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Genocide: International Efforts at Punishment and Prevention from 1993 to 2013

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1. INTRODUCTION

What is genocide? Why has it occurred repeatedly over the last 20 years? What attempts has the international community, primarily the United Nations (UN), taken to counter it between 1993 and 2013? How could the international community better address the crime of genocide in the future? These are the main questions this paper attempts to answer.

Many find the topic of genocide morbid, one that should be conveniently avoided. However, it is a topic that must be a priority of all states, leaders, and participants in global civil society. Prevention of genocide is in the interest of all nations because failure to do so is costly to the international community in moral, political, and financial ways.

Although the concept of genocide has existed throughout history, it remained without a name until global civil society gave it one during the 20th century. That century witnessed the Holocaust, the Nazi persecution and killing of millions of Jews during the Second World War. The Holocaust evoked international outrage. Indeed, most people recognized that the Holocaust constituted genocide.

After the formation of the UN in October 1945, a call went forth for this new world organization to respond to this crime with no name. Beyond deriving a name, a legal definition of this crime was also required for building an institution whose purpose was to attempt to control or at least respond to its manifestation. For this reason, the first section of this paper provides the reader with an understanding of the UN definition of genocide, its shortcomings, and the 1948 treaty— the Genocide Convention— into which the definition was incorporated.

However, it must be recognized that for over four decades, the UN definition of genocide would not be invoked in international law. The principles of prevention and punishment of genocide put forth in the Genocide Convention were stymied by a bi-polar world ordered during the Cold War. The power locus of the UN has always been concentrated in the Security Council. Its five permanent veto-wielding members include the United States, France, Great Britain, Russia, and China. Conflicting interests among these member states during the Cold War resulted in failure to reach required unanimous decisions on many issues, including those dealing with human rights. However, within the international community, the formation of advocacy groups in the 1970s and the end of the Cold War in 1989 provided the momentum for a renewed emphasis on the promotion of fundamental human rights. In the early 1990s, this momentum culminated in the UN establishing the first *ad hoc* international tribunals tasked with handling atrocities committed during the civil wars in Yugoslavia and Rwanda, respectively. The findings of these tribunals confirm that in each conflict the crime of genocide was committed.

This paper will use the Yugoslavia and Rwanda conflicts as case studies. It will present a condensed history and summary of these conflicts. It will also consider the reaction of the international community, the establishment of the international *ad hoc* tribunals, their findings of genocide, and the shortcomings of the international system in its response to these findings. Although the tribunals of the 1990s set a precedent for challenging the perpetrators of genocide, they reflected only an *ad hoc* and reactive response to a crime which drafters of the Genocide Convention wanted to prevent. New approaches were needed.

In that light, this paper will discuss the efforts within the international community beginning in the 21st century intended to create a more permanent approach to countering genocide. These include establishing a permanent international judicial body— the International Criminal Court— outside the UN framework, to counter impunity as well as an agreement among member states that sovereignty should entail a responsibility to protect civilians.

Within that framework, this paper will consider two case studies— Darfur and Syria. Each case study presents the application of one of the more permanent approaches to countering genocide. Yet in both case studies the application failed. The paper will conclude by summarizing the major limitations of the UN in responding to genocide and the prospects for addressing these deficiencies in the future.

2. A CONVENTION ON GENOCIDE

2.1. The International Precedence

After the Second World War, a precedent in international law was established by the International Military Tribunal (IMT) in Nuremberg. The IMT, held in October 1945, sought justice against former Nazi leaders for war crimes, crimes against peace, and "crimes against humanity." Though the scale of destruction the Nazis inflicted upon minority groups, citizens of the state (Jews and Gypsies), was well-documented, the IMT limited the scope of crimes against humanity to acts committed after the outbreak of war with an enemy (Schabas, 2008). Acting to address what it perceived as a shortcoming of

justice, the UN General Assembly moved in its first session in 1946 to attach a formal name to the act committed against civilians during peacetime.

In 1944, a Polish jurist of Jewish decent, Raphael Lemkin, published a book entitled *Axis Rule in Occupied Europe*. In it he described the process aimed at destruction of the essential foundations of the life of a group of people (Lemkin, 1944). He labeled it 'genocide,' a term derived from the Greek *genos,* meaning race or tribe, and the Latin suffix *cide*, meaning to kill (Lemkin, 1944). Lemkin fervently lobbied the relevant UN committees in the post-war years to pass a convention banning genocide. On December 11, 1946, the General Assembly unanimously passed Resolution 96 (I) (Curthoys and Docker, 2008:11; UNGA, 1946). This resolution for the most part accepted Lemkin's use of the term genocide, affirmed it as a crime under international law, and commissioned an *ad hoc* committee of the Economic and Social Council (ECOSOC) to draft a treaty for consideration by member states (UNGA, 1946).

With Lemkin serving as one of three experts on this *ad hoc* committee, ECOSOC presented the Convention on the Prevention and Punishment of the Crime of Genocide to the General Assembly plenary session in Paris on December 9, 1948. This international legal instrument was the first treaty negotiated under UN auspices that focused on human rights (Schabas, 2008).

2.2. The Definition of Genocide and its Shortcomings

Despite Lemkin's efforts, the final version of the Convention incorporated a less inclusive definition of the term genocide. In *Axis Rule in Occupied Europe*, Lemkin puts forth his idea of genocide as a process which encompasses

> …the destruction of a nation or an ethnic group....Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group. (Lemkin, 1944:79)

Specifically, the Convention defines genocide in Article II:

> In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group. (UNCG, 1951)

When comparing the two definitions of genocide, one notes two important differences. While the Convention's definition limits itself to acts that have a direct impact on members of a targeted group, Lemkin's definition also includes a more gradual erosion of cultural values and symbols that could wipe out a particular group's identity without any killing or harm having occurred to individuals of the group. For instance, the destruction of religious meeting places or the passing of laws prohibiting the use of a group's native language in public would qualify as part of a broader plan to commit genocide. An explanation for the focus on the humanitarian aspects of genocide can be understood when one considers that a primary purpose for the UN's existence is the promotion of universal human rights as defined in Chapter I of the Charter (UN Charter, 1945).

The second difference is that Lemkin includes a reference to political and social institutions (i.e., groups), while the Convention limits genocide to acts committed against a national, ethnic, racial or religious group. This difference stemmed from the

controversy that ensued among member states surrounding the ability to effectively distinguish political groups under the Convention because of the voluntary status of their membership and their mutability (Totten, 2007:3). In other words, it was not possible for all governments to agree under which circumstances it could distinguish between a benign membership in a political organization and those which threatened the ruling regime. Another potential reason for the controversy was that such recognition provided a basis for UN interference in a sovereign state's internal affairs.

Just as important as the different definitions of genocide are two details common to both. Each emphasizes the need for demonstrating intent and neither sets forth a threshold of destruction required (i.e., number of group members killed or in what frequency) for an act to be classified as genocide. These commonalities alone, regardless of any controversy between group definitions or destruction type, show that there are limitations to classifying an event as genocide. In a legal sense, it is often difficult to establish a perpetrator's motives even long after a crime is determined to have been committed, let alone preventing it as the title of the Convention suggests. However, even if the intent of the perpetrator to commit genocide was known beyond doubt, at what level of intensity does destruction have to occur to a group of people or its culture before it can be considered to have been destroyed in part? Again, the definition falls into a grey area. This is not surprising since the definition of genocide is a political one. In other words, the definition of genocide provides sufficient latitude in interpretation based on varying national interests. States and non-governmental organizations (NGOs) have often used the term to further a political agenda. It it is important to keep in mind the

shortcomings of the definition of genocide as discussed here and the reluctance to use it within the context of international relations.

Scholarly approaches attempting to define genocide have been alternatively accepted by international watchdogs to serve a more utilitarian role in monitoring suspected events that fall into this category worldwide. Some of these methods establish a more transparent threshold to tell if the potential for genocide is high or to determine if it is under way. Such a threshold may be better suited to serve the spirit of the intended purpose of the Convention. Nevertheless, the difficulty of identifying genocide over the decades has not legally been addressed by revising its definition. Instead, international law broadened the concept of crimes against humanity, which now covers a variety of atrocities committed during peacetime against both individual civilians and civilian identity groups (Schabas, 2008, UNRS, 2002).

2.3. Key Provisions and Ratification of the Convention

Drafting of the Genocide Convention in the post-World War II era was an unprecedented step by the international community toward expanding the cause of human rights. The Convention stresses the role of criminal justice and accountability in the protection and promotion of human rights. The Convention condemns genocide by making it a crime under international law. It bestows an obligation upon states ratifying the treaty to undertake steps to prevent and punish its occurrence, according to Article I:

> The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish (UNCG, 1951).

Other key provisions of the Convention include Articles III through VIII. Article III lists five categories of the crime of genocide which represent the extent of the preventive nature of the document:

> The following acts shall be punishable:
>
> (a) Genocide;
> (b) Conspiracy to commit genocide;
> (c) Direct and public incitement to commit genocide;
> (d) Attempt to commit genocide;
> (e) Complicity in genocide. (UNCG, 1951)

Article IV denies evasion of culpability based on the defense of acting in an official capacity:

> Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals. (UNCG, 1951)

Article V requires that states have appropriate legal provisions contained in their penal code to accommodate punishment of crimes under the Convention:

> The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III (UNCG, 1951).

Article VI sets the precedence for the establishment of the international criminal tribunals that took place in the 1990s. It also provides the latitude for a State to bring a perpetrator to trial:

> Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction (UNCG, 1951).

Article VII covers the precedence of extradition:

> Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force (UNCG, 1951).

Finally, Article VIII reinforces the Convention's relationship to the UN Charter:

> Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III (UNCG, 1951).

The Convention attained the required 20 ratifications of UN member states, and it was adopted by the General Assembly and entered into force on January 12, 1951 (Schabas, 2008). Although 41 states originally signed the Convention, only 25 states were subject to the treaty's provisions through ratification or accession by the date it went into effect. In the seven decades since, the treaty has been ratified by an additional 119 UN member states. An original signatory party to the treaty, the United States actually did not ratify the Convention until Nov. 25, 1988 when it became the 96th state to do so (UNTC, 2013). According to an article published in the *American Society of International Law*, debate within the U.S. Congress over the treaty's definition of genocide played a primary role in the decades-long delay to rally the support required for ratification (LeBlanc, 1984). Currently, 142 out of 193 UN member states have ratified the treaty (see Appendix A) (UNTC, 2013).

3. *AD HOC* INTERNATIONAL JUSTICE: THE TRIBUNALS

Despite the gradual but progressive acceptance of the Convention by the member states, the commitment to confront the crime of genocide remained dormant for its first four decades due to international relations molded by the Cold War. Beginning in the 1990s, the UN revived the concept of international criminal jurisdiction applying it to the punishment of individual perpetrators of genocide. Responding to reports of atrocities in the bloodiest post-World War II European conflict, the UN Security Council created the first *ad hoc* international criminal tribunal in 1993. That action set the precedent for

taking greater latitude in applying international law. It was followed by creation of the *ad hoc* International Criminal Tribunal for Rwanda.

This section discusses the genocides in the former Yugoslavia and Rwanda and the development of the *ad hoc* tribunals. It also provides a brief background on how the respective conflicts evolved. It explains why the UN recognized certain atrocities committed during these conflicts as genocide. It considers the most pronounced international responses.

3.1. The Case of the Former Federal Republic of Yugoslavia

3.1.1. A History of Ethnic Tensions

Originally formed from remnants of the dissolved Ottoman Empire following World War I, Yugoslavia consisted of six republics: Slovenia, Croatia, Bosnia and Herzegovina (referred to collectively as Bosnia), Serbia, Montenegro, and Macedonia. It was home to an ethnically diverse population comprised primarily of Serbs, Montenegrins, Croats, Muslims, Slovenes, Macedonians, and Albanians (see Figure 1). Sporadic upsurges in nationalism among groups within Yugoslavia fueled tensions in regions, such as Bosnia, where the distribution of Muslims, Serbs, and Croats among the populace was fairly heterogeneous. Bosnia also had a history of genocide extending back to World War II when approximately 300,000 civilians were killed, and an estimated 72 percent of the casualties were inflicted upon Serbs by Croats (Hayden, 2008:491).

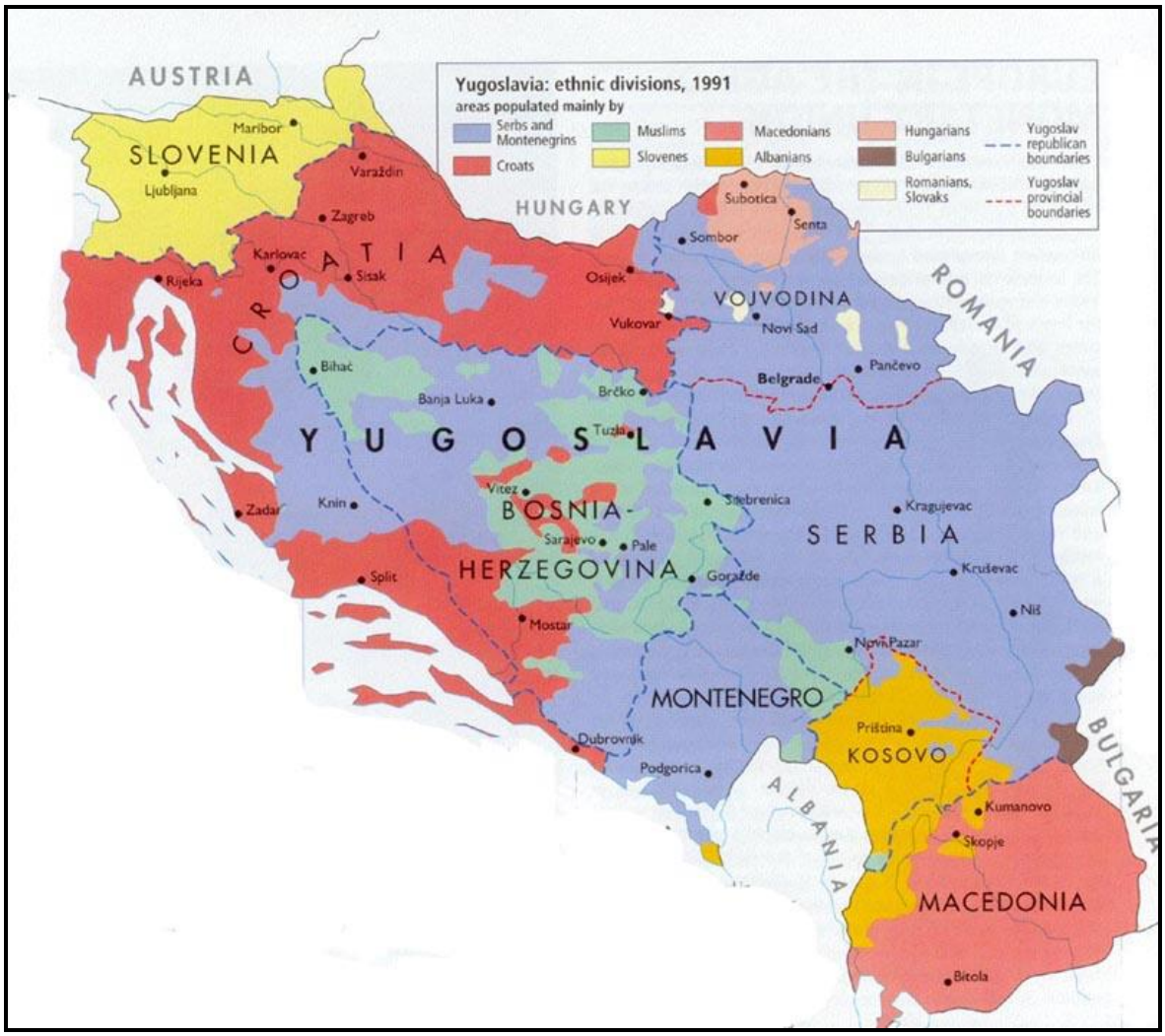

Figure 1: Map of the Former Yugoslavia republics depicting ethnicity distribution in 1991 (Source: www.centropa.org)

After the war, Yugoslavia was held together by socialist dictator Marshal Josip Broz "Tito," whose rule held in check the national tensions among these ethnic groups. When Tito died in May 1980, the government began to falter as domestic economic strife set in. Shortly thereafter, a "generation of ethno-nationalist politicians" re-emerged, the most prominent among these being the Serb leader Slobodan Milošević and Croatian leader Franjo Tudjman (Jones, 2011).

In particular, Milošević had sought to form a "Greater Serbia" out of the republics of the former federation and use force to hold it together. Since Serbia inherited the bulk of the Yugoslav National Army equipment and Serbs dominated its 80,000-strong ranks, Milošević possessed the military means with which to potentially accomplish his goal. Nevertheless, the will of several republics to be free of Serb dominance proved to be greater than any threat the Serb Army posed.

3.1.2. The Start of Ethnic-Based Civil War: Slovenia and Croatia

The break-up of Yugoslavia began on June 25, 1991, when Slovenia and Croatia simultaneously declared their independence. Serbia waged a war against Slovenia lasting 10 days before Slovenia succeeded in breaking away. Within neighboring Croatia, the percentage of Serbs was much higher than in Slovenia. Serbs within Croatia resisted independence through uprisings in the Krajina region (see Figure 2), spurring a seven-month civil war that left "some 10,000 dead and 700,000 displaced from their homes." (Power, 2002:247). The Yugoslav National Army assisted the Serb separatists by capturing of the eastern Croatian city of Vukovar in November 1991. It was the first military campaign in which there were accusations of the Serb Army committing atrocities. The *BBC News* reported that at least 200 Croat civilians and soldiers being treated for their injuries were removed from a hospital and taken to a nearby farm where the Serb Army executed them (Kovacevic, 2004).

Figure 2: Krajina regions of Croatia depicted in dark gray (or red if printed in color) (Source: www.e-ir.info)

It was during this conflict that the relatively new term of "ethnic cleansing" appeared in both the European Community and UN correspondence to refer to the actions undertaken by the Serbs (Doder, 1992). On August 13, 1992, the Security Council used the term for the first time in Resolution 771, expressly stating that ethnic cleansing violated international humanitarian law (UNSCR 771, 1992).

However, there is no universally recognized definition for ethnic cleansing, nor does one exist in international law (Petrovic, 1994). Ethnic cleansing defies easy definition since it can range from forced emigration and population exchange at one end of the spectrum to deportation and genocide at the other (Bell-Fialkoff, 1993). At the most general level, however, ethnic cleansing can be understood as the expulsion of an 'undesirable' population from a given territory due to religious or ethnic discrimination; political, strategic, or ideological conditions; or a combination of these. Essentially, ethnic cleansing became a convenient alternative way to refer to the atrocities without

committing a speaker to use the term genocide, with its politically-charged connotations. Petrovic has asserted that ethnic cleansing has been used in instances by the international community "only as an excuse not to comply with duties laid down by international law" (Petrovic, 1994). I concur with this postulate.

As early as September 1991, the UN became involved in attempts to curb the fighting between Serbs and Croats. The Security Council adopted Resolution 713, in which it established a "general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia" (UNSCR 713, 1991). This was followed in February 1992 by Resolution 743, in which the Security Council urged a cease-fire between the two governments so that a peace-keeping force could be inserted in the region (UNSCR 743, 1992).

The peace-keeping force, known as the United Nations Protection Force (UNPROFOR), had an initial mandate to ensure that a lasting cease-fire was maintained in UN protected areas. UNPROFOR was also to provide humanitarian relief to civilians in war-torn areas. Despite augmentation of UNPROFOR and enlargement of its mission over several years in Croatia, hostilities between Serbs and Croats continued and eventually expanded to Bosnia (UNPROFOR, 1996).

3.1.3. Genocide in Bosnia: Massacre at Srebrenica

Following a March 1992 referendum, Bosnia declared its independence and was almost immediately recognized by the U.S. and the European Community. This policy was an effort to demonstrate to Serbia the resolve within the international community to

support the new state. However, Bosnian Serbs boycotted the referendum. Milošević was determined to keep the state from breaking away.

Beginning on March 31, 1992 in Bijeljina, Bosnian Serb military and paramilitary groups initiated a campaign of aggression designed to terrorize the Bosnian population. Over the next three years, Serb atrocities would extend to other municipalities including Bratunac, Bosanski Novi, Brčko, Foča, Kljuc, Konjic, Prijedor, Sanski Most, Srebrenica, Vlasenica, and Zvornik (UNICTY, 2004; Balkan Insight, 2013). Bosnian Muslim, Croat, and non-Serb civilians were killed by the thousands or sent to detention centers where they were inhumanely treated. In addition to mass killings, cultural centers including libraries and mosques were destroyed (Goldhagen, 2009; Zubcevic, 2006).

The fall of Srebrenica in 1995 provides a glaring example of a lack of political will on the part of the UN to prevent genocide when it was undeniably aware that there was the potential for it. In April 1993, the Security Council adopted Resolution 819, which established Srebrenica and its surroundings as a "safe area which should be free from any armed attack or any hostile act." Resolution 819 included a paragraph reminding the Serbs of their responsibilities under the Genocide Convention:

> "…that the Government of the Federal Republic of Yugoslavia should immediately, in pursuance of its undertaking in the Convention of the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent the commission of the crime of genocide" (UNSCR 819, 1993) .

By May 1993, the UN had established five additional "safe areas" within the cities of Bihac, Gorazde, Sarajevo, Tuzla, and Zepa (UNSCR 824, 1993). Muslims contained within these "safe areas" agreed to disarm themselves while USPROFOR troops maintained a cordon around each city to monitor persons coming and going. However, the inconsistent mandate left much to interpretation, which resulted in

inadequate planning by UNPROFOR to defend the cities (Honig and Both, 1997:6). In a harbinger of what was to transpire two years later in Srebrenica, an article in *The Independent* at the time recognized UN use of "safe areas" as a nonviable solution in the short or long term and labeled it as "deeply unfair, as the Serbian side keep their arms while the Muslims will be disarmed" (Tanner, 1993).

