



Never Again? The United Nations and Genocide: A Doomed Mission?

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### **Abstract**

Despite their commitment to international peace and security and to the concept of “never again,” the United Nations has failed to end the many genocides of the late 20th century. In this thesis, I use the genocides in Rwanda (1994) and in the Yugoslav Wars (1991-1999) as case studies to understand the UN’s response to genocide and to attempt to understand why the UN cannot effectively respond to and end genocide. I discover that issues such as the limitations of the Genocide Convention, the importance of state sovereignty, and overall institutional failures of the United Nation make any attempt to end genocide doomed. I end the discussion by examining ways the UN has attempted to fix these inadequacies, but ultimately come to the conclusion that their attempts have been futile and have allowed for genocides to continue into the twenty-first century, using the case studies of the Rohingya in Myanmar and the Uyghurs in China. Throughout this paper, I use a number of sources to develop my answer. Primary sources include sources such as eye-witness interviews, UN released reports, independent fact finding research, UN documents such as the UN Charter and Genocide Convention, and documents from the International Criminal Tribunal in Rwanda (ICTR) and in Yugoslavia (ICTY). My secondary sources come from scholarly articles and books, newspaper articles, articles issued by think tanks, and museum resources.

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## Introduction

Holocaust survivor Primo Levi once took comfort in the knowledge that something like the Holocaust could never happen to him again. But as the 1980s came to a close, he wrote in an essay, "The one thing was certain, is that it can happen again, anywhere."<sup>1</sup> Unfortunately, many events of the 20th century post-Holocaust proved him painfully correct, especially during the 1990s. The mass atrocities that occurred post-Holocaust has led many scholars, most notably Samantha Power, to refer to the 20th century as the "age of genocide." Ironically, after the end of World War II and the fall of the Nazi regime, the international community made a pledge to "never again" allow such an atrocity like the Holocaust to occur.<sup>2</sup> This pledge was supported by actions such as the establishment of the 1948 Genocide Convention, which was meant to ensure that genocide could never happen again while the outside world watched on.<sup>3</sup> Despite the rhetoric of "never again," the events of the 20th century have proven to be a failure of the international community, more specifically the United Nations, especially in the genocides of Rwanda and Yugoslavia. Within the frameworks of the United Nations, there are a number of issues that make it difficult to pressure states to end genocide in a timely effective fashion, such as the technicalities and definitional issues of the term genocide, the issue of sovereignty, the physical structure of international institutions, the lack of cooperation among member states, and competing national security interests.

The course of this paper will proceed by first discussing the history and formation of the United Nations. Following this discussion, we will discuss the Genocide Convention which was meant to ensure that states could not be passive onlookers to genocide, but rather active

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<sup>1</sup> Frontline. "Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE." PBS. January 1999.

<sup>2</sup> Power, Samantha. "Genocide And War Crimes - Never Again | The World's Most Wanted Man | FRONTLINE." PBS.

<sup>3</sup> "United Nations Office on Genocide Prevention and the Responsibility to Protect." United Nations.

opponents to those committing genocide. Following these discussions, we will then turn to the two case studies of the genocides of Rwanda and Yugoslavia, discussing the background, the facts of the case, and the international responses. Out of the many genocides that occurred throughout the 20th century, I decided to focus on these two case studies as they both occurred shortly after the collapse of the USSR, the end of the Cold War, and after the UN made a renewed promise to human rights with the development of the Agenda for Peace. In addition to the general timing, I chose these two cases due to their location. Despite one happening on the continent of Africa and one happening in Europe, both genocides received relatively little intervention from the UN. Upon discussing these two case studies, this paper will conclude by examining the possible reasons for why the United Nations failed to intervene in both genocides within a timely and effective fashion.

### **Research Methodology**

Throughout this paper, I have used a variety of sources to formulate my argument. The types of sources have differed for each section, varying from eye-witness interviews, documentaries, scholarly articles, books, newspaper articles, reports released by organizations like the UN and Human Rights Watch, as well as from independent researchers, UN primary documents, museum exhibits, articles released by think tanks and human rights organizations, and primary documents from the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for Yugoslavia (ICTY). In my first two sections, focusing largely on the formation of the United Nations and the drafting of the Genocide Convention, my main sources consisted of primary documents released by the United Nations, such as the UN Charter and the draft resolution of the Genocide Convention. I also used a number of scholarly sources to

compose a timeline and history of the UN formation, as well as the procedures that eventually led to the Genocide Convention. These scholarly sources were also used in my discussion of the limitations of the Genocide Convention. In my next two sections, focusing on the Rwandan and Yugoslavian Genocides, my main sources consisted of scholarly writing that also referenced eyewitness accounts. I was also informed by documentaries released by *Frontline PBS*. Other sources consisted of primary documents and reports released by bodies like the Physicians for Human Rights and the International Center for Transitional Justice. In these sections, I focus solely on the history and timeline of the two genocides. For this reason, I relied on one or two main sources to establish a history, with supporting evidence from other sources. In my next section, focusing on why the UN has failed to intervene, I again mainly use scholarly sources. In this section, I make the bulk of my argument focusing on why the UN has failed to intervene in genocide cases. I argue that the limitations imposed by the definition of genocide, the importance of state sovereignty, and the institutional structuring of the UN, specifically the veto power possessed by the UN Security Council which allows them to protect their national interests, are all reasons why the UN has failed in the field of human rights abuses. These arguments are then supported by other scholarly sources. Finally, my conclusion includes a discussion regarding the current events happening to the Rohingya Muslims in Myanmar and the Uyghur Muslims in China. All information in this section is provided from newspaper articles and from reports released from the UN Special Rapporteur on human rights as well as independent researchers.

I found all these sources to be incredibly useful in my research. I found documentaries to be particularly helpful in allowing me to understand the timelines of my two case studies. While none of the documentaries are directly cited, they did allow me to understand more fully the scholarly sources I was pulling my information from. I also found eyewitness accounts to be

helpful in humanizing the situations I was discussing. However, I did find some limitations in my sources, such as finding sources that directly addressed the research question I was examining. Many of my sources, which focused on the same issues I was examining, took a different approach than I was thinking. For example, in my research regarding UN intervention, some of my sources focused more on how UN intervention represents Western intervention, and therefore, can be considered a continuation of colonial power over non-Western powers. Others took more bottom up approaches, where the solution for genocides comes from the country itself (solving its social, economic, political, etc. problems first). While I found these arguments to be interesting, and certainly true (in varying degrees of importance), my paper was not meant to focus on colonial ramifications or indigenous perspectives. I wanted a very high level understanding for why the UN did not intervene, not why genocides as such may come to be or their ramifications thereafter.

### **History and Formation of International Organizations**

While the history of international organizations can be traced back all the way to the Vienna Convention in 1815, for the purposes of this paper, the history of international organizations will mainly focus on the period of World War II and onward. I will also only be focusing on the United Nations. The United Nations represented one of the first formations of the international community working as one body. It was meant to promote international peace and security, including the protection of fundamental human rights.<sup>4</sup> When states join the UN, they promise to take “joint and separate action” to protect these human rights.<sup>5</sup> Because of this

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<sup>4</sup> Reinalda, Bob. 2009. Routledge History of International Organizations : From 1815 to the Present Day. London: Routledge. 290.

<https://search-ebscohost-com.arcadia.idm.oclc.org/login.aspx?direct=true&db=edsebk&AN=290336&site=eds-live>.

<sup>5</sup> United Nations. "Chapter I." United Nations. July 11, 2016. Accessed December 14, 2021.

<https://web.archive.org/web/20171028091648/http://www.un.org/en/sections/un-charter/chapter-i/index.html>.

promise and their obligations as signatories of the Genocide Convention, all states in the United Nations should have come to the aid of Rwanda and Yugoslavia during their respective genocides, unless they could somehow claim that they were not actually genocides.

As previously stated, the goal of states working together is not a new concept, and could be traced back to 1815. The first establishment of international organizations began in 1865, when organizations, such as the International Telegraph Union, were formed to focus on specialized issues.<sup>6</sup> Beginning in 1899, states turned their attention to working on a plan for peace among nations. At the International Peace Conference in The Hague, states adopted the Convention for the Pacific Settlement of International Disputes and established the Permanent Court of Arbitration, where they discussed how to maintain peace and prevent war.<sup>7</sup> This Convention was activated in 1902.<sup>8</sup> Unfortunately, the Convention was unable to prevent the start of World War I. After witnessing the atrocities of the War, states began to put their efforts back towards maintaining world peace. In order to do so, states established the League of Nations.<sup>9</sup> The League was formed for a number of reasons. The main reason for the League's establishment was "to promote international cooperation and to achieve peace and security."<sup>10</sup> Others argue that its establishment allowed it to maintain the great-power cooperation of World War I, as well as change the matter of war to "dispute resolution."<sup>11</sup> However, with the United States failing to join the League of Nations<sup>12</sup> and the departure of belligerent states like Japan<sup>13</sup>

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<sup>6</sup> United Nations. "Predecessor." United Nations. Accessed November 12, 2021.

<https://www.un.org/en/about-us/history-of-the-un/predecessor>

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Alvarez, José E. "International Organizations: Then and Now." *The American Journal of International Law* 100, no. 2 (2006): 324–47. 325. <http://www.jstor.org/stable/3651150>.

<sup>10</sup> United Nations. "Predecessor."

<sup>11</sup> Alvarez, "International Organizations: Then and Now." 325.

<sup>12</sup> "The League of Nations, 1920." U.S. Department of State. Accessed November 12, 2021.

<https://2001-2009.state.gov/r/pa/ho/time/wwi/99150.htm>.

<sup>13</sup> Clare, John D. "A League of Nations and Manchuria Invasion." *Manchuria*. November 27, 2018. Accessed December 14, 2021. <https://www.johndclare.net/EL5.htm>.

and Germany,<sup>14</sup> it ultimately failed in its goal to prevent war, eventually leading to the start of World War II.

During World War II and onward, the Allies, among other states, worked to ensure that once the war ended, something like it could never happen again. Throughout the war, the Allied leadership met to discuss what the world would look like post-war. This conversation first began with multiple state representatives on June 12, 1941, with the Declaration of St. James Palace.<sup>15</sup> Within this document, states agreed that they must all willingly cooperate in order to maintain peace and “economic and social security.”<sup>16</sup> Following this Declaration, on August 14, 1941, two of the Allied leaders, President Franklin D. Roosevelt and Winston Churchill, met to discuss what came to be known as the Atlantic Charter.<sup>17</sup> The Atlantic Charter is often seen as the origin charter of the United Nations, as it called for the “establishment of a wider and permanent system of general security,”<sup>18</sup> and was even the first time the term “united nations” was used in an official document.<sup>19</sup> Other principles within the Charter called for peace and safety within state boundaries, and that “all the men in all the lands may live out their lives in freedom from want and fear.”<sup>20</sup> Those who decided to sign onto the Charter were promising “to defend life, liberty, independence and religious freedom and to preserve human rights and justice in their own lands as well as in other lands.”<sup>21</sup> The Declaration was then issued on January 1, 1942,<sup>22</sup> and

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<sup>14</sup> The National Archives. “Credibility and End of The League.” The National Archives. The National Archives, December 30, 2008.

<https://www.nationalarchives.gov.uk/cabinetpapers/themes/blows-credibility-end-league.htm#:~:text=The%20peace%20role%20of%20the,to%20an%20end%20in%201946>.

<sup>15</sup> United Nations. “Preparatory Years.” United Nations. Accessed November 12, 2021.

<https://www.un.org/en/about-us/history-of-the-un/preparatory-years>

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Reinalda. 2009. *Routledge History of International Organizations : From 1815 to the Present Day*. London: Routledge. 276.

<sup>20</sup> Reinalda, *Routledge History of International Organizations : From 1815 to the Present Day*, 274.

<sup>21</sup> Reinalda, *Routledge History of International Organizations : From 1815 to the Present Day*, 276.

<sup>22</sup> Reinalda, *Routledge History of International Organizations : From 1815 to the Present Day*, 273.

officially became known as the Declaration by United Nations.<sup>23</sup> In 1943, representatives from the United States, United Kingdom, USSR, and China met in Moscow where they adopted a declaration recognizing the “necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security.”<sup>24</sup> In the following year, the four countries met again at Dumbarton Oaks. At this meeting, the four states published the Proposals for the Establishment of a General International Organization, in which they outlined objectives such as “maintain[ing] international peace and security, fostering friendly relations among nations, and promoting international cooperation.”<sup>25</sup> More discussion continued among FDR, Winston Churchill, and Joseph Stalin at the Yalta Conference in 1945, where they worked to solve issues unresolved from the Dumbarton Oaks Conference.<sup>26</sup> The UN Charter was then finalized in San Francisco, at the United Nations Conference on International Organization (UNCIO) between April 25 and June 26, 1945, where the United Nations was officially conceived.<sup>27</sup> The Conference was greatly influenced by the work of the United States, United Kingdom, USSR, and China from their previous meetings at Dumbarton Oaks and Yalta.<sup>28</sup> Delegates of fifty nations agreed upon the following principles of the UN Charter, among others: international peace and security, peaceful resolution of disputes, fundamental human rights, and equal rights, all of which would be made possible through the establishment of the United Nations.<sup>29</sup> The United Nations would work to promote “universal respect for, and observance of, human rights and fundamental freedoms for

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<sup>23</sup> United Nations. “Preparatory Years.”

