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Never Again: The Genocide Convention in Review

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Never Again: The Genocide Convention in Review

By

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Submitted in partial fulfillment of the requirements for the degree

Master of History

Department of History

Seton Hall University

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APPROVAL FOR SUCCESSFUL DEFENSE

Master's Thesis Candidate, **William Chalmers**, has successfully defended and made the required modifications to the text of the master's dissertation for the **M.A.** during this **Spring Semester 2015**.

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I would first like to thank God for allowing me the opportunity to have the platform of a Master's Thesis to research and discuss the very serious matter of genocide. I would also like to acknowledge and thank my mother and my family for supporting me this far in my academic career. I would like to acknowledge and thank Dr. Maxim Matusevich for giving me the mentorship needed to complete this thesis. I would also like to acknowledge and thank Dr. Larry Greene and Dr. Murat Menguc for being on my thesis review committee and for their insight and efforts. Lastly I would like to thank Christina Johnson who has been at my side every step of the way and continues to love and support me in all of my endeavors.

Dedications

This Master's Thesis is dedicated to Hassan Nuhanovic, to all of the families affected by the Bosnian Genocide, and to those who seek to bring an end to genocide. This book is also dedicated to all those who perished because of genocide. Lastly I dedicate this book to the youth who march onward and upward toward the light. Though genocide may not become extinct in my time, let this thesis be a stepping-stone on your path to creating a safer world where wars are only fought with words.

Abstract

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide was supposed to, as its title states, prevent any further genocides from occurring. In the event the United Nations could not prevent genocide the convention obligates all member States to intervene and punish those perpetrating the crime. Despite the existence of the Genocide Convention the world has witnessed several more cases of genocide, some of which the perpetrators have either not been punished or have been punished long after they have committed the crime of genocide. With a lack of prevention and punishment critics of the Genocide Convention have labeled it non-effective. Those affected by genocide declare that justice has not been served and that too often bureaucracy and back channels have prevented them from obtaining peace.

This Master's Thesis explores the claim that the Genocide Convention has been a failure and offers a perspective that includes the long term affects of the convention and what it has meant to the study of genocide. This work greatly includes the efforts of the United Nations and various organizations that are dedicated to preventing armed conflicts that could potentially lead to genocide. State responsibility is another major issue discussed throughout this thesis given that in every case of genocide the State has had a major role. Hope for the future of the Genocide Convention is the last major theme of this thesis. Despite the many shortcomings of the United Nations and its member States the convention can be monumental in preventing genocide.

Key Words

Genocide

Convention

Prevention

Punishment

Survivors

United Nations

Bosnia

Rwanda

Cambodia

Lemkin

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Introduction

The phrase “never again” has become one of the most notable vows of the 21st century. It is a vow that has been recited by officials around the globe signifying their nation’s pledge to prevent and punish those who commit the crime of genocide. 140 states have signed on to aid in the defense of humanity in both times of war as well as in times of peace. Yet some sixty-seven years after this seemingly hallowed vow was etched into the minds of the international community, we still find ourselves grappling with what Samantha Power has so appropriately termed the “problem from hell”¹.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide brought to the international stage a call for the world to define and condemn the crime of genocide. In the years that followed, colleges and universities around the world have shown their support of the Convention by creating degree programs dedicated to the study of the Holocaust and genocide itself. Some of these same schools have even sponsored travel learn opportunities to send their students to sites where genocide has taken place so that they can see with their own eyes the remnants of gas chambers, and hear the stories of struggle straight from the mouths of survivors. Memorial sites and museums were erected around

¹ Samantha Power, *A Problem From Hell: America and the Age of Genocide* (New York: Basic Books, 2002)

the world to preserve the memory of the horrors of the Holocaust, and to help create a future free of genocide.

To the dismay of the remaining survivors of genocide, the world has witnessed the evolution of crimes against humanity rather than its eradication. Far from fearing the authority of the convention, perpetrators have instead become more brazen and ruthless. Suicide bombers and civilian soldiers stand at the ready to carry out the will of their leaders and their organizations. Governments supply these organizations with weapons and combat training instead of condemning them for threatening the civility of mankind. It appears that there is very little concern for what the International Court of Justice, the United Nation's Secretary General, or any of the contracting parties of the Convention will do, and has resulted in a heightened threat to humanity.

In the years after the adoption of the convention the world has seen several genocides. No mass murder could ever be ranked by severity, but there is certainly an upward trend in the progression of the crime. There has been an enormous increase in ethnically and religiously targeted raping and pillaging, public beheadings and suicide bombings. All of humanity is faced with a problem that won't simply go away. No organization has a better understanding of the root causes for the increase

of these acts than the United Nations, which despite its promise of prevention and punishment for these crimes has only partially delivered.

Though it seems that the world has witnessed a rise in genocidal activity and crimes against humanity since the Genocide Convention came into force, there have actually been great strides toward prevention and punishment. The fact that the world has begun to pay more attention to these kinds of crimes shows that interest in stopping these criminals is growing. Our daily news circuit includes at least one segment about peace making in war torn countries and attempts to eliminate the threat of nuclear arms. These steps are preventative measures and certainly can assist in keeping disputes from becoming armed conflicts, which could potentially elevate to acts of genocide.

The fundamental connection between armed conflict and genocide has been identified and acknowledged through genocide studies and through the unfortunate circumstance of witnessing genocide again and again. There have been tremendous efforts made to attack the threat of genocide at its core by preventing armed conflict. In doing so the “smaller” issues that could potentially lead to genocide are quelled and though not always resulting in permanent peace, it does save lives. This is an example of the developments in methods of prevention. Nations are sharing information and allowing foreign mediators to assist in their

otherwise domestic issues to try and keep disputes from becoming wars and escalating from wars to acts of genocide.

All of these developments are the result of the Genocide Convention. Without the Convention the term genocide would not have criminal or at the very least, lawful meaning domestically or otherwise. The Convention has created the opportunity for protection from those who see The Ottoman Turks and Adolf Hitler as models of leadership. The Genocide Convention ignited a standard for international humanitarianism that not only sparks political conversations about the safety of protected groups, but is also grounded in prevention and punishment for the crime.

At the same time criminals with genocidal intent have become more active across the globe and are adding more people to their ranks daily. They even operate within some of the party nations of the Convention, including the United States, France and the United Kingdom. How then can anyone proclaim the success or the failure of the Genocide Convention when there has been great improvement and a great deal of shortcomings? There have been major developments in the methods of prevention and there has certainly been better efforts made to bring genocidal criminals to justice. However, there has been an increase in cases of religious and ethnically motivated armed conflicts around the

world that have the potential to escalate to genocide. How can progress and regression exist at the same time?

To understand how, one must first examine the brief background of the Convention, what it aims to accomplish and its critiques. Within these margins lie the spectrum of the success and the shortcomings of the Convention. In reviewing the Genocide Convention it has proven itself to be a sound tool for the contracting parties and for the rest of the world. It outlines every act that should be constituted as genocide and makes no discrimination on who can be held responsible for these acts. The Convention places upon the contracting parties the responsibility to prevent genocide and to punish those who commit the crime, which if otherwise left up to individual nations, may not be treated as a primary obligation. Despite the Convention's shortcomings it has been a beacon of hope for humanity in its efforts to be more humane regardless of ideology, race, creed, political or national differences.

The Catalyst for This Thesis and Literature Review

The catalyst for this thesis is a travel-learn experience to Germany, Poland, and Bosnia-Herzegovina in the summer of 2013. A cohort of graduate students majoring in Holocaust and Genocide Studies at Kean University sought out what remained of the genocides that once plagued

the three nations. During the trip the students visited the Sachsenhausen Concentration Camp Museum in Oranienburg, Germany to see the rubble that used to serve as gas chambers. They then flew to Warsaw, Poland to visit a Jewish community that has reestablished themselves after having had most of their congregation lost to the Holocaust. To end the trip the students visited the Srebrenica-Potocari Genocide Memorial where they had the opportunity to meet survivors of the Bosnian Genocide and to see the vast graveyard of Bosnian Muslims and Croats.

Enlightened and touched by the stories shared by the survivors and experts that they met while abroad, the cohort of students returned from their trip wanting to know more about Genocide Studies. The first work suggested to them by the trip advisor was Samantha Power's *"A Problem From Hell: America and the Age of Genocide"*. Samantha Power is the permanent representative of the United States to the United Nations and has contributed much to the protection of human rights. Power has served as a Special Advisor to both the President of the United States and the Senior Director for Multilateral Affairs and Human Rights. She has worked to preserve the freedom of protected groups in the United States and abroad in relation to the interests of the United States. She has also dedicated much of her efforts to U.N. reform and served as the Professor of the Practice of Global leadership and Public Policy at Harvard University.

In her work *A Problem From Hel*, Power masterfully weaves together the thread of genocide thus far in our history and outlines the many times that Americans have failed to step in when they were needed most. Power prefaces her work by sharing her experience in Bosnia/Herzegovina where she has seen first hand the lack of response and concern for the state of Bosnia by her supervisor while working for the *Washington Post*. Her supervisor's actions was appalling and revealing to her. The rest of the book offered the same appalling and revealing effect to any reader seeking to learn about the history of genocide.

The next area of research was on ways in which the atrocities described in Samantha Power's book were being combatted. The platform for that research was the Convention on the Prevention and Punishment of the Crime of Genocide. Studying the text of the Convention itself offered an understanding of how the problem of genocide was being viewed by the world powers and what were the possible solutions to that problem. Along with learning about the text it was also very helpful to understand the scholarly view of the Convention and its drafters. Dr. Paola Gaeta provided an insightful work entitled *The UN Genocide Convention: A Commentary* that was the perfect gateway to the popular and not so popular thoughts about the Convention and its drafters.

Dr. Gaeta's work on the UN Genocide Convention provided sources of commentary and critical feedback on the Convention that begs serious questions about the intentions of the Drafters. It inspired a rerouting of the original argument for this Master's Thesis by suggesting questions regarding the applicability of the Convention. Not only did her work framed the questions, it also gave logical ideas to provide realistic answers to the issues that keep the Genocide Convention and the United Nations from seeming so pointless in battle to prevent and punish the crime of genocide.

One of the other pivotal figures that contributed to the research for this Master's thesis was former Secretary-General Kofi Annan. