cambodia during the late 1970s, again imposing a sentence of life in prison. These three tribunals contributed significantly to the development of the law of genocide, analysing and advancing the definition of genocide and the parameters of the crime's commission from the basic definition found in the Genocide Convention.

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The establishment and running of these courts and tribunals represents one way by which states have complied with their obligation under Article I of the Genocide Convention to punish genocide. States establish courts and tribunals through United Nations Security Resolutions (e.g., [the ICTR](#) and [ICTY](#)), treaties (e.g., [the International Criminal Court](#)), or other forms of international agreements (e.g., [the ECCC](#)). States also contribute personnel to these courts and tribunals, as judges, lawyers, jurists, analysts, investigators, and many other roles. States can also refer situations to the [International Criminal Court](#) (ICC) for investigation, either directly or through the United Nations Security Council (UNSC). The ICC has issued an arrest warrant for former Sudanese President [Omar Al Bashir](#) for three counts of genocide after the situation in Darfur was referred to the ICC [by the UNSC](#) in 2005.

While Article VI refers to 'persons charged with genocide', indicating the role of courts and tribunals in enforcing individual criminal responsibility for genocide, the Genocide Convention's provision for ICJ jurisdiction over disputes under the Convention allows for the enforcement of state responsibility. Thus, the Genocide Convention is a legal instrument that offers comprehensive accountability across the two areas of responsibility: individual and state.

The ICJ has had a few contentious cases brought before it under the Genocide Convention. In 2007, the ICJ issued its judgment in the [Bosnia and Herzegovina v Serbia and Montenegro](#) case, in which the ICJ affirmed that genocide had taken place in Srebrenica in 1995. In 2015, a judgment was delivered in the [Croatia v](#)

[Serbia and Montenegro](#) case, with no finding of genocide.

The ICJ should be used more often than it has been to address the commission of genocide. However, in recent years, two cases have been brought before the ICJ under the Genocide Convention, both of which demonstrate a renewed and expanding commitment by states to implementing their obligations under the Convention. In November 2019, [The Gambia began proceedings against Myanmar](#), alleging violations of the obligation to prevent and punish genocide under the Genocide Convention, based on [atrocities committed against the Rohingya](#) minority population of Myanmar.

In February 2022, [Ukraine instituted proceedings against Russia](#), alleging violations of the Genocide Convention. This is an interesting case in that the assertion is not that Russia has committed or is committing genocide. Rather, Ukraine claims that Russia is undermining the object and purpose of the Convention on the Prevention and Punishment of the Crime of Genocide through Russia's justification of its invasion of Ukraine based on [false claims](#) of genocide being perpetrated in Ukraine, and that the duty to prevent and punish genocide under the Genocide Convention 'must be performed in good faith and not abused'.

In September 2022, [32 states intervened](#) under Article 63 of the [ICJ Statute](#) to support Ukraine in its case against Russia. While interventions have occurred before, such a large number of states intervening in an ICJ case is unprecedented. In November 2023,

seven states intervened in *The Gambia v Myanmar* case, with six of those states submitting a joint declaration of intervention. Many of the states intervening in *Ukraine v Russia* have similarities across [the sources and argumentation](#) in their submissions, and with the joint intervention in *The Gambia v Myanmar*, this indicates a clear collaboration and agreement between states to hold other states accountable for violations of the Genocide Convention. In their [joint intervention submission](#), Canada, Denmark, France, Germany, the Netherlands and the United Kingdom referred to 'their common interest in the accomplishment of the high purposes of the Convention'.

There remains much to accomplish to ensure comprehensive enforcement of

the Convention on the Prevention and Punishment of the Crime of Genocide and certainly the ICJ's judgments have not been without their [problematic aspects](#). However, increased engagement by states with enforcement of the Convention on the Prevention and Punishment of the Crime of Genocide, including collaboratively, demonstrates states' dedication to uphold the obligations of the Convention on the Prevention and Punishment of the Crime of Genocide. As we arrive at the 75<sup>th</sup> anniversary, this demonstrates that the Convention on the Prevention and Punishment of the Crime of Genocide is relevant and respected as an important international law instrument that actively contributes to the prevention and punishment of genocide.

# YEZIDI PERSPECTIVE ON GENOCIDE PREVENTION

HEWAN OMER<sup>12</sup>

The 75-year legacy of the Convention on the Prevention and Punishment of the Crime of Genocide is profoundly significant, underscoring our collective commitment to preventing mass atrocities. This milestone prompts a comprehensive evaluation of the Convention's impact on global efforts to combat genocide, emphasizing the strides made and the challenges that persist. As we commemorate this anniversary, we must recommit ourselves to the principles embedded in the Convention, fostering a world where the horrors of genocide are condemned and actively prevented through collective vigilance and cooperation. Personally, reflecting on this from the lens of the Yezidi Genocide, I am acutely aware of the Convention's pertinence considering the enduring horrors my community faces. And sadly, the Convention has failed to ensure meaningful prevention or punishment in our case. Equal rights, tolerance, democratic governance, justice, and education all play pivotal roles in responding to and preventing genocide, providing a multifaceted approach toward a more just and resilient world.

## Addressing the Root Causes

Addressing the root causes of genocide is not only a moral imperative but is also

paramount to preventing their recurrence. By tackling the underlying factors that contribute to the emergence of genocidal tendencies, societies can develop comprehensive strategies that dismantle the conditions encouraging hatred and violence. Socioeconomic discrimination, political disempowerment, and deep-seated prejudices often lie at the heart of genocidal acts. Effectively addressing these root causes involves promoting inclusive governance, economic equity, and tolerance through education.

A proactive approach that identifies and rectifies systemic issues contributing to genocide is crucial in building resilient societies that can withstand the destructive forces of discrimination. In this way the international community can work collectively to create a world where the seeds of genocide do not find fertile ground, ensuring the protection of human dignity and the prevention of future atrocities.

## Ensuring Equal Rights

Ensuring equal rights for all is a powerful deterrent against the occurrence of genocide. Fundamental to the prevention of genocide is the acknowledgment and protection of the inherent dignity and rights of every individual, regardless of their ethnicity, religion, nationality

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<sup>12</sup> Iraq Country Director, Free Yezidi Foundation.

background. When societies actively promote equality, they create a foundation where grievances can be addressed peacefully, fostering social cohesion. In such environments, the risk of marginalized groups becoming targets of discrimination and violence diminishes significantly. By championing equal rights, societies build a resilient defense against the seeds of hatred and intolerance. Embracing the principles of equality can help safeguard the collective dignity and humanity of every person, helping to prevent the tragic consequences of discrimination and persecution.

### Promoting Tolerance and Diversity

Respect for and acceptance of ethnic, religious, and cultural diversity serve as indispensable safeguards against genocide. Embracing diversity creates a societal fabric woven with understanding, tolerance, and empathy. When communities recognize and celebrate the richness of different ethnicities, religions, and cultures, they foster a sense of unity that transcends divisive lines. By promoting respect for diversity, societies build a foundation that values every individual. This inclusivity becomes a formidable force against the hatred and discrimination that can lead to genocide. Ultimately, societies that prioritize diversity not only mitigate the risk of genocide but also cultivate environments where the unique contributions of every group are acknowledged and valued, creating a tapestry of harmony that resists the forces of intolerance and violence.

### Facilitating Democratic and Transparent Governance

Democratic and transparent governance are essential to the prevention of genocide. In a democratic system, where power is derived from the people and institutions are accountable, the risk of unchecked authoritarianism is mitigated. Transparent governance fosters openness, accountability, and responsiveness to the needs of diverse communities. Through inclusive political processes, grievances can be addressed peacefully, reducing the likelihood of marginalized groups feeling disenfranchised or persecuted. The protection of individual rights, freedom of expression, and the rule of law, inherent in democratic systems, helps build resilient societies that prioritize dialogue and ensure legal mechanisms can prevent violence. Transparent governance ensures that decision-making processes are accessible and accountable, creating an environment that values pluralism and safeguards against the manipulation of ethnic, religious, or cultural differences for destructive purposes.

### Pursuing Justice and Accountability

The imperative of bringing perpetrators to justice cannot be overstated as a pivotal means to prevent future genocides. Accountability serves as a powerful deterrent, sending a resounding message that individuals who orchestrate or participate in mass atrocities will face consequences for their actions. The legal pursuit of perpetrators also contributes to the establishment of historical truths,



fostering collective memory and understanding. This, in turn, helps societies to confront the realities of past atrocities and work towards reconciliation. Importantly, the pursuit of justice acts as a preventive measure, dissuading potential perpetrators by illustrating that their actions will not go unpunished. In holding individuals to account, we not only seek justice for the victims but also construct a formidable barrier against the recurrence of the horrors of genocide in our shared global history. It is very unfortunate that although the Yazidi Genocide is now widely acknowledged, efforts to advance justice and accountability have been severely lacking almost 10 years later.

#### Implementing Equal and Ethical Education

Equal and ethical education nurtures a foundation of understanding, tolerance, and empathy crucial for preventing atrocities. By providing citizens with

access to quality education, irrespective of their background, societies can dismantle the ignorance and prejudice that often underlie acts of mass violence. An education system that prioritizes ethics and equality instills values that promote respect for diversity, human rights, and the sanctity of life. Students equipped with critical thinking skills are better prepared to challenge discriminatory ideologies and engage in constructive dialogue. In Iraq, education about the components of our society is lacking, and this is one reason harmful stereotypes and discrimination has been able to flourish. Ethical education emphasizes the importance of addressing systemic injustices, reducing the likelihood of marginalized groups becoming targets of discrimination and violence. In promoting a curriculum that celebrates cultural and ethnic communities, equal and ethical education helps citizens to work toward peace, understanding, and the prevention of future genocides.

# UNITAD: SPEARHEADING ACCOUNTABILITY FOR THE ISLAMIC STATE OF IRAQ AND THE LEVANT (ISIL)'S INTERNATIONAL CRIMES, SUPPORTING JUSTICE FOR YAZIDI VICTIMS

CHRISTIAN RITSCHER<sup>13</sup>

9 December 2023 marks the 75<sup>th</sup> anniversary of the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) by the General Assembly of the United Nations ([UN Doc A/RES/3/260](#)). The Genocide Convention was the first human rights treaty<sup>14</sup> that came into existence reflecting the commitment of the international community that “never again” would the atrocities committed during the Second World War happen. Despite its ratification by 153 States, the crime of genocide persisted, and so did endeavors to hold its perpetrators accountable before a court of law. One of the most horrid atrocities in modern history is the genocide of Iraq’s Yazidi community in the Sinjar region in northern Iraq at the hands of Da’esh/ISIL.

The Yazidis are one of Iraq’s oldest religious minority groups. Wrongly and derogatorily labelled as “devil worshippers” and consistently singled out throughout history for being

„different“ and attacked by hate speech, the Yazidis have been systematically massacred or denounced as infidels.<sup>15</sup> At the very beginning of their reign of terror in Iraq, Da’esh/ISIL masterminded the destruction of the Yazidi community in a way that has ‘shocked the conscience of humanity’.<sup>16</sup> The extent of Da’esh/ISIL crimes against the Yazidis included not only genocide but also a range of heinous crimes including subjecting women and girls to a system of sexual slavery, torture, child enlisting, persecution and other crimes against humanity and war crimes. On 9 August 2017, the Government of Iraq called upon the international community to assist in ensuring that members of ISIL/Da’esh are held accountable for the atrocious crimes that had been committed against its population. In response, the United Nations Security Council unanimously adopted [resolution 2379](#), establishing the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD). UNITAD operates under its [Terms of Reference](#) as an independent and

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<sup>13</sup> Special Adviser and Head of the UN Investigative Team to Promote Accountability for Crimes Committed by Da’esh/ISIL (UNITAD) until March 2024.

<sup>14</sup> [United Nations Office on Genocide Prevention and the Responsibility to Protect.](#)

<sup>15</sup> [Who are the Yazidis and why is Isis hunting them? | Iraq | The Guardian.](#)

<sup>16</sup> Quote from former SA - [ISIL crimes against Yazidis constitute genocide, UN investigation team finds | UN News.](#)

impartial investigative team that aims to promote accountability for the international crimes committed by Da'esh/ISIL perpetrators, including -in some cases-genocide.

Since its creation, UNITAD has dedicated one of its field investigation units to investigating the atrocities against the Yazidi community, as one of UNITAD's priority lines of investigation. Through this unit, UNITAD has focused on investigations and case assessments into crimes committed in the Yazidi villages of Kojo, Hamadan and Qeni in the Sinjar region of Iraq. Work has also been done on developing profiles for key Da'esh/ISIL perpetrators responsible for attacks against the Yazidis as well as interviewing witnesses and victims. Additionally, 50 mass graves of Yazidi Da'esh/ISIL victims have been excavated and UNITAD has identified over 100 Yazidi cultural heritage sites that have been destroyed by Da'esh/ISIL to date. Overall (and for many years), UNITAD has concluded that there is 'clear and convincing evidence' to legally qualify the acts committed against the Yazidi as the crime of genocide.<sup>17</sup>

This legal qualification is crucial for UNITAD's endeavors on the path towards accountability for genocide by supporting prosecutions of Da'esh/ISIL perpetrators throughout the world. One recent example is UNITAD's involvement with the framework of the European

Network for investigation and prosecution of genocide, crimes against humanity and war crimes, established by the Council of the European Union in 2002, to provide the judicial authorities in third States with the necessary analysis, information and evidence needed to support proceedings against Da'esh/ISIL members. This jurisdictional support for third-party States of the leading role UNITAD plays in this arena and UNITAD's unwavering pursuit of justice and accountability no matter where Da'esh/ISIL perpetrators of genocide may reside.

In 2021, UNITAD welcomed the landmark conviction in a German court of Da'esh/ISIL member Taha Al-J for the crime of genocide. It was the first ruling worldwide that recognized the crimes committed against the Yazidi community as genocide.<sup>18</sup> The conviction was a defining moment showing that global efforts to deliver accountability and justice for victims and survivors of genocide can be a reality. Furthermore, this case demonstrated that justice for genocide is a collaborative and global effort. UNITAD, which supported the German prosecutors in engaging witnesses and document verification in the Taha Al-J case, worked through partnerships with national authorities, impacted communities, and non-governmental organizations, showing how such partnerships exist and can, in practice, work effectively to achieve

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<sup>17</sup> [Special Adviser Khan Briefs the Security Council on UNITAD Investigations | Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL \(UNITAD\).](#)

<sup>18</sup> [UNITAD Special Adviser Christian Ritscher Welcomes Landmark Genocide Conviction of ISIL Member | Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL \(UNITAD\).](#)

accountability for genocide.<sup>19</sup> Later on, UNITAD similarly welcomed the conviction by a German Court of a Da'esh/ISIL member, Nadine K, for aiding and abetting war crimes and genocide against the Yazidis in August 2023.<sup>20</sup> To date, Germany is the only State that has successfully convicted Da'esh/ISIL members for the crime of genocide.

Looking towards the future, I commend the persistent work by all concerned Iraqi authorities in advancing the Iraq-led process of enacting a national legislation that would allow for the prosecution of Da'esh/ISIL members for international crimes such as genocide. We at UNITAD supported this work and stand ready to provide further technical support to this Iraq-led process. Enacting such a legislation would open a historic chapter for seeing trials against perpetrators of the Yazidi genocide before domestic courts in Iraq, with the participation of victims.

On this day celebrating the Genocide Convention, I clearly recall my first visit to Kojo in December 2021, when my Team supported the identification and return of

remains for tens of Yazidi victims of ISIL genocide. I stood among mourning Yazidi families, whose quest for recognition and dignified burial of their beloved ones is as firm as their quest for justice. UNITAD has drawn strength from the determination of those communities, their resilience and their perseverance. UNITAD works hand in hand with those victims and survivors, some of whom have become tireless activists for justice within their communities as well as internationally. I remain humbled by these activists' resolute insistence on bringing justice to their communities and to all those who have suffered from ISIL crimes in Iraq.

On this day, which also marks the seventh anniversary of the downfall of Da'esh/ISIL in Iraq, the global commitment to accountability and justice remains crucial in preventing genocide. Maintaining such collective commitment and strengthening unity in addressing the inherent challenges that the scale of Da'esh/ISIL criminality presents is the only way to turn the tide from impunity to justice.

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<sup>19</sup> [Relentless Pursuit of Justice and Accountability Continues: 9 Years Since the Yazidi Genocide | Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL \(UNITAD\)](#).

<sup>20</sup> [German woman jailed for nine years for enslaving Yazidi woman | ISIL/ISIS News | Al Jazeera](#).

## WHY THE GENOCIDE TERM SHOULD BE USED WITH CAUTION

PROFESSOR DR CHRISTOPH SAFFERLING<sup>21</sup>

The conceptualization of the crime of genocide came too late for it to be incorporated into the Charter of the International Military Tribunal at Nuremberg. However, shortly after the judgment at Nuremberg had been delivered, the United Nations General Assembly affirmed the crime of genocide together with the so-called Nuremberg Principles on 9 December 1946 through Resolution(s) 96 and 95 (I) respectively.

It had only been two years since the Polish-Jewish jurist Raphael Lemkin coined the term “genocide” (verbatim: slaughter of a people) and defined the elements of this new crime. He had in mind a special norm protecting a collective, a group characterized by nationality, ethnicity, religion or race. He was thinking among others about the slaughtering of Christians in ancient Rome, the mass killings of Armenians by the Ottoman empire, and the systematic elimination of Jews by Nazi Germany.

He augmented a new sense of injustice by extending the criminal act beyond the killing of a multitude of individuals, to a group of people. The targeting of such a collective elicits a special intrinsic culpability, which cannot be captured by the systematic and widespread attack on civilians as embodied in “crimes against humanity”. However, perhaps Lemkin

would not have sacrificed the rest of his life to the adoption and ratification of the Convention for the Prevention and Punishment of Genocide had not the Nuremberg judgment paid comparatively little attention to the specific targeting of Jews, Sinti and Roma as well as Poles and others by Nazi Germany.

The speed by which the Convention on the Prevention and Punishment of the Crime of Genocide was adopted on 9 December 1948, and widely ratified, is evidence that Lemkin’s idea was convincing and a new crime, encapsulating the holocaust, was necessary. The crime of genocide was soon accepted as an *erga omnes* – obligation which triggers a responsibility to protect.

The crime fits well when assessing the actions of the Nazi perpetrators. And maybe it is ironic that trials and convictions for genocide could not be implemented in relation to the Holocaust. However, genocide is sometimes difficult to apply to the complex situations we see today. Further, the premise that group identities with regards to nationality, ethnicity, race and religion are stable proved to be erroneous. Today group identities are understood to be dynamic, to be socially constructed, and with an element of

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<sup>21</sup> Director of the International Nuremberg Principles Academy.

freedom of choice. The first ever conviction for genocide by an international tribunal, namely by the ICTR in 1998, some 50 years after the adoption of the convention, embraced these difficulties and adopted a modern and convincing reading of the 1948 norm.

The second peculiarity of the crime of genocide is the special intent requirement. The perpetrator must be proven to have acted according to his will to eliminate the protected group, in whole or in part, by among others killing, torturing or violating members of this group. This subjective element might be easy to prove with regard to the policy of a state. With regards to an individual, it remains very difficult indeed. This might be a factor in explaining why international courts and tribunals have thus far been very restrictive in issuing convictions for genocide.

Both of these issues, the group identity and the subjective element, have encountered different interpretations in national and international fora. Whereas international courts see the aim of the perpetrator to inflict the biological destruction of the group as a necessary requirement of the *dolus specialis*, others, like the German courts, see the social elimination of the group as sufficient. Likewise, international courts adopt a purpose-based approach with regards to the intention requirement. This means that the ultimate aim of the perpetrator needs to be the destruction of the protected group. All other accused can only be convicted for aiding and abetting in genocide. German courts, on the contrary, see it as sufficient if the elimination of the protected group is an intermediate aim of the perpetrator, who

might follow other ultimate goals. The reasons for a more extensive interpretation of the genocide norm by German courts are rooted in the specific historic circumstances and contexts of German law. Until the adoption of the Code of International Crimes in 2002, German law did not have provisions criminalizing crimes against humanity or war crimes.

There are two further interrelated issues that are critical and need to be addressed.

The narrow approach adopted by international courts leads to a discriminatory effect. For example, in the context of Bosnia, a genocide conviction has only been handed down with regard to the mass killing in Srebrenica. Other massacres of a similar nature have not been accepted as being genocide but rather as genocidal events and ethnic cleansing, which have been convicted as crimes against humanity. From a victim's perspective, this differentiation is not understandable and can be distressing. In addition, other courts, for example in Germany, have issued convictions for genocide in places other than Srebrenica.

In the current discourse, the term genocide is often invoked in an inflationary and inflammatory manner. Genocide has been declared as the "crime of crimes" by several international tribunals. This holding is ahistorical as the crime of aggression is the original "crime of crimes" as maintained by the IMT at Nuremberg. Today, the allegation that genocide has taken place is raised extremely often. And many times, such allegations are made without any proof

of the basic elements of the crime of genocide being fulfilled. One has the feeling that only genocide is the “real” international crime and only victims of genocide are “real” victims of international crimes. Certainly, in some instances, the term genocide is used to bring a specific crime or context closer to the holocaust, which is the worst crime that has ever taken place on this earth.

I would thus call for a cautious use of the crime of genocide and restrict the use to situations where a protected group is clearly targeted with the intent to destroy the group as such. Such usage would stay true to the origins of the crime as well as protect the integrity of the term and prevent its misuse.

## PREVENTING GENOCIDE A GREATER CHALLENGE THAN DELIVERING PUNISHMENT

JUDGE GRACIELA GATTI SANTANA<sup>22</sup>

The 75<sup>th</sup> anniversary of the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) prompts me to think, with pride, of the contributions of the International Residual Mechanism for Criminal Tribunals (Mechanism), over which I preside, and its predecessor tribunals – the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) – to the goals of the Genocide Convention “to prevent and to punish” genocide.

Almost 75 years ago, on the day the Genocide Convention entered into force, Raphael Lemkin encouraged the contracting States to make this convention a “living force”. I reflect with humility and admiration on the steps taken since then to make these words a reality. Decades after the adoption of the Genocide Convention, the Security Council recognized that crimes such as genocide constitute a threat to international peace and security, and that bringing to justice those responsible for them would contribute to ensuring that genocide and violations of international humanitarian law are halted and effectively redressed. On this basis,

the Security Council decided to establish the ICTY and the ICTR and to include the crime of genocide in their Statutes, repeating *verbatim* the relevant provisions of the Genocide Convention.

The first conviction for genocide by an international criminal tribunal was issued by the ICTR, 50 years after the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, in the case against Jean-Paul Akayesu for his role in the 1994 Genocide against the Tutsi in Rwanda. The same historic judgment acknowledged for the first time that rape and sexual violence can constitute genocide. Then, the ICTY, for its part, held that genocide could be perpetrated in a limited geographic zone, as was the case with the Srebrenica Genocide. These and other landmark judgments in genocide cases before the *ad hoc* tribunals and the Mechanism have provided a solid interpretation of the definition of genocide, which continues to serve as guidance for other courts and tribunals to date.

As a Judge of the Mechanism, I was part of the appeals chamber that confirmed the conviction of Radovan Karadžić for his role in the Srebrenica Genocide and, therefore, experienced first-hand the role of judicial institutions in punishing the crime of genocide and strengthening

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<sup>22</sup> President of the International Residual Mechanism for Criminal Tribunals (IRMCT).



accountability. Today, I observe with hope the commitment of national judiciaries in adjudicating genocide and other international crimes. This is why I consider it important that the Mechanism continues to assist national authorities in trying such cases by sharing its wealth of evidence.


Prevention of genocide, however, has proven to be a far greater challenge than punishment. In 1995, when the Srebrenica Genocide occurred, the ICTY and the ICTR were fully operational. At the time, I was serving as a Judge in my home country of Uruguay and, as an active observer of both *ad hoc* tribunals, remember my shock at the events and my dismay over the fact that whatever deterrent effect I, along with the rest of the world, had hoped these tribunals would have seemed not to have materialized. It was after my election to the Mechanism's judicial roster that I began to appreciate just how challenging administering justice during an ongoing conflict is.

Despite such challenges, I remain convinced that our best chance of preventing genocide is to persist and fight for justice and accountability. The genocide cases adjudicated by the *ad hoc* tribunals and the Mechanism brought dozens upon dozens of perpetrators of genocide and their accomplices to justice, and gave thousands of victims and witnesses a voice by allowing them to testify to, and thus bring to light, their suffering. The truth of what happened, as reflected in the tens of thousands of pages of judgments, is the antidote to voices of genocide denial. We need to understand what happened to prevent it from

happening again, and these judgments do just that.

Judicial processes, however, are not the end in the fight to prevent and punish genocide. As President of the Mechanism, I am aware that achieving these goals requires going beyond the courtroom. At the current stage of the Mechanism's lifespan, where there are no longer any active trial and appeal proceedings in core crimes cases, I am committed to continuing to consolidate the legacy of the *ad hoc* tribunals and the Mechanism. The [Mechanism](#) is the gatekeeper of this valuable legacy and we strive to make it widely accessible through our website, public databases and outreach activities, so that it reaches not only the legal community, but more importantly, the affected communities, and particularly, the younger generations. In my view, helping the public realize the nuances and complexities of conflicts can play a significant role in prevention.

As I reflect on the Genocide Convention and the history of its implementation, I am struck by how indispensable it has been to the work of the Mechanism and its predecessors. The Convention on the Prevention and Punishment of the Crime of Genocide provided a legal framework which allowed for the proper legal characterization of events that occurred during the conflicts in Rwanda and the former Yugoslavia, and I hope that this has helped, at least to some extent, the affected communities feel that justice has been served. On the day the Genocide Convention entered into force, Lemkin charged the world to "not rest on the laurels of this great success" and to instead "work for a universalization of



this treaty so that it might cover soon with its protective wings the greatest part of the globe.” The ICTY, the ICTR, and the Mechanism have between them six decades’ worth of successes to celebrate for their part in taking on this challenge, and several lessons learned to

share for even better protection in the future. Yet, let us not rest on our laurels. Let us continue to work to end impunity everywhere, for genocide and all international crimes.

# WHY HAS THE UN FAILED TO ENFORCE THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE?

DR GREGORY H. STANTON<sup>23</sup>

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted in 1948 by unanimous vote of the UN General Assembly. The history of the UN and the Genocide Convention are closely intertwined. To understand why the UN has failed to enforce the Genocide Convention, one must understand the flaws in the structure of the UN.

The UN was set up to prevent wars between nations. It was also established to protect individuals and groups from crimes perpetrated by their own nations. The tension between protecting nations and protecting groups and individuals has never been resolved. Despite the opening words of the UN Charter, "We the peoples", the UN is an organization of nation-states. Whenever you hear the term, "international community", question it. Does this imaginary "community" really exist?

The Genocide Convention was intended to protect nations, but also peoples: ethnic, religious, and racial groups.

It was meant to protect individuals and groups even when, especially when they are murdered by their own governments.

There are several reasons for the UN's failure to enforce the Genocide Convention:

First: The UN has been hobbled from birth by the persistent doctrine of "domestic jurisdiction"

It is embodied in Article 2(7) of the UN Charter.<sup>24</sup> National leaders still assert that their actions, no matter how heinous, are "domestic" matters, not subject to international law.

The counter-doctrine is the Responsibility to Protect, adopted in 2005 by consensus of the UN General Assembly. It asserts that when a state commits genocide, crimes against

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<sup>23</sup> Founding President, Genocide Watch.

<sup>24</sup> "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." UN Charter, Article 2 (7)

humanity, "ethnic cleansing",<sup>25</sup> or war crimes against its population, other states, acting through the UN Security Council should take collective action to protect the population.

The UN has often failed in its purpose to prevent wars between nations. It has also often failed in its purpose to protect the human rights of groups and individuals.

Second: The UN has been crippled from the start by the Perm-5 veto<sup>26</sup>

The great powers that won the Second World War were the colonial powers that dominated half of the world in 1945. They insisted on having vetoes over all authorizations to use force by the UN. This made them immune to any UN action if they started wars of aggression or committed genocide or crimes against humanity themselves.

In the UN Charter, authorization for the use of force is reserved to the Security Council. For Security Council action, no Perm-5 member can vote against it.

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<sup>25</sup> Genocide Watch rejects the term, "ethnic cleansing", a euphemism invented by Milošević, to deny genocide. It is not prohibited by any treaty. It sometimes means "forced displacement", which is a crime. See: <https://www.genocidewatch.com/articles-by-dr-stanton>.

<sup>26</sup> As of 2022, Russia/USSR had used its veto 121 times, the US 82 times, the UK 29 times, China 17 times, and France 16 times.

From the start, the Soviet Union vetoed most authorizations to use force.<sup>27</sup> The most important case came when North Korea invaded South Korea. The US found a way around the Soviet veto by passing the [Uniting for Peace Resolution](#),<sup>28</sup> UNGA Res. 377A, which gives the UN General Assembly power to authorize force when the Security Council, due to a veto by a member of the Perm-5, fails to exercise its primary responsibility for the maintenance of International peace and security.

Third: The UN has never had an international police force, as envisioned by Articles 43 through 48 of the Charter.

The UN has never been able to quickly send a UN police force with a mandate and rules of engagement robust enough to protect civilians and defeat a national army engaged in genocide. It has also lacked a UN police force independent of national forces to arrest perpetrators of genocide.

As UNAMIR in Rwanda showed in 1994, even when a UN force is already deployed, and all the early warning signs

<sup>27</sup> There was an interlude after the fall of the Soviet Union in the early 1990s when Russia and China did not use their vetoes to block Chapter 7 UN Peacekeeping Operations. That is when the UN was able to establish the ICTY, ICTR, and peacekeeping operations that stopped several civil wars, such as Mozambique's.

<sup>28</sup> Uniting for Peace has been invoked 13 times: in Korea, Suez, the Congo, Israel/Palestine, Hungary, India/Pakistan/East Pakistan/Bangladesh, Afghanistan, Namibia, and Libya. But only in Korea did it result in armed UN military intervention to stop a war.

of genocide are present, the UN Security Council voted to order 2,000 out of 2,500 troops home at the beginning of a genocide that killed 800,000 Tutsis and moderate Hutus.<sup>29</sup>

When [genocides and politicides](#) have been under way, the UN has almost always been powerless to act.

Regional organizations acting under Chapter 8 of the UN Charter have been much more effective in ending wars and stopping genocides.

153 nations have ratified the Genocide Convention. The Genocide Convention was a step toward protecting national, ethnic, racial, and religious groups under international law. The International Court of Justice has declared it a peremptory norm that applies to all nations. It is customary international law.

But in the [Bosnia v Serbia](#) and [Croatia v Serbia](#) cases, the International Court of Justice interpreted the Genocide Convention's state intent requirement so perversely that the Genocide Convention may never again apply to a state's commission of genocide. The ICJ said that genocide must be the only intent of a state for the ICJ to find that the state violated the Genocide Convention. If the state had any other intent, such as "ethnic cleansing", the crime of genocide could not be proven.

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<sup>29</sup> Stanton, Gregory. 'Could the Rwandan Genocide Have Been Prevented?' June 2004, [Journal of Genocide Research](#) 6(2):211-228. Also online at:

It is like saying that if a murderer points a gun at someone and pulls the trigger, he cannot be tried for murder because he also had the intent to rob the victim. The ICJ's judgment, concurred to by the current President of the ICJ, Joan Donoghue,<sup>30</sup> means that Gambia could lose its case against Myanmar for Myanmar's genocide and "ethnic cleansing" of the Rohingya.

[Fourth: The Genocide Convention was not enforced because until 1993, there was no court to enforce it](#)

To become effective law, a treaty must be voluntarily obeyed or legally enforced.

The Genocide Convention's Article Six envisioned an international penal tribunal. But no tribunal was created until 1993 with the [ICTY](#) and 1994 with the [ICTR](#). So there were no convictions for genocide until the ICTR's 1996 conviction of Jean Paul Akayesu. For the first time the Genocide Convention was enforced.

After the genocides of the 1990s, Canada, the Netherlands, and other nations established the International Criminal Court. Some 123 nations are now States Parties to the ICC.

<https://www.genocidewatch.com/articles-by-dr-stanton>.

<sup>30</sup> Donoghue led the State Department's three-month refusal to apply the term "genocide" to Rwanda.

But the largest nations in the world are not states parties. They govern over [55 per cent of the world's population](#).<sup>31</sup>

#### Fifth: The world still lacks enough courts with universal jurisdiction to try genocide

The Rome Statute restricts ICC jurisdiction for genocide to crimes committed in the territory of an ICC State Party, by a national of a State Party, or to situations referred to the ICC Prosecutor by the UN Security Council. Such referral has only happened twice – for Darfur and Libya.

At the Rome conference to create the International Criminal Court in 1998, human rights organizations as well as US war crimes Ambassador David Scheffer advocated making genocide a crime of

universal jurisdiction.<sup>32</sup> That could give the ICC jurisdiction over all crimes of genocide.

The Torture Convention of 1984 requires all States parties to the convention to make torture a crime of universal jurisdiction. So do the Geneva Conventions of 1949 that outlaw war crimes.

The Rome Statute of the ICC should be amended to give the ICC jurisdiction over all crimes of genocide. That can be done by the ICC Assembly of States Parties. No Perm-5 member of the UN Security Council could veto it.

The time has come for an international movement to get UN member states to adopt laws to make genocide a crime of universal jurisdiction.

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<sup>31</sup> Non-states parties include China, India, the United States, Indonesia, Pakistan, Russia, Turkey, Ethiopia, Vietnam, Iran, Myanmar, Iraq, South Sudan, and Sudan.

<sup>32</sup> States that currently make genocide a crime of universal jurisdiction include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany,

Israel, Mexico, Netherlands, [Senegal](#), Spain, Switzerland, the United Kingdom and the United States.

## THE POWER OF A SINGLE WORD

FRANKLIN STEBBINS<sup>33</sup>

*Raphael Lemkin's voice continues to echo in the consciousness and responses of global citizens when the phrase "genocide" is used. Does one choose to respond? To find a way to do something or do nothing at all?*

As the United Nations commemorates the 75th Anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide, the words of Raphael Lemkin, which created the foundation for that convention, continue to "strike at our consciousness." His legacy has shown, and continues to show, that Lemkin's and the Genocide Convention's visions remain "a living force in world society."

Lemkin's vision calls on the world to answer the questions of who am I, who are you, and who are we. Only through an examination of those responses can we begin to define who we are as individuals, and who we are as a society. This approach also forces the global community to look at the consequences of defining membership based on perceived notions of race, religion, and nation. While countries and governing

bodies have used the guise of membership to isolate, remove power from, and commit atrocities long before 1948, the events surrounding the

Holocaust demanded a response like no other moment in history. International leaders were faced with decisions of how to punish those responsible for the systematic murder of over 12 million people and prevent a similar event from happening again.

Quickly it was realized that there was an even more fundamental problem to solve than the legal questions. The crime that had been committed had no name. This dilemma is where one of the most essential contributions of the Convention for the Prevention and Punishment of the Crime of Genocide may be seen. The creation of the language to define a crime that, up until that moment, was "without a name" cannot be overlooked. Common language is crucial in a global community. While words or definitions cannot begin to explain the lives lost, the suffering experienced, or even what specific actions define this crime, it can and does lead to language that may educate and "strike at our consciousness". And so, it was determined that the crime of genocide would no longer be nameless.

The legacy of the Convention forces nation states to examine human conscience, human behaviour,

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<sup>33</sup> Facing History & Ourselves Organization

responsibilities, and how community membership is defined. Lemkin wrote about what he referred to as a “common destiny” -- that some crimes could harm the world community as a whole; that these crimes were and are so horrific that they violate not only the laws protecting the individuals of a specific nation state, but also the principles shared as human beings. On 9 December 1948, the delegates of the convention voted yes to Lemkin’s vision to which he responded, “The world was smiling and approving, and I only had one word in answer to all of that .... Thanks.” This moment was a rare one focused on international unity and human rights.

Aside from defining the crime of genocide, the 1948 Convention for the Prevention and Punishment of the Crime of Genocide also provided language to attempt to hold those responsible for the crime accountable in an international court. Close to 50 years after the Convention, the first conviction for the crime of genocide was issued, and it was the first time the court defined rape as an international crime, showing that the 1948 Convention was indeed a “living force” as it continued to expand the definition of genocide.

However, being a “living force” makes the continuous grappling of difficult questions a necessity. Can a society torn apart by war and genocide find healing and reconciliation? Who is responsible, and can they be held accountable? These questions extend beyond any one historical moment or its immediate

aftermath by asking how to face this history to see if genocide, mass murder, and atrocities may be prevented.

While the questions may lead to an examination of history, they do not translate into action, to responsiveness, or to prevention. Challenges arise when state sovereignty and intervention are not aligned, when responses rely on individual voices, and when the definition of a global community is not uniform. The challenges continue to drive the necessity of the Convention for the Prevention and Punishment of the Crime of Genocide to expand on this notion of being a “living force”, moving beyond foundational language to be a core framework to educate the international community.

The legacy of the 1948 Convention encourages the definition of education to expand. Saying that education is the answer without exploring its goals and objectives is not enough. History has illustrated that educated leaders have been and can be responsible for allowing and promoting genocide. While there is no one lesson, strategy, or resource that will achieve all of this, one theme is evident. A historical analysis of past events is not enough. Students, teachers, and education systems must be able to make connections that provide ethical reflections allowing for informed civic agency showing that genocide prevention is a global issue regardless of the sector of work an individual is engaged in. Students that effectively take the academic approach required to strengthen international law, policy, and



governance must also be provided an emotional connection that instills a necessity and a requirement to choose to participate in the active prevention of genocide.

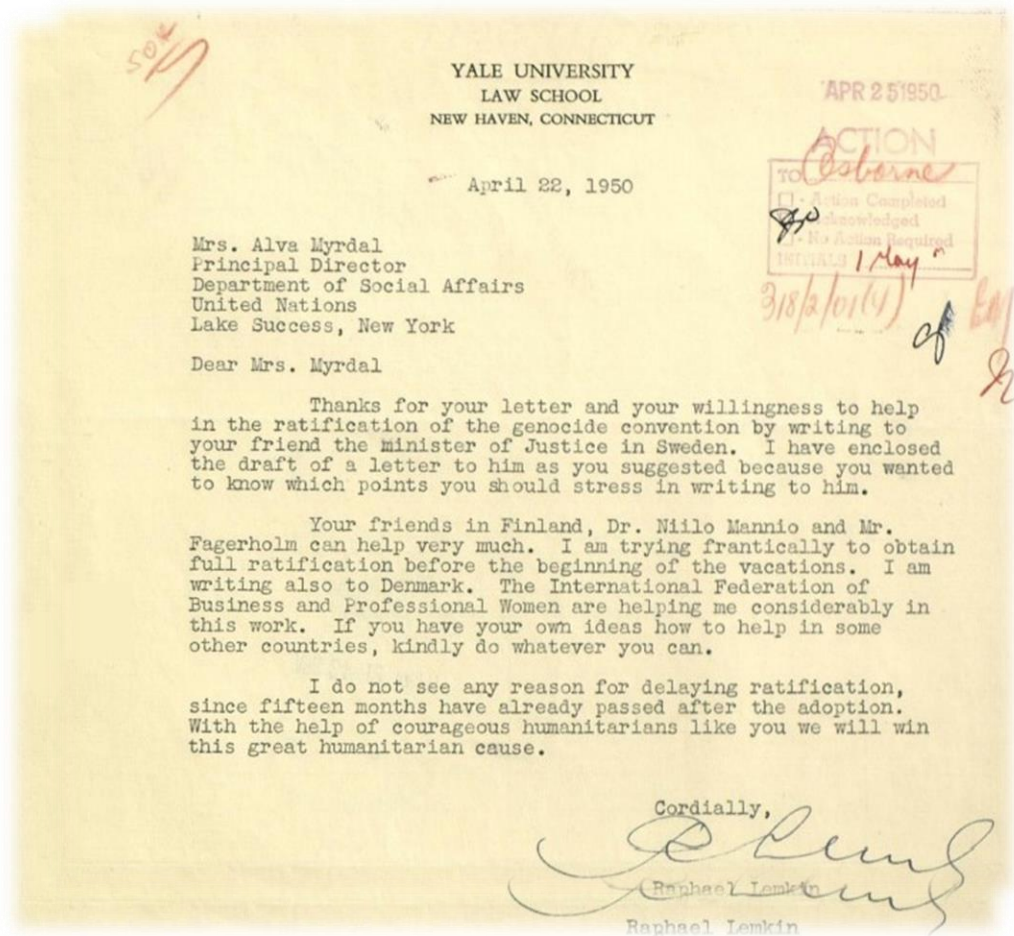
When asked how to do this, Ben Ferencz, prosecutor of the Nuremberg Trials, often responded, "Law, not war", explaining that if this could be achieved everything could be changed. Ferencz would then respond, "Never give up." This relentless perseverance needs to be at the core of any educational objectives centered on the emphasis of recognizing

the humanity of others through the realization that people make choices and choices make history. Through the legacy of the 1948 Convention and the words of Raphael Lemkin, the foundational framework has been laid. The question remains, will a choice to face collective histories be made to not make genocide prevention a rare moment of international unity, but a shared vision of participation redefining the very essence of what it means to be in a global community? The choice is ours to make.

# PART III: THEMATIC PAPER BY YALE UNIVERSITY STUDENTS OF JACKSON SCHOOL OF GLOBAL AFFAIRS

Prepared for the Office of the Special Advisor for Genocide by Yale University students participating in the Jackson School of Global Affairs seminar "Atrocity Prevention," taught by Professor David Simon during the Fall 2023 term. 34

*Lemkin's April 1950 letter to the President of UN Department of Social Affairs, sent from his post at Yale University, urging support for the ratification of Genocide Convention by Member States.*



<sup>34</sup> Authors / Seminar Participants: Kathryn Hemmer, Alex Hoang, Tione Hoeckner, Prajval Jhunjunwala, Minseong Kim, Maya Kyriakides, Josh Leffler, Georgette Nyiraneza, Abby Schnabel, Yana Tucker. Renee Sanacora provided additional research and editorial assistance

## RAPHAEL LEMKIN AND THE LEGACY OF THE GENOCIDE CONVENTION AT 75

### Introduction

Raphael Lemkin, father of the Convention on the Punishment and Prevention of the Crime of Genocide (herein the Genocide Convention), began teaching at Yale Law School in 1948. When the UN General Assembly adopted the Genocide Convention on December 9 of that year, Lemkin reportedly wept – from joy, from relief, and from exhaustion. The latter was so extreme he had to be hospitalized.<sup>35</sup>

When Lemkin returned to Yale to take up his lectureship again, however, he knew that the hardest part of his lifelong quest to rid the world of the scourge of genocide lay yet ahead. The first task Lemkin took up was to help convince 20 states to accede to the Convention, per the steps required in Article XIII of the Convention itself. This task involved having to navigate the political, cultural, and legal intricacies unique to each country. Encountering resistance, particularly from the government of the country in which he resided, left him frustrated. He once expressed that “The rain of my work [has fallen] on a fallow plain...only this rain was a mixture of the blood and tears of eight million innocent people throughout the world.”<sup>36</sup>

By the time the 20-state ratification threshold was achieved in early 1951, Lemkin had turned his attention to a still bigger task: animating the Convention with norms, institutions, and procedures that would enable it to, in the words of its own preamble, “liberate mankind from . . . the odious scourge” of genocide. Lemkin offered a clue to what he thought this process would entail in a response to a student who had asked him, “Can you really achieve results against such a disease [genocide]?” Lemkin replied,

Yes, you can, if you do not look at the watch while you are asking this question. It will take a long time before results are noticeable. The Genocide Convention is only a framework for this task, a rallying point for thinking and acting. A starting point for a new conscience! [...] The Genocide Convention is predestined not only to punish but also to prevent genocide. The work of the anthropologist, social psychologist, historian, and even the economist could help in planning prevention. Only a combination of punishment and prevention can bring results. Through repeated invocation of court action over a long time, through repeated condemnation of genocide in public opinion, conscience in the form of

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<sup>35</sup> Raphael Lemkin (with Donna-Lee Frieze, ed.). *Totally Unofficial: The Autobiography of Raphael Lemkin*. Yale University Press, 201.

<sup>36</sup> Douglas Irvin-Erickson, *Raphaël Lemkin and the Concept of Genocide* (Philadelphia, Pennsylvania: University Of Pennsylvania Press, 2017), 229.

the integrity of the other group will grow. [...] The moral condemnation will become easier because genocide was made a crime. It must be condemned by national society.<sup>37</sup>

Lemkin had faith in the power of the Convention as a symbol of the international community's commitment to repudiating the evil of genocide. Indeed, that the Convention named and defined "genocide" as a crime was a necessary first step towards that goal.<sup>38</sup> Yes, as Lemkin acknowledged in a lecture to his Yale law students, the Convention was meant not to concern itself with details—it offered no guarantees of fairness, retribution, restoration, or even a more liberal world.<sup>39</sup> All of this, he envisioned, would come if and only if the international community allowed the law to grow and evolve alongside international norms and emerging frontiers of genocide.

It seems fair to ask whether the 75 years that have passed since the dawn of the Genocide Convention constitute a sufficiently "long time" (per Lemkin's words) for results in the project of ending genocide to have begun to appear "noticeable." This assessment begins with a reflection on what the Convention accomplished from its original text alone; on how the Convention related to episodes of genocide over the intervening three quarters of a century; and on how the convention can be re-invigorated so that it might come closer to "curing the disease" of genocide over the course of the next 75 years.