<sup>24</sup> Ibid.

<sup>25</sup> Reinalda, *Routledge History of International Organizations : From 1815 to the Present Day*, 282.

<sup>26</sup> United Nations. “Preparatory Years.”

<sup>27</sup> Reinalda, *Routledge History of International Organizations : From 1815 to the Present Day*, 283.

<sup>28</sup> United Nations. "History of the United Nations." United Nations. Accessed November 12, 2021. <https://www.un.org/en/about-us/history-of-the-un>.

<sup>29</sup> Reinalda, *Routledge History of International Organizations : From 1815 to the Present Day*, 290.

all without distinction as to race, sex, language or religion.”<sup>30</sup> The United Nations officially began on October 24, 1945.<sup>31</sup> Since its creation, the UN has been the primary actor in creating international human rights norms.<sup>32</sup>

While the UN’s main purpose is to work to establish international peace and security, throughout the twentieth century they often have failed to do so. In terms of preventing genocide, the UN has failed time and time again.<sup>33</sup> As will be further explored in this paper, the UN has failed to prevent the genocides of Rwanda and Yugoslavia. They have also failed to prevent genocide in places such as, “Bangladesh, Burundi, East Timor, Indonesia, Iraq... Cambodia [and] Guatemala.”<sup>34</sup> Throughout the Cold War period of 1945-1989, the UN’s ideological reliance on *realpolitik* (practical matters over ethical matters)<sup>35</sup> led to the UN’s neglect of the issue of genocide in favor of national security interests.<sup>36</sup> The US and USSR would ignore the genocides being committed by their allies as long as that meant their respective strategic interests would be insured.<sup>37</sup> Once the Cold War came to an end, the UN was hopeful that these inadequacies would disappear as there were no longer two ideologically different superpowers stalemating action. In order to work towards this, the Secretary General developed an Agenda for Peace which was meant to “reinvigorate UN enforcement efforts and bring to fruition the early hope envisioned at the outset of the establishment of the United Nations” of the Security Council’s role as “global peacekeeper.”<sup>38</sup> Despite the renewed hope in the UN’s ability to stop

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<sup>30</sup> Reinalda, *Routledge History of International Organizations : From 1815 to the Present Day*, 285.

<sup>31</sup> United Nations. "History of the United Nations."

<sup>32</sup> Delaet, Debra. "Promoting Human Rights from the Top Down: Implementing Human Rights through International Organizations and States." In *The Global Struggle for Human Rights*, 133-50. 134.

<sup>33</sup> Totten, Samuel, and Paul R. Bartrop. "The United Nations and Genocide: Prevention, Intervention, and Prosecution." *Human Rights Review* 5, no. 4 (July 2004): 8–31. doi:10.1007/s12142-004-1025-1. 9.

<sup>34</sup> Ibid.

<sup>35</sup> "Realpolitik Definition & Meaning." Merriam-Webster. Merriam-Webster, April 3, 2022.

<https://www.merriam-webster.com/dictionary/realpolitik>.

<sup>36</sup> Torrent and Bartop, "The United Nations and Genocide: Prevention, Intervention, and Prosecution." 9.

<sup>37</sup> Ibid.

<sup>38</sup> Totten, "The United Nations and Genocide: Prevention, Intervention, and Prosecution." 10.

genocide and bring peace following the Cold War, the genocides in Rwanda and Yugoslavia were still able to continue with virtually no UN interference shortly after the Security General's statement.

### **What is Genocide?**

The term "genocide" originated following World War II, in connection with the prosecution of Nazi leaders during the Nuremberg trial.<sup>39</sup> The term was first coined, and later advocated for, by Raphael Lemkin.<sup>40</sup> Dr. Raphael Lemkin, who was Polish and Jewish, did not begin his advocacy for the concept of genocide because of the Holocaust, but rather began to pursue this line of thinking a number of years before.<sup>41</sup> His work first began in 1933 because of the massacre of Christian Assyrians by the Iraqis.<sup>42</sup> He compared its similarities to the slaughter of Armenians in Turkey in World War I, and began to wonder how to possibly prevent such atrocities, or as he then called them, "acts of barbarism."<sup>43</sup> His first proposal to outlaw such acts was to the League of Nations in 1933, but unfortunately, his proposal failed and led to the disapproval of the Polish government, as they were working towards conciliation with Nazi Germany.<sup>44</sup> Beginning in 1939, Dr. Lemkin began to personally experience the aggressions of Nazi Germany.<sup>45</sup> After six months of hiding in Polish forests, he escaped to Sweden where he continued to study the Nazi occupation and he "identified the instruments used to systematically eliminate a people."<sup>46</sup> It was during this time that he developed the term genocide. The term

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<sup>39</sup> Schabas, William A. "Origins of the Genocide Convention: From Nuremberg to Paris." *Case Western Reserve Journal of International Law* 40, no. 1 (2007): 35-55. 50.

<sup>40</sup> United Nations. "Genocide." Office on Genocide Prevention and the Responsibility to Protect. <https://www.un.org/en/genocideprevention/genocide.shtml>

<sup>41</sup> "Life of Raphael Lemkin." Lemkin House. 2013. <http://lemkinhouse.org/about-us/life-of-raphael-lemkin/> .

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

genocide was developed using two words. The first, *genos*, comes from the Greek language and means race or tribe; the second, *cide*, comes from the Latin language and means killing.<sup>47</sup>

Genocide was therefore understood as the killing of a tribe, race, or people. This term was then coined and published in his book *Axis Rule in Occupied Germany*.<sup>48</sup> In the years following the introduction of the term, Lemkin had to work incessantly to have it become recognized by the international community, as the community was more focused on prosecuting crimes against humanity at the Nuremberg Trials.<sup>49</sup>

While the term was first published in 1944, it did not become officially recognized by the international community until December 9, 1948, when the Genocide Convention was adopted by the United Nations General Assembly.<sup>50</sup> Though Raphael Lemkin was a strong advocate of adoption of the term, many in the international community saw no reason for distinguishing genocide from the already known idea of crimes against humanity. However, after the Nuremberg trials failed to punish crimes committed before the war, three UN member states, Cuba, Panama, and India, proposed a resolution to fix the inherent problems of using the framework of crimes against humanity.<sup>51</sup> Their resolution included two main objectives: an acknowledgement that genocide could happen during peacetime, and that genocide falls under universal jurisdiction.<sup>52</sup> Due to state disagreements, the final resolution was more toned down than the first proposal, but it did begin the process of what would eventually become the

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<sup>47</sup> United Nations. "Genocide."

<sup>48</sup> Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris," 2007, 35.

<sup>49</sup> Power, Samantha. *"A Problem From Hell: America and The Age of Genocide"*. New York, NY: Harper Perennial, 2002.

<sup>50</sup> UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at: [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

<sup>51</sup> Schabas, William A. "Convention on the Prevention and Punishment of the Crime of Genocide." United Nations. July 2008. <https://legal.un.org/avl/ha/cppcg/cppcg.html>.

<sup>52</sup> Ibid.

Convention for the Prevention and Punishment of the Crime of Genocide, or the Genocide Convention of 1948.<sup>53</sup>

As explained by William Schabas, a professor of International Law at the National University of Ireland in Galway and the director of the Irish Center for Human Rights, the development process of the Genocide Convention occurred in three stages. Throughout all three stages, there was continuous controversy over the relationship between genocide and crimes against humanity; with some states arguing that genocide was under the umbrella of crimes against humanity and did not need to be separately defined, and other states arguing that the term had to be defined in order to make it a chargeable offense during peacetime.<sup>54</sup> The first stage of the Genocide Convention began with the drafting of the convention. This stage was led by the Secretariat, with the help of three experts: Dr. Raphael Lemkin, Henri Donnedieu de Vabres, and Vespasian V. Pella.<sup>55</sup> This draft was then sent to the Committee on the Progressive Development of International Law and Its Codification for comment.<sup>56</sup> At this stage, France first challenged separating genocide from crimes against humanity as “useless and even dangerous neologism” (a new or recent word attempting to enter the mainstream),<sup>57</sup> perhaps because they were afraid it could be used against them for their actions during peacetime. During the draft’s consideration at the second session of the General Assembly, other countries like the UK were similarly against separating the term genocide from crimes against humanity, while many “third world” countries advocated and fought for the term’s separation and autonomy in order to protect themselves against larger powers.<sup>58</sup> The second stage involved a reworking of the draft by an ad hoc committee. During this stage, the debate between the relationship between genocide and crimes

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<sup>53</sup> Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris." 2007, 36.

<sup>54</sup> Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris." 2007, 37.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris." 2007, 38.

<sup>58</sup> Ibid.

against humanity continued.<sup>59</sup> As some form of compromise between the two opposing groups, the ad hoc committee decided that genocide should be characterized as a “crime against mankind.”<sup>60</sup> The final stage concluded with the Sixth Committee of the General Assembly agreeing on the text and submitting it to the General Assembly for adoption.<sup>61</sup> During this stage, the argument between genocide and crimes against humanity continued. France continued to be the leading country arguing that genocide falls under crimes against humanity and should not be separated.<sup>62</sup> On the opposing side, countries, such as Brazil, argued that, while crimes against humanity did encompass genocide, genocide still had to be defined separately because it was a crime that could also be committed during peace time (while crimes against humanity could only be committed during wartime).<sup>63</sup>

Following these three stages and their contentious debates, the Convention for the Prevention and Punishment of the Crime of Genocide, or the Genocide Convention, was unanimously voted in by the 56 members at the 179th plenary meeting and was adopted on December 9, 1948, by the United Nations.<sup>64</sup> The Convention eventually went into force on January 12, 1951.<sup>65</sup> According to the UN, the drafting of this Convention symbolized the international community’s commitment of “never again.”<sup>66</sup> And in the view of the International Court of Justice (ICJ), the principles of the Convention have become general customary international law, and therefore, the Convention is binding on all states regardless of their

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<sup>59</sup> Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris." 2007, 39.

<sup>60</sup> Ibid.

<sup>61</sup> Schabas, "Convention on the Prevention and Punishment of the Crime of Genocide." 2008.

<sup>62</sup> Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris." 2007, 40.

<sup>63</sup> Ibid.

<sup>64</sup> See the following link for a list of the Convention’s current signatories:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-1&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en), and the following PDF (page 3) for a list of the countries who have yet to sign on to the Convention:

<https://www.un.org/en/genocideprevention/documents/Genocide%20Convention-FactSheet-ENG.pdf>

<sup>65</sup> Schabas, "Convention on the Prevention and Punishment of the Crime of Genocide." 2008.

<sup>66</sup> United Nations. “Genocide Prevention.”

Convention ratification status.<sup>67</sup> The Convention contains a number of articles important to the term genocide. Article II is arguably the most important article as it defines what genocide means, and the conditions that must be met in order to trigger state obligations. The definition is as follows:

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

While the definition of genocide is extremely important, there are still some other important aspects of the Genocide Convention to note. One of these aspects resolves the debate between the relationship of genocide and crimes against humanity that occurred all throughout the development of the Convention. Within Article I of the Convention, all Contracting Parties agreed that “genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”<sup>68</sup> Furthermore, within the Convention, there are certain obligations which all states must follow whether or not they have ratified the Convention. These obligations include to do all they can to prevent and punish the crime of genocide, as well as the obligations to not commit genocide and to give effective penalties for those charged with genocide.<sup>69</sup> Essentially, the Genocide Convention compels all

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<sup>67</sup> United Nations. “Genocide.”

<sup>68</sup> UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide. 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at:

[https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1\\_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf)

<sup>69</sup> United Nations. “Genocide Prevention.”

signatory states to act once a genocide is known to be happening. This obligation will be central to my argument concerning the UN and the events in Rwanda and Yugoslavia in the 1990s.

## **The Rwandan Genocide**

Beginning in the spring and summer of 1994, Rwanda saw “the most unambiguous case of state-sponsored genocide in an attempt to exterminate a category of humanity, a people, since the Nazi Holocaust of the Jews of Europe.”<sup>70</sup> Within 100 days, over 800,000 people were intentionally killed by the Rwandan Hutu government simply because they were Tutsi.<sup>71</sup> The genocide that occurred so quickly in Rwanda was one based on ethnic difference<sup>72</sup> between the Hutu majority (about 85%) and the Tutsi minority (about 15%).<sup>73</sup> While many in the international community like to argue that the fighting between the two groups is one that stems back to an ancient hatred, this is simply not the case. The Hutu and Tutsi groups are extremely similar, sharing “the same language and culture; the same clan names, the same customs, and the [same] symbols of kingship [that] served as a powerful unifying bond between them.”<sup>74</sup> It was not until Belgian colonization and their divide and conquer strategy that the Hutu and Tutsi became a distinct ethnicity with hatreds towards the other group.<sup>75</sup> When the Belgians arrived in the early 1900s, they brought with them the idea of race science and racial groups.<sup>76</sup> The Belgians created an apartheid system in Rwanda,<sup>77</sup> forcing the two ethnic groups to carry around

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<sup>70</sup> Frontline. "Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE." PBS. January 1999. <https://www.pbs.org/wgbh/pages/frontline/shows/evil/interviews/gourevitch.html>.