On July 6, 1995, Bosnian Serb forces under the command of General Ratko Mladić assaulted Srebrenica. The promised close air support from North Atlantic Treaty Organization (NATO) aircraft failed to materialize. The Serb advance could not be turned back by the fewer than 450 Dutch UN peace-keeping troops guarding the enclave. Five days later, on July 11, the city fell (Honig and Both, 1997:6-26). Approximately 25,000 Muslim refugees fled Srebrenica to the nearby Dutch compound in Potočari for protection, but two days later the Serbs deported the women and children to Klandanj and executed approximately 1,700 men (Honig and Both, 1997:65).

In April 2013, Serbian President Tomislav Nikolik issued a formal apology and requested "a pardon for Serbia for the crime that was committed in Srebrenica." He acknowledged that a total of approximately 8,000 Muslim men and boys were massacred. Indicative of the politically charged implications of calling it genocide, Nikolik avoided using the term in his public address (Zimonjic and McDonald-Gibson, 2013). However, the International Criminal Tribunal for the former Yugoslavia has issued indictments referring to genocide on suspected perpetrators of the crimes committed at Srebrenica (UNICTY, 2009).

Five months after the fall of Srebrenica, the war in Bosnia came to an end through a deal brokered by the U.S. that repartitioned the area along ethnic lines (Bass, 1998).

The estimate of lives lost remains a controversial issue to this day. However, a census-based study completed in 2010 seems to provide the most realistic estimates in the literature. The study determined that out of 104,732 war-related deaths, 36,700 (35 percent) resulted from one-sided violence (i.e., innocent civilians) (Zwierzchowski and Tabeau, 2010). Of the total number of civilian deaths, approximately 70 percent were Muslim, which suggests a deliberate targeting of that religious group.

3.1.4. The International Tribunal for the Former Yugoslavia: Its Establishment, Performance, and Shortcomings

In May 1993, a month after the Security Council designated the safe areas within Bosnia, it also adopted Resolution 827, in which it used its Chapter VII powers to establish the International Criminal Tribunal for the Former Yugoslavia (UNSCR 827, 1993). As its justification, the Security Council cited Article 41 of the UN Charter:

> The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations (UN Charter, 1945).

There was much controversy as to whether the Security Council had the authority to create an international criminal tribunal since that was not one of the measures listed in Article 41. The argument supporting its decision is that the list of measures in Article 41 was not meant to be inclusive (Schabas, 2006:22). The Security Council's action also was an affirmation of UN ability to establish such a body as provided under Article VI of the Genocide Convention.

The tribunal took more than a year to become functional and appropriately staffed; it issued its first indictments in late 1994. In October 1995, even before the first

trial was held under the new body, the tribunal's Appeals Chamber issued a significant ruling in which it determined both that "war crimes could be committed during civil wars" and that "crimes against humanity could take place during peacetime" (UNICTY, 1995). Compared with the era of the Nuremberg Trials, when crimes against humanity were regarded as acts perpetrated in a time of war, the tribunal's ruling gave a broader interpretation of international law (Schabas, 2006:23). Article 7 of the Rome Statute, which is the legal basis for the International Criminal Court (ICC) established in 2002, summarizes the scope of acts that now can be prosecuted under crimes against humanity according to international law (see Appendix B). Indictments issued by the tribunal of individuals who committed crimes against civilians included crimes against humanity to negate the need to demonstrate intent required by a count of genocide (Quigley, 2006:10-14).

A total of only 161 indictments have been served by the tribunal under its jurisdiction. The tribunal's focus on indicting high level leaders while not addressing the crimes of other lesser military officials has been a subject of criticism by members of human rights organizations (Hoare, 2005). Furthermore, only 11 of the indictments contained any reference to a charge of genocide, and all were levied against Serbs. Of those 11 individuals, eight were determined to have had some degree of complicity in orchestrating the Srebrenica massacre, including Milošević (see Table 1).

Case ID	Name	Indicted For*	Crime Location*	Conviction/Result of Trial*
IT-05-88	Beara, Ljubša	GEN	SRE	YI = life, case on appeal
IT-02-60	Blagojević, Vidoje	CCGEN	Bosnia	overturned but convicted for CAH, YI = 15
IT-95/5/18-1	Karadžić, Radovan	GEN	Bosnia, SRE	still in progress
IT-97-24	Kovačević, Milan	GEN/CCGEN	Prijedor, Bosnia	died before sentencing
IT-98-33	Krstić, Radislav	AAGEN	SRE	YI = 35
IT-02-54	Milošević, Slobodan	GEN/CCGEN	SRE, BCK	died before sentencing
IT-09-92	Mladić, Ratko	GEN	SRE	still in progress
IT-05-88	Nilolić, Drago	AAGEN	SRE	YI = 35, case on appeal
IT-05-88	Popović, Vujadin	GEN	SRE	YI = life, case on appeal
IT-99-36/1	Talić, Momir	GEN/CCGEN	Bosnia Krajina	died before sentencing
IT-05088/2	Tolimir, Zdravko	GEN/CCGEN	SRE	YI = life
*** Key:**				
GEN = genocide CCGEN = complicity to commit genocide AAGEN = aiding and abetting genocide CAH = crimes against humanity				
BCK = Bosnia/Croatia/Kosovo SRE = Srebrenica YI = number of years sentenced to imprisonment				

Table 1: Yugoslavia tribunal cases containing an indictment for genocide (UNICTY, 2013)

The tribunal's rate of success for convictions of genocide is underwhelming; only two persons have been found guilty. Zdravko Tolimir was sentenced to life imprisonment as a primary perpetrator of genocide, and Radislav Krstić was sentenced to 35 years imprisonment as a secondary actor. In both cases the tribunal's judgment of genocide was reached because the systematic killing of civilian Bosnian Muslim men demonstrated the intent to destroy the targeted group both "as such" and "in whole or in part" (UNICTY, 2013).

The convictions against Ljubšaand Beara, Drago Nilolić, and Vujadin Popović remain under appeal. A conviction on the charge of complicity to commit genocide against Vidoje Blagojević was subsequently overturned, though he was still convicted and sentenced to 15 years imprisonment for crimes against humanity. Three individuals, including Milošević, died either while on trial or before a sentence was handed down (UNICTY, 2013).

Two of the most notorious individuals associated with Srebrenica— Radovan Karadžić and Ratko Mladić— were arrested in 2008 and 2011, respectively, and their

trials are under way. The prosecution is attempting to demonstrate Karadžić's genocidal intent through the following statement he made in the parliament of Bosnia and Herzegovina in October 1991: "Do not think you will not push Bosnia into hell and maybe the Bosniak people into extinction, because the Muslim people cannot defend themselves if a war breaks out" (Balkan Insight, 2013). Meanwhile, it is likely that Mladić's genocidal intent will be demonstrated in the same manner as the case against Tolimir since he was Mladić's second-in-command. There has been concern among survivors of Srebrenica that, like the other three perpetrators who died before judicial proceedings completed, the aging Mladić may succumb to a heart ailment before a verdict is rendered (BBC News, 2012). The tribunal projects the trial proceedings against Mladić to last until 2016 (UNICTY, 2013).

Besides being an extremely long process, resorting to the tribunal is a very expensive way to render justice for the victims of genocide. Over its 20 years of operation, the tribunal's operating budget has totaled $2.3 billion. This is over $14 million per indictment (PMIUN, 2009; UNICTY, 2013; Wippman, 2006). However, the international community's experience with the high cost of international justice rendered through a tribunal has not been isolated to the case of the former Yugoslavia. Occurring a full year before Srebrenica, a genocide in Rwanda would hasten the call for an international tribunal to punish its perpetrators as well.

3.2. The Case of Rwanda

3.2.1. A History of Ethnic Tensions and Genocide

In the central African country of Rwanda, a distinction of ethnicity stemming from the division in labor among tribes has existed since at least the 14th century. Historically, those who toiled as farmers identified themselves as Hutu and those who herded cattle were Tutsi (UPASC, 2013). The Hutu have always been in the majority and currently comprise 85 percent of the population, while the Tutsi are in the minority, comprising only 14 percent (Waugh, 2004: 226). Nevertheless, the Tutsi used their ownership of cattle and their combat skills to achieve economic, political, and social control over the Hutu. Rwandan society continued that way up to the beginning of European colonial rule in the late 18th century (UPASC, 2013).

Following the First World War, Belgium succeeded Germany in rule of the colony and fostered some social changes within Rwanda (UPASC, 2013). Unfortunately, these changes would serve to exacerbate divisions between Hutu and Tutsi, whose relations had previously been benign. Beginning in 1933, every person in Rwanda was issued an ethnic identity card to distinguish his or her place in the cultural hierarchy. The Tutsi were identified as the upper class and the Hutu as the lower class (Waugh, 2004: 226; Kinzer, 2008:28). This ethnic distinction was promulgated by the Catholic Church and incorporated into the basis of the Belgian colonial administration. The Hutu were subjected to forced labor while the Tutsi supervised them (History World, 2013; Kinzer, 2008:28).

With the formation of the UN after the Second World War, a mandate required Belgian authorities to implement political reforms within Rwanda to integrate all its citizens into the political process (Kinzer, 2008:29; UPASC, 2013). This led to limited political representation in the government in Kigali. In the 1950s, a series of broad socioeconomic reforms were implemented to promote political progress and social stability (UPASC, 2013). These programs encouraged the growth of democratic political institutions that were opposed by the Tutsi, who saw them as a threat to their traditional dominant role (USDOS, 2012) (Waugh, 2004: 232-233). Subsequently, both the Belgian administration and the Catholic Church reversed their institutional support of Tutsi dominance to one of support for Hutu aspirations to shed their subservient political and social status (Prunier, 1997:44). In 1959, revolts by the Hutu resulted in the deaths of hundreds of Tutsi and shifted the political dynamic in the state by the time it was granted its independence in 1961. By 1963, an all-Hutu government's repressive policies against Tutsi had resulted in tens of thousands of refugees and genocide. An estimated 10,000 Tutsi were slaughtered (Prunier, 1997:52-56).

3.2.2. Prelude to Genocide and Warning Signs

For the next quarter of a century, a Hutu government remained in power while the number of Tutsi refugees swelled to around 500,000 (Waugh, 2004:10). During this period, skirmishes were conducted frequently across borders by individual Tutsi rebels looking to return to their homeland. These rebels eventually became organized as the Rwandan Patriotic Front (RPF). In 1990, the Tutsi began making coordinated attacks against the regime of Rwandan President Habyarimana, primarily from staging areas in

neighboring Uganda. By July 1992, the RPF had grown stronger. Two years of fighting had taken its toll on the Rwandan economy. Over the next year Habyarimana entered into international talks conducted through the UN by the Organization of African Unity, the U.S., and France. On August 4, 1993, the Arusha Accords were signed by Habyarimana and the RPF. The Arusha Accords provided a framework under which a transitional government would be initiated in a power-sharing arrangement with the RPF (Waugh, 2004:46-60). Two months later, the UN established a limited mandate for the United Nations Assistance Mission for Rwanda (UNAMIR), a peace-keeping operation designed to oversee the transfer of power (UNSCR 872, 1993).

There were certainly indications on both sides leading up to and after the signing of the Arusha Accords that their commitment to the process of peace was precarious at best. Both sides continued to prepare for additional hostilities. In November 1992, Habyarimana declared that the ceasefire agreement with the RPF to support the Arusha Accords was "only a scrap of paper." Three months later fighting again broke out in northwestern Rwanda (CFR, 2000).