#### What the Convention says (and does not say)

The text of the Genocide Convention was, in essence, a promise made by the members of the General Assembly; Lemkin took on the challenge of realizing this promise through formalized commitments and institutions. This section addresses what Lemkin had to work with in terms of the text itself. It examines what the text of the Convention achieved on its own, which parts of it would necessitate institutions to effect the underlying promise of the Convention, and where ambiguity would produce controversy and debate in the living discourse around how to implement the Convention.

Perhaps the most fundamental contribution of the Genocide Convention is that it recognized and defined genocide as a crime under international law for the first time in history. At the heart of the definition of genocide in Article II is the "intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." One way that the definition distinguishes genocide from other crimes is through its recognition of groups as victim; victims are targeted not in any individual capacity but merely due to their involuntary membership in a defined group. The framing of the crime in this way also

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<sup>37</sup> *Totally Unofficial*, 182.

<sup>38</sup> *Raphaël Lemkin and the Concept of Genocide* ( ), 223.

<sup>39</sup> *Ibid*, 228.

enables it to fall under the jurisdiction of international law, beyond just that of sovereign states.

The Genocide Convention further establishes that, while the victims of the crime of genocide are groups, the perpetrators are still identifiable, prosecutable, and punishable as individuals. Article IV states that any person who commits genocide will be punished “whether they are constitutionally responsible rulers, public officials, or private individuals,” meaning that any individual who participates in genocide, regardless of rank or state affiliation, can be held accountable. This notion of individual liability signals that no complicit partaker of genocide is safe from punishment.

To this end, the Convention created a mechanism for the prosecution and punishment of individuals suspected of committing any of the defined acts of genocide delineated in Article III. Article VI of the Convention states that individuals accused of genocide “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.” When the Convention first came into force, only national-level justice institutions existed. However, Lemkin wrote that the creation of “international machinery” was “essential” for the punishment of genocide to ever happen.<sup>40</sup> Not until the 1990s and the creation of international criminal justice institutions – the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, as well as the International Criminal Court – did the Convention emerge from its dormancy and establish these mechanisms that Lemkin initially sought out.

Meanwhile, despite the inclusion of the word “Prevention” in the official name of the Genocide Convention, the text notably lacks robust articulated mechanisms for preventing genocide, or for suppressing it when prevention fails. Article I of the Convention affirms that its contracting parties would “undertake to prevent” the crime of genocide, but Article VIII only outlines some vague suggestions. Article VIII states that a contracting party can “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 the crimes defined earlier in the Convention. Article IX allows for International Court of Justice (ICJ) consideration, on request, of issues “relating to the responsibility of the State” (and other “disputes relating to the interpretation, application, or fulfilment” of the Convention), providing another means of addressing potential genocides or genocide risks. Although this provision itself has been largely under-

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<sup>40</sup> Raphael Lemkin, “Genocide,” *American Scholar* 15, no. 2 (1946), <http://pscourses.ucsd.edu/poli120n/Lemkin1946.pdf>, 228.

conceptualized and unused, it has been used to consult the ICJ in order to establish state obligations to prevent genocide, which do not otherwise appear in the Convention.<sup>41</sup>

Lemkin himself recognized the need for a large effort to conceptualize and implement prevention mechanisms. He hoped that his scholarly effort at Yale, a manuscript entitled “The Origins of Genocide,” would help illuminate what forms (and where, when, and how) genocide prevention would have to take to be effective, but it remained unpublished until much later.

With little guidance in the Convention for its stated prevention agenda, the United Nations has had to supplement the text of the Convention to provide other ways to engage in prevention. It was not until more than 50 years after the adoption of the Convention that the two most significant developments took place: the creation of the Office of the Special Adviser on the Prevention of Genocide (now also known as the Office on Genocide Prevention) in 2004, and its pairing with the Special Adviser on the Responsibility to Protect in 2008. By 2014, the Office created a Framework of Analysis to anticipate genocide risk around the world, later adding language for the prevention of war crimes and crimes against humanity.<sup>42</sup> The Office’s work on the Secretary-General Reports on implementing the Responsibility to Protect (R2P) has also clarified mechanisms to be used for genocide prevention.<sup>43</sup>

This recently developed blueprint for prevention partially realizes the vision that Lemkin inspired with his work at Yale. However, the prevention regime remains under-institutionalized compared to that which has developed, if only in the past few decades, for punishing genocide. The Framework is essentially an academic exercise, and the doctrine of R2P is merely a political commitment rather than a treaty or convention. Neither provides a concrete course of action for states to take to prevent genocide. External organizations – from the seminal International Commission on Intervention and State Sovereignty (ICISS) that defined the concept, to non-governmental

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<sup>41</sup> Until the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, for which arguments were held in 2006 and a judgment rendered in 2007, there had been little use of Article IX recourse to the ICJ. See International Court of Justice. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro): Summary of the Judgment of 26 February 2007*. 26 Feb. 2007, [www.icj-cij.org/sites/default/files/case-related/91/13687.pdf](http://www.icj-cij.org/sites/default/files/case-related/91/13687.pdf). Subsequent cases alleging state responsibility for genocide were filed by the Gambia (against Myanmar, regarding the Rohingya) and South Africa (against Israel, regarding Palestinians in Gaza). [Add case citations]

<sup>42</sup> United Nations, “Framework of Analysis for Atrocity Crimes: A Tool for Prevention,” 2014, [https://www.un.org/en/genocideprevention/documents/about-us/Doc.3\\_Framework%20of%20Analysis%20for%20Atrocity%20Crimes\\_EN.pdf](https://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf).

<sup>43</sup> The Secretary General, working with input from the Special Adviser for the Responsibility to Protect, issued annual reports on the development of the R2P doctrine, starting in 2009. See United Nations Office on Genocide Prevention and the Responsibility to Protect, “Secretary-General’s Reports,” 2023, <https://www.un.org/en/genocideprevention/key-documents.shtml>.

organizations like the Global Centre for the Responsibility to Protect, which offer advice on how and when it should be applied – have shaped the regime-building requirements needed to construct a full-blown prevention regime.

Also notable is the absence of the term “suppression” altogether from the full title of the Genocide Convention. While, intuitively, the Convention would discuss suppressing an ongoing genocide in addition to preventing it, the term appears only in the previously quoted passage from Article VIII. The “competent organs” of the UN cited in Article VIII presumably refer (in the absence of significant revisions to the body’s charter) to the General Assembly [GA] and the Security Council [SC]. Since the GA’s resolutions are not legally binding, the body has played a limited role in the prevention regime. The SC, on the other hand, has the primary responsibility for peace and security matters under the UN Charter and is thus the body that is tasked with how to implement and interpret the Genocide Convention. However, the political structure of the Security Council, with five permanent members each possessing a veto, undermines its decisiveness.

Ambiguity in the Convention’s text exacerbates the problem. When the Convention was composed in 1948, the UN had not yet identified the tools at its disposal: “appropriate measures” were entirely notional as a matter of necessity. However, the delegates still expected a “system of international jurisdiction” for suppression to emerge once “an international community had been established on firmer foundations” and “the conception of national sovereignty had become less rigid”.<sup>44</sup> At the time, states were concerned that a mechanism for genocide suppression would undermine their sovereignty as they understood it. Yet in the debates over the Convention, some delegates believed that “a well-organized system of suppression on an international scale would prove very effective as a preventive measure” once sovereignty as a concept became better understood.<sup>45</sup>

Nonetheless, the variety of practices – approved armed intervention by member states, multilateral peacekeepers, sanctions, diplomatic entreaties, etc. – that emerged over the following decades were not accompanied by a less rigid conception of sovereignty. Therefore, while the Secretary-General’s reports on the R2P doctrine have outlined a set of coercive actions that are appropriate for genocide suppression, there is no apparent agreement on the thresholds for considering, much less mandating, different types of actions. Compounding the matter is the fact that the Convention does not specify what happens when the UN fails to act. There is thus no way to hold the Security Council accountable for failing to fulfill their obligations under the Genocide Convention – or, for that matter, those established by the UN charter to maintain international peace and security.

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<sup>44</sup> Hiram Abtahi and Philippa Webb, *The Genocide Convention: The Travaux Préparatoires* (Brill, 2008), 686.

<sup>45</sup> *Ibid*, 1317.

## Historical Episodes: How the Convention has informed doctrine and practice over the past 75 years

As the Genocide Convention commemorates its 75th anniversary, and as the genocide deterrence community continues to grapple with recurring issues and new challenges, the history of the Convention in practice offers several important lessons about what the Convention has – and has not – been able to achieve in the past three quarters of a century. In this section, we review how different cases involving possible or actual genocide illustrated the challenges of making the Genocide Convention a meaningful force in global politics. The cases selected are not meant to comprise an exhaustive list. Rather, they represent examples from across the relevant eras of the Convention's development in practice: from the Cold War to the immediate post-Cold-War era, to the dawn of the Responsibility to Protect era, to the uncertain times of the present.

Lemkin's concerns about the challenges in rendering the Genocide Convention operational were well founded, though perhaps not for a reason he had anticipated: the Convention became a casualty of the Cold War, manipulated by both superpowers to advance their own agendas.<sup>46</sup> Geopolitical and domestic self-interests within both the Western and Soviet blocs hampered the effectiveness of the convention, as both the genocidal episodes in Cambodia (1975-1979) and Somalia (1987-1989), among others, illustrate (see Box 1).

### **Box 1: The Genocide Convention in the Cold War era**

Two cases illustrate the functional irrelevance of the United Nations – and of the Convention as an instrument for intervention, prevention, and punishment – during this era. The Cambodian genocide, in which the Khmer Rouge regime killed around two million of its own citizens between 1975-1979,<sup>i</sup> demonstrated the impotence of the Convention at the time. While a lack of media access and disbelief towards such an unfathomable atrocity were contributing factors to the ineffective response to the response of the Security Council, the United States' policy alignment to the Cold War was the most detrimental to prevention and punishment. The US's opposition to KR's opponents, whom it viewed as allies of pro-Soviet Vietnam, caused it to avoid endorsing actions against the KR, even compelling it to stop the international community from recognizing the successor regime at the UN for more than a decade.

The Isaaq genocide in Somalia, in which the Somali dictator Siad Barre killed an estimated 200,000 members of the Isaaq tribe, highlighted a similar issue. Cold war dynamics underlying the conflict between Soviet-aligned Ethiopia and US-aligned Somalia paralyzed the Security Council from giving proper consideration to Isaaq protection needs. The Isaaq genocide illustrates that, even in the waning years of the Cold War, the signatories of the Genocide Convention failed to look beyond geopolitical factors to appreciate the need to invoke a genocide prevention regime.

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<sup>46</sup> Anton Weiss-Wendt, *A rhetorical crime: Genocide in the geopolitical discourse of the Cold War*. Rutgers University Press, 2018.



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i Complications arise in applying the Convention definition of genocide to the case because of the Khmer Rouge were ethnically identical to most of their victims. However, as the Extraordinary Criminal Courts for Cambodia noted in finding the former Khmer Rouge head of state Khieu Samphan guilty of genocide, people of Vietnamese nationality within Cambodia were explicitly target with intent to eliminate. In addition, some scholars have noted that the Khmer Rouge targeted Cambodia's Cham Muslim population with an intent to destroy that might also qualify as "genocide."<sup>47</sup>

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The end of the Cold War provided a potential opening for a more robust international regime of promoting human rights. As then-Secretary General Boutros Boutros-Ghali noted in *An Agenda for Peace* in 1992, security in the emerging post-Cold War order would require a renewed "commitment to human rights with a special sensitivity to those of minorities."<sup>48</sup> Boutros-Ghali wrote in the context of a vastly expanding reliance on UN peacekeeping, with the Security Council having sent forces to several conflict and post-conflict countries around the world (including Cambodia) in just a few short years. However, as the cases of Rwanda and Srebrenica illustrate, the presence of peacekeepers

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<sup>47</sup> Ben Kiernan, "Mass murder and genocide in Indonesia and Cambodia, 1965-79: Cold War, state, and region." In *Handbook of Genocide Studies*, pp. 95-105. Edward Elgar Publishing, 2023.

<sup>48</sup> Boutros Boutros-Ghali, "An agenda for peace : preventive diplomacy, peacemaking and peace-keeping: report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992" United Nations Department of Public Information, p. 9. <https://digitallibrary.un.org/record/145749?ln=en>.

did not guarantee that they would be used in the service of the principles of the Genocide Convention (see Box 2).

Both episodes highlighted the deficiencies of the global genocide prevention regime: peacekeeping forces retreated (Rwanda) or stood idly by (Srebrenica) as episodes that international courts – an innovation of the time – would later confirm to be genocides under the Convention’s definition.

### **Box 2: Rwanda and Srebrenica in the post-Cold War era**

In 1993, the Security Council authorized a peacekeeping force (UNAMIR) to preserve the peace during a transitional period following a civil war that had pitted a predominantly Hutu Rwandan regime against a mostly Tutsi rebel army (the Rwandan Patriotic Army, or RPA). Nine months into the peace process, and just days after UNAMIR reached its Security Council-targeted size, the assassination of the country’s ethnically Hutu president triggered waves of massacres against Rwanda’s Tutsi population. As the attacks on civilians spread throughout the country and the death toll mounted, the UN Security Council declined to give UNAMIR more power and responsibility to halt the genocide. Instead, it ordered the withdrawal of most of the peacekeeping force, including contingents that were providing life-saving protection to pockets of civilians. By mid-July, at least 800,000 Tutsis (and possibly as much as twice that number) had been murdered. The Secretary General at the time, Boutros Boutros Ghali, called his “worst failure at the UN.”<sup>49</sup> A 1999 independent inquiry, termed the episode “a failure by the United Nation system as a whole” reflecting both “a lack of resources and political commitment” devoted to Rwanda as well as “serious mistakes . . . with those resources that were at the disposal of the United Nations.”<sup>50</sup>

Meanwhile, around the same time, Yugoslavia was breaking up, pulled apart by internationally recognized secessionist movements. Serbs within the newly independent states sought to establish regions in which they could constitute the dominant share of the population – and possibly re-amalgamate with the state-based in Belgrade. Throughout eastern Bosnia, Serbian militias known as the VRS launched a campaign of terror and intimidation that forced the Muslim Bosnian (or ‘Bosniak’) populations off their land. They fled to towns with existing Bosniak populations. There, the United Nations established “Safe Areas,” protected by contingents of peacekeepers. The Safe

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<sup>49</sup> [From Box 2] Goshko, John M. 2016. “Boutros Boutros-Ghali, U.N. Secretary General Who Clashed with U.S., Dies.” *The Washington Post*. February 16, 2016. [https://www.washingtonpost.com/world/boutros-boutros-ghali-un-secretary-general-who-clashed-with-us-dies-at-93/2016/02/16/8b727bb8-d4c1-11e5-be55-2cc3c1e4b76b\\_story.html#](https://www.washingtonpost.com/world/boutros-boutros-ghali-un-secretary-general-who-clashed-with-us-dies-at-93/2016/02/16/8b727bb8-d4c1-11e5-be55-2cc3c1e4b76b_story.html#).