<sup>71</sup> Ibid.

<sup>72</sup> Lemarchand, René. "The 1994 Rwanda Genocide." In *Century of Genocide: Critical Essays and Eyewitness Accounts*, 483-504. 3rd ed. New York, NY: Routledge, 2009. 484.

<sup>73</sup> Frontline. "Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE."

<sup>74</sup> Lemarchand, "The 1994 Rwanda Genocide." 484.

<sup>75</sup> Lemarchand, "The 1994 Rwanda Genocide." 485.

<sup>76</sup> Frontline. "Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE."

<sup>77</sup> Ibid.

ethnic identity cards.<sup>78</sup> The system created then worked to privilege the Tutsi minority, while oppressing the Hutu majority.<sup>79</sup> This inevitably led to hatred among the two groups, with the Hutus now looking at the Tutsi in a racist manner, portraying them as alien, clever, and unable to be a member of the national community.<sup>80</sup>

In the late 1950s and with the onset of the African liberation movements, Rwanda began to push for its independence from the Belgians.<sup>81</sup> In Rwanda, the Hutu majority pushed for revolution and eventually reversed the system set in place by the Belgians.<sup>82</sup> However, the Hutu majority left the Belgian apartheid system intact, and instead placed themselves at the top of the hierarchy.<sup>83</sup> For the next thirty years, the Hutu ruled by keeping the Tutsi in a position of political and social inferiority. The Hutu government “systematically discriminated against [the Tutsi] and periodically subjected [them] to waves of killing and ethnic cleansing.”<sup>84</sup> The violence inflicted on the Tutsi minority by the Hutu government led many Tutsi individuals to flee to neighboring countries as refugees.<sup>85</sup> This is the background that eventually led to the civil war of 1990, when groups of armed Tutsi exiles who wished to return home invaded Rwanda from the Ugandan border.<sup>86</sup> The Tutsi exile group came to be known as the Rwandan Patriotic Front (RPF) and continued to fight against the Hutu government.<sup>87</sup> The war continued on and off from 1990 up until 1993.<sup>88</sup> In 1993, a cease-fire was arranged between the two groups, eventually leading to the Arusha Accords, which stated the two groups would share power.<sup>89</sup> Many Hutu disapproved

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<sup>78</sup> Lemarchand, "The 1994 Rwanda Genocide." 485.

<sup>79</sup> Frontline. "Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE."

<sup>80</sup> Lemarchand, "The 1994 Rwanda Genocide." 487.

<sup>81</sup> Frontline. "Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE."

<sup>82</sup> Ibid,

<sup>83</sup> Ibid,

<sup>84</sup> Power, Samantha. "Bystanders to Genocide." *The Atlantic*. September 08, 2019. Accessed November 21, 2021. <https://www.theatlantic.com/magazine/archive/2001/09/bystanders-to-genocide/304571/>.

<sup>85</sup> Frontline. "Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE."

<sup>86</sup> Power. "Bystanders to Genocide." 6.

<sup>87</sup> Ibid,

<sup>88</sup> Frontline. "Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE."

<sup>89</sup> Ibid,

of the Accords and despite the cease-fire, Hutu extremists continued to kill and terrorize Tutsi and the Hutu politicians that supported peace.<sup>90</sup> The Hutu dictator, President Habyarimana, was even quoted as saying the “threat of peace was even greater than the threat of war, because it amounted to a defeat.”<sup>91</sup> Throughout this period, the extremist Hutus killed several thousand Rwandans and detained about 9,000.<sup>92</sup> To stop this slaughter and ensure the establishment of the Arusha Accords, UN Peacekeepers, led by Roméo Dallaire, were sent to Rwanda on what was known as the UN Assistance Mission In Rwanda, or UNAMIR, in 1993.<sup>93</sup> This Mission was barely supported by the UN, as the Mission received second hand vehicles from the former UN Cambodia mission where only about 80 out of 300 were viable, they lacked medical supplies and were not given a restock, and they had poorly trained personnel,<sup>94</sup> all because no member state wanted to pay the major expenses associated with properly funding the mission.

It was during the establishment of the Arusha Accords when individuals first started warning the United Nations about rumblings of genocidal killings. In what came to be known as the Dallaire Fax, Dallaire told the United Nations that an informant stated that the Hutus “had been ordered to register all the Tutsi in Kigali.”<sup>95</sup> This informant, who became known as Jean-Pierre, told Dallaire he believed it was for their ultimate extermination.<sup>96</sup> The informant was later revealed to be a former member of President Habyarimana’s security staff.<sup>97</sup> In fact, he actually served as the head of a Kigali interahamwe (Hutu militia groups) training program.<sup>98</sup> In the information that he provided Dallaire, Jean-Pierre warned of a genocidal plan calling for

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<sup>90</sup> Power. “Bystanders to Genocide.” 7.

<sup>91</sup> Frontline. “Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE.”

<sup>92</sup> Power. “Bystanders to Genocide.” 7.

<sup>93</sup> Ibid.

<sup>94</sup> Power, “Bystanders to Genocide.” 8.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Frontline. “Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE.”

<sup>98</sup> Ibid.

extermination of part of the Rwandan population, as well as threats against UN peacekeepers.<sup>99</sup> Despite the warnings of genocide in Rwanda, the UN did nothing and treated the fax “as a routine bureaucratic matter,” as authorized by UN mandate rules.<sup>100</sup> Because of bureaucratic procedures, they actually had to inform President Habyarimana of the fax, which ultimately informed the President there was a leak within his administration.<sup>101</sup> Despite knowing of the possibility of a genocide in Rwanda, the UN took no action to stop it.

While there had been sporadic ethnic killings throughout the beginning of the 90s, the real genocide did not begin until April 6, 1994, when President Habyarimana’s plane was shot down and he was killed.<sup>102</sup> Soon after the news broke, Rwandan authorities announced a curfew and erected roadblocks.<sup>103</sup> Hutu extremists were quick to use the plane crash as an excuse to attack Tutsis, who they immediately blamed for the crash<sup>104</sup> (though there has been speculation that the crash was actually the doing of the President’s inner circle in order to provide a reason for the following genocide).<sup>105</sup> It became clear within a few hours that the streets were being taken over by Hutu militias and that they were targeting anyone who expressed support for the Arusha Accords,<sup>106</sup> as well as any Hutu politician affiliated with the Democratic Republic Movement (MDR) or the Social Democratic Party (PSD), Tutsi leaders, and anyone suspected of RPF (Rwandan Patriotic Front aka the Tutsi rebels) sympathies.<sup>107</sup> These actions were not spontaneous killings. Rather, the individuals to be killed were broadcasted on one of Rwanda’s

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> Lemarchand, "The 1994 Rwanda Genocide." 490.

<sup>103</sup> Power, "Bystanders to Genocide." 9.

<sup>104</sup> Power, "Bystanders to Genocide." 10.

<sup>105</sup> Holland, Hereward. "Rwanda Says Hutu Radicals Killed President in 1994." Reuters. Thomson Reuters, January 11, 2010. <https://www.reuters.com/article/ozatp-rwanda-genocide-20100111-idAFJ0E60A08F20100111>.

<sup>106</sup> Power, "Bystanders to Genocide." 11.

<sup>107</sup> Lemarchand, "The 1994 Rwanda Genocide." 491.

national radio channels, Radio-Television Mille Collines.<sup>108</sup> Their personal information such as names, addresses, and license-plate numbers, were broadcasted for all to hear, and Hutu extremists did the rest.<sup>109</sup> Within 48 hours of the plane crash, massacres began to occur all across the country, such as in Nyamata, Musha, and Karubamba.<sup>110</sup> The international response to the violent outbreak that followed the plane crash was to evacuate all their people from the country. As reported by Samantha Power, “in the three days during which some 4,000 foreigners were evacuated, about 20,000 Rwandans were killed.”<sup>111</sup>

Once the genocidal killings began, they proceeded in a rapid fashion. The Rwandan Genocide is widely considered as a low-technology genocide. Orders to kill were given through the Hutu government-owned radio station, Radio-Television Mille Collines.<sup>112</sup> The Hutu government utilized this radio channel to mobilize the population to kill Tutsi all throughout the country.<sup>113</sup> Because of this, killings occurred on a local scale and were carried out in an extremely brutal manner with the following items: “machetes, massues (clubs studded with nails), small axes, knives, grenades, guns, fragmentation grenades, beatings to death, amputations with exsanguination, live burials, drowning, or rape.”<sup>114</sup> Militias would also cut the Achilles tendons of victims to “immobilize them so that they could be finished off later.”<sup>115</sup> According to eyewitnesses, many of those participating in these genocidal acts were often local government authorities. One account describes these authorities as setting fires to houses and destroying properties.<sup>116</sup> The eyewitness also describes, “they would shoot at a hundred or two

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<sup>108</sup> Power. “Bystanders to Genocide.” 13.

<sup>109</sup> Ibid.

<sup>110</sup> Lemarchand, “The 1994 Rwanda Genocide.” 492.

<sup>111</sup> Power, “Bystanders to Genocide.” 20.

<sup>112</sup> Frontline. “Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE.”

<sup>113</sup> Ibid.

<sup>114</sup> Physicians for Human Rights (1994). Rwanda 1994: A Report of the Genocide. London: Author, p. 11 (typescript).

<sup>115</sup> Ibid.

<sup>116</sup> Omaar, Rakiya (1994). Rwanda: Death, Despair, and Defiance. London: African Rights. 366.

hundred people. It is all former soldiers who killed us. Those who fell over were beaten up with clubs or hacked to death.”<sup>117</sup> The interahamwe’s brutality did not stop there. A 24 year old eyewitness describes how he was forced to kill his own brother in order “to prove” that his family were not agents or sympathizers of the RPF.<sup>118</sup> In addition to killing, the interahamwe also participated in the rapes of women all across Rwanda. One 17 year old girl describes how three men raped her in turns. She states, “as the last one finished, a new group of interahamwe arrived. They ordered the man who raped me last to rape me again. He refused. Then they threatened to burn both of us alive unless he raped me again. So he raped me again.”<sup>119</sup>

Despite the atrocities occurring in Rwanda and varying estimates of between 500,000-2,000,000 people murdered (the figures are highly contested, but estimates usually fall around 800,000 killed within 100 days),<sup>120</sup> the UN took no action to help the Rwandan people. In fact, they did the exact opposite. Reeling from the 1993 experience in Somalia, the United States remained apprehensive about intervening in Rwanda and played a large role in preventing the United Nations from doing so.<sup>121</sup> The Pentagon also feared that intervention in Rwanda would lead to long-term, costly engagement of the United States Military.<sup>122</sup> Belgium, who also wanted to leave Rwanda, turned to the US for support for a full UN exit.<sup>123</sup> Samantha Power describes US policy in the case of Rwanda as: “no U.S. military intervention, robust demands for a withdrawal of all of Dallaire's forces, and no support for a new UN mission that would challenge the killers.”<sup>124</sup> When questioned by the press about what was happening in Rwanda, US

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<sup>117</sup> Quoted in Omaar, 368.

<sup>118</sup> Quoted in Omaar, 344-5.

<sup>119</sup> Quoted in Omaar, 425.

<sup>120</sup> Guichaoua, André. “Counting the Rwandan Victims of War and Genocide: Concluding Reflections.” *Journal of Genocide Research* 22, no. 1 (March 2020): 125–41. doi:10.1080/14623528.2019.1703329.

<sup>121</sup> CFR Staff. “The UN Security Council.” Council on Foreign Relations. Council on Foreign Relations, August 12, 2021. <https://www.cfr.org/backgrounder/un-security-council>.

<sup>122</sup> Power, “Bystanders to Genocide.” 27.

<sup>123</sup> Power, “Bystanders to Genocide.” 28.