Even as a termination of hostilities led back to the negotiating table, both sides prepared for further hostilities. The Armed Forces of Rwanda (FAR) procured some "40 million tons of small arms" while the ranks of the Rwandan Armed Forces had grown to some 40,000 troops (Prunier, 1997:193; Waugh, 2004: 57-61). Meanwhile, the RPF also maintained its own military supply lines through Uganda and swelled its ranks to 20,000 troops (Waugh, 2004: 61). Internal opposition within Habyarimana's government to a power-sharing deal resulted in organized demonstrations against him. He repeatedly

delayed implementation of the transitional government that had been agreed to under the Arusha Accords (Kinzer, 2008:97-98).

Warning signs suggesting a high potential for genocide within Rwanda were prevalent in the years leading up to 1994, according to findings contained in Chapter 9 of an Organization of African Unity investigative report. Some examples are as follows:

- Between October 1990 and March 1993: at least six separate massacres of over 3,500 Tutsi by Rwandan government troops
- Between October 1990 and March 1993: at least nine reports by international watchdog organizations concerning the violation of human rights violations against Tutsi
- Between 1990 and 1993: widespread anti-Tutsi propaganda prevalent within Rwandan media, including a radical Hutu newspaper's publication in December 1990 of an article entitled "Ten Commandments of the Hutu" along with the initiation of broadcasting in June 1993 by Radio Télévision Libre des Mille Collines, which served to propagate hatred toward Tutsi over the airwaves (CFR, 2000).

The report goes on to cite numerous examples of Rwandan communications using hate language during the final months leading up to the genocide. The intention of Hutu extremists to carry out massacres against Tutsi and other supporters of the power-sharing plan were demonstrated through the preparation of death lists by a violent extremist Hutu militia known as the *interahamwe*. Public communication broadcasts containing such information were intercepted by UNAMIR personnel and Belgian government officials. UNAMIR personnel were also notified by Hutu informants that the widespread distribution of small arms, weapons, and machetes was under way. (Power, 2002:343). However, despite these warning signs indicating that extreme ethnic violence was being promoted openly, the Security Council did not expand UNAMIR's mandate to include protection of the civilian populace (UNSCR 872, 1993). Lack of interest by U.S. policymakers helped to limit UN actions. Three factors at the time played into this scenario: the disaster that U.S. troops experienced during their participation in Somalia

peace-keeping operations in 1993; U.S. weariness of paying expanding costs for UN peace-keeping ventures; and lack of perceived U.S. national interest in Rwanda (Power, 2002:341-342; CFR, 2000).

3.2.3. 100 Days of Genocide and Failure to Intervene

During a trip to Tanzania by President Habyarimana on April 6, 1994, intense international pressure finally led him to transfer power to the transitional government (Prunier, 1997: 204-211). Back in Rwanda's capital of Kigali, the 2,700-strong UNAMIR force was on the ground to oversee and maintain a peaceful transition to the new arrangement. However, on the return flight to Rwanda that evening, Habyarimana's plane was shot down under mysterious circumstances by two missiles while preparing to land at the Kigali Airport (Prunier, 199:212-213; Waugh, 2004:64).

The killing of President Habyarimana was a catalyst for igniting Rwandan ethnic tensions. Within hours, three ominous developments occurred: roadblocks were set up by the *interahamwe,* the Radio Télévision Libre des Mille Collines began broadcasts designed to incite attacks against opponents of the Hutu government, and death lists were distributed in an orchestrated fashion. The death lists contained the names of Tutsi and moderate Hutu who were sympathetic with the Tutsi cause. Their location was broadcast by Radio Télévision Libre des Mille Collines to the *genocidaires* (Prunier, 1995:224).

The first victims of the violence were carefully selected to include prominent Rwandan leaders who supported the power-sharing process. On April 7, Hutu Prime Minister Agathe Uwilingiyimana and her 10 Belgian UNAMIR soldier protectors were massacred (Prunier, 1995:230). The death of the Belgian soldiers and the denial by the

UN to expand the UNAMIR mandate prompted France and Belgium to evacuate their forces and other foreign nationals from the country, effectively allowing the slaughter to proceed (Prunier, 1995: 234-236). UNAMIR was denied approval to decommission the Radio Télévision Libre des Mille Collines broadcasts because that action exceeded its limited mandate (Waugh, 2004:82-83). In addition to the use of death lists, the FAR and *interahamwe* militia used ethnic identity cards to identify Tutsi victims for slaughter. Many Tutsi sought out shelter from the onslaught in public places such as churches and schools. However, these buildings did not provide them any protection. Today, some of these venues serve as memorials to the massacres.

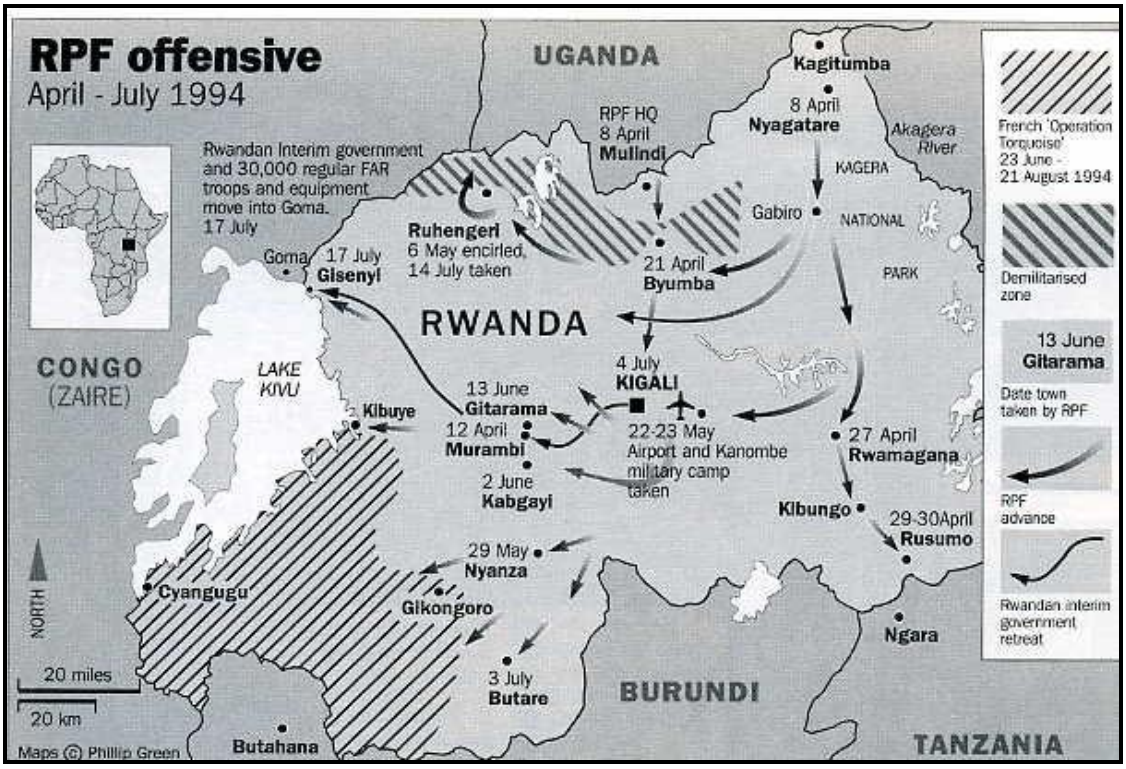

Figure 3: Map depicting RPF offensive initiated once the genocide began (Source: www.orwelltoday.com)

As early as April 8, realizing that the UN was incapable of taking action to prevent the massacres, the RPF began a military offensive to counter the Hutu, but the

killing only intensified (see Figure 3) (Waugh, 2004:67). Within four days, an estimated 20,000 Rwandans were massacred, the vast majority of them Tutsi (Des Forges, 1999:201). Within two weeks, the International Red Cross estimated that tens or hundreds of thousands of Rwandans had been killed (Robinson and Loeterman, 1999).

As the situation worsened in Rwanda, the Security Council adopted a resolution on April 21, which condemned the violence against UNAMIR personnel. Unfortunately, instead of expanding the UNAMIR mandate to include protection of innocent civilians, the Security Council reduced the force to 270 troops (UNSCR 912, 1994; UN Security Council S/1994/470). The killing continued at an estimated rate of 8,000 to 10,000 per day. The death toll was estimated at 200,000 by the end of April (Dallaire, 2003:375). Reluctant to recognize the unfolding genocide and put more peacekeepers at risk, it was not until May 17 that the Security Council reversed itself by expanding the UNAMIR mandate to include protection of civilians in "secure humanitarian areas" (UNSCR 918, 1994). Regardless, the action proved to be too little, too late. Most estimates indicate between 500,000 to 1,000,000 Rwandans had been killed by mid-July, when the RPF finished its advance across Rwanda. The RPF finished its pursuit of the Hutu *genocidaires* into the neighboring Zaire (the Democratic Republic of the Congo), where international relief efforts provided aid to refugees (Clark, 2010:1).

In retrospect, the inaction to prevent the Rwandan genocide was a significant failure of the UN to live up to the spirit of the Genocide Convention. Former UN Secretary-General Boutros Boutros-Ghali summarized the extent of the failure as "ten times greater than the failure of Yugoslavia" since "in Yugoslavia the international community was interested and involved," but as for Rwanda, "nobody was interested"

(PBS News, 2004). Much of this failure originated in the lack of political will by the Security Council to acknowledge that what was occurring in Rwanda was genocide. Not once did that body use the term 'genocide' in any of its resolutions to refer to the massacres that were under way, even though the warning signs were known before they started. The term's absence is conspicuous in the sense that it enabled the Security Council to avoid recognizing an international situation that would have required its action.

This conclusion is supported by a March 2004 article in *The Guardian* that specifically faults the U.S. for choosing not to intervene despite its knowledge of a "final solution to eliminate all Tutsis" before the slaughter reached its peak. According to the article, a release of intelligence reports confirmed that as early as April 23 the Central Intelligence Agency had referred to the event as genocide. However, the Clinton administration did not utter the term publicly until May 25. Even then the administration downplayed its significance (Carroll, 2004).

3.2.4. The Rwanda Tribunal: Establishment, Performance, and Shortcomings

It was not until June 8 that the Security Council formally referred to the reporting of events in Rwanda as genocide (UNSCR 935). Over the months that followed, the Security Council designated a Commission of Experts to conduct investigations into the allegations of genocide to confirm that the crime had occurred (Schabas, 2006:26-28). On September 28, Rwanda formally requested that an international tribunal be established to dispense justice against the perpetrators of genocide and assist in the nation's reconciliation efforts. This happened after the Commission made its recommendations

(UN Security Council S/1994/1115). On November 8, the Security Council used its Chapter VII powers to establish the International Criminal Tribunal for Rwanda. However, it differed from the International Criminal Tribunal for the former Yugoslavia in one important aspect: one of its primary functions was specifically to prosecute "persons responsible for genocide" based on the Commission's findings (UNSCR 955).