<sup>50</sup> [From Box 2] Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda [S/199/1257], December 1999; p. 3.

Areas made it easier to bring humanitarian relief to populations displaced and distressed by war while providing an illusion of protection.

The model failed to translate protection into prevention, however. When the Gorazde, Bihac, Tuzla, Srebrenica, and Zepa safe areas came under attack, the UN contingents could do little more than help in evacuating civilians. When the VRS attacked Srebrenica, peacekeepers first called in vain for NATO air support to fight off the attackers. The requested support did not materialize. Their bluff effectively called, the UN's UNPROFOR peacekeepers stood helplessly by as the militias rounded up all fighting-age Bosniak men, over 8,000 of which the militias proceeded to murder over the following days. The International Criminal Tribunal for the Former Yugoslavia would later find the perpetrators of the episode guilty of committing genocide. Only after the VRS attacked another Safe Area a few weeks later did the international community – in the form of Croatian ground troops supported by NATO air power – move robustly to stop the assault and, ultimately, force the VRS's sponsors in Belgrade to negotiate an end to the conflict and the atrocities that were committed under its cover.

The international reactions to the genocides in Rwanda and Bosnia reveal a truth about the Genocide Convention that the Cold War era had concealed: there is no self-activating prevention or suppression mechanism embedded within the text of the Convention. The Security Council deliberated more on the possible responses to the events than it had with respect to the Cold War-era instances of mass killing. Those deliberations, however – at least in the realm of prevention/suppression – produced only ineffectual measures (such as the Safe Area concept) or counterproductive policies (like drawing down UNAMIR in the heat of the genocide against Rwanda's Tutsi population) that can only be described, in retrospect, as a flight from responsibility. Security Council powers lacked direct national interests at stake and believed, furthermore, that inaction was the best means of avoiding humiliating episodes like those that had transpired in Somalia.

The Security Council did create ad hoc international tribunals for the two cases – the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which would soon make the first important steps in the jurisprudence of the crimes of genocide in international law. This result reflects that the Genocide Convention provides much more of a roadmap concerning accountability than it does for prevention and suppression. Moreover, it took years after these genocide episodes had concluded to issue decisions on genocide charges – long after any deterrent effect on potential future atrocities could plausibly be claimed.

In 1993, the Security Council authorized a peacekeeping force (UNAMIR) to preserve the peace during a transitional period following a civil war that had pitted a predominantly Hutu Rwandan regime against a mostly Tutsi rebel army (the Rwandan Patriotic Army, or RPA). Nine months into the peace process, and just days after UNAMIR reached its Security Council-targeted size, the assassination of the country's ethnically Hutu president triggered waves of massacres against Rwanda's Tutsi population. As the attacks on civilians spread throughout the country and the death toll mounted, the UN Security Council declined to give UNAMIR more power and responsibility to halt the genocide. Instead, it ordered the withdrawal of most of the peacekeeping force, including contingents that were providing life-saving protection to pockets of civilians. By mid-July, at least 800,000 Tutsis (and possibly as much as twice that number) had been murdered. The Secretary General at the time, Boutros Boutros Ghali, called his "worst failure at the UN."<sup>51</sup> A 1999 independent inquiry, termed the episode "a failure by the United Nation system as a whole" reflecting both "a lack of resources and political commitment" devoted to Rwanda as well as "serious mistakes . . . with those resources that were at the disposal of the United Nations."<sup>52</sup>

Meanwhile, around the same time, Yugoslavia was breaking up, pulled apart by internationally recognized secessionist movements. Serbs within the newly independent states sought to establish regions in which they could constitute the dominant share of the population – and possibly re-amalgamate with the state-based in Belgrade. Throughout eastern Bosnia, Serbian militias known as the VRS launched a campaign of terror and intimidation that forced the Muslim Bosnian (or 'Bosniak') populations off their land. They fled to towns with existing Bosniak populations. There, the United Nations established "Safe Areas," protected by contingents of peacekeepers. The Safe Areas made it easier to bring humanitarian relief to populations displaced and distressed by war while providing an illusion of protection.

The model failed to translate protection into prevention, however. When the Gorazde, Bihac, Tuzla, Srebrenica, and Zepa safe areas came under attack, the UN contingents could do little more than help in evacuating civilians. When the VRS attacked Srebrenica, peacekeepers first called in vain for NATO air support to fight off the attackers. The requested support did not materialize. Their bluff effectively called, the UN's UNPROFOR peacekeepers stood helplessly by as the militias rounded up all fighting-age Bosniak men, over 8,000 of which the militias proceeded to murder over the following days. The International Criminal Tribunal for the Former Yugoslavia would later find the perpetrators

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<sup>51</sup> [From Box 2] Goshko, John M. 2016. "Boutros Boutros-Ghali, U.N. Secretary General Who Clashed with U.S., Dies." *The Washington Post*. February 16, 2016. [https://www.washingtonpost.com/world/boutros-boutros-ghali-un-secretary-general-who-clashed-with-us-dies-at-93/2016/02/16/8b727bb8-d4c1-11e5-be55-2cc3c1e4b76b\\_story.html#](https://www.washingtonpost.com/world/boutros-boutros-ghali-un-secretary-general-who-clashed-with-us-dies-at-93/2016/02/16/8b727bb8-d4c1-11e5-be55-2cc3c1e4b76b_story.html#).

<sup>52</sup> [From Box 2] Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda [S/199/1257], December 1999; p. 3.

of the episode guilty of committing genocide. Only after the VRS attacked another Safe Area a few weeks later did the international community – in the form of Croatian ground troops supported by NATO air power – move robustly to stop the assault and, ultimately, force the VRS's sponsors in Belgrade to negotiate an end to the conflict and the atrocities that were committed under its cover.

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### The emergence of a new doctrine: the responsibility to protect

By the late 1990s, it was apparent that, aside from advances in international justice, there had been no meaningful development of the global norms and institutions necessary to realize the prevention and suppression objectives of the Genocide Convention. A series of episodes spanning the end of the 20th Century and the start of the 21st illustrate halting progress in this project. The cases of East Timor and Darfur (see Box 3) showed that the UN could become much more significantly engaged with civilian protection missions in the face of possible genocide. They formed a blueprint for an emerging doctrine, the Responsibility to Protect, which marked the most significant – but still incomplete – advancement to the atrocity prevention regime since the passage of the Genocide Convention in 1948.

#### **Box 3: Timor-Leste and Sudan**

In 1999, the Indonesian province of Timor-Leste (then called East Timor) held a referendum to bring about its long-sought independence from Jakarta. The Indonesian military deputized local paramilitary forces to suppress a 1999 East Timorese

independence vote. The vote clearly carried an elevated risk of genocide, given past enmity between the Timorese and forces loyal to Jakarta, as well as the heightened uncertainty that a regime change after over three decades of military rule was producing. When the referendum results showed a preference for independence, opposing forces reacted with extreme violence towards civilians –who were mostly unprotected despite the evident stakes. However, the successful pressure exerted by global protests and the withdrawal of military aid led to a fairly rapid diminution of the violence. A robust international presence helped lead to the peaceful establishment of an independent Timor-Leste.

With the episodes of the mid-1990s not too distant in the past, world leaders (and especially the Security Council powers) appeared to have recognized the need for fast and proactive measures in a variety of realms: diplomatic, economic, and military. Even if the Genocide Convention was not specifically invoked, global powers appeared to be working towards a more robust approach to atrocity prevention.

In April 2003, identity-based conflict broke out in Darfur, a region in western Sudan in April 2003. In response, with the active support of the Sudanese military, pro-government militias known as the Janjaweed pillaged more than 3,000 African villages and killed more than 400,000 people.<sup>53</sup> The Janjaweed's victims were mostly non-Arab Africans, many belonging to the Fur, Masalit, and Zaghawa ethnic groups.<sup>54</sup> Primed by the advent of the tenth anniversary of the Genocide against the Tutsi in Rwanda, an unusually attentive public in the United States and other countries, successfully pressed its leadership to condemn the events as genocide, and to pursue measures of suppression, civilian protection, and accountability as necessary. The African Union and, later, the United Nations mobilized peacekeeping missions empowered to protect people in displacement camps. The newly operation International Criminal Court opened cases accusing regime officials (including Sudanese president Omar Bashir) and Janjaweed leaders of crimes including genocide. Active suppression measures remained elusive, but diplomatic and economic pressure eased (without eliminating) the danger to the threatened peoples of the region. Ultimately the episode – or at least the mid-2000s chapter of it – demonstrated the possibility of greater attentiveness to contemporary genocidal dynamics, while underscoring the conclusion, apparent from the previous decade's experiences, that the Genocide Convention is not self-effectuating.

Simply naming violence as 'genocide' was not enough to create a truly robust response.

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<sup>53</sup> Jérôme Tubiana, "Darfur: Between Two Wars," Aljazeera, June 30, 2023, <https://www.aljazeera.com/features/longform/2023/6/30/between-two-wars-20-years-of-conflict-in-sudans-darfur>.

<sup>54</sup> Julie Flint and Jemera Rone, "Darfur Destroyed - Ethnic Cleansing by Government and Militia Forces in Western Sudan" (Human Rights Watch, May 6, 2004 (<https://www.hrw.org/report/2004/05/06/darfur-destroyed/ethnic-cleansing-government-and-militia-forces-western-sudan>).

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Genocide Convention is not self-effectuating. Simply naming violence as 'genocide' was not enough to create a truly robust response.

The Responsibility to Protect doctrine emerged from the work of the International Commission on Intervention and State Sovereignty (ICISS), which formed to address then-Secretary-General Kofi Annan's query: "if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that affect every precept of our common humanity?"<sup>57</sup> ICISS's work culminated in the articulation of the Responsibility to Protect (R2P) concept at the 2005 World Summit Outcome. The R2P concept established that there was a collective responsibility of the international community to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.

Annan's successor as SG, Ban Ki-Moon, proposed that the doctrine be understood as having three pillars<sup>58</sup>: The first focuses on the responsibility of the state to protect its own population from these egregious crimes. The second pillar recognizes that the international community has a responsibility to assist states in protecting their populations. The third pillar establishes that, should there be instances in which a state proves unwilling or unable to protect its population, the international community has a responsibility to take collective action, including through the use of force, to halt or prevent the unfolding atrocities. The third pillar emphasizes the need for a carefully considered and proportionate response but stops short of providing specific guidance for determining whether coercive or non-coercive measures should be adopted and to what kinds of situations. Despite the unanswered questions, the development of the doctrine represents exactly the type of work Raphael Lemkin had predicted would be necessary to render the Genocide Convention a meaningful tool for promoting peace and protecting civilians in global affairs.

#### **Box 4: R2P in action: Kenya, Côte d'Ivoire, and Libya**

An outbreak of ethnicity-oriented violence in Kenya that followed a disputed election in 2007 presented the international community with an opportunity to put the new doctrine to the test. Politicians had organized youth gangs and militias to attack their opponents' supporters, largely doing so along ethnic lines, the determination of which relied on ethnicity. A rising civilian death toll included the victims of large-scale massacres which evoked memories of Rwanda. The international community, led by former and current African heads of state along with former UN Secretary-General Kofi Annan, mobilized a high-level effort to negotiate a peace settlement and power-sharing arrangement. By March 2008, the violence had abated. In the months and years that

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<sup>57</sup> Kofi A. Annan, *We the Peoples: The Role of the United Nations in the 21st Century*. United Nations Department of Public Information, 2000, p. 48.

<sup>58</sup> United Nations General Assembly, "Implementing the Responsibility to Protect: Report of the Secretary General" [A/63/677r] September 2009.



followed, the Kenyan government and civil society pursued a wide range of efforts to reduce future genocide risk. Measures included legislation prohibiting hate speech; creating more independence for critical institutions like the judiciary and police; and ending Kenya's centralized and personalized form of governance that had led to ethnic clientelism in political behavior. In retrospect, the episode stands as a high point for the responsibility to protect, particularly for the quieter first and second pillars. Neither the United Nations nor the African Union had to mobilize an intervention force, but actively pushed for Kenya to adopt –and “own” –measures that would serve to reduce future atrocity risk.

Three years later, in March 2011, threats of genocidal violence in Côte d'Ivoire and Libya (respectively) prompted the Security Council to invoke R2P as it authorized the use of force. With respect to Côte d'Ivoire, it authorized an existing peacekeeping operation to use force in cooperation with a French force with an established presence. The forces did so, decisively, against the incumbent regime, which the international community had determined to have lost a disputed election that had occurred five months earlier. Concerning Libya, the Security Council authorized NATO to take “all necessary measures” to protect members of a growing resistance movement that Libyan President Muammar Gaddafi had denigrated, in words evoking the dynamics of dehumanization in Rwanda, “cockroaches” to be “exterminated.” NATO's command interpreted its mandate to extend beyond direct civilian protection and target the regime's military capacity, eventually helping Libyan rebels remove Gaddafi from power.

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These two episodes significantly extended the R2P doctrine beyond where it had been implemented previously. Whereas previous invocations focused on the first two pillars, which recognize a regime’s responsibility to protect its own population, the Ivorian and Libyan episodes saw the UN and others explore the possibilities of the third pillar. In so doing, they came closer to realizing Lemkin’s vision of a softer sovereignty that seeks to protect groups and individuals when the state cannot do so.

Yet the very act of attempting to fulfill this vision of international responsibility triggered a substantial backlash. The threat of vetoes at the Security Council became unable to authorize robust protection measures on behalf of threatened populations in Syria, Myanmar, China, Afghanistan, or (in a re-emergence of conflict along previous lines in Darfur) Sudan. Regimes and other parties allegedly and/or ostensibly responsible for the respective threats have largely evaded the prospect of being held accountable. Yet the vision of international responsiveness to possible genocide has not been entirely extinguished: a series of cases in German courts are trying members of Da’esh for the perpetration of genocidal violence against the Yezidi people of Iraq, albeit on a case-by-case basis. Two recent cases invoke Article IX of the Convention— a 2019 Gambian petition alleging Myanmar’s responsibility for genocide against the Rohingya and a 2023 petition filed by South African alleging genocidal elements to Israel’s operations in Gaza – led the International Court of Justice to issue Provisional Measures meant to injoin the respective accused parties from engaging in acts that could constitute violations of the Convention. Without enforcement power behind them, however, these measures are more expressive than compelling.

Indeed, the current stance of the international community consists of little more than the pursuit of accountability measures after the fact. As in the 1990s, active suppression appears to be off the table in ongoing cases. Prevention is relegated to the important but barely visible tasks of bottom-up capacity building. Whether as a matter of collective decision or as a reflection of ongoing internal dissent, the Security Council has been unable to invoke the R2P doctrine as recent crises have unfolded – and nowhere more strikingly and shockingly as in Darfur and Gaza in December 2023, suggesting that the Genocide Convention that Raphael Lemkin helped conceive and sought to invigorate while at Yale 75 years ago remains an unfulfilled promise.

## Making the Genocide Convention more effective

In light of the Genocide Convention's shortcomings, we propose in this section several areas and avenues for change that would help to better align the current regime of genocide prevention and response with Lemkin's original vision. In the absence of a clear path to amending the text of the Convention itself (see Box 5), we instead begin with proposals to change the composition and procedures of the Security Council as a way to make UN responses to impending crises more efficient, accurate, and precise. We then propose modernizations of other components of the international system, such as human rights reviews and the Office of the Special Adviser on the Prevention of Genocide. Finally, we explore areas for further advocacy, such as the international codification of cultural genocide and the creation of a treaty governing crimes against humanity. The reforms proposed here may not be sufficient on their own, but the international community has a responsibility to address the shortcomings characterized by the situations described in the previous section.