<sup>124</sup> Ibid.

representatives would only refer to what was happening in Rwanda as “acts of genocide,” but not genocide.<sup>125</sup> In fact, an official from the Office of the Secretary Of Defense even noted that US officials had to be careful to avoid using words that insinuated genocide as a genocide finding could lead the government to “do something.”<sup>126</sup> In addition, US policy followed the Presidential Decision Directive 25, which essentially called for the United States to pressure other countries into following non-intervention policies.<sup>127</sup>

Perhaps influenced by US policies and lobbying, the UN Security Council eventually decided to dramatically decrease the size of Dallaire’s peacekeeping forces down to 270 men.<sup>128</sup> Madeleine Albright described the “small, skeletal” operation as a symbol of “the will of the international community,”<sup>129</sup> or in reality a lack thereof. However, as the number of deaths continued to rise, the Security Council began to consider sending in a more powerful force to end the slaughter.<sup>130</sup> Dallaire requested that the UN follow an inside-out approach to end the genocide, which focused on sending an additional 5,000 well-armed soldiers who could secure Kigali and then work outwards to the countryside.<sup>131</sup> Whereas the US proposed an outside-in approach, which would create protection zones along the border that Tutsi refugees would then have to travel to on their own.<sup>132</sup> Being that most Tutsis were unable to safely make it to the safe zones, Dallaire described the US proposal as a “mission...to put on a show at no risk.”<sup>133</sup> The US eventually agreed to Dallaire’s plan, but only once it was too late. The genocide had already been ended by the Rwandan Patriotic Front.<sup>134</sup> The damage had already been done.

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<sup>125</sup> Power, “Bystanders to Genocide.” 24

<sup>126</sup> As quoted in: Power, “Bystanders to Genocide.” 22.

<sup>127</sup> Frontline. “Interviews - Philip Gourevitch | The Triumph Of Evil | FRONTLINE.”

<sup>128</sup> Power, “Bystanders to Genocide.” 30.

<sup>129</sup> Ibid.

<sup>130</sup> Power, “Bystanders to Genocide.” 35.

<sup>131</sup> Ibid.

<sup>132</sup> Power, “Bystanders to Genocide.” 36.

<sup>133</sup> Ibid.

<sup>134</sup> Power, “Bystanders to Genocide.” 38.

## The Yugoslavian Genocide

Beginning in the early 1990s, the Republic of Yugoslavia entered an almost ten year period of turmoil, on and off wars, and genocidal violence. Throughout this period, thousands of people, of all ethnic groups (Bosnians, Serbs, Croats, Albanians, etc.), were murdered, tortured, raped, and forced into exile.<sup>135</sup> While there are a number of explanations for the violence that erupted throughout the 90s, they all focus on one factor: the power vacuum left when communism began to decline in the late 1980s. This power vacuum allowed politicians like Slobodan Milošević to come to power and spout the language of ethno-nationalism and religious hatreds. In this paper, I will focus on only two main explanations that scholars have attempted to explain this period of turmoil. The first mirrors explanations posed for the genocide in Rwanda; this theory is known as the “ancient hatreds” theory, and bases the violence off of inevitable ‘age-old’ conflicts between differing ethnic and religious groups that ultimately developed into genocidal violence.<sup>136</sup> The second theory blames the turmoil in Yugoslavia throughout the ‘90s on outsider intervention and past imperialism.<sup>137</sup> The hatreds that began to develop in Yugoslavia were based on “imperial manipulation rather than ethnic hostility.”<sup>138</sup> However, as argued by Tony Judt, these theories fail to account for the role of the Yugoslavs themselves. Throughout Yugoslavia, there was some generalized discrimination towards the Albanian minority in the South (strongest among those in Serbia), as well as a Northern distaste for the South, as they were economically underachieving.<sup>139</sup> In addition to financial mismanagement, the Republic also began to crack when Slobodan Milošević became President of Serbia in 1989. Milošević

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<sup>135</sup> Judt, Tony. *Postwar: A History of Europe Since 1945*. New York, NY: Penguin Press, 2005. 665.

<sup>136</sup> *Ibid.*

<sup>137</sup> Judt, *Postwar: A History of Europe Since 1945*, 666.

<sup>138</sup> *Ibid.*

<sup>139</sup> Judt, *Postwar: A History of Europe Since 1945*, 669-671.

absorbed two provinces within the Republic, which then allowed Serbia to have half of the eight federal votes (Serbia, Kosovo, Vojvodina, and the compliant pro-Serbian Montenegro), leading to the effective stalemate of the government.<sup>140</sup> These factors led other states within the Republic to consider declaring independence, such as Slovenia and Croatia in 1991 and Bosnia and Herzegovina in 1992.<sup>141</sup> These wars of independence eventually led to the displacement of over two million people and to the deaths of thousands,<sup>142</sup> as different ethnic groups fought other groups to ensure their own protection.

### *Croatia and Bosnia-Herzegovina*

The first of these wars was in Croatia. After Croatia declared independence, Serbs in the state began to fear they would suffer, as they only represented 12% of the population.<sup>143</sup> In order to protect themselves, Croatian Serbs used military force to occupy about 33% of Croatian territory, while simultaneously “[destroying] towns and cities, massacr[ing] defenseless civilians, and [forcibly removing] ethnic groups from [their] territory.”<sup>144</sup> However, the conflict in Croatia was not only that of Serb aggression. During Operation Storm, Croatian forces retook Serb territory, forcing over 150,000 Serbs to flee and “unlawfully killing” more than 100 civilians.<sup>145</sup> The conflict in Croatia lasted about seven months,<sup>146</sup> and led to the deaths of between 10,000 to 20,000 people, the fleeing of 200,000, and internal displacement of more than 300,000 people.<sup>147</sup>

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<sup>140</sup> Judt, *Postwar: A History of Europe Since 1945*, 672.

<sup>141</sup> Mennecke, Martin. "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." In *Century of Genocide: Critical Essays and Eyewitness Accounts*, 507-554. 3rd ed. New York, NY: Routledge, 2009. 508.

<sup>142</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 507.

<sup>143</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 508.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 509.

<sup>147</sup> *Ibid.*

This was also when the term “ethnic cleansing” began to have widespread usage in the Western world.<sup>148</sup>

A few months after the conflict in Croatia ended, the war in Bosnia and Herzegovina began. This war lasted more than three years, and led to the deaths of over 100,000 people, especially civilians.<sup>149</sup> This war included a number of warring factions such as “Bosnian Serbs, Bosnian Muslims, Bosnian Croats, regular army and paramilitary forces from Croatia and Serbia, foreign mercenaries, UN troops, and NATO soldiers” (though the last two groups were careful to avoid fighting)<sup>150</sup> Beginning in April and May of 1992, the goal of the Bosnian Serb army, with support from the Yugoslav Army and Serbia, was to “ethnically cleanse” all non-Serbs from Bosnia.<sup>151</sup>

The ethnic cleansing perpetuated by the Bosnian Serbs led to a number of atrocities and constituted war crimes and crimes against humanity.<sup>152</sup> For example, in Sarajevo, the Bosnian Serbs controlled part of the city as well as the surrounding mountains. The area of the city not controlled by Serbs, but completely surrounded by them, was deprived of food, water, heat, UN Humanitarian Aid, and other necessities.<sup>153</sup> The Serbs also attacked the area, killing men, women, and children, as well as destroying Mosques and other cultural and religious monuments.<sup>154</sup> Bosnian Serbs also committed a number of other atrocities against Bosnian Muslims, including ethnic cleansing campaigns in April of 1992.<sup>155</sup> Serbs would kill any

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<sup>148</sup> History.com Editors. “Ethnic Cleansing.” History.com. A&E Television Networks, October 14, 2009. <https://www.history.com/topics/holocaust/ethnic-cleansing#:~:text=The%20phrase%20%E2%80%9Cethnic%20cleansing%E2%80%9D%20came,disintegration%20of%20the%20former%20Yugoslavia>.

<sup>149</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 509.

<sup>150</sup> Ibid.

<sup>151</sup> Lupis, Ivan, and Laura Pitter. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” Edited by Ivana Nizich and Holly Cartner. *Human Rights Watch* 7, no. 13 (October 15, 1995): 1–81. <https://www.hrw.org/report/1995/10/15/fall-srebrenica-and-failure-un-peacekeeping/bosnia-and-herzegovina>. 6.

<sup>152</sup> Lupus, et al. 6.

<sup>153</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 509.

<sup>154</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 510.

<sup>155</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 510.

non-Serb professionals, political leaders, and intellectuals.<sup>156</sup> The rest were forced to flee the area, and their houses were then destroyed.<sup>157</sup> The Serbs also created detention camps, where they would detain non-Serbs, who then faced overcrowding, beatings, torturings, murders, malnutrition, and sexual abuse, such as gang rapes and sex slavery.<sup>158</sup> Throughout these three years, “more than half of Bosnia’s multi-ethnic population of 4.4 million people had been displaced, an estimated 1.3 million were internally displaced; another half a million had fled to neighboring countries, and some 700,000 had sought refuge in Western Europe.”<sup>159</sup>

It is important to note that all of the above ethnic groups committed war crimes, and “the International Criminal Tribunal for Yugoslavia (ICTY) has initiated proceedings against all members of all ethnic groups.”<sup>160</sup> However, the Bosnian Serbs have committed the most number of offenses during this period and committed the most heinous acts of genocide, and therefore, a majority of ICTY indictments are directed against the Serbs.<sup>161</sup>

#### *Act of Genocides in Bosnia and Herzegovina?: The Case of Srebrenica*

Within the Bosnia and Herzegovina war, there is one notable event that is unanimously recognized by legal scholars and the International Criminal Court (ICC) as an act of genocide. This event consists of the six days between July 13 and July 19, 1995, when over 7,000 mostly civilian boys and men were systematically murdered from the UN Safe Area of Srebrenica.<sup>162</sup>

Beginning in 1993, the population of Srebrenica, which had grown to an estimated 55,000-60,000 non-Serb and Muslim residents,<sup>163</sup> was frequently attacked and shelled by the

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<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 511.

<sup>159</sup> Ibid.

<sup>160</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 510.

<sup>161</sup> Ibid.

<sup>162</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 512.

<sup>163</sup> Lupis, Ivan, et al.. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 7.

surrounding Bosnian Serb army.<sup>164</sup> The Bosnian Serb army announced they would only cease these attacks if those within the city would agree to relinquish their weapons to the UN and become a “demilitarized zone.”<sup>165</sup> The UN then declared Srebrenica a “safe area” on April 16, 1993, by passage of Resolution 819.<sup>166</sup> The UN forming a safe area in the first place illustrates that the UN acknowledged that ethnic cleansing and crimes against humanity were occurring in Bosnia and Herzegovina.<sup>167</sup> However, a 1994 UN report by UN Secretary General, Boutros Boutros-Ghali, revealed that the UN could not actually guarantee the safety of these “safe areas.”<sup>168</sup> While the UN troops were authorized to use force to guarantee the safety in these areas, they needed an estimated 34,000 troops in order to do so effectively.<sup>169</sup> The UN only deployed 3,500 troops and UN commanders emphasized that force should be used to protect UN troops within the safe area, rather than the civilians.<sup>170</sup> On March 8, 1995, the Republika Srpska president Radovan Karadžić authorized what was known as Directive No. 7, which ordered the army to “create an unbearable situation of total insecurity with no hope of further survival or life” for those who take refuge in the safe area of Srebrenica, as well as Zepa.<sup>171</sup> This meant that refugees often faced Serb shelling, food shortages, medical supply shortages, overcrowding, as well as lack of other necessities, as the Serb army refused to allow aid convoys into the area.<sup>172</sup> For example, UN convoys were being so restricted by the Bosnian Serbs that only one convoy was allowed in per month and was somehow meant to feed over 39,000 people.<sup>173</sup> Bosnian Serbs

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<sup>164</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 8.

<sup>165</sup> Ibid.

<sup>166</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 9.

<sup>167</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 512.

<sup>168</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 9.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid.

<sup>171</sup> Klarin, Mirko. "Srebrenica: Genocide in Eight Acts." Srebrenica. 2016. Accessed December 30, 2021.

<https://srebrenica.sense-agency.com/en/>.

<sup>172</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 512.

<sup>173</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 11.

also forbade the delivery of salt so that the enclaves would not be able to preserve any food.<sup>174</sup>

These Serb microaggressions were witnessed by the UN peacekeepers, and therefore, the international community; yet, nothing was ever done.

Beginning on July 11, with the Bosnian Serb invasion of this safe area, UN Peacekeepers became bystanders and watched the following events unfold. First hand accounts given to Human Rights Watch described that UN Peacekeepers were stripped to their underwear by Bosnian Serbs, who then took and wore their UN uniforms in order to fool citizens into thinking they were troops.<sup>175</sup> Then on July 13, the Bosnian Serb army began to deport over 20,000 women, children, and elderly individuals into Muslim-controlled territory.<sup>176</sup> Boys and men, ranging from younger than sixteen to men well into their seventies, were separated and considered to be “battle-aged” men (despite many of these men not being capable of military fighting).<sup>177</sup> These individuals were told that they would rejoin the rest of the group in Muslim-controlled territory once they had been interrogated and it was determined if they had committed “war crimes.”<sup>178</sup> However, these 7,000 boys and men were instead transported from Srebrenica to nearby execution sites, such as schools, factories, and meadows, where they were denied food and water, beaten,<sup>179</sup> and were eventually executed with machine guns.<sup>180</sup> Any survivors were rooted out by the Serb military and shot with pistols.<sup>181</sup> After the killings, excavators were brought in to pick up the hundreds of bodies and bring them to mass graves.<sup>182</sup>

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<sup>174</sup> Ibid.