The jurisdiction of the International Criminal Tribunal for Rwanda extended to crimes committed by Rwandans between January 1 and December 31, 1994. The proceedings were executed within its judicial chambers located in Arusha, Tanzania. The tribunal was designed to prosecute the primary planners of the Rwandan genocide, including national leaders, ringleaders and inciters (Clark, 2010:73). Despite a vote of dissention by the Government of Rwanda on the parameters of the tribunal's final jurisdiction, the Security Council approved its establishment (Schabas, 2006:29). Since December 1995, the tribunal has indicted 75 individuals, with most containing a count of genocide. As of July 2013, the tribunal has handed down a total of 63 convictions on the charge of genocide with 17 cases still pending appeal (UNICTR, 2013). On September 2, 1998, the tribunal issued the world's first conviction for genocide in an international tribunal when Jean-Paul Akayesu, mayor of the Rwandan town of Taba, was found guilty of the crime and sentenced to life imprisonment. Another notable found guilty of genocide and sentenced to life imprisonment was Théoneste Bagosora, the former executive assistant to the Rwandan Minister of Defence, who ordered the murder of the Hutu Prime Minister along with the 10 Belgian UNAMIR soldiers. Additionally, four employees of Radio Télévision Libre des Mille Collines were found guilty of "direct and public incitement to commit genocide," and each received a sentence ranging from 12

years to life imprisonment (UN ICTR, 2013). The percentage of defendants both indicted and convicted on the genocide charge was substantially higher than that of the International Criminal Tribunal for the former Yugoslavia. The Rwanda tribunal is scheduled to complete the remaining cases on appeal and conclude operations in 2014 (Xinhua, 2013).

Due to the location of the tribunal outside Rwanda and its limited capacity to prosecute *genocidaires*, the Government of Rwanda determined that only limited benefit towards reconciliation would result from the tribunal's proceedings. Possessing custody of approximately 120,000 genocide suspects, the Government of Rwanda alternatively established a system of local community courts without lawyers, called *gacaca*, to address what it felt were obvious shortcomings of the international tribunal (Clark, 2010:50).

From the beginning, the International Criminal Tribunal for Rwanda has been extensively criticized, especially by those who live in the country where the acts were perpetrated. As with the International Tribunal for the former Yugoslavia, the Rwanda tribunal has been characterized by the protracted time for trials and their high cost. Over its 18 years of existence, the tribunal's operating budget totaled $1.8 billion: $24 million per indictment or $28.5 million per genocide conviction (Wippman, 2006; Vokes, 2002). At the same time, the International Criminal Tribunal for Rwanda established milestones within international law by securing the first conviction under the Genocide Convention and establishing that rape is both a crime against humanity and an instrument of genocide (Vokes, 2002).

The formation of both of these international criminal tribunals in the last decade of the 20th century and their continued operation to dispense justice well into the 21st century reflects a shift from the prior four decades in the international community's willingness to combat impunity. Hopefully, the actions of these judicial bodies will extend their influence well into the future and serve to deter would-be perpetrators of genocide. The tribunals formed in the 1990s wrestled with punishment of the crime of genocide with specific regional focus and only on an *ad hoc* basis. As the 21st century dawned, world leaders focused on the establishment of a permanent institutional body that would accomplish this on a global scale.

4. PUNISHING GENOCIDE IN THE 21ST CENTURY

Throughout the latter half of the 20th century, the UN progressed in its constitution building as a response to the occurrence of mass atrocities. The 1948 Genocide Convention was a reaction to the inadequacies of the findings of the Nuremberg trials that followed the Holocaust. Though the creation of an international criminal court had been discussed within the General Assembly in the early 1950s, consideration of the topic was postponed pending a consensus among states of what constituted the crime of aggression. However, the start of the Cold War prevented further progress on the issue. This remained the case until the 1991 Iraq War (Feinstein and Lindberg, 2009:28, UNGA, 1954). Both the U.S. and the European Community revived the idea of establishing an international criminal court in reaction to the atrocities committed by Saddam Hussein. Although the idea was never put into action, it did provide the momentum for the establishment of the *ad hoc* international tribunals of the

1990s as a reaction to the widespread moral outrage to the unconscionable atrocities committed in the former Yugoslavia and Rwanda (Schabas, 2006:11-13). The momentum did not stop with the tribunals. Their functioning further demonstrated the need for a permanent international criminal court as originally proposed four decades earlier. The General Assembly created the International Law Commission to draft a report on the topic. This culminated in the 1998 Diplomatic Conference in which the Rome Statute of the International Criminal Court (ICC) was adopted (Schabas, 2006:31; UNDC, 1988).

4.1. The International Criminal Court (ICC): Establishment and Jurisdiction

The Rome Statute entered into force on July 1, 2002, after ratification by 60 countries. It created the International Criminal Court (ICC) as "the first permanent, treaty-based, international criminal court established to end impunity for the perpetrators of the most serious crimes of concern to the international community" (ICC, 2013). Articles 5 through 8 of the Rome Statute provide a comprehensive list of the crimes, along with their corresponding definitions, that fall within the jurisdiction of the ICC. The main categories include genocide, crimes against humanity, war crimes, and the crime of aggression (UNRS, 2002).

The ICC, which has its seat at The Hague, is an independent international organization existing outside of the UN system and has no formal link to the Security Council. Nevertheless, the ICC strives to maintain a cooperative relationship with the Security Council since it still has the power to refer situations to the Court for prosecution.

The ICC is funded by the states that have ratified the Rome Statute. It also receives voluntary contributions from governments, international organizations, individuals, and corporations (ICC, 2013). One such organization is the Coalition for the International Criminal Court, which, according to its website: "consists of a membership of over 2,000 NGOs that work in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective, and independent; make justice both visible and universal, and advance stronger national laws that deliver justice" (CICC, 2013).

As of July 2013, the Rome Statute has been ratified by 122 states (see Appendix C). Although the U.S. is a signatory state, it has not yet ratified the Rome Statute (CICC, 2013). A primary objection by the U.S. to its ratification has been the possibility that its soldiers located overseas might be subject to "politically motivated or frivolous prosecutions" (BBC News, 2013; Feinstein and Lindberg, 2009:28). At the same time, it has been argued that U.S. national interests are supported by the ICC and that the lack of U.S. support only serves to weaken the international power of the institution (Feinstein and Lindberg, 2009:103-124; Smith, 2013). Two other veto-wielding members of the Security Council— China and Russia— have not yet ratified the Rome Statute. China has two primary objections to signing on. The first is its concern about the potential for the ICC to use excessive prosecutorial discretion. Additionally, within China there are certain political factions that disagree with the definition of what constitutes "crimes against humanity" as put forth in the Rome Statute (Wuthnow, 2012). For Russia, significant amendments are needed to its current criminal code in order to accommodate the core crimes contained under ICC jurisdiction. This has thus far created an obstacle to Russia's

ratification of the statute (Vasiliev and Ogorodova, 2005). However, there seems to be a general consensus within academic circles that, in the long term, these circumstances do not signify a permanent barrier to either state finding an appropriate avenue under which signing on to the Rome Statute might eventually be accomplished.

Given these understandings about the ICC, the following section will consider ICC performance relative to a specific case that has been referred to it by the Security Council. The case in question is the genocide situation in Darfur (Sudan).

4.2. A Declared Genocide: The Case of Darfur

In September 2004, U.S. Secretary of State Colin Powell labeled the violence occurring since April 2003 in western Sudan as genocide. As conflicts increased between nomadic Arab tribes and African farmers in the Darfur region (see figure 4), reports of atrocities became more pronounced. A series of systematic attacks were carried out by the Government of Sudan-supported *janjaweed*. Literally meaning "devils on horseback", this militia attacked the African Fur, Masalit and Zaghawa ethnic groups. Raids conducted by the *janjaweed* over several years included the killing of civilians, raping of women, and burning of villages. Between 2003 and 2008, estimates indicate that 300,000 to 400,000 civilians were killed, over 400 villages were completely destroyed, and approximately three million people were displaced. The situation has been worsened by a subsequent famine that has created a humanitarian crisis that is ongoing and affects over three million people who are still reliant on food aid (Kinnock and Capuano, 2013; UHRC, 2013).

Figure 4: Map of Sudan showing location of Darfur Region
(Source: brooklynpeace.com)

By the early 2000s, almost 10 years had passed since the genocides in the former Yugoslavia and Rwanda. Political awareness of the Clinton administration's failure to call either event genocide was still acute. There was concern within the Bush administration that it not repeat this mistake with Darfur. Powell's declaration of the atrocities in Darfur as genocide was the first time a member of any U.S. administration had applied the term to an ongoing conflict (Hamilton, 2011). The statement was made on the basis of a U.S. State Department-sponsored field investigation conducted during the two previous months, which documented responses from a total of 1,136 interviews of people fleeing the conflict (Totten and Markusen, 2006:200).

Unfortunately, Powell's declaration did not result in any effective action by the U.S. or UN to stop the genocide. The combination of lack of political will and national interests overrode the ability of the UN to take any decisive action on the matter. The Security Council chose to accept a weak proposal by the African Union (AU) to send a monitoring force to oversee the situation while urging that peace be restored among the involved parties. On July 31, 2007, almost three years after the U.S. declaration, Security Council Resolution 1769 established an AU/UN hybrid peacekeeping operation in Darfur, which included the protection of civilians within its Chapter VII mandate

(UNSCR 1769, 2004). However, it was not until the summer of 2010 that the operation reached its full deployment force of 26,000. By that time the genocide had already taken its toll on the Darfur populace. Regardless of the vow of 'never again' made by the international community after the Holocaust of World War II and again in 1994 following the Rwanda debacle, a mere 10 years later that promise rang as hollow as ever, while the world watched the genocide unfold (UN Secretariat Press Release SG/SM/7263 AFR/196, 1999, Annan, 2010; Wadhams, 2005).

Powell's declaration of genocide did succeed in demonstrating that a determination can be made before it is too late to respond. It also evoked the Genocide Convention, which kept the situation on the Bush administration's political agenda and eventually led to the Security Council taking up the matter in accordance with Article VIII under the treaty (Totten and Markusen, 2006:163).

On March 31, 2005, the Security Council passed Resolution 1593, which referred the Darfur situation to the ICC for prosecution (UNSCR 1593, 2005). Since the Government of Sudan had not ratified the Rome Statute, Resolution 1593 obligated it to submit to ICC jurisdiction on the matter. On July 12, 2010, the arrest warrant issued by the ICC a year earlier indicting Sudanese President Omar al-Bashir on crimes against humanity and war crimes was amended to include three charges of genocide (ICC, 2009; AMICC, 2013). Yet to date President al-Bashir has not been arrested on any of these charges and brought before the ICC.