### **Box 5: Amending the Convention**

Article XVI of the Convention states that "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." To amend the Convention, therefore, it would be necessary to first establish a process, perhaps similar to the ones outlined in other UN Conventions that are ratified by most countries around the world. This might resemble Article 47 of the Convention on the Rights of Persons with Disabilities or Article 50 of the Convention on the Rights of Child.

The process could begin with a GA-devised process to amend Article XVI itself, endeavoring to define the steps to be undertaken when member countries propose amendments. As most regulatory bodies within the UN currently specify, the amendment should be referred to an ad-hoc committee and/or research body, depending on the severity of the change, that is tasked with a clearly defined mandate to examine and deliberate on and present their conclusions before the UN General Assembly. The article on amendment can then govern a simple majority ratification to determine whether the proposed amendment should be adopted. In the absence of such a process, the Convention is bound to a narrow scope. It has limited capacity to address emerging forms of genocide and new challenges in preventing atrocities.

For a document to have a "living" legacy, it must have the capacity to adapt and thus reflect the evolving nature of international law and human rights. Therefore, advocating for amendment clauses within the Genocide Convention aligns with the contemporary legal paradigm, despite severe opposition to that effect by current diplomacy around the subject. In the absence of the amendment possibility attention should focus on steps and solutions that can be built around better interpretation of the text and its Articles as currently written.

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### Security Council reform

The most obvious and most effective area for reform would be to reform the Security Council to better reflect contemporary international dynamics. The Security Council is the UN’s most powerful organ, with a high potential for efficient, timely responses and creative resolutions to crises. It alone can authorize the use of military force by or on behalf of the United Nations. Yet discord among the 5 permanent members (P5) and their immutable veto (or even just the threat to deploy the veto) has paralyzed the Security Council on many occasions, including those of genocidal violence in Somalia, Rwanda, Bosnia, Sudan, Iraq, Myanmar that we addressed in the previous section.

While certain changes would require the revision of the UN’s charter, others are simpler and could be affected immediately. For one, the UN Security Council could transition from having a “single pen-holder” system— by which five permanent members of the Security Council draft most all resolutions—to a collaborative and equal method. Secondly, the General Assembly could more actively invoke resolution 377(V) “Uniting for Peace” mechanism (see Box 6), which calls for the Security Council to defer to the judgment of

the General Assembly in cases where the Security Council is otherwise unable to take appropriate actions in the interest of maintaining international security and peace, especially in situations where the doctrine of R2P applies. UN General Assembly resolution 76/262, entitled “Standing mandate for a General Assembly debate when a veto is cast in the Security Council,” requests that P5 states submit a special report to the UNGA when using their veto power, would be another useful step in the right direction.<sup>59</sup>

The P5 could make further progress by voluntarily adopting as practice the “responsibility not to veto” (R2NV) when voting on resolutions related to mass atrocities. Proposals advocating for an R2NV doctrine have been developed by both the France/Mexico Initiative and the Accountability, Coherence and Transparency (ACT) Code of Conduct, garnering support from over 120 governments.<sup>60</sup> Such a policy would both combat the explicit use of veto power as well as the threat of using it (the so-called “silent veto”), in cases of mass atrocity.

#### **Box 6. Uniting for Peace (UNGA Resolution 377 (1950))**<sup>61</sup>

As early as 1950, the General Assembly recognized the possibility that the Security Council might not be able to fulfill its responsibilities to uphold peace and security as laid out in the UN Charter. Resolution 377 created the Uniting for Peace mechanism, proclaiming that:

*“if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary.”*

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<sup>59</sup> United Nations Meetings Coverage and Press Releases, “General Assembly Adopts Landmark Resolution Aimed at Holding Five Permanent Security Council Members Accountable for Use of Veto” GA/12417, 26 April 2022. (<https://press.un.org/en/2022/ga12417.doc.htm>).

<sup>60</sup> See Center for the Development of International Law, “UN Security Council Code of Conduct” (<https://cdilaw.org/unsc-code-of-conduct>, accessed 10 March 2024).

<sup>61</sup> United Nations, “Uniting for Peace (A/RES/377(V)).” Un.org, 3 Nov. 1950.

“if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary.”

More significant structural reform – including to the Security Council’s underlying composition and power structure – is also necessary to create a more robust Genocide Convention regime. The Council ought to reflect changes in the geopolitical landscape since it was originally formed. It could do so either by expanding the number of permanent and/or veto-holding member seats (as, with some variations between them, the United States, the United Kingdom, and France do) or by increasing the number of total seats on the Council as Russia and China appear to favor. At a minimum, the proposal for two permanent African seats with full veto privileges and at least three additional non-permanent seats (as per the so-called Ezulwini Consensus<sup>62</sup>) would go a long way towards reducing the geographical bias in Council’s composition. The body’s substantive agenda disproportionately pertains to African nations, which host the large majority of peacekeeping operations, and yet the continent is afforded almost no voice.

### Building Genocide Prevention Capacity

A second set of reforms needed to help realize Lemkin’s vision for the Genocide Convention lie not in the political realm of the United Nations, but within its bureaucracy. The Office on Genocide Prevention and the Responsibility to Protect has been given the responsibility to detect early warning signs that could indicate the eventual onset of atrocity crimes. With no other body assuming direct responsibility for the construction and implementation of a genocide prevention regime, the powers and responsibilities of the Special Adviser and her Office should be expanded, whether through formal or informal means. The Special Adviser should be empowered to trigger an automatic vote within the Security Council by issuing an official “early warning” alert to the Secretary-General, which would then compel the Council to debate and subsequently vote on the Special Adviser’s recommended course of action within a designated period. While by no means a guarantee of said action occurring, this would remove the ability of the Security Council to effectively ignore escalating atrocity situations through inaction.

More broadly, the Special Adviser is presently limited by the office’s ability to collect specific information on early warning signals. Specifically, the office has a very small staff, and the avenues by which it can collect information are limited to requesting information

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<sup>62</sup> [From Box 6] African Union, “The Common African Position on the Reform on the United Nations” African Union document Ext/EX.CL/2 (VII) P, 7-8 March 2005.

from other bodies of the UN (such as the Office of the United Nations High Commissioner for Human Rights) or by attempting to gain their information from afar (such as through monitoring social media). The office does not, however, have the personnel or mandate to seek its information about circumstances in a potential hotspot through on-the-ground observations, and while it can use information collected by those other bodies, that information may not be sufficiently detailed in the precise areas needed by the Special Adviser to make accurate and timely determinations. As such, we advocate for an expansion of the Special Adviser's office to include a small group of personnel who can deploy to a region where the Special Adviser is concerned but lacking information, closing that information gap and ensuring that the Special Adviser – and thereby the Secretary-General and Security Council – can act with the most accurate and up-to-date information possible.

Furthermore, when the Office uses information from other bodies of the UN, it is forced to sift through impossible quantities of material – and to rely upon reports that lack a specific atrocity prevention lens. In 2013, former Secretary-General Ban Ki-moon's 'Human Rights up Front' initiative established a system of Regional Quarterly Reviews (RQRs) serving to integrate early warning into the UN system, particularly in response to immediate and serious atrocity risks. The initiative also enabled cross-agency collaboration, empowering leaders to develop response plans or call for the procurement of additional information. Nonetheless, various constraints mean that some human rights violations – particularly in countries out of the spotlight – often go unheeded.

One avenue to accomplish this would be to augment the Universal Periodic Review (UPR) to include a specialized section on atrocity risk. In its current form, the UPR proposes that countries undergo a general human rights review every four and a half years. While the UPR reveals the challenges of human rights protection in a given country, it lacks a key forecasting or prevention perspective. To better reveal potential risk hotspots, the UPR should include a section on early warning signs and triggers that could precipitate the development of atrocity crimes and other serious human rights violations. This would institutionalize early warning as a core policy priority of the United Nations as a whole and would help account for the limitations of the Special Adviser's Office and the Regional Quarterly Reviews to adequately flag all potential atrocity risks.

Although politically delicate, the topic of atrocity prevention should not be sidestepped simply because states seek to avoid international pressure. Since UPRs take place in all countries at regular intervals, no single country could claim to have been singled out. Moreover, the process itself would highlight the types of country-level practices recognized to serve up-stream genocide prevention (much along the lines of what Lemkin had been researching at Yale!). And by bringing impending risks to the public eye, both civil society and national organizations would have the opportunity to implement mitigating policies and programs.

Slightly more ambitiously, we propose that the UN address atrocity risk in a similar manner to the emerging regime of climate change risk management. In 2022, Secretary-General

António Guterres implemented the Early Warnings for All initiative, which advocates for a five-year investment plan to “strengthen disaster risk knowledge and management, observation and forecasting, dissemination and communication of warnings, and preparedness and response capabilities.” All of these tools are equally relevant to atrocity prevention. In the same way that climate change harms vulnerable civilians, triggers mass displacement, and causes regional instability, atrocity crimes can harm entire populations socially and economically as well. To fulfill the R2P agenda in its entirety, states must be aware of atrocity risks as they develop. Leaving protection and intervention to the late stages of systematic attacks on civilians negates the international community’s ability to take “timely and decisive action,” a fundamental obligation encompassed by R2P. Therefore, an atrocity early warning plan designed and funded by the international community would allow for more horizontal collaboration among States to identify and prevent such crimes.

Finally, the United Nations could explore the possibility of instituting a standing International, Impartial and Independent Mechanism (IIIM) modeled off of the accountability mandates created for Syria (IIIM), Da’esh (UNITAD), and Myanmar (IIMM). These three investigative mechanisms, all established within the last decade, have collectively marked a milestone in atrocity crime accountability. By facilitating and centralizing the collection of court-admissible evidence, they have laid the foundations for national or international criminal proceedings that might otherwise have lacked the requisite documentation.<sup>63</sup> The demand for such institutions was made clear when, in 2023, over one hundred civil society organizations lobbied the UN to implement an independent accountability mechanism for Sudan.<sup>64</sup> Indeed, the benefits of these mechanisms are manifold, particularly in countries where prosecuting perpetrators through the national legal system is difficult to impossible. A standing IIIM would help bridge this gap while also strengthening case documentation through the standardization and professionalization of evidence collection.

### Towards a More Robust Atrocity Prevention Regime

Taking stock of the 75 years since the 1948 Genocide Convention presents an opportunity to consider that other violations of our collective humanity merit coverage in a similar regime of prevention, suppression, and punishment. First among these are the “acts of

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<sup>63</sup> Polina Levina Mahnad, “An Independent Mechanism for Myanmar: A Turning Point in the Pursuit of Accountability for International Crimes,” *European Journal of International Law:Talk!* blogpost, 1 October 2018. (<https://www.ejiltalk.org/a-turning-point-in-the-pursuit-of-accountability-for-international-crimes/>, accessed 10 March 2024).

<sup>64</sup> Details available in a letter (“Sudan: Joint Letter Calling for Independent UN Mechanism To Advance Accountability For International Crimes”) featuring 114 signatories posted by Human Rights Watch on 1 September 2023. (<https://www.hrw.org/news/2023/09/01/sudan-joint-letter-calling-independent-un-mechanism-advance-accountability>, accessed 10 March 2024).



vandalism”, as Lemkin called them, that now fall under the rubric of the (unofficial) category of “cultural genocide.” Lemkin defined vandalism as the “systematic and organized destruction of the art and cultural heritage in which the unique genius and achievement of a collectivity are revealed in fields of science, arts, and literature.” He believed such crimes should be prohibited under international law because they both victimize specific groups on the basis of their members’ collective identity and victimize civilization as a whole: “Such acts shock the conscience of all humanity.” When Lemkin brought these ideas before the League of Nations at its 1933 conference in Madrid, delegates there rejected his proposal on the ground that such events occurred “too seldom to legislate.” Lemkin would later propose that what he once called “acts of vandalism” – such as religious persecution and destruction of cultural heritage – be included into the Genocide Convention. However, they were ultimately written out, and emergent jurisprudence has used this to conclude that cultural genocide cannot, on its own, constitute genocide.

While not a crime themselves, what Lemkin called ‘acts of vandalism’ may nonetheless serve as an indicator (or even proof) of genocidal intent and should be regarded as an early warning sign of genocide. Indeed, the Office of the Special Advisor’s *Framework of Analysis for Atrocity Crimes* cites “Destruction or plundering of essential goods or installations for protected groups, populations or individuals, or of property related to cultural and religious identity” as a potential “enabling circumstance of preparatory action” (Risk Factor 7) that could presage the commission of genocide of another atrocity crime.<sup>65</sup> Since the international community has never agreed upon a definition of cultural genocide, it has been – and will continue to be – nearly impossible to prosecute cultural genocide as an independent crime. This points to the need to adopt an additional protocol to the Genocide Convention – or to draft a separate Convention – defining and punishing cultural genocide. By doing so, the eradication of a group’s cultural heritage could serve as grounds for intervention and could be independently recognized and prosecuted among the world’s other most heinous crimes.

A second adjacent step would be the creation of a treaty on the prevention and punishment of crimes against humanity. Despite the fact that genocide is often viewed as the “crime of crimes,” the UN has stated that there is no intrinsic “hierarchy of gravity” of international crimes. The presence of a convention on genocide, coupled with the absence of a specific multilateral treaty on crimes against humanity, contributes to the perception, and praxis, that the international community has deprioritized the prevention and punishment of crimes against humanity. Adopting a convention on crimes against humanity would elevate their treatment by international courts and governments – in prevention, intervention, and prosecution – and increase their relevance among the general public. It would also serve to reduce the pressure on the use of the term ‘genocide’ in cases that do not fully conform with the definition – a common phenomenon in light of the current situation in which, on account of the Convention and of the mystique

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<sup>65</sup> United Nations, *A Framework for Analysis for Atrocity Crimes: A Tool for Prevention*, (2014), 16.

surrounding the word, commentators perceive that a situation will only be taken seriously if a genocide is recognized as taking place. Furthermore, a convention would require state parties to cooperate with fellow signatories in the investigation and prosecution of such crimes and would establish state responsibility as opposed to individual criminal responsibility. As a result, crimes against humanity could be tried in national courts, relieving much of the current pressure on the ICC. Finally, a convention would force state parties to incorporate such crimes into their domestic law: a requirement that Rome Statute ratification does not imply. This would help foster more universal legal protections against the most grave human rights violations.

### Honoring Lemkin's legacy by renewing the commitment to the Genocide Convention

The Genocide Convention was designed on ideas that were revolutionary for its time, creating a new world order based on the principle that the task of preventing the crime of genocide should be unopposed: no state should be on the other side of the issue, and international unanimous cooperation against aggressors must be of paramount importance. The Convention represents a commitment and a promise. The commitment is to punish and suppress genocides that have occurred or emerged before they could stop. The promise is to construct a regime that prevents these unfathomable crimes from ever occurring in the first place. The 75th anniversary of the Genocide Convention presents a special opportunity for the international community to reflect on how far the project of genocide prevention has come over the past three-quarters of a century – and how much work still remains. Raphael Lemkin is remembered for having named one of the worst crimes humankind can experience and for having dedicated his life to eradicating it. When he pursued the passage of the Genocide Convention, Lemkin often reflected on the deaths of the millions of victims of the crimes to which he gave a name. As we celebrate and honor his legacy, the international community should remember all those who have suffered from similar crimes over the past three-quarters of a century and redouble our commitment to making Lemkin's vision of a genocide-free world a reality.