<sup>175</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 22.

<sup>176</sup> Ibid.

<sup>177</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 26-27.

<sup>178</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 23.

<sup>179</sup> Klarin. "Srebrenica: Genocide in Eight Acts." Srebrenica. 2016.

<sup>180</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 512.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

There were a number of massacre sites that these men could have been taken to upon their removal from Srebrenica. The first is the Nova Kasaba-Konjevic Polje Area. Eight photographs from around July 13th or 14th depict a crowd of people crowded onto a soccer field, but days later, aircrafts detected an empty stadium with four patches of freshly disturbed earth.<sup>183</sup> In addition, there were tracks from heavy vehicles that were not there before.<sup>184</sup> An eyewitness describes the massacre that happened there to Human Rights Watch, stating “They would just line them up and shoot them into the pits. The approximately one hundred guys whom they interrogated and who had dug the mass graves then had to fill them in. At the end of the day, they were ordered to dig a pit for themselves and line up in front of it.”<sup>185</sup> Another eyewitness describes that those who surrendered were shot dead, as well as over 400 men who had been buried alive.<sup>186</sup> Another massacre occurred in the Karakaj area, where individuals were first interrogated in Bratunac and then transported to Karakaj to be “interrogated, harassed, and beaten”<sup>187</sup> and finally killed by gun and bulldozed away.<sup>188</sup> Bratunac also served as a massacre area, however, in this area there were no eyewitness survivors to tell the story.<sup>189</sup> Second-hand accounts relay similar information as the massacres above. A UN soldier who was held in Bratunac describes hearing Bosnian Serb guards brag about murdering people and raping women.<sup>190</sup> Another, who was the sister-in-law of a Bosnian Serb soldier, described how he would speak openly about killing Muslims. She reports that he said they had probably killed an

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<sup>183</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 50.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 52.

<sup>187</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 57.

<sup>188</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 61-66.

<sup>189</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 66.

<sup>190</sup> Lupis, et al. “The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina.” 67.

estimated 4,000 men, and since they were in such a hurry, would shoot most of them and then slit the throats of those who were known to be “war criminals.”<sup>191</sup>

Following the Serb attack in Srebrenica, and the lack of international intervention, the Bosnian Serb army then took over a second safe area, Zepa, where they again encountered no international opposition.<sup>192</sup> In fact, there was no international response to Srebrenica until a full seven weeks later, on August 28th.<sup>193</sup> The response had nothing to do with the atrocities at Srebrenica, but rather, it was a response to the second shelling of a Sarajevan marketplace.<sup>194</sup> NATO, led by President Clinton, finally authorized a bombing campaign against Serbian capacities.<sup>195</sup> Eventually, peace talks began and the Dayton Accords were signed. From the moment that fighting broke out in the early 1990s, human rights organizations and the media were calling out to the international community to end the slaughter.<sup>196</sup> While UN Peacekeeping forces were sent in to help curb the fighting, the actual assistance was severely limited, due to “restricted rules of engagement, limited resources, and interference from the warring parties, but also by a lack of political will to apply the military means available.”<sup>197</sup> Furthermore, the UN intentionally destroyed video footage that depicted UN troops watching as Bosnian Serbs began to massacre Muslim men.<sup>198</sup> In 1999, the UN Secretary General at the time, Kofi Annan, released a report assessing the UN’s role in protecting the safe areas of Srebrenica and Zepa.<sup>199</sup> The report criticizes member states for their lack of involvement in implementing resolutions, and greatly criticized the Dutch UN Peacekeepers who stood aside while Srebrenica was captured.<sup>200</sup>

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<sup>191</sup> Ibid.

<sup>192</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 513.

<sup>193</sup> Judt, *Postwar: A History of Europe Since 1945*, 678.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 518.

<sup>197</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 518-519.

<sup>198</sup> Lupis, et al. "The Fall of Srebrenica and the Failure of UN Peacekeeping: Bosnia and Herzegovina." 31.

<sup>199</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 520.

<sup>200</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 520.

In addition, the international community responded to the atrocities only after the fact by forming the International Criminal Tribunal of Yugoslavia, which was meant to investigate “war crimes, crimes against humanity, and genocide committed in the Yugoslav wars since 1991”; this was actually the first international effort since the Nuremberg and Tokyo Trials to address war crimes.<sup>201</sup> Since the Tribunal’s establishment, there have been 161 indictments against individuals for their actions in the former Yugoslavia, and the ICTY has finished proceedings against 113 individuals (9 acquittals, 55 sentences, 13 sent for retrial in the former Yugoslavia).<sup>202</sup> While the number of cases is relatively small, the ICTY has played an indispensable role in preserving history of the major atrocities that occurred during the wars in the former Yugoslavia.<sup>203</sup>

In March of 1993, Bosnia and Herzegovina sued the government of Yugoslavia in the International Court of Justice (ICJ).<sup>204</sup> The Court did not come to its decision until February 26, 2007, when it decided in a 175 page judgement that the only Serb action that constituted genocide was their actions at Srebrenica.<sup>205</sup> All other actions including sexual violence, detention camps, and ethnic cleansing did not constitute genocide.<sup>206</sup> The ICTY judges are in agreement with the ICJ, and have only convicted a six individuals for genocide, as they could not prove the mental intent requirement under the definition of genocide.<sup>207</sup> Only the acts at Srebrenica showed specific intent to “destroy a group in whole or in part.”<sup>208</sup>

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<sup>201</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 521.

<sup>202</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 522.

<sup>203</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 523.

<sup>204</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 526.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.

<sup>207</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 528.

<sup>208</sup> Ibid.

*Kosovo*

Following the above mentioned wars, in 1998, another war broke out in Kosovo, an autonomous province, between the Serbs and the Kosovo Liberation Army (KLA).<sup>209</sup> The conflict in Kosovo had been building since the 1980s, when Milošević came to power.<sup>210</sup> Milošević encouraged the Kosovo Serbs, who felt that they had been wronged by the Kosovo Albanian majority. He introduced anti-Albanian measures such as, the revocation of Kosovo's autonomous province status, the replacement of Albanian police forces with Serb police forces, the closure of Albanian language centers, and the removal of Albanians from public employment and educational spaces.<sup>211</sup> By the Spring of 1997, the UN was well aware of the situation, as the UN special rapporteur for human rights, Elizabeth Rehn, closely monitored the situation and warned of "impending disaster."<sup>212</sup> After years of Serb oppression, the Kosovo Liberation Army (KLA) began to commit attacks on Serb police forces and Albanian collaborators.<sup>213</sup> By 1998, the KLA had set up detention centers where Serbs and their collaborators were kept in "inhumane conditions, tortured, and killed."<sup>214</sup> In retaliation, Serb forces mirrored their actions in Bosnia by attacking villages, killing civilians, and burning houses.<sup>215</sup> By the year's end, 300,000 Kosovo Albanians were forced to flee and over 3,000 had been killed.<sup>216</sup> By the end of the war, 800,000 Albanians had fled and hundreds of thousands had become internally displaced, and 5,000-30,000 are estimated to have been killed.<sup>217</sup>

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<sup>209</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 529.

<sup>210</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 530.

<sup>211</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 531.

<sup>212</sup> Judt, *Postwar: A History of Europe Since 1945*, 679-80.

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

<sup>216</sup> Power, Samantha (2002). "A Problem from Hell": America and the Age of Genocide. New York: Basic Books, 465.

<sup>217</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 532.

In the early summer of 1998, the War Crimes Tribunal in the Hague announced it would exercise their jurisdiction over the crimes in Kosovo, and “on July 19th, the US senate urged the Hague official to indict Milošević with ‘war crimes, crimes against humanity, and genocide.’”<sup>218</sup> Six months after this, the Serbian government turned over Milošević to the Hague, where he was charged with genocide and war crimes.<sup>219</sup> While Slobodan Milošević was indicted by the ICTY, the Court ultimately did not recognize the actions in Kosovo as genocide because the intent was not to destroy a part or all of the Albanian ethnic group, but rather to forcefully remove them from Kosovo.<sup>220</sup>

Totaling at over 140,000 deaths and 4 million displaced<sup>221</sup> (though some observers have higher numbers) in this short ten year period, it is truly a wonder why the United Nations did not take more concrete steps to actively end the turmoil in Yugoslavia. Why is it that out of all the massacres and genocidal acts seen throughout the period that the situation in Srebrenica is the only event legally recognized and prosecuted as genocide? While the terrible atrocities that occurred in this ten year period were mostly the fault of young, hateful Serb men,<sup>222</sup> one cannot casually ignore the responsibility of the United Nations, who was sworn to protect human rights and international peace.

### **Why did it take so long for the UN to intervene?**

After examining the case studies of Rwanda and Yugoslavia, it is easy to wonder: how can something like this happen under the United Nation’s watchful eye? It can be hard to reconcile the idea of “never again” that was championed by the United Nations when it is in

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<sup>218</sup> Judt, *Postwar: A History of Europe Since 1945*, 681.

<sup>219</sup> Ibid.

<sup>220</sup> Mennecke, "Genocidal Violence in the Former Yugoslavia: Bosnia Herzegovina and Kosovo." 537.

<sup>221</sup> International Center for Transitional Justice, “Transitional Justice in the Former Yugoslavia,” International Center for Transitional Justice, April 25, 2011, <https://www.ictj.org/publication/transitional-justice-former-yugoslavia>.

<sup>222</sup> Judt, *Postwar: A History of Europe Since 1945*, 685.

stark contrast to what actually happened throughout the twentieth century. Scholars attempt to explain this disconnect in a number of ways.

### *Limitations of the Genocide Convention*

One of the main criticisms in terms of the lack of UN intervention actually comes from the limitations imposed by the definition of genocide. As previously mentioned, genocide requires an “intent to destroy, in whole or in part, a national, ethnical, racial or religious group,” by acts such as killing, causing bodily or mental harm, deliberately causing “conditions of life calculated to bring about [a group’s] physical destruction in whole or in part,” imposing sterilization methods, and separating children.<sup>223</sup> Under this definition, there are a few problems that arise. First and foremost is the extremely narrow definition of genocide. Since the establishment of the Convention, there have been numerous debates over what is actually covered by this definition and what situation constitutes genocide.<sup>224</sup> In this narrow definition, there are two main elements that must be met: 1) a mental “intent to destroy,” or *dolus specialis*, and 2) a physical element such as killing or causing harm to bring about a group’s destruction.<sup>225</sup> Under this definition, it is incredibly hard for a state or international body to establish the perpetrator’s intent.<sup>226</sup> Note also that under the current definition of genocide within the Convention, cultural destruction, the persecution of political groups, and the intention to disperse a group (i.e. ethnic cleansing) do not suffice as genocide.<sup>227</sup> From previous case law, intent is also

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<sup>223</sup> UN General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide.

<sup>224</sup> Goldsmith, Katherine. "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach." *Genocide Studies and Prevention: An International Journal*. Vol. 5, no. 3 (December 2010): 238-57. 240. Available at: <https://scholarcommons.usf.edu/gsp/vol5/iss3/3>

<sup>225</sup> United Nations. “Genocide Prevention.”

<sup>226</sup> *Ibid.*

<sup>227</sup> *Ibid.*

often associated “with the existence of a State or organizational plan or policy.”<sup>228</sup> Due to this narrow definition, critics have argued that the Convention has too limited of a scope.<sup>229</sup> With the difficulties that arise from trying to prove *dolus specialis*, the Convention has become ineffective in reducing mass atrocities as it is incredibly difficult to prove someone’s intent<sup>230</sup> without the presence of expressed intent in writings, speeches, or organizational plans and policies of the state.<sup>231</sup>

Supporters of using the aspect of *dolus specialis* in the Convention argue that, by requiring this intent, genocide is separated from “lesser” crimes, such as crimes against humanity.<sup>232</sup> However, as previously stated, *dolus specialis* makes it incredibly difficult for the Genocide Convention to actually prevent and end genocide. Because intent refers to an individual’s private state of mind, it is extremely difficult to prove beyond a reasonable doubt that an individual is intending to commit genocide.<sup>233</sup> Therefore, perpetrators are very careful in making sure that their actions are not publicly proclaimed as intending to destroy a part of or entire group.<sup>234</sup> This technicality is exemplified by the case of Yugoslavia, where individuals who directly participated in genocide were tried for a lesser crime because it could not be proven that they had genocidal intentions (with the exception of certain individuals in the case of Srebrenica).<sup>235</sup> Due to this limitation, many in the international community have called to change

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<sup>228</sup> Ibid.

<sup>229</sup> Schabas, "Convention on the Prevention and Punishment of the Crime of Genocide." 2008.

<sup>230</sup> Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach." 240.

<sup>231</sup> United Nations. "Genocide Prevention."

<sup>232</sup> Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach." 241.

<sup>233</sup> Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach." 242.

<sup>234</sup> Ibid.