4.3. The ICC: Performance and Shortcomings

In this situation one must ask: "How effective is the ICC?" Since its inception in 2002, only 18 cases in eight situations have been brought before the ICC. It has issued a total of only 21 indictments (see Table 2). The ineffectiveness of the ICC can be

Situation*	Indictee (s)*	Indicted for	Status
Uganda	4 LRA* leaders	crimes against humanity, war crimes	8 July 2005 - warrant issued, at large
DRC*	Thomas Lubanga Dyilo	war crimes/recruitment of child soldiers	14 March 2012 - convicted, on appeal
	Bosco Ntaganda	war crimes	in custody, awaiting hearing
	Germain Katanga	crimes against humanity, war crimes	trial underway, verdict pending
	Matheiu Ngudjolo Chui	crimes against humanity, war crimes	18 December 2002 - acquitted
	Callixte Mbarushimana	crimes against humanity, war crimes	12 December 2011 - charges dropped
	Sylvestre Mudacumura	war crimes	13 July 2012 - warrant issued, at large
Sudan (Darfur)	Omar Hassan Ahmad Al Bashir	genocide, crimes against humanity, war crimes	4 March 2009/12 July 2010 - warrant issued, at large
	Ahmand Muhammad Harun	crimes against humanity, war crimes	27 April 2007 - warrant issued, at large
	Ali Muhammad Ali Abd-Al-Rahman	crimes against humanity, war crimes	27 April 2007 - warrant issued, at large
	Bahar Idriss Abu Garda	war crimes	8 February 2010 - charges dropped
CAR*	Jean-Pierre Bemba Gombo	crimes against humanity, war crimes	in custody, hearings underway
Kenya	William Samoei Ruto	crimes against humanity	in custody, trial to begin in September 2013
	Joshua Arap Sang	crimes against humanity	in custody, trial to begin in September 2013
Libya	Muammar Gaddafi	crimes against humanity	22 November 2011 - deceased, case terminated
	Saif Al-Islam Gaddafi	crimes against humanity	27 June 2011 - warrant issued, Libya has custody
	Abdullah al-Senussi	crimes against humanity	27 June 2011 - warrant issued, Libya has custody
Côte d'Ivoire	Laurent Gbagbo	crimes against humanity	in custody, hearings underway
Mali	none thus far		situation referred to ICC by Government of Mali
* Key: DRC = Democratic Republic of the Congo CAR = Central African Republic LRA = Lord's Resistance Army			

Table 2: ICC situational jurisdiction and associated indictments (ICC, 2013).

epitomized by its having attained only a single guilty verdict during its 11 years of existence. Like the international *ad hoc* tribunals, the ICC has been criticized for the slowness of its trial proceedings and its high cost of dispensing justice. With budget expenditures of almost $1 billion dollars since its establishment, the operating costs for the ICC have run double to triple that of the international *ad hoc* tribunals based on the number of indictments attained. However, this is not a reasonable financial comparison when one considers that its mandate to counter impunity is global in nature while the international *ad hoc* tribunals were geographically focused. Operating outside the framework of the UN, the ICC must engage in lengthy negotiations with national judicial

systems and is highly dependent upon the cooperation of other governments in carrying out its mission (Silverman, 2012).

Until 2005, the U.S. under the Bush administration maintained a hostile stance towards the ICC agenda. It threatened to oppose Security Council resolutions extending peacekeeping missions and entered into bilateral agreements with other countries to limit ICC jurisdiction (Feinstein and Lindberg, 2009:46-52). Even after the Security Council referred the al-Bashir case to the ICC, the Security Council has failed to assist the ICC by applying pressure on African states to cooperate in his capture (Amnesty International, 2009; Sutherland, 2012). Such pressure is sorely needed, because since the arrest warrant was issued in 2009, some African Union (AU) states that are party to the ICC (including Chad, Kenya, Djibouti, and Malawi) have failed to arrest him during his visits to their country, in violation of Security Council Resolution 1593 and Article 86 of the Rome Statute (Sudan Tribune, 2013).

Although Security Council Resolution 1593 also obligates Sudan to cooperate with the ICC, it has chosen not to do so. Here one must note that Sudan has suffered no adverse impact from snubbing its nose at its international responsibility. In other words, the Security Council is not pressuring Sudan by imposing sanctions or ultimately threatening the use of force. Human rights monitoring groups have called upon the Security Council to back up its initial commitment to justice by pressuring African Union countries that have not cooperated with the ICC arrest warrant (Amnesty International, 2009; Dicker and Evenson, 2013). This case demonstrates that the ability of global civil society to counter the impunity of perpetrators of genocide remains intimately tied to the

national interests of individual states within the UN system and the political will of its powerful members.

5. A FRAMEWORK FOR PREVENTING GENOCIDE IN THE 21ST CENTURY?

5.1. The Responsibility to Protect (R2P)

The three cases of genocide discussed above demonstrate the failure of the UN to intervene within situations, even when it had prior evidence or knowledge that mass atrocities or genocide were under way. These failures, particularly those of the former Yugoslavia and Rwanda, spurred a call within the international system to address this issue through a strengthened international framework for civilian protection. The General Assembly appointed a special commission in 2001 to study the issue. The commission published a report entitled "The Responsibility to Protect (R2P)" in which it concluded:

> Sovereignty not only gives a State the right to "control" its affairs; it also confers on the State primary "responsibility" for protecting the people within its borders. When a State fails to protect its people — either through lack of ability or a lack of willingness — the responsibility shifts to the broader international community (ICISS, 2001; UNOPRG, 2013).

In 2004, the UN Secretary-General created the Office of the Special Adviser on the Prevention of Genocide (OSAPG), or Genocide Prevention Office, whose responsibilities are as follows:

- Collecting existing information, in particular from within the United Nations system, on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide;
- Acting as a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention situations that could potentially result in genocide;
- Making recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide; and

- Liaising with the United Nations system on activities for the prevention of genocide and working to enhance the United Nations' capacity to analyze and manage information regarding genocide or related crimes (UNOSAPG, 2013).

The Genocide Prevention Office has developed an analysis framework which considers the cumulative effect of eight general categories of risk factors to monitor situations within states in which genocide could occur. These risk factors include: the presence of discriminatory inter-group relations; the absence of state institutions that serve to dissuade genocide; the presence of illegal arms or illegally armed elements; political actors that encourage divisions between national, racial, ethnic, or religious groups; efforts to reduce diversity within a state and other triggering factors for genocide (see Appendix D). Incorporated within these risk factors are warning signs that clearly arose in the three cases considered in this paper. The risk factors are used as predictive indicators designed to assist with UN efforts to prevent future genocides.

At the September 2005 UN World Summit, one outcome was that all member states unanimously expressed their commitment to R2P. Each state agreed that it must protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity (see Appendix E). Since 2006, the Security Council has referred to states' commitment to protect civilians in resolutions that it has passed. The most significant and undisputedly effective of these has been Resolution 1973 concerning Libya. Adopted on March 17, 2011, it authorized Member States to take "all necessary measures" to protect civilians under threat of attack in the country, while excluding a foreign occupation force of any form on any part of Libyan territory. It also established a no-fly zone across Libya; and, a few days later, NATO forces acting on the resolution conducted air strikes against the forces of Libyan President Muammar Qadhafi (UNOPRG, 2013; UNSCR 1973).

5.2. Not Always R2P?: Shortcomings in the Case of Syria

Although R2P appears to be a step forward in building a case for international intervention in situations where civilians are not being protected and the potential for genocide exists, the civil war which has been underway in Syria for over two years demonstrates its serious shortcomings. As early as June 2011, the Genocide Prevention Office started issuing statements "expressing concern" at persistent reports of widespread and systematic human rights violations by Syrian security forces (UNOSAPG, 2013). At that time, human rights groups were reporting that approximately 1,200 people had died. However, the Security Council had drafted no resolution on the situation because two of its veto-wielding members— Russia and China— opposed taking action (Hassan, 2011).

By March 2012, the UN had reported that more than 9,000 civilians had been killed in the violence. Over the course of that year, a divided Security Council resulted in the veto of three separate resolutions: two sought to intervene using military force and one considered imposing sanctions (Charbonneau and Nichols, 2012; EuroNews, 2012). However, on April 14, 2012 the Security Council passed Resolution 2043 which supported a proposed peace plan headed by former UN Secretary-General Kofi Annan (UNSCR 2043, 2012). After four months of negotiations, the results were rejected by Syria. Annan resigned his mission, citing a "clear lack of unity" in the Security Council (Sterling, 2012). By then, reports estimated the number killed between 10,000 and 21,000 (Abu-Nasr & Carey, 2012). In December 2012, the Genocide Prevention Office warned that "minority communities, including Alawite and other minorities perceived to be associated with the Government could be subject to large-scale reprisal attacks" (UNOSAPG, 2013). That same month, reports estimated the number killed at 44,000.

During the UN envoy's trip to Syria, he indicated that the situation was dire and that the figure could rise to 100,000 within the next year if no action were taken to stop the violence (Brown, 2012; El Baltaji & Sabah, 2012).

Over the first seven months of 2013, the estimated number of deaths from the violence has risen from 60,000 to around 100,000. The UN's most recent report indicates that the rate of killing in the conflict has now accelerated to approximately 5,000 per month. In July, the UN High Commissioner for Refugees issued a press release in which he warned the Security Council of an "unfolding tragedy in Syria" (UN Security Council Press Release SC/11063, 2013). UN officials have compared the Syrian refugee crisis to the 1994 Rwandan genocide. Reports indicate an average of 6,000 people fleeing per day, and approximately 1.8 million people have taken refuge in countries surrounding Syria (Witcher, 2013). Despite the urging of senior UN officials for the Security Council to "come together to put an end to the bloodshed," the five veto-wielding permanent members of the Security Council have long since chosen sides and not deviated from their initial positions on the Syrian conflict (Klein, 2013).

Although no genocide has been declared in Syria, it is widely agreed that crimes against humanity and war crimes have certainly occurred. These are crimes that should be addressed under the R2P umbrella. However, the Security Council remains stalemated on the issue, given the conflicting national interests of its permanent members. Indeed, these conflicting national interests and sovereignty trump the consideration to protect human rights. R2P should be an international policy triggered by risk factors for the potential of genocide to occur in a given situation. Nonetheless, it remains tied to the political will of the five veto-wielding members of the Security Council on a 'case-by-case' basis. The

consequences of this shortcoming are unfortunately now being realized in Syria, with the time for prevention now past.

At the end of June, the U.S. decided to start unilaterally delivering arms to the anti-government rebel forces in Syria after intelligence reports indicated that the Syrian government has used chemical weapons in the conflict (Barnes and Gorman, 2013). In the short term, this potentially means an escalation of the killing and an increase in the number of innocent civilians impacted by the conflict. Although implemented with respect to indications of how desperate the situation has become, a policy that is not developed and/ or implemented collectively will only further polarize the Security Council concerning the ultimate status of a post-conflict Syria. The case of Syria does not bode well for the future success of R2P.

6. SUMMARY AND CONCLUSIONS

6.1. 'Genocide' as a Limiting Term

'Genocide' is a term that was developed in the formative years of the UN to refer to a crime so shocking that it was deemed unconscionable and a gross violation of the fundamental human rights that its Charter upholds. When the media informs the public that genocide is occurring, one can conjure up horrible images of vast amounts of people being massacred within a short period of time by some indescribable method. Images of mutilated corpses are usually part of the broadcast.

However, the Genocide Convention's definition of 'genocide' does not refer to any threshold number of people massacred, any particular method of killing, any duration

of time over which the massacre takes place, and technically does not even require any actual killing to have occurred. The definition of 'genocide' was not arrived at scientifically, but within an environment of political wrangling that has allowed states to pick and choose what events qualify as genocide depending on their own calculus of national interest. An accusation that a state (or individual) has committed genocide possesses politically-charged connotations in the context of international relations. It has consequences transcending even the actual atrocities that were committed. The mere utterance of the word 'genocide' is an indication that the intent of the perpetrator to carry out the extermination of a targeted group is known. Avoidance of its use can demonstrate a lack of political or moral will. Its careless use can create an extreme backlash, making a political solution to end the killing more difficult to reach if international intervention is not an option. It indicates outside knowledge of a plan that spawns denial by the alleged perpetrator(s), hence stalemating any potential alleviation short of forceful means.

For these reasons, the definition of 'genocide' inherently limits its practicality to describe the impact of the actions on the welfare of individuals within the community that is being affected. The three cases of genocide under discussion— the former Yugoslavia, Rwanda, and Darfur— demonstrate the limits to the usefulness of the word 'genocide' and the Genocide Convention. Since its establishment, the ICC has issued only one indictment for genocide while also issuing counts of 'crimes against humanity' in most of its indictments. To throw off the stigma associated with genocide, Goldhagen in his studies has suggested the use of the word 'eliminationism,' since it focuses one's attention upon the core results of the act, which is the desire to eliminate specific peoples or groups (Goldhagen, 2009:14). However, such a suggestion would require renegotiation

of the Genocide Convention along with a significant rewriting of international law to accommodate the change that the category of crimes against humanity already captures. It seems that we are trapped with the 'genocide' terminology quagmire for the foreseeable future.

6.2. The Shortcomings of Prevention, Intervention, and Punishment

The full title of the Genocide Convention contains both the words prevention and punishment; however, it is no surprise that the international community failed to prevent genocide in the 1990s. Although the warning signs of genocide were undeniably present in both the former Yugoslavia and Rwanda, during the Cold War era no precedent for a state or states to intervene in the internal affairs of another had been established. Furthermore, genocide prevention was not interpreted as necessarily being in the national interests of powerful UN member states such as the U.S. However, noninterventionist policies would prove to be politically costly to UN member states as the media uncovered the knowledge that the intelligence that these states possessed was not acted upon.

The cost of intervening in either crisis would have been substantially less than that required for the vast humanitarian relief efforts in the aftermath and for dispensing punishment through the international tribunals. Indeed, the adage 'an ounce of prevention is worth more than a pound of cure' rings true. Although U.S. and NATO forces eventually intervened in the Bosnian conflict, they did so only after a three-year period that claimed approximately 100,000 lives. Rwanda wasn't as fortunate. The international community never intervened during the horrific 100 days of that conflict, which claimed between 500,000 and a million lives. Likewise, the 21st century conflicts in Darfur and

Syria have not received timely collective action by the UN. The glaring deficiency of R2P is that it can only work in situations where the veto-wielding members of the Security Council can agree.

During a television interview with Allan Gregg in 2003, former Lieutenant-General Roméo Dallaire proposed that the differences in the UN response to the conflicts in Yugoslavia and Rwanda were due to an inherent selectiveness to act within the system. He suggested that the decision-makers probably made the determination that responding to the former seemed more relevant to the interests of the powerful Security Council members than that of the latter (Dallaire, 2003). The concept of R2P is revolutionary within the UN since its basic premise is that state sovereignty is trumped by the fundamental human rights of its population. Nevertheless, R2P in its current form does not correct the potential for selectivity of response to which Dallaire refers. A lesson that should have been learned from the UN experience in Rwanda has been disregarded, as the events playing out in the case of Syria clearly demonstrate. For R2P to be a viable instrument through which to prevent genocide, it should be incorporated into a permanent mandate that would be automatically triggered by reaching a pre-determined threshold level of any combination of the Genocide Prevention Office risk factors.

Regarding punishment, the makeup of the Security Council— given its five permanent veto-wielding members— can explain the stalemate that delayed the establishment of an international judicial body to support the Genocide Convention over the first 40 years of its existence. Since this failure had implied impunity for so long, it did nothing to inhibit the ambitions of nationalistic leaders who stood to gain from committing genocide. They were emboldened enough to reveal the intent of their actions.

Demonstrating this intent is a condition required for it to be accurately labeled genocide under the Genocide Convention and within international law. The ability of the *ad hoc* international tribunals of the 1990s to obtain convictions of genocide with the evidence to support them was apparently enhanced by the dormancy of the Convention to address genocide and the presence of members of the UN peacekeeping forces to serve as witnesses during the trials that the *ad hoc* tribunals conducted.

Even though the Yugoslavia and Rwanda *ad hoc* tribunals attempted to address the punishment aspect of the Genocide Convention, serious shortcomings were inherent in both. The *ad hoc* nature of the tribunals meant that they did not exist prior to genocide and did not serve to inhibit actors in the commission of genocide. Milošević and the Hutu thought that the international community didn't care and expected their actions could be carried out with impunity. Other shortcomings include the inability of the tribunal format to prosecute a large number of defendants, the slow pace of trial proceedings, and their high cost. In the case of the Yugoslavia tribunal, the ability of the courts to demonstrate the intent to commit genocide was almost prohibitively limited. With the Rwanda tribunal, the disapproval of its jurisdictional format by the Rwandan government limited the effectiveness of its proceedings toward reconciliation efforts.

The establishment of the ICC as a permanent institution independent of the UN framework is a step in the positive direction to inhibit future occurrences of genocide. Unfortunately, it remains dependent upon the Security Council in obtaining jurisdiction over cases not referred to it by individual states. If a return to the Cold War era divisiveness among the veto-wielding Security Council members prevails in certain situations, as in Syria, then the effectiveness of the ICC against punishing impunity will

be accordingly limited. Likewise, the reluctance of the Security Council to assert pressure on countries to cooperate arresting al-Bashir on the charge of genocide will correspondingly lessen the threat that the ICC poses against operating with impunity. Disunity on the Security Council can potentially create a loophole in dispensing justice against perpetrators of genocide. This would certainly be a step backward for the cause of fundamental human rights.

6.3. Future Prospects for Countering Genocide

Despite the shortcomings of R2P and ICC, the ideals and principles upon which they are based are commendable. They would likely address the problem of preventing and punishing genocide if they were incorporated into an appropriate organizational framework where the interests of the civil global community to protect individual fundamental human rights were foremost. Since the end of the Cold War, the need for organizational reform of the UN to respond to changing global priorities and to increase its legitimacy as a world body has been acknowledged by the leadership of the institution itself (Annan, 2000). Perhaps under the sanction of a reformed UN, it may be possible to establish an organization outside its framework that would be dedicated to the strict nonselective enforcement of R2P. Besides monitoring for warning signs of genocide and intervention, another responsibility of such an organization might include a global education program that would raise individual awareness of the consequences of participating in genocide or acting as bystanders while the crime is committed by others. Perhaps the ICC could be part of that same organization, and its primary seat in The Hague would be decentralized into a series of seats that would be geographically

positioned, as deemed necessary by the situation, to more effectively assist with a state's reconciliation efforts. Such an envisioned framework must clearly demonstrate to leaders that the cost of perpetuating genocide, crimes against humanity, or war crimes far outweigh any benefit achieved by committing them while eliminating their potential for persuading *genocidaires* to carry out their plans.

In his book *Worse Than War*, Goldhagen suggests that the UN is part of the problem and that what the world really needs is to replace it with an international watchdog agency made up of democratic nations that will enforce a zero tolerance policy on genocide (Goldhagen, 2009: 591-592). However, to take a more practical approach, one must acknowledge that the UN is accepted by its 193 member states as the institutional model for the world over the last 68 years. It already has the established buy-in of global civil society that is essential for its success in an otherwise potentially chaotic world.

The UN acknowledges the right of each member state to belong to its organization based on the concept of Westphalian sovereignty, each with its own national interests at stake, and each possessing varying levels of commitment to the importance of fundamental human rights. Furthermore, the Security Council comprises several powerful veto-wielding states— including the U.S.— that were instrumental in founding the UN Charter and possess resources required to support operations that could prevent or intervene in a potentially genocidal situation. Replacing the UN with a rebirthed international institution seems unthinkable. Reform of the UN seems much more practicable. Under a reform scenario, the creation of a UN-recognized authoritative body

empowered by delegated authority to protect fundamental human rights and civilian populations at risk without reliance on the Security Council would be the way to go.

What shape any reform might take and how far off it will be remains anyone's guess. However, I believe that the chronic ineffectiveness of the UN in confronting the repeated tragedy of human rights violations in the form of genocide will be at its center. Unfortunately, until then we will all have to suffer the consequences of an atrocity that shocks the conscience of humankind.

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Appendix A: States Parties to the Genocide Convention as of July 28, 2013 (UNTC, 2013)

		Date of Ratification/Accession
1.	Afghanistan	03/22/1956
2.	Albania	05/12/1955
3.	Algeria	10/31/1963
4.	Andorra	09/22/2006
5.	Antigua and Barbuda	10/25/1988
6.	Argentina	06/05/1956
7.	Armenia	06/23/1993
8.	Australia	07/08/1949
9.	Austria	03/19/1958
10.	Azerbaijan	08/16/1996
11.	Bahamas	05/08/1975
12.	Bahrain	03/27/1990
13.	Bangladesh	05/10/1998
14.	Barbados	01/14/1980
15.	Belarus	08/11/1954
16.	Belgium	09/05/1951
17.	Belize	03/10/1998
18.	Bolivia	06/14/2005
19.	Bosnia-Herzegovina	12/29/1992
20.	Brazil	04/15/1952
21.	Bulgaria	07/21/1950
22.	Burkina Faso	09/14/1965
23.	Burundi	01/06/1997
24.	Cambodia	10/14/1950
25.	Canada	09/03/1952
26.	Cape Verde	10/10/2011
27.	Chile	09/03/1952
28.	China	04/18/1983
29.	Colombia	10/27/1959
30.	Comoros	09/27/2004
31.	Congo (Dem. Rep.)	05/31/1962
32.	Costa Rica	10/14/1950
33.	Côte d'Ivoire	12/18/1995
34.	Croatia	10/12/1992
35.	Cuba	03/04/1953
36.	Cyprus	03/29/1982
37.	Czech Republic	02/22/1993

		Date of Ratification/Accession
38.	Denmark	06/15/1951
39.	Ecuador	12/21/1949
40.	Egypt	02/08/1952
41.	El Salvador	09/28/1950
42.	Estonia	10/21/1991
43.	Ethiopia	07/01/1949
44.	Fiji	01/11/1973
45.	Finland	12/18/1959
46.	Former Yugoslav Republic of Macedonia	01/18/1994
47.	France	10/14/1950
48.	Gabon	01/21/1983
49.	Gambia	12/29/1978
50.	Georgia	10/11/1993
51.	Germany	11/24/1954
52.	Ghana	12/24/1958
53.	Greece	12/08/1954
54.	Guatemala	01/13/1950
55.	Guinea	09/07/2000
56.	Haiti	10/14/1959
57.	Honduras	03/05/1952
58.	Hungary	01/07/1952
59.	Iceland	08/29/1949
60.	India	08/27/1959
61.	Iran (Islamic Rep. of)	08/14/1956
62.	Iraq	01/20/1959
63.	Ireland	06/22/1976
64.	Israel	03/09/1950
65.	Italy	06/04/1952
66.	Jamaica	09/23/1968
67.	Jordan	04/03/1950
68.	Kazakhstan	08/26/1998
69.	Korea (Dem. People's Rep.)	01/31/1989
70.	Korea (Republic of)	10/14/1950
71.	Kuwait	03/07/1995
72.	Kyrgyzstan	09/05/1997
73.	Lao People's Dem. Rep.	12/08/1950
74.	Latvia	04/14/1992
75.	Lebanon	12/17/1953
76.	Lesotho	11/29/1974

		Date of Ratification/Accession
77.	Liberia	06/09/1950
78.	Libyan Arab Jamahiriya	05/16/1989
79.	Liechtenstein	03/24/1994
80.	Lithuania	02/01/1996
81.	Luxembourg	10/07/1981
82.	Malaysia	12/20/1994
83.	Maldives	04/24/1984
84.	Mali	07/16/1974
85.	Mexico	07/22/1952
86.	Moldova (Republic of)	01/26/1993
87.	Monaco	03/30/1950
88.	Mongolia	01/05/1967
89.	Montenegro (Republic of)	10/23/2006
90.	Morocco	01/24/1958
91.	Mozambique	04/18/1983
92.	Myanmar	03/14/1956
93.	Namibia	11/28/1994
94.	Nepal	01/17/1969
95.	Netherlands	06/20/1966
96.	New Zealand	12/28/1978
97.	Nicaragua	01/29/1952
98.	Nigeria	07/27/2009
99.	Norway	07/22/1949
100.	Pakistan	10/12/1957
101.	Panama	01/11/1957
102.	Papua New Guinea	01/27/1982
103.	Paraguay	10/03/2001
104.	Peru	02/24/1960
105.	Philippines	07/07/1950
106.	Poland	11/14/1950
107.	Portugal	02/09/1999
108.	Romania	11/02/1950
109.	Russian Federation	05/03/1954
110.	Rwanda	04/26/1975
111.	Saint Vincent Grenadines	11/09/1981
112.	Saudi Arabia	07/13/1950
113.	Senegal	08/04/1983
114.	Serbia (Republic of)	03/12/2001
115.	Seychelles	05/05/1992
116.	Singapore	10/18/1995

	Date of Ratification/Accession
117. Slovakia	05/28/1993
118. Slovenia	07/06/1992
119. South Africa	12/10/1998
120. Spain	09/13/1968
121. Sri Lanka	10/02/1950
122. Sudan	10/13/2003
123. Sweden	05/27/1952
124. Switzerland	09/07/2000
125. Syrian Arab Republic	06/25/1955
126. Tanzania (United Rep. of)	04/05/1984
127. Togo	05/24/1984
128. Tonga	02/16/1972
129. Trinidad and Tobago	12/13/2002
130. Tunisia	11/29/1956
131. Turkey	07/31/1950
132. Uganda	11/14/1995
133. Ukraine	11/15/1954
134. United Arab Emirates	11/11/2005
135. United Kingdom	01/30/1970
136. United States of America	11/25/1988
137. Uruguay	07/11/1967
138. Uzbekistan	09/09/1999
139. Venezuela	07/12/1960
140. Viet Nam	06/09/1981
141. Yemen	02/09/1987
142. Zimbabwe	05/13/1991

Appendix B: Article 7 of the Rome Statute (Crimes against Humanity)

Article 7
Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above (UNRS, 2002).

Appendix C: States Parties to the Rome Statute as of July 29, 2013 (UNTC, 2013)

		Signature Date	Date of Ratification/Accession
1.	Afghanistan		02/10/2003
2.	Albania	07/18/1998	01/31/2003
3.	Algeria	12/28/2000	
4.	Andorra	07/18/1998	04/30/2001
5.	Angola	10/07/1998	
6.	Antigua and Barbuda	10/23/1998	06/18/2001
7.	Argentina	01/08/1999	02/08/2001
8.	Armenia	10/01/1999	
9.	Australia	12/09/1998	07/01/2002
10.	Austria	10/07/1998	12/28/2000
11.	Bahamas	12/29/2000	
12.	Bahrain	12/11/2000	
13.	Bangladesh	09/16/1999	03/23/2010
14.	Barbados	09/08/2000	12/10/2002
15.	Belgium	09/10/1998	06/28/2000
16.	Belize	04/05/2000	04/05/2000
17.	Benin	09/24/1999	01/22/2002
18.	Bolivia	07/17/1998	06/27/2002
19.	Bosnia and Herzegovina	07/17/2000	04/11/2002
20.	Botswana	09/08/2000	09/08/2000
21.	Brazil	02/07/2000	06/20/2002
22.	Bulgaria	02/11/1999	04/11/2002
23.	Burkina Faso	11/20/1998	04/16/2004
24.	Burundi	01/13/1999	09/21/2004
25.	Cambodia	10/23/2000	04/11/2002
26.	Cameroon	07/17/1998	
27.	Canada	12/18/1998	07/07/2000
28.	Cape Verde	12/28/2000	10/10/2011
29.	Central African Republic	12/07/1999	10/03/2001
30.	Chad	10/20/1999	11/01/2006
31.	Chile	09/11/1998	06/29/2009
32.	Columbia	12/10/1998	08/05/2002
33.	Comoros	09/22/2000	08/18/2006
34.	Congo	07/17/1998	05/03/2004
35.	Cook Islands		07/18/2008
36.	Costa Rica	10/07/1998	06/07/2001
37.	Côte d'Ivoire	11/30/1998	02/15/2013

		Signature Date	Date of Ratification/Accession
38.	Croatia	10/12/1998	05/21/2001
39.	Cyprus	10/15/1998	03/07/2002
40.	Czech Republic	04/13/1999	07/21/2009
41.	Democratic Republic of the Congo	09/08/2000	04/11/2002
42.	Denmark	09/25/1998	06/21/2001
43.	Djibouti	10/07/1998	11/05/2002
44.	Dominica		02/12/2001
45.	Dominican Republic	09/08/2000	05/12/2005
46.	Ecuador	10/07/1998	02/05/2002
47.	Egypt	12/26/2000	
48.	Eritrea	10/07/1998	
49.	Estonia	12/27/1999	01/30/2002
50.	Fiji	11/29/1999	11/29/1999
51.	Finland	10/07/1998	12/29/2000
52.	France	07/18/1998	06/09/2000
53.	Gabon	12/22/1998	09/20/2000
54.	Gambia	12/04/1998	06/28/2002
55.	Georgia	07/18/1998	09/05/2003
56.	Germany	12/10/1998	12/11/2000
57.	Ghana	07/18/1998	12/20/1999
58.	Greece	07/18/1998	05/15/2002
59.	Grenada		05/19/2011
60.	Guatemala		04/02/2012
61.	Guinea	09/07/2000	07/14/2003
62.	Guinea-Bissau	09/12/2000	
63.	Guyana	12/28/2000	09/24/2004
64.	Haiti	12/26/1999	
65.	Honduras	10/07/1998	07/01/2002
66.	Hungary	01/15/1999	11/30/2001
67.	Iceland	08/26/1998	05/25/2000
68.	Iran (Islamic Republic of)	12/31/2000	
69.	Ireland	10/07/1998	04/11/2002
70.	Israel	12/31/2000	
71.	Italy	07/18/1998	07/26/1999
72.	Jamaica	09/08/2000	
73.	Japan		07/17/2007
74.	Jordan	10/07/1998	04/11/2002
75.	Kenya	08/11/1999	03/15/2005
76.	Kuwait	09/08/2000	
77.	Kyrgyzstan	12/08/1998	

	Signature Date	Date of Ratification/Accession
78. Latvia	04/22/1999	06/28/2002
79. Lesotho	11/30/1998	09/06/2000
80. Liberia	07/17/1998	09/22/2004
81. Liechtenstein	07/18/1998	10/02/2001
82. Lithuania	12/10/1998	05/12/2003
83. Luxembourg	10/13/1998	09/08/2000
84. Madagascar	07/18/1998	03/14/2008
85. Malawi	03/02/1999	09/19/2002
86. Maldives		09/21/2011
87. Mali	07/17/1998	08/16/2000
88. Malta	07/17/1998	11/29/2002
89. Marshall Islands	09/06/2000	12/07/2000
90. Mauritius	11/11/1998	03/05/2002
91. Mexico	09/07/2000	10/28/2005
92. Monaco	07/18/1999	
93. Mongolia	12/29/2000	04/11/2002
94. Montenegro		10/23/2006
95. Morocco	09/08/2000	
96. Mozambique	12/28/2000	
97. Namibia	10/27/1998	06/25/2002
98. Nauru	12/13/2000	11/12/2001
99. Netherlands	07/18/1998	07/17/2001
100. New Zealand	10/07/1998	09/07/2000
101. Niger	07/17/1998	04/11/2002
102. Nigeria	06/01/2000	09/27/2001
103. Norway	08/28/1998	02/16/2000
104. Oman	12/20/2000	
105. Panama	07/18/1998	03/21/2002
106. Peru	12/07/2000	11/10/2001
107. Philippines	12/28/2000	08/30/2011
108. Poland	04/09/1999	11/12/2001
109. Portugal	10/07/1998	02/05/2002
110. Republic of Korea	03/08/2000	11/13/2002
111. Republic of Moldova	09/08/2000	10/12/2010
112. Romania	07/07/1999	04/11/2002
113. Russian Federation	09/13/2000	
114. Samoa	07/17/1998	09/16/2002
115. San Marino	07/18/1998	05/13/1999
116. Sao Tome and Principe	12/28/2000	
117. Senegal	07/18/1998	02/02/1999

	Signature Date	Date of Ratification/Accession
118. Serbia	12/19/2000	09/06/2001
119. Seychelles	12/28/2000	08/10/2010
120. Sierra Leone	10/17/1998	09/15/2000
121. Slovakia	12/23/1998	04/11/2002
122. Slovenia	10/07/1998	12/31/2001
123. Solomon Islands	12/03/1998	
124. South Africa	07/17/1998	11/27/2000
125. Spain	07/18/1998	10/24/2000
126. St. Kitts and Nevis		08/22/2006
127. St. Lucia	08/27/1999	08/18/2010
128. St. Vincent and the Grenadines		12/03/2002
129. Sudan	09/08/2000	
130. Suriname		07/15/2008
131. Sweden	10/07/1998	06/28/2001
132. Switzerland	07/18/1998	10/12/2001
133. Syrian Arab Republic	11/29/2000	
134. Tajikistan	11/30/1998	05/05/2000
135. Thailand	10/02/2000	
136. The Former Yugoslav Republic of Macedonia	10/07/1998	03/06/2002
137. Timor-Leste		09/06/2002
138. Trinidad and Tobago	03/23/1999	04/06/1999
139. Tunisia		06/24/2011
140. Uganda	03/17/1999	06/14/2002
141. Ukraine	01/20/2000	
142. United Arab Emirates	11/27/2000	
143. United Kingdom of Great Britain and Northern Ireland	11/20/1998	10/04/2001
144. United Republic of Tanzania	12/29/2000	08/20/2002
145. United States of America	12/31/2000	
146. Uruguay	12/19/2000	06/28/2002
147. Uzbekistan	12/29/2000	
148. Vanuatu		12/02/2011
149. Venezuela	10/14/1998	06/07/2000
150. Yemen	12/28/2000	
151. Zambia	07/17/1998	11/13/2002
152. Zimbabwe	07/17/1998	

Appendix D: UN Genocide Prevention Office Analysis Framework (UNOSAPG, 2013)

Appendix E: 2005 World Summit Outcome Document (Reference to R2P)

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide (UNGA, 2005).