*The Special Adviser on the Prevention of Genocide with Jackson School of Global Affairs students, Yale University, October 2023.*

# PART IV: HIGH-LEVEL EVENT MARKING 75TH ANNIVERSARY OF THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE: EXPERT PANEL REMARKS

*\*The following are remarks as delivered by all panel speakers at the 8 December 2023 high-level event commemorating the 75<sup>th</sup> Anniversary of the Genocide Convention, and the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime. Panel also included Ms. Graciela Gatti Santana, President of the International Residual Mechanism for Criminal Tribunals, Mr. Serge Brammertz, Prosecutor of the international Residual Mechanism for Criminal Tribunals, Mr. Christoph Safferling, Director of the International Nuremberg Principles Academy, and Ms. Farina So, Principal Deputy Director of the Documentation Center of Cambodia whose expert essays are featured in the second part of this publication.*



**MS. SILVIA FERNANDEZ DE GURMENDI  
PRESIDENT OF THE ASSEMBLY OF STATES FOR THE  
ROME STATUTE**

Excellencies, ladies and gentlemen,

I thank the organizers for giving me the opportunity to address this important event. As President of the Assembly of State Parties of the International Criminal Court, I'm honored to be able to contribute to this commemoration of the 75th anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide. The Genocide Convention laid the foundation of modern international criminal justice and is instinctively linked to the Rome Statute and International Criminal Court. Adopted in the aftermath of the Second World War, the Genocide Convention built up on the statement famously included in the Nuremberg judgement of 1946, *that crimes are committed by persons not by abstract entities*. Accordingly, the Genocide Convention rightly treated atrocities against certain groups as outright crimes whether committed in times of peace or times of war.

Crimes are committed by individuals who must be held accountable regardless of whether they are constitutionally responsible rulers, public officials or private individuals. Most importantly, the Convention expanded the basis for jurisdiction over these crimes, recognizing that their punishment was a concern of the international community as a whole and could not be left exclusively to national states within the

confines of their borders. Perpetrators were to be tried by 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 have accepted its jurisdiction. Only a few years later, in 1951, the international Court of Justice considered the prohibition of genocide as a peremptory norm of international law. Moreover, the jurisprudence of the ICJ - the international Court of Justice - recognized that the principles underlying the Convention are principles which are recognized by civilized nations, binding on states, even without any conventional obligation. And yet, it took almost five more decades and the end of the Cold War for the international community to finally apply in practice the Genocide Convention. The establishment of international ad hoc tribunals for former Yugoslavia and Rwanda paved the way for the dramatic acceleration of international criminal justice, and a practical enforcement of the norms and principles of the Genocide Convention. The parallel setup of the International Criminal Court in 1998 consolidated the achievements of international criminal justice. As foreseen by the Genocide Convention, there is now a permanent institution of a general kind that may step in to investigate and prosecute the perpetrators of genocide and other

international crimes when the national systems fail to act. The inclusion of the crime of genocide in the Rome Statute was amongst the earliest agreements during the negotiations of the treaty, and the definition of the crime contained therein reproduces verbatim the definition contained in Article 2 of the Convention.

Ladies and gentlemen,

there is indeed much to celebrate since the adoption of the Genocide Convention in the quest for accountability for the gravest international crimes. However, despite the peremptory nature of the prohibition to commit genocide, and the general recognition of the need to prevent and suppress this crime, neither the Genocide Convention nor the Rome Statute have attained universal participation. This lack of universality creates gaps where impunity regrettably continues to flourish, leaving victims without protection and without remedy for the harm suffered. As we commemorate the 75th anniversary of the adoption of the Genocide Convention and the 25th anniversary of the Rome Statute, the challenge of enforcing the prohibition against genocide and more globally mass atrocity crimes, remains enormous. While there is very broad agreement that egregious atrocities constitute crimes that must be

addressed either nationally or internationally, many of them are not addressed at all and many or even most perpetrators continue to be left untouched. This needs to be addressed by the joint efforts of national and international jurisdictions. While the prohibition of genocide is a peremptory norm that goes beyond the treaty obligation it is clear that states must ratify the Convention and implement all the obligations therein including adopting national legislation to ensure they are in a position to investigate and prosecute themselves the perpetrators of these crimes. The International Criminal Court plays a crucial role in an emergent global system of justice but it is a last resort institution complementary of domestic jurisdiction.

The daunting task of fighting impunity for massive crimes requires combined efforts at all levels. Enormous progress has been achieved in international criminal justice in the last three decades, however it is clear that there is a need for a stronger commitment of the global community to ensure a consistent pattern of accountability and thus a more effective prevention of genocide and other atrocity crimes.

Thank you very much for your attention.

**MR. KARIM A. A. KHAN  
PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT**

Under-Secretary-General, Special Adviser  
Alice Nderitu,

Dear colleagues in this room,

this really is one of the most important events of the year. It is a time of reflection and to see how we're doing and remember why we have this United Nations and I'll come back to that in a moment. I just wanted to say, Alice, that I think you have done a phenomenal job. I'm very grateful in my capacity as Prosecutor for your constant support, your counsel, the work you're doing around the world to try to prevent this terrible and cruel crime. I've had the honor of also working with your predecessor, His Excellency Adama Dieng, and it was such a wise and necessary decision of the United Nations to create this position.

And when I was looking at the video<sup>66</sup> and hearing the voice of Raphael Lemkin, and recalling the pictures of bodies piled high, ashes going to the heavens of people whose lives were taken in the Shoah, lives that were targeted because of their religion, one sees so much in clear terms. I saw on the video, in fact, Pakistan was

only a child of one year in 1948 and I saw in the video the person that was like a grandfather to me, the first Foreign Minister of Pakistan Sir Muhammad Zafrulla Khan, who later on became the president of the General Assembly and the international Court of Justice, signing the Genocide Convention. So appalled was the world, so appalled was Pakistan, at what had taken place in the Second World War.

In this divided world we clearly need these United Nations, we need to come together and realize that beyond the jurisprudence that has emerged in different courts and tribunals there's a very simple imperative that must be given life to, in this room. Serene and calm in which we are by the Grace of God secure, *we must remember those that are terrified and scared, being hunted down, targeted because of their race or their religion for any of the reasons listed as prescribed in the Genocide Convention*, and realize collectively that they look to us, they look to you, they look to the powerful, they look to civil society, states, organizations, for more effective protection. Because ultimately, what was

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<sup>66</sup> The opening video shown at the beginning of the high-level event, telling the story of Mr. Raphael Lemkin and the Genocide Convention;

[found here at the 21 minute mark](#); and here in a [shorter version](#).

this 1948 Convention? Not fine words, though the prose is wonderful. It was a promise, it was a collective promise to children, to women, and to men, to people around the world, to future generations, that the unspeakable experience of the Shoah should not be repeated.

That gave rise to the cry, the prayer, the hope, the demand of "never again" and it was an undertaking from leaders of the world that measures would be put in place, that the heartbreak, the scars, the wounds, the deaths of the Second World War, the Holocaust would finally wake us up from our stupor. That it would be an electric shock to push us forward as a species to render extinct, to render to the pages of history a crime that was coined by Rafael Lemkin. And this awakening, this hopefully profound affirmation on the right of every person is a work in progress, because we haven't done really very well. And the realization at the heart of it, at the core of the Genocide Convention, was that individuals deserve protection of the law but the corollary was that individuals who commit these crimes must face accountability - they are two sides of the same coin. As Jackson said, the crimes are not committed by abstract entities and this was also put in an eloquent terms by the British prosecutor Sir Hartley Shawcross at Nuremberg and I quote, he said that in "no other sphere is it more necessary to affirm that the rights and duties of states are the rights and duties of men and that unless they bind individuals, they bind no one". Of course, it's the rights and duty of all of us. The Convention, as a basic yardstick of humanity to prevent inhumanity is why it was drafted and yet the promise of never again seems to be

again and again and again and we'll hear that today. We have the President of the Residual Mechanism, we have the Prosecutor Serge Brammertz of the Residual Mechanism, we have individuals that are memorializing what happened in Srebrenica and in Rwanda, we bear in mind the Holocaust, and how do we prevent it. Because it keeps on happening again and again.

We've spoken about prevention clearly, we've seen in history whether it's against the Jews in occupied Europe and Germany or against Tutsi called cockroaches, we've seen the othering, the dehumanization, the hate speech that creates the breeding ground, the festering environment in which the virus of hate can seep away the humanity of our neighbors and our friends and suddenly they become just people are not even people. They become an entity that can be targeted under the crime of genocide. And I saw that myself in 2021, in beginning of June, in my last report to the Security Council as the Special Adviser of the Secretary General and the Head of the UN team investigating Daesh - we had the obligation, based upon independent forensic investigations, to say that the crimes against the Yazidi people in Iraq by Daesh, this most unislamic state, the crimes against the Shia that we saw in Camp Speicher, met the legal criteria for genocide. And Nadia Murad, the Nobel Prize laureate, this courageous, brilliant young woman in her book "The last girl" gives a story that many millions have read and yet the very title is a reproach to us because she has not been the last girl. The terrible crimes visited upon her and her people are the terrible crimes that are committed upon new generations around the world as we

speaking, and we see now a tidal wave of inhumanity that threatens to engulf us all.

A tidal wave of inhumanity that threatens to shake the very foundations of the United Nations Charter, never mind the Universal Declaration of Human Rights or the Genocide Convention or the Rome Statute. We look at the pictures coming out of Gaza of children, lifeless and dead, severely injured, we see stories of children, babies taken from Israel and held hostage or killed; we see the awful information that we're investigating coming out of Darfur right now, yet again, a new wave of alleged criminality that should spark us into action - what on Earth are we doing and where are we going and what do we want to leave to our children? How can we forget the plight of the Rohingya, also targeted in different ways and also being investigated both by the United Nations Mechanism for Myanmar and the International Criminal Court.

In the darkness where crimes take place, and sometimes actually with the deliberate spotlight put on them to terrorize, we also see the heroism of survivors, individuals, groups and

communities who refuse to go quietly into that good night, who insist upon their humanity. And we see the effort, the positivity of the international instruments that have been put up to protect the individuals and to demonstrate that this is a standard of compliance for each of us and for states to move forward. There's a lot more that could be said but the various threads of the international ecosystem in relation to genocide, crimes against humanity, war crimes, including the Special Advisers or the Special Representatives of the Secretary-general here in New York, the Special Procedures, the High Commissioner for Human Rights in Geneva, the International Criminal Court, other mechanisms and tribunals, are part of the same family, are part of the same drive, the same necessary focus to try to hold back the tide and create a new dawn where we don't have to discuss crimes against humanity, war crimes or genocide that are taking place, that have taken place, but that would allow humanity to march forward unencumbered by the echoes of the past that we should hear very loudly today in this room.



**MR. EMIR SULJAGIĆ**  
**DIRECTOR, SREBRENICA MEMORIAL CENTER**

Good afternoon to everyone in New York,

it is an early evening here in Eastern Bosnia and it's an early evening here in this place where a group of survivors some 20 years ago decided to come back. And to come back and live under the authority, under the ideology that was actually responsible for genocide.

We came back here to live under conditions mostly resembling apartheid with rife genocide denial; literally being in the enemy territory the moment that we leave this Memorial Center. We came here to keep the flame alive, we came here to keep the fire burning and we came here to do it for what is probably the first time in my nation's history. This is not the first mass murder in my nation's history, this is not the first time that we were uprooted, exterminated and that we were incarcerated or killed, but this is the first time that we have – and actually with a great help from our friends in ICTY that no one can ever deny - managed to pen down. The fact that there is a mountain of evidence now, literally a mountain of evidence, testifying not only to the individual criminal responsibility but to a historical, social, political and cultural climate that contributed to or that created the conditions for genocide, is something that has allowed us to write our history of events like these for the first time, and I am not exaggerating. I know my country's history.

This place came about as a result - and I can never underline this strongly enough - as a result of the struggle of a group of women. And they were not like most of the women sitting in this room in New York, they were not urbanite educated women with law degrees, they were mostly uneducated conservative Muslim ladies from rural Eastern Bosnia and nobody ever gave them a chance. Nobody gave a chance to Munira Subasic, to Kada Hotic, to Hatidza Mehmedovic. Nobody gave them a chance and they took on the world, literally took on the world, and as a result of that struggle we have this place today. We were not alone in this, they were not alone in this, we had friends, we had allies, but it was a struggle and it continues to be a struggle against all odds, or against *the* odds in any case.

75 years after the adoption of the Genocide Convention I, like many other people who have been in my shoes, have asked myself what it is that it brought to the table, what it is that it contributed. And yes, there have been some successes in terms of implementing it and these successes are measured in the number of international tribunals and international justice mechanisms, but what is it what it is beyond just that that the Convention has left us. And I've been thinking about that on the way here, thinking that, for instance at the table when the Convention was negotiated there was no place for people like Honore

and me, for people like Alice, there was no place for women, there was no place for a lot of people, but still there is this one thing that even to the extent that they were allowed to the table, those who survived the Holocaust managed to leave us with that's beyond important. And maybe Honore here will understand that, but what they left us with is - and we cannot place the blame for the repetition on them and on that generation- but what they left us with is that no one who ever faced similar atrocities, did not face them in silence. It never happened in

silence again and as a result of what some survivors of the Holocaust did, as a result of what Raphael Lemkin did, as a result of that conversation over the Convention, there are no more genocides taking place in silence at the very least. And maybe that was it for that generation, that was the most that could be achieved, and maybe it's time to see what this generation can actually achieve. To see what is it that we can do.

Thank you very much.

**MR. HONORE GATERA  
DIRECTOR, KIGALI GENOCIDE MEMORIAL**

Excellencies, distinguished participants of this important event,

it is also my honor to be a part of this commemoration, because as Emir said, for us in Rwanda, for us who went through the atrocities that we are talking about today - 75 years after Raphael Lemkin managed to give it a name and it became a genocide, we sit down to reflect on what has been happening and is happening again today. A day like this reminds me and reminds many others who saw genocide, that humanity has failed to its promise of preventing the genocide.

The crime that had the name, the crime that occurred after the Convention was created, lead us to living only with the memory of those that we have lost. Yet, living with the memory is key and important in all the efforts that we do all along our journey in life to sustain and support the efforts such as Raphael Lemkin's and others who contributed to the Convention and those who continue to carry it on so that we reach the point that doctor Christoph mentioned - that the best ever gift to give to the Convention is to say that now we don't need the Convention, we have eradicated genocide, no more will these happen in the history of humanity. But currently this is not

the case. We still need to fight, we still need to dedicate our efforts and our careers into prevention. Memorialization after the atrocities that have happened in the world is an important element that should be an integral part of all the efforts that are being done. It is of a very big importance to see that this Office (*NB Office of the Special Adviser on the Prevention of Genocide*) was created by the UN because it created a space that never existed before. A space where the efforts from the grassroots to the UN level can be put together, recognized and contribute to the efforts of prevention, education and making sure that the criminals are punished.

I was so pleased to see that my fellow country woman Domitilla Mukantaganzwa was being awarded<sup>67</sup>. She played a big role for ten years leading the Gacaca courts. Such local solution that led to what Rwanda is going through now, a country that is going through resilience and trying to achieve its unity and a future without discrimination and without forgetting the genocide. Because memorization is about remembering and forgiving, as we work to prevent the genocide to happen again.

Even though we talk about our failures, we are here today as a grown-up

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<sup>67</sup> Ms Domitilla Mukantaganzwa was awarded as one of the 2023 Raphael Lemkin Champions of Prevention by the UN Office of the Special

Adviser on the Prevention of Genocide on 9 December 2023. More here.

generation where many of us, at a young age, had to suffer from this crime that many of us didn't even know about. When I started working with the Kigali Memorial, it was 19 years ago, as a young boy of 23 years I never even knew even about the Convention for the Prevention and Punishment of the Crime of Genocide. Having learned about the Holocaust, having learned about the World War II, I never knew what it actually meant. However, because of what I had gone through, I decided to dedicate my career into this journey of preventing genocide through memorization and education. Overall memorization, memorial sites and many other efforts that work towards remembering the victims by their faces and their names, will be playing a very big role even in the punishment and prevention of the genocide crime because activities that memorials and that kind of sites do, could feed information and can be an important in allowing justice to follow the criminals who now have found many strategies of fleeing from justice. And we know that when Gregory Stanton mentions the stages of genocide, we have gone up to stage 10 where denial has become now a very big tool which

sees even some of the memorial sites and memorization efforts as potential target of the same criminals who commit genocide or who have committed genocide.

Hence, we need to place our efforts together as we look back at the Convention and look at what are the challenges currently that we are facing. As Emir said, the generation behind us has seen genocide happening in silence, and then others saw knowingly what was happening to us. Now the efforts that we have to do are to make sure that those who are younger than us - while living in the future - will never face what we faced.

As to conclude, what I saw is enough. And I don't wish any other 13-year-old young boy walking through my footsteps to in end become someone who is dedicating his career to preventing genocide, preventing the saddest event that has ever happened in his life. If we work together, I know we can achieve it and we have platforms as these that can allow us to prevent genocide from ever happening among humanity.

I thank you very much.

**MS. FELICE GAER  
DIRECTOR, JACOB BLAUSTEIN INSTITUTE FOR THE  
ADVANCEMENT OF HUMAN RIGHTS <sup>68</sup>**

Thank you very much, Special Adviser, this is a special occasion.

I think back to the time after the Holocaust when advocacy for adoption of the Convention was done by the American Jewish Committee because it considered it essential to secure binding international commitments by states - not only to punish but also to prevent the crime of genocide; and since 1971 when the Jacob Blaustein Institute was founded by the American Jewish Committee, we have advocated for the Genocide Convention's adoption, ratification, and effective implementation. Now during that time, the repeated failure of the international community to prevent genocide in Rwanda, in Bosnia, against the Yazidi, the Rohingya, and others have only strengthened our resolve to ensure early warning and catalyze early action to prevent genocide, as well as to punish the perpetrators. So too has the dramatic increase in an indicator that both we and the Special Adviser's Office on Genocide Prevention considered to signal a risk of social fragility - that is Holocaust

denial and genocide denial more broadly.

Holocaust and genocide denial are forms of harmful denigration, they traumatize survivors and their communities. They convey pernicious stereotypes about and encourage and perpetrate hatred including anti-Semitism, anti-Muslim bigotry and other types of hatred of groups that have faced genocidal violence in the past. They undermine historical memory about tragic events that have been conclusively established, and this denial encourages audiences to ascribe to other conspiracies and disinformation. Holocaust and genocide denial are a warning sign not only of societal fragility but also of the specific risk that members of groups that have previously experienced genocidal violence may experience violence and discrimination once again, yet again, still again.

Together with the Special Adviser's Office, to respond to these phenomena, we have developed tools to identify human rights related risk factors for genocide and policy responses to them. One of these is the "Policy Paper: Protecting Survivors, Preserving Memory and Promoting Prevention". It provides guidance for governments, politicians,

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<sup>68</sup> Ms. Gaer, a recognized peace and human rights advocate, passed away on November 9, 2024. The Office of the Special Adviser on the Prevention of Genocide remembers and honors her as a Champion of Prevention.

faith leaders, educators, social media companies too, on measures they can take to prevent the emergence of these harmful messages of denial, protecting the people who are its real targets and adhere to human rights standards. First, that policy paper calls for education that conveys accurate information about the Holocaust and past genocides. I can't overemphasize this point. Such education must target many audiences, public officials, youth, at different levels and even educators themselves. Second, and reflecting on the panel that just concluded, we call for memorialization efforts that respect the right to truth for victims. And third, we call for clear condemnation of Holocaust and genocide denial. Condemnation by policymakers, leaders, and officials at the highest levels.

In the face of Holocaust denial and distortion, and genocide denial, silence is not an option. No matter where in the world these messages are being spread, silence is interpreted by audiences as signaling agreement, agreement with tolerance of hate. We urge leaders to support legal responses to denial in line with human rights standards when such measures are necessary to protect the intended targets from harm. Fourth, we call for specific action to counter Holocaust and genocide denial online, given the wide-ranging impacts, negative impacts that can arise online. We encourage all stakeholders to take action

and particularly for companies to limit the visibility and transmission of such denial. And fifth, we emphasize the critical importance of leaders at all levels consulting and expressing solidarity with those communities that are affected by Holocaust and genocide denial, even where and - especially where - it is politically challenging. There are many signs of social fragility around the world today, yet in our view it is ignorance of the history of past genocides, including the Holocaust, and ignorance of the patterns of discrimination and demonization that preceded them, that have a particularly pernicious impact. Particularly as the very idea of historical truth is also being challenged today to an unprecedented extent. We are alarmed that communities that previously experienced genocide are experiencing significant and even unparalleled threats today to their safety.

In this context, our call for prevention is not only an appeal for early action, it is a plea to avoid the repetition of the darkest chapters of human history. We are grateful to you, Special Adviser, for so clearly identifying and recognizing the enormity of the challenge we face on this landmark anniversary of the Genocide Convention.

We resolve to do all we can to meet that challenge, and we ask all of you here today to do the same, thank you.

**MR. JAMES WALLER**  
**DIRECTOR OF THE DODD HUMAN RIGHTS IMPACT**  
**PROGRAMS, UNIVERSITY OF CONNECTICUT**

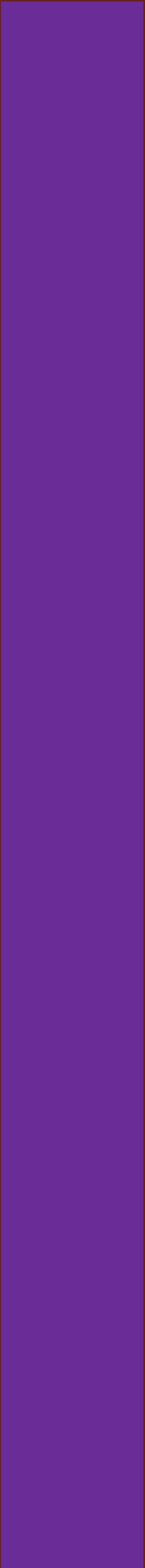
I am very glad to be able to join you virtually and honored to have been invited by the Special Adviser's Office to participate in this 75th anniversary, recognition of the Genocide Convention.

I would like to very briefly frame my remarks around two points, one related to the breadth of what we mean when we talk about genocide prevention and the second related to connecting it to the human rights agenda. I think in our work globally on genocide prevention with policymakers and civil society particularly, we still are fighting against the perception that genocide prevention always means military intervention. That simply putting boots on the ground or responding to force with greater force is what we mean by genocide prevention. In my mind, that's a failure of our moral imagination if that is the limited scope in which we think about genocide prevention. As I have written about elsewhere, I've talked about genocide prevention much more broadly to think of upstream, midstream, and downstream prevention, with upstream prevention being all the measures we take to build resilience in societies that could be at risk for genocide. And all societies in the world have some degree of risk for genocide. How do we build strong democratic

institutions, foster social cohesion, teach conflict history appropriately, and so on, all of that is the important work of upstream prevention which is the most important preventive work we can do

because it's the most efficient and the most lifesaving. But even in the midst of crisis, we would have still entered a preventive realm that I've called midstream prevention, which means as the conflict is ongoing, we still have options to prevent further loss of life - we have political tools, we have economic tools, we have legal tools, and we have some military tools that don't include nonconsensual military intervention. And then finally, downstream prevention refers to the efforts we take once the crisis is over: how do we rebuild the society that has torn itself apart, what does justice look like, what truth looks like, what does memory look like. All of those are important preventive efforts, so in a real sense we are always doing the work of genocide prevention - before crisis, during crisis, after crisis. And the more we can help people understand that broad understanding of genocide prevention, the better our work will be.

And then secondly, the Chair I currently hold is focused on human rights practice and part of my responsibilities is merging the human rights agenda with the atrocity prevention agenda. Two agendas that were birthed just one day apart in 1948, but unfortunately atrocity prevention has too often separated itself from human rights field even though atrocities are human rights that have become human wrongs. I do think there is value for us in connecting with promotion and protection of human



rights across the globe, as an important partner in atrocity prevention.

Thank you for allowing me to share these remarks with you today and I wish you all the best for the rest of the commemoration, thank you.



**MR. DAVID SIMON  
DIRECTOR OF THE GENOCIDE STUDIES PROGRAM AT  
YALE UNIVERSITY**

Madam Under-Secretary-General,  
distinguished guests and excellencies,

It is really a pleasure to be here, and as you said I am speaking on behalf of my students. It's an honor both to be here and to represent them.

The passage of the Genocide Convention left Lemkin in tears, tears of joy, tears of relief, tears of exhaustion. He also knew that the hardest part affecting all that the Convention aspired to do, lay ahead. Earlier that year, as Madam Under-Secretary had mentioned, Lemkin had taken on a position of lecturer at Yale Law School from where he could continue his mission to eradicate genocide. Now there, the first task would be to bring the Convention itself into effect which would occur when twenty Member States had ratified it. Thanks in part to Lemkin's efforts, that was attained in just two years, although the failures of certain states to sign by that point weighed heavily on Lemkin. In fact, from during his time at Yale, he once proclaimed that "the rain of my work [has fallen] on a fallow plain...only this rain was a mixture of the blood and tears of eight million innocent people throughout the world."

We might consider it part of Lemkin's legacy now that 153 countries have ratified the Convention. I suspect

though that if Lemkin were still alive, and to be fair he'd be 123 years old, but he would be pressing as hard as ever to

convince the remaining 44 countries to ratify. Lemkin would also be dismayed to know that two dozen countries ratified the Convention but added official reservations that made reference to articles 4, 6 and or 9, thereby seeking to opt out essentially of international legal liability. That, in Lemkin's words, would render the Convention a set of non-enforceable laws with many loopholes. At least four countries have withdrawn their initial reservations, and part of realizing Lemkin's legacy today in making the Convention whole, requires that others in this category should do so as well.

Now, when Lemkin was at Yale, they embraced a more intellectual approach to the development of the concept of genocide. While he was at Yale, he was working on a manuscript that was not published before he deceased, called "The Origins of Genocide", and during which he thought about what the underpinnings of genocide are- the sociology, the political reasons, why genocide happens. Once in a conversation with a Yale student, he was asked: do you think you can really achieve the results against this disease of genocide? Lemkin responded as follows "yes, yes you can, but it will take a long time before results are noticeable; the Genocide Convention is only a framework for this task, a rallying point for thinking and acting, a starting point for a new conscience". Lemkin

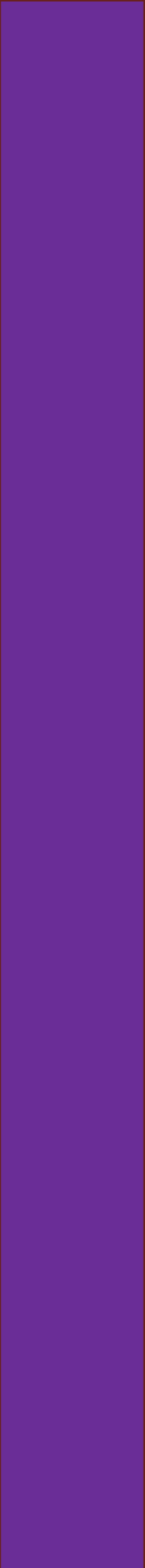
concluded that it would take both repeated invocation of court action over a long time and repeated condemnation of genocide in public opinion for self-sustaining norm against genocide to grow.

I would say that the past 75 years have proven Lemkin's prediction prophetic. After several decades of relative quiet, a number of cases at the ad hoc International Criminal Tribunals, the International Criminal Court, the International Court of Justice, along with many national courts, have begun to establish the full extent of individual and sovereign liability for genocide crimes. Institutional innovations, like the very Office of the Special Adviser that organized this event, and then doctrinal developments like that of the Responsibility to Protect, are anchored in the principles established in the Genocide Convention. They reflect a recognition, as Lemkin had articulated at Yale, that the Convention itself was not enough. Although noted for his faith in law, Lemkin at Yale was working on a book as I mentioned, on the political and social origins of genocide. His research led him to draw strong connections between attempts to destroy a people and attempts to destroy their culture. Even though the Convention itself in the text omits any reference to the concept of cultural genocide, though it had been considered earlier. Lemkin, in calling for the development of a regime of prevention, was working from a Convention that was mostly silent on the matter. My students' review of cases found that local level knowledge, community empowerment, and attention from regional actors are among the key ingredients for prevention. Upstream

measures like these, to use professor Waller's word, would be well served by having the Human Rights Council's Universal Periodic Reviews, which already interfaced with actors at these levels, incorporate genocide and atrocity risk factors into their review process.

But perhaps the Convention's biggest enigma is with respect to suppression. The word is absent from the title but it appears crucially in Article 8 which gives the UN, through its competent organs, the responsibility to suppress genocide. However, the Convention does not say whether or when intervention by armed forces might be the appropriate response or what other actions might constitute appropriate ones. Moreover, the Convention does not specify what happens when its contracting parties fail to mobilize appropriate actions or how to hold the Security Council accountable for instances of inaction such as in the case of Rwanda in 1994, Srebrenica in 1995.

In spite of the institutional and doctrinal developments of the past three decades, recent and contemporary cases suggest that the problem has gotten worse, not better. So to this end, my class concluded that the proposal originally forwarded by the representatives of France and Mexico for the suspension of veto powers in cases of mass atrocity is a good idea. So too could be greater recourse to the Uniting for Peace mechanism that recognizes the competence of the General Assembly in cases of possible genocide and other atrocities when the Security Council is frozen in inaction. It is clear, in conclusion, that any hope of eradicating genocide and thereby realizing Lemkin's legacy requires not just an appreciation



of the text of the Convention that we celebrate today, but also the leadership and the commitment to animate it. My students and their peers around the world that Honore Gatera mentioned as well, will experience much more of the next 75 years of the Genocide

Convention than they have of the past 3/4 of a Century.

For them, I humbly but urgently ask the international community represented here and elsewhere to embrace the new conscience that Lemkin dreamed of during his time at Yale, thank you.



**United Nations**  
Office on Genocide Prevention  
and the Responsibility to Protect