<sup>235</sup> Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach." 244.

the *dolus specialis* requirement to one that is more of a knowledge-based approach.<sup>236</sup> Under this approach, if an individual commits a “prohibited act with the knowledge that it would further a genocidal plan,” they would satisfy the intent requirement of the Genocide Convention and could, therefore, be charged with genocide.<sup>237</sup> In the case of *Prosecutor v. Goran Jelisic* during the International Criminal Tribunal for Yugoslavia (ICTY), the Prosecutor did attempt to introduce a knowledge-based approach to intent, but was rejected by the Court, as the perpetrator seemed to kill arbitrarily and did not kill only one group.<sup>238</sup> Similarly, in *Prosecutor v. Radislav Krstić, Krstić*, who was originally charged with genocide for his actions in Srebrenica, had his conviction overruled by the Appeals Chamber who stated there was no *dolus specialis*, “but only his knowledge of the other perpetrators’ genocidal intent.”<sup>239</sup> He was therefore only convicted for aiding and abetting genocide, like so many of the perpetrators in the Yugoslav wars.<sup>240</sup> Without a judge accepting a knowledge-based approach, there is no precedent to compare this approach to *dolus specialis* to see if it would be better suited for prosecuting genocide.

However, due to the fact that prosecution under the current Genocide Convention is so difficult, one may wonder why the courts have refused to accept a knowledge-based approach instead of *dolus specialis*, which would help to make the prosecution of genocide much easier. Could this be an oversight on behalf of the UN or could this lack of change be intentional? History suggests that this may be intentional. In the 1998 Rome Conference, states were given “a golden opportunity” to fix “blind spots” found in the Genocide Convention, however, they

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<sup>236</sup> Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach." 245.

<sup>237</sup> *Ibid.*

<sup>238</sup> Ambos, Kai. 2009. “What Does ‘Intent to Destroy’ in Genocide Mean?” *International Review of the Red Cross* 91 (876): 833–58. doi:10.1017/S1816383110000056. 837.

<sup>239</sup> Ambos, “What Does ‘Intent to Destroy’ in Genocide Mean?” 838.

<sup>240</sup> *Ibid.*

refused to do so.<sup>241</sup> The only proposed amendment at the Conference came from Cuba, who argued for the inclusion of social and political groups, while every other country supported the original document.<sup>242</sup> Is this because the UN did not want to close a loophole that allowed for justification of their inaction? Being that the narrowness of the definition of genocide, and the difficulties that emerge from the issue of intent have been long criticized by academics and activists alike, it seems odd that states refused to make any amendment to the Convention in 1998.<sup>243</sup> This may lead one to wonder if states' actions in leaving the definition intentionally narrow and hard to prosecute is by design.

### *State Sovereignty*

One of the hardest things to overcome when trying to garner international action in the face of genocide is state sovereignty. Beginning in the 1990s, there was a shift between the balance of state sovereignty and human rights.<sup>244</sup> In international society, state sovereignty stands as one of the most important values as it “authenticates a political order based on independent states whose governments are the principal authorities both domestically and internationally.”<sup>245</sup> Because of this, intervention on the ground of human rights issues within a country's own borders is generally rare.<sup>246</sup> Even within the UN Charter, this preference of state sovereignty over human rights is exemplified.<sup>247</sup> Article 2 of the UN Charter, which grants all Member states equal sovereignty, states that “All Members shall refrain in their international relations from the threat

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<sup>241</sup> Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris." 2007, 46.

<sup>242</sup> Ibid.

<sup>243</sup> Ibid.

<sup>244</sup> Walling, Carrie Booth. “Human Rights Norms, State Sovereignty, and Humanitarian Intervention.” *Human Rights Quarterly* 37, no. 2 (2015): 383–413. <http://www.jstor.org/stable/24518323>. 387.

<sup>245</sup> Walling, “Human Rights Norms, State Sovereignty, and Humanitarian Intervention.” 386.

<sup>246</sup> Walling, “Human Rights Norms, State Sovereignty, and Humanitarian Intervention.” 384.

<sup>247</sup> Lodico, Yvonne C. “The Justification for Humanitarian Intervention: Will the Continent Matter?” *The International Lawyer* 35, no. 3 (2001): 1027–50. <http://www.jstor.org/stable/40707614>. 1031.

or use of force against the territorial integrity or political independence of any state.”<sup>248</sup> In a continuance of emphasizing sovereignty overall, the UN stated in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation that “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or the external affairs of any other State.”<sup>249</sup> However, the UN Charter does allow for an exception to this rule under chapter 7, where they state there can be an exception to the rule of sovereignty when the Security Council determines that there is a threat to peace and security.<sup>250</sup> It is important to note that this threat must be determined and agreed upon unanimously by the Permanent Five in the Security Council in order for it to supersede a state’s sovereignty. It is also important to note that when examining the UN Charter, states are legally bound to respect the sovereignty of a state and refrain from interference, whereas states are only encouraged to promote human rights throughout states (though not required).<sup>251</sup>

For example, during the Cold War, the two opposing sides, the United States and USSR, worked to make sure that states would join their “camp.” This led to the United States to ignore human rights violations as long as that state had allegiance to the Western (United States) ideology.<sup>252</sup> These policies were further perpetuated in the UN as human rights issues took the backseat. Human rights groups within the UN, such as the Human Rights Commission, possessed no real power to investigate member states or protect human rights.<sup>253</sup> Emphasis on human rights within the world order did not emerge again until the 1970s, when groups such as

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<sup>248</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at: <https://www.refworld.org/docid/3ae6b3930.html>.

<sup>249</sup> Lodico, “The Justification for Humanitarian Intervention: Will the Continent Matter?” 1032.

<sup>250</sup> Lodico, “The Justification for Humanitarian Intervention: Will the Continent Matter?” 1038.

<sup>251</sup> Ignatieff, Michael. “Intervention and State Failure.” *Dissent* (00123846) 49, no. 1 (Winter 2002): 114–23.

<https://search-ebscohost-com.arcadia.idm.oclc.org/login.aspx?direct=true&db=ofm&AN=507795143&site=ehost-liv> g. 115.

<sup>252</sup> *Ibid.*

<sup>253</sup> *Ibid.*

Amnesty International became prominent.<sup>254</sup> Once the Cold War dissolved and the United States reigned victorious, the Western allies made human rights an entry requirement for those wanting to join either NATO or the EU.<sup>255</sup> However, this did not dissolve the preference towards sovereignty. Sovereignty continued to be favored as “all states have an interest in ensuring that territories remain under the effective control of a government, regardless of its human rights record.”<sup>256</sup>

Under UN protocol and international norms, the concept of sovereignty is irreconcilable with the idea of intervention.<sup>257</sup> Under sovereignty, states have the right to govern their own territory without the interference of others. State sovereignty means a government has the ultimate power over the “people, resources, and all other authorities within the territory it controls.”<sup>258</sup> This means they can engage in certain practices (like genocide) under the guise of maintaining “law and order” or preserving “the territorial integrity of the state.”<sup>259</sup> As stated by Leo Kuper, a specialist in the study of genocide, “the structure and ideology of the UN, particularly its protective stance in relation to the sovereign rights of the territorial state, [stands] in the way of effective action.”<sup>260</sup> In the two cases studies described previously, the UN generally preferred to accept the predisposition towards state sovereignty rather than human rights, which was exhibited through their actions and attitudes towards intervention. However, preference towards a state’s sovereignty may actually be an excuse used by UN member states to

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<sup>254</sup> Ignatieff, “Intervention and State Failure.” 116.

<sup>255</sup> Ibid.

<sup>256</sup> Ignatieff, “Intervention and State Failure.” 117.

<sup>257</sup> White, Nigel D. *The International and Comparative Law Quarterly* 44, no. 3 (1995): 734–35. <http://www.jstor.org/stable/761230>. 734.

<sup>258</sup> Makinda, Samuel M. “Sovereignty and International Security: Challenges for the United Nations.” *Global Governance* 2, no. 2 (1996): 149–68. <http://www.jstor.org/stable/27800134>. 150.

<sup>259</sup> Kuper, Leo. *Genocide: Its political use in the twentieth century*. Yale University Press, 1981. 161.

<sup>260</sup> Kuper, *Genocide: Its political use in the twentieth century* 164.

justify inaction. More likely, UN inaction can be explained by states within the UN basing intervention on a cost/benefit analysis of their own national interest, as will be explored later.

### *Institutional and Structural Failures*

While the limitations of the Genocide Convention and the dichotomy between state sovereignty and human rights play a large role in the UN's failure to intervene in the cases of Rwanda and Yugoslavia, the ultimate failure arises from the structural and institutional failures of the United Nations as a whole. To begin with, the fault of lack of intervention falls onto the member states, who often delay or deter prevention through their disagreements.<sup>261</sup> This is especially true of the permanent members of the Security Council.<sup>262</sup>

Before I begin my discussion on the institutional failures of the UN, I would first like to explain the actual structuring of the UN, and how this structuring could lead to problems. The United Nation is made up of a number of committees, but its two main components consist of the General Assembly (all member states) and the Security Council. The structure of the UN Security Council is outlined in the UN Charter under Chapter V: The Security Council, Articles 23-32. There are fifteen member countries in the UN Security Council (UNSC), ten of which are determined on a two year rotating basis and five who hold permanent seats.<sup>263</sup> These permanent members include the United States, the United Kingdom, France, China, and Russia (mentioned in the charter as the Union of Soviet Socialist Republics).<sup>264</sup> The main responsibility of the UNSC is to ensure "the maintenance of international peace and security."<sup>265</sup> Decisions of the UNSC are determined through a voting process. Procedural matters are decided by an affirmative

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<sup>261</sup> Totten, Samuel, and Paul R. Bartrop. "The United Nations and Genocide: Prevention, Intervention, and Prosecution." *Human Rights Review* 5, no. 4 (July 2004): 8–31. doi:10.1007/s12142-004-1025-1. 8.

<sup>262</sup> *Ibid.*

<sup>263</sup> UN Charter, Article 23, Section 1

<sup>264</sup> *Ibid.*

<sup>265</sup> UN Charter, Article 24, Section 1

vote of nine of the fifteen countries. All other matters “shall be made by an affirmative vote of nine members including the concurring votes of the permanent member.”<sup>266</sup> This essentially translates to a veto power, or a rule of “great power unanimity,” belonging to the permanent members of the UNSC on all matters other than procedural.<sup>267</sup> This means that if one of the five permanent member states casts a negative vote in any non-procedural decision or resolution, that decision or resolution will not be passed.<sup>268</sup>

The founders of the UN formed the Security Council in this way for a reason. Learning from the failures and mistakes of the League of Nations, the Dumbarton Oak writers proposed that the Security Council have primary responsibility over maintaining international peace and security.<sup>269</sup> The Council was made intentionally small so they could “act speedily and decisively in time of crisis without interference from the General Assembly.”<sup>270</sup> In contrast to the League of Nations, the UN Security Council also has final say on decisions regarding “prevention and suppression of aggression.”<sup>271</sup> In order to achieve these goals, the permanent five great powers were given a veto power that allowed them to make sure that all important decisions went through them first.<sup>272</sup> When the UN Charter began to be finalized at the San Francisco Conference, multiple states argued to amend the balance of power between the permanent five Security Council member states and the General Assembly.<sup>273</sup> Despite these disagreements, the

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<sup>266</sup> UN Charter, Article 27, Section 3

<sup>267</sup> UN Security Council. “Membership of the Security Council.” United Nations, May 10, 2012. <https://web.archive.org/web/20120510230439/http://www.un.org/sc/members.asp>.

<sup>268</sup> United Nations. “Voting System | United Nations Security Council.” Welcome to the United Nations. United Nations. Accessed February 11, 2022. <https://www.un.org/securitycouncil/content/voting-system>.

<sup>269</sup> Wilcox, Francis O. “II. The Yalta Voting Formula.” *The American Political Science Review* 39, no. 5 (1945): 943–56. <https://doi.org/10.2307/1950035>. 944.

<sup>270</sup> *Ibid.*

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> Wilcox, “II. The Yalta Voting Formula.” 946.

permanent five refused to change their stance, as they did not want to weaken “the prestige, efficiency, and power of the Council.”<sup>274</sup>

Ever since its conception, the veto power has led to a number of controversies between supporters and critics. Supporters of the veto argue that it allows for the UN to maintain international stability and ensures that important decisions involving war and peace happen by consensus.<sup>275</sup> Furthermore, the establishment of the veto power ensures that the UN can exist. Without the veto power to protect national interests, it is unlikely that the major powers would have agreed on an international body that binds “legal authority on matters of peace and security.”<sup>276</sup> Critics, on the other hand, see the veto power differently than its supporters: usually as a power that leads to a superiority of the permanent five. For example, many of the smaller member states of the UN have argued that the veto power given to the permanent five is a violation of “democracy and sovereign equality” among states.<sup>277</sup> It argued that “it was preposterous that a single great power should be able to block action in the peaceful settlement of a dispute to which it was not a party.”<sup>278</sup> Other countries also argue that the Security Council is meant to favor the powerful and bigger states, and many of these smaller states argue that the veto should ultimately be abolished to make the UN more democratic.<sup>279</sup> The institutional veto power has ultimately led to the permanent five having substantial power over the other member states of the General Assembly and over the ten non-permanent Security Council members.

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<sup>274</sup> Ibid.

<sup>275</sup> Putin, Vladimir V. “What Putin Has to Say to Americans About Syria.” *The New York Times*. The New York Times Company, September 11, 2013.

<https://www.nytimes.com/2013/09/12/opinion/putin-plea-for-caution-from-russia-on-syria.html>.

<sup>276</sup> Bosco, David. “In Defense of the Veto Power.” *Foreign Policy*. Foreign Policy, January 31, 2012.

<https://foreignpolicy.com/2012/01/31/in-defense-of-the-veto-power/>.

<sup>277</sup> Wilcox, “II. The Yalta Voting Formula.” 947.

<sup>278</sup> Ibid.

<sup>279</sup> Afoaku, Osita G., and Okechukwu Ukaga. “UNITED NATIONS SECURITY COUNCIL REFORM: A CRITICAL ANALYSIS OF ENLARGEMENT OPTIONS.” *Journal of Third World Studies* 18, no. 2 (2001): 149–69. <http://www.jstor.org/stable/45193959>. 160.

### **National Interests and Lack of Cooperation/Agreement among the Permanent Five**

The institutional establishment of the veto power in the United Nations has led to a non-democratic ‘international’ body dominated by the five major powers. This has led to an extremely unequal balance of power where decisions that benefit the major five’s national interests are favored, and their lack of cooperation has led to stalemates and inaction (even in the favor of genocide). The veto allows for the permanent members of the UNSC to “defend their national interests, to uphold a tenet of their foreign policy or, in some cases, to promote a single issue of particular importance to a state.”<sup>280</sup> The decisions to intervene must be approved by the UN Security Council, and therefore, these decisions often default to the permanent five’s national interests and whether intervention would help or hinder those interests.<sup>281</sup> The national interests of these powerful nations, especially the US, UK, and France, have even been described as the “will of the international community.”<sup>282</sup> For example, a US congressional official in a conversation with Monique Mujawamariya (a Rwandan human rights activist and genocide survivor) about the lack of intervention in the Rwandan Genocide stated: “the United States has no friends. The United States has interests. And in the United States, there is no interest in Rwanda. And we are not interested in sending young American Marines to bring them back in coffins. We have no incentive.”<sup>283</sup> Where there was no interest, there was no intervention. As previously discussed, the Rwandan Genocide ended by an RPF takeover, and not by an international intervention force.

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<sup>280</sup> “The Veto: UN Security Council Working Methods.” Security Council Report. Security Council Report, December 16, 2020. <https://www.securitycouncilreport.org/un-security-council-working-methods/the-veto.php>

<sup>281</sup> Makinda, Samuel M. “Sovereignty and International Security: Challenges for the United Nations.” *Global Governance* 2, no. 2 (1996): 149–68. <http://www.jstor.org/stable/27800134>. 160-61.

<sup>282</sup> Makinda, “Sovereignty and International Security: Challenges for the United Nations.” 161.

<sup>283</sup> Barker Greg, *Ghosts of Rwanda*. Alexandria, VA: PBS Home Video, 2004. Available at: <https://www.youtube.com/watch?v=2xS65zyT4D8&t=4184s>

However, the readiness to blame lack of UN intervention due to the permanent five's national security interests should be taken lightly. While it remains true that the permanent five's national security interests do influence UN security council decisions, it must be acknowledged that these interests cannot influence decisions too greatly, especially if those interests are against what the majority of the UN wants. In order for the United Nations to function, the UNSC must have the support of other member states.<sup>284</sup> If the permanent five were to continuously make decisions that opposed the wants of member states, those states would have little incentive to continue supporting the UN financially, militarily, or politically<sup>285</sup> (though, it is important to note that this is a very delicate balance, as a majority of states within the General Assembly know it would be disadvantageous to leave the UN and antagonize the greater powers). So while the permanent five's interests do play a role in determining intervention in a crisis, including its intensity and location, it would be exaggerated to claim that the UN is "nothing but an instrument for the advancement of parochial great power interests,"<sup>286</sup> and that UN decisions are made solely on the basis of national interests.

In addition to competing national interests, the members of the permanent five often differ ideologically, which can lead to a lack of cooperation in decision making. From the birth of the UN in 1945 up until the end of the Cold War in 1989, the Security Council was "crippled by big-power politics."<sup>287</sup> The ideological differences between the United States and the United Socialist Soviet Republic (USSR) made it incredibly difficult for the UNSC to successfully

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<sup>284</sup> Beardsley, Kyle, and Holger Schmidt. "Following the Flag or Following the Charter? Examining the Determinants of UN Involvement in International Crises, 1945-20021." *International Studies Quarterly* 56, no. 1 (March 2012): 33-49. doi:10.1111/j.1468-2478.2011.00696.x. 36.

<sup>285</sup> Beardsley et al., "Following the Flag or Following the Charter? Examining the Determinants of UN Involvement in International Crises, 1945-20021." 37.

<sup>286</sup> Beardsley et al., "Following the Flag or Following the Charter? Examining the Determinants of UN Involvement in International Crises, 1945-20021." 46.

<sup>287</sup> Romita, Paul. "The UN Security Council and Conflict Prevention: A Primer." *International Peace Institute*, 2011. <http://www.jstor.org/stable/resrep09518>. 4.

respond to international situations, especially when these two powers used their veto to “further their political views.”<sup>288</sup> Furthermore, the two superpowers (US and USSR) were resistant to the possibility of the United Nations acting in the regional conflicts where either state had “political or military interest.”<sup>289</sup> During the Cold War period, acts of genocide were committed with little resistance from the UN, as the US and USSR were working to protect their own interests and allies. In more recent times, the interests of the Permanent Five members generally involve conflicts occurring in Africa and the Middle East.<sup>290</sup> After the NATO intervention in Libya in 2011, Russia and China became strongly opposed to resolutions authorizing “‘all necessary means’ for the protection of civilians,” as they feared this could lead to regime change that would no longer benefit them.<sup>291</sup> The veto given to the permanent members of the UN Security Council allows for each power to protect their own spheres of influence and to protect their allies (ex. US often vetoes matters involving Israel to protect them, and Russia does the same for Syria).<sup>292</sup>

The veto power of the United Nations Security Council has allowed for the Permanent Five to protect their national interests when considering the situations and resolutions brought before it. These states have substantial power over the General Assembly and Non-Permanent members of the UNSC, as they ultimately decide what decisions pass and which do not. Due to this power imbalance and lack of equal state sovereignty, there have been a number of calls to reform the Permanent Five’s veto power, even including reform calls from one of its own

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<sup>288</sup> Ramsbotham, Oliver, and Tom Woodhouse. *Encyclopedia of International Peacekeeping Operations*. Santa Barbara, Calif, CA: ABC-Clio, 2000. 45.

<sup>289</sup> Ibid.

<sup>290</sup> Paterson, Mark and Kudrat Virk. “The Political Dynamics of the UN Security Council.” *Africa, South Africa, and the United Nations’ Security Architecture*. Center for Conflict Resolution, 2013. <http://www.jstor.org/stable/resrep05138.6>. 9.

<sup>291</sup> Ibid.

<sup>292</sup> Trent, John, and Laura Schnurr. “Peace and Security: Fixing the Security Council.” In *A United Nations Renaissance: What the UN Is, and What It Could Be*, 1st ed., 56–70. Verlag Barbara Budrich, 2018. <https://doi.org/10.2307/j.ctvdf03xp.7>. 62.

members. France proposed to limit the powers of the veto first in 2012. President François Hollande proposed that in the event of mass crimes (only including genocide, crimes against humanity, and war crimes on a large scale) the Security Council “can decide to collectively renounce their veto powers.”<sup>293</sup> It also provides the conditional that if a Permanent Five member decides to use the veto in these situations due to vital national interests, it must also provide a public explanation for why they chose to do so.<sup>294</sup> In addition to France, there have been calls from other member states of the United Nations to reform the veto power of the Permanent Five, such as the following states: Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland, which have been nicknamed the Small Five (S5).<sup>295</sup> However, it is incredibly unlikely that the veto power will ever be reformed or removed. To reform or remove the veto power, the UN Charter would have to be amended, which would require ratification by 2/3s of the UN member states, including the permanent five.<sup>296</sup> Even in that scenario, the P5 could then use their veto power against any amendment to ensure the protection of their “privileged position.”<sup>297</sup>

### **The Institutional Failures of the UN in Practice**

These institutional failures of the UN described above are exemplified in their debates regarding Rwanda and Yugoslavia. In the case of Rwanda, the UN Security Council held off on intervention due to their respect for Rwanda’s status as a sovereign state. Rwanda was an active member of the United Nations, and President Habyarimana’s government was recognized by the UN as a legitimate sovereign authority.<sup>298</sup> At the time, Rwanda was even allowed to maintain its

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<sup>293</sup> Vilmer, Jean-Baptiste Jeangène. “The Responsibility Not to Veto: A Genealogy.” *Global Governance* 24, no. 3 (2018): 331–49. <https://www.jstor.org/stable/26777577>. 336.

<sup>294</sup> Ibid.

<sup>295</sup> “The Veto: UN Security Council Working Methods.” Security Council Report.

<sup>296</sup> CFR Staff. “The UN Security Council.” Council on Foreign Relations. Council on Foreign Relations, August 12, 2021. <https://www.cfr.org/background/un-security-council>.

<sup>297</sup> Wilcox, “The Yalta Voting Formula.” 946.

<sup>298</sup> Walling, “Human Rights Norms, State Sovereignty, and Humanitarian Intervention.” 400.

position as a non-permanent member of the Security Council, illustrating that the UN possessed more respect for Rwanda's sovereignty than it did for Rwanda's people.<sup>299</sup> In the case of Bosnia and Herzegovina, the UN Security Council (UNSC) disagreed on a number of things, such as the actual state of the conflict (was this ethnic cleansing or interstate aggression by Serbia and Croatia?), debate over whether the fighting was that of a civil war or of external aggressions, debate over who were the victims and perpetrators, as well as Bosnia's sovereign authority.<sup>300</sup> In Kosovo, the UN Security Council continued to be in disagreement over what action to take. While arguments raged in the General Assembly as to whether Kosovo was an internal crisis or one of ethnic cleansing, the UNSC had already decided that it was more important to preserve Kosovo's "sovereignty and territorial integrity."<sup>301</sup> The main reason cited for UNSC's refusal to authorize humanitarian intervention was because of the conflict between state sovereignty and human rights,<sup>302</sup> and threats of vetoes from Russia as the "geography and politics rendered unanimity by the permanent members in support of military action (especially in the Balkans) highly unlikely."<sup>303</sup>

## Conclusion

*Did the UN take any action to fix the above problems?*

Following the many atrocities of the twentieth century, the United Nations did engage in conversations about issues such as the definitional technicalities of the Genocide Convention, as well as their failure to intervene in situations where they were most needed. However, the outcomes of these deliberations are mixed. To reemphasize, in 1998, after the limitations of the

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<sup>299</sup> Ibid.

<sup>300</sup> Walling, "Human Rights Norms, State Sovereignty, and Humanitarian Intervention." 397.

<sup>301</sup> Walling, "Human Rights Norms, State Sovereignty, and Humanitarian Intervention." 402.

<sup>302</sup> Walling, "Human Rights Norms, State Sovereignty, and Humanitarian Intervention." 404.

<sup>303</sup> Henkin, Louis. "Kosovo and the Law of 'Humanitarian Intervention.'" *The American Journal of International Law* 93, no. 4 (1999): 824–28. <https://doi.org/10.2307/2555346>. 825.

Genocide Convention were well known by the UN due to the fact that situations like Rwanda and Yugoslavia were still able to occur, the U.N was given the opportunity to remedy the Genocide Convention's limitations at the Rome Conference. They refused to alter the Convention, and left it as is.<sup>304</sup>

However, the UN did seem to recognize some of the faults of their actions throughout the twentieth century in 2005 when they passed the Responsibility to Protect (R2P) Doctrine, which supplements the Genocide Convention. The R2P Doctrine is “an international norm that seeks to ensure that the international community never again fails to halt the mass atrocity crimes of genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>305</sup> The R2P Doctrine establishes two principles. The first, which harkens back to the importance of state sovereignty, is that each state has its own individual responsibility to protect its people from “genocide, war crimes, ethnic cleansing and crimes against humanity.”<sup>306</sup> The second principle expresses that if a state is unwilling to do the above actions, then it becomes the responsibility of the international community to protect the population of that state from the above crimes.<sup>307</sup> The R2P Doctrine's greatest benefit is that it “explicitly eliminates the specific intent requirement” that is found in the Genocide Convention, which allows for states to act in situations where there is no established intent of destruction.<sup>308</sup> In addition, the R2P Doctrine also allows for states or international organizations to exercise force without having to go through the Security Council,

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<sup>304</sup> Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris." 2007, 46.

<sup>305</sup> Global Center for the Responsibility to Protect. “What Is R2P? .” Ralph Bunche Institute for International Studies. Accessed January 25, 2022.  
<https://www.globalr2p.org/what-is-r2p/#:~:text=The%20Responsibility%20to%20Protect%20%E2%80%93%20know%20cleansing%20and%20c>

<sup>306</sup> UN General Assembly, 2005 World Summit Outcome, 24 October 2005, United Nations, 1-38, available at:  
[https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_60\\_1.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf). 30.

<sup>307</sup> Karazsia, “An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention.” 24.

<sup>308</sup> Ibid.

as long as the guiding principles are met and the intervening state clearly justifies their intentions.<sup>309</sup> The Doctrine also provides protection to all human beings facing extreme suffering, rather than just the four protected groups listed under the Genocide Convention.<sup>310</sup> Finally, the R2P Doctrine also establishes standards that make it so one state cannot attack another under the guise of protecting the attacked state's population. The Doctrine calls for states to establish a "right intention" principle, which means that the main reason for intervention is to "halt or avert human suffering."<sup>311</sup>

Since its passage in 2005, the UN General Assembly has overwhelmingly reaffirmed its commitment to the R2P Doctrine, and it has been referenced in more than 80 UN Security Council resolutions for multiple crises, as well as in resolutions "concerning the prevention of genocide, prevention of armed conflict and restricting the trade of small arms and light weapons."<sup>312</sup> It seems to have become a cornerstone piece in relation to genocide and war crime prevention.

*The UN in Action Today: The Case of the Rohingyas in Myanmar and Uyghurs in China*

Despite the adoption of the R2P Doctrine, the United Nations and the international community have continued to fail in stopping genocide and mass atrocities in the twenty-first century. While there have been a number of mass atrocities in the last twenty years, for the purposes of this conclusion I will only be focusing on their failures using two examples: the Rohingya Muslims in Myanmar and the Uyghur Muslims in China.

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<sup>309</sup> Karazsia, "An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention." 25.

<sup>310</sup> Karazsia, "An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention." 25.

<sup>311</sup> Karazsia, "An Unfulfilled Promise: The Genocide Convention and the Obligation of Prevention." 24.

<sup>312</sup> Global Center for the Responsibility to Protect. "What Is R2P? ."

Beginning in 1974, the Parliament of Myanmar (then known as Burma) passed an Emergency Immigration Act that limited the rights of “foreigners.”<sup>313</sup> Under this Immigration Act, Rohingyas were to be considered foreigners and their registration cards (the document that confirmed citizenship) were confiscated.<sup>314</sup> Throughout the late 1970s, the military then terrorized the Rohingya population and destroyed their homes.<sup>315</sup> Then in 1982, the government passed a Citizenship Law, which purposely excluded the Rohingyas from citizenship.<sup>316</sup> Now considered foreigners, the government was able to limit a Rohingya’s freedoms, such as the right to travel, right to education, and right to own property.<sup>317</sup> The Rohingya also faced deportation, evictions, unemployment, and discrimination.<sup>318</sup> Following this law, the military then launched Operation Pyi Thaya in 1991, where soldiers committed “widespread violence”<sup>319</sup> against the Rohingya, including harassment, police violence, sexual abuse, and deaths while in custody.<sup>320</sup> This continued for almost two decades, and in 2008, the UN Human Rights Council announced that the Rohingyas were being “subjected to political, economic, religious and social repression by the authorities.”<sup>321</sup>

In 2017, violence again erupted between the Rohingyas and the government. The Myanmar government, along with local Buddhist mobs, began to burn villages, attack and kill

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<sup>313</sup> “Timeline.” United States Holocaust Memorial Museum. United States Holocaust Memorial Museum. Accessed March 1, 2022. <https://exhibitions.ushmm.org/burmas-path-to-genocide/timeline>.

<sup>314</sup> “Timeline.” United States Holocaust Memorial Museum. United States Holocaust Memorial Museum. Accessed March 1, 2022. <https://exhibitions.ushmm.org/burmas-path-to-genocide/timeline>.

<sup>315</sup> Ibid.

<sup>316</sup> Human Rights Watch. “III. Discrimination in Arakan.” Burma/Bangladesh: Burmese Refugees In Bangladesh - Discrimination in Arakan. Human Rights Watch. Accessed March 1, 2022. <https://www.hrw.org/reports/2000/burma/burm005-02.htm>.

<sup>317</sup> Zawacki, Benjamin. “Defining Myanmar’s ‘Rohingya Problem.’” *Human Rights Brief* 20, no. 3 (2013): 18–25. 19.

<sup>318</sup> Ibid.

<sup>319</sup> “Timeline.” United States Holocaust Memorial Museum.

<sup>320</sup> “Report of the Special Rapporteur on the Situation of Human Rights in Myanmar.” *Human Rights Council*. United Nations, March 7, 2008. United Nations General Assembly.

<https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Myanmar%20A.HRC.7.18.pdf>. 17.

<sup>321</sup> Ibid.

Rohingyas, and rape and abuse young women and girls.<sup>322</sup> Over 6,700 Rohingya individuals, including 730 individuals under the age of five, were killed after a month of violence.<sup>323</sup> A UN fact-finding mission determined that the actions taken against the Rohingya constituted genocidal intent.<sup>324</sup> Others, such as the United States, have also formally labelled the actions in Myanmar as genocide.<sup>325</sup> Despite this, the international community had little response other than economic and political sanctions.<sup>326</sup> Resolutions brought before the UNSC were vetoed, or threatened to be vetoed, by Russia and China, “stating that the issue was a domestic affair of Myanmar and not a threat to regional or international peace and security.”<sup>327</sup> Therefore, no humanitarian action was taken by the UN in the case of the Rohingya in Myanmar.

Similarly, China has also been persecuting the Muslim population known as the Uyghurs (also spelled Uighur), who inhabit the north-western region of China, Xinjiang. The Uyghur population in China has been facing persecution since 1949, when the Chinese Communist Party came to power, and became actively categorized as terrorists in the 1990s.<sup>328</sup> The Uyghurs were continually discriminated against for the next two decades, and in July of 2009, ethnic riots in the capital led to over 200 people dying.<sup>329</sup> This turning point later led to policies such as the 2014 Strike Hard Campaign Against Violent Terrorism, which allowed for “increased amount of

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<sup>322</sup> “Myanmar Rohingya: What You Need to Know about the Crisis.” BBC News. BBC, January 23, 2020. <https://www.bbc.com/news/world-asia-41566561>.

<sup>323</sup> Ibid.

<sup>324</sup> Güneş Gülal, Asiye Gün, Taylan Seyirci, and Fatih Fuat Tuncer. “Humanitarian Crisis in Myanmar: Another Failure for ‘Responsibility to Protect.’” *Journal of Public Affairs* (14723891), October 20, 2021, 1. doi:10.1002/pa.2778. 5.

<sup>325</sup> Hansler, Jennifer. “House Says Myanmar Crimes against Rohingya Are Genocide.” CNN. Cable News Network, December 13, 2018. <https://edition.cnn.com/2018/12/13/politics/house-resolution-myanmar-genocide/index.html>.

<sup>326</sup> Güneş Gülal et al., “Humanitarian Crisis in Myanmar: Another Failure for ‘Responsibility to Protect.’” 6.

<sup>327</sup> Güneş Gülal et al., “Humanitarian Crisis in Myanmar: Another Failure for ‘Responsibility to Protect.’” 3.

<sup>328</sup> Boissoneault, Lorraine. “Is China Committing Genocide against the Uyghurs?” Smithsonian.com. Smithsonian Institution, February 2, 2022. <https://www.smithsonianmag.com/history/is-china-committing-genocide-against-the-uyghurs-180979490/>.

<sup>329</sup> Ibid.

surveillance, with roadblocks and checkpoints, confiscation of Uyghurs' passports, and the introduction of 'people's convenience cards' that restricted Uyghurs' freedom of movement."<sup>330</sup>

In 2017, the Chinese government began its most criticized phase of the Uyghur persecution by beginning to build massive detention centers, referred to as reeducation camps,<sup>331</sup> where they have detained more than one million Uyghur individuals.<sup>332</sup> Leaked documents, referred to as the China Cables, revealed that these camps were actually meant to be "high security prisons, with strict discipline and punishments."<sup>333</sup> This seems to be the case, as former detainees testify to forced labor, mass rape and sexual violence, beatings, and physical, mental, and sexual torture.<sup>334</sup> It is also thought that a number of individuals have been killed in the camp, but there have been no reliable estimates.<sup>335</sup>

In addition, a report by Chinese scholar, Adrian Zenz, outlines the number of abuses against Uyghur women, including forced surgical sterilization, sterilization by drug injection, and forced IUD implementation.<sup>336</sup> There have also been reports of children being removed from parents and sent to state institutions or full-time boarding schools.<sup>337</sup> The international response to China's genocidal acts against the Uyghurs have been far and wide with countries such as the United States, Canada, Netherlands,<sup>338</sup> Czech Republic, Lithuania, Belgium and the United Kingdom<sup>339</sup> accusing China of committing genocide. Former US Secretary of State, Mike

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<sup>330</sup> Ibid.

<sup>331</sup> Ibid.

<sup>332</sup> "Who Are the Uyghurs and Why Is China Being Accused of Genocide?" BBC News. BBC, June 21, 2021. <https://www.bbc.com/news/world-asia-china-22278037>.

<sup>333</sup> Ibid.

<sup>334</sup> Ibid.

<sup>335</sup> Boissoneault, "Is China Committing Genocide against the Uyghurs?"

<sup>336</sup> Zenz, Adrian. *Sterilizations, IUDs, and Mandatory Birth Control: The CCP's Campaign to Suppress Uyghur Birthrates in Xinjiang*. Washington, D.C.: The Jamestown Foundation, 2020. Available at <https://jamestown.org/wp-content/uploads/2020/06/Zenz-Internment-Sterilizations-and-IUDs-UPDATED-July-21-R-ev2.pdf?x26611>. 1.

<sup>337</sup> Boissoneault, "Is China Committing Genocide against the Uyghurs?"

<sup>338</sup> "Who Are the Uyghurs and Why Is China Being Accused of Genocide?" BBC News.

<sup>339</sup> Boissoneault, "Is China Committing Genocide against the Uyghurs?"

Pompeo has called for China to end their “horrific practices” and for the international community “to join the United States in demanding an end to these dehumanizing abuses.”<sup>340</sup> Many countries have issued economic sanctions, travel bans, asset freezes, and diplomatic boycotts of the 2022 Winter Olympics in Beijing.<sup>341</sup> Despite these measures, it is unlikely that any UN action will be taken against China for their genocidal conduct. Any action taken by the UN must be approved by the Security Council. In this instance, China will veto any proposed resolutions and the genocide will be allowed to continue.

While the UN has attempted to reform its humanitarian processes through documents like the R2P Doctrine, it has continually failed to stop instances of mass atrocities and genocide, as exemplified by the Rohingyas in Myanmar and the Uyghurs in China. The UN has been a major force and stabilizer in many international realms, however, they are incredibly ineffective in their handling of human rights abuses. The veto has proven to be an extremely unproductive tool, and has allowed for genocidal actions to continue as states prioritize their own national interests. If the UN seriously wants to become a more effective body in the area of human rights, the body as a whole, and more specifically the permanent members of the Security Council, need to consider veto power reform. If one were to remove the veto power from the Permanent Five, it would make it much harder for these ideologically different countries to protect their national interests over human rights abuses. In addition, the UN as a whole needs to resolve the tension between their commitment to human rights and bowing before the absolute of state sovereignty. Whether individuals are killed in a genocide within one’s border should not matter. The UN must uphold their promise to protect human rights. Promises like the R2P Doctrine are a good start, but the UN needs to add more effective action to back up their doctrines. Policy doctrines mean nothing

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<sup>340</sup> “China Forcing Birth Control on Uighurs to Suppress Population, Report Says.” BBC News. BBC, June 29, 2020. <https://www.bbc.com/news/world-asia-china-53220713>.

<sup>341</sup> Ibid.

when no real action follows. Finally, the UN needs to reconsider the *dolus specialis* approach in the Genocide Convention. *Dolus specialis* makes it too difficult to prosecute genocide, as individuals know how to avoid prosecution by not explicitly stating their intentions. Rather, the UN should adopt a knowledge-based approach, where one can be charged with genocide if they can reasonably foresee that their actions could constitute genocide. This will allow for more war criminals to be rightfully prosecuted and for victims of genocide to receive justice.

The promise of never again has been betrayed over and over again. Genocides continue to this day, and they will keep continuing if the UN allows authoritarian governments to exploit and destroy their citizens. After the many genocides of the twentieth century, including in Rwanda and Yugoslavia, it is time the UN re-evaluate aspects of its institutional structuring and its founding documents. It is time they re-evaluate the Genocide Convention to make it more effective in stopping present day genocides. It is time they prioritize human rights over the rights of the state. It is time they actually uphold the concept of never again.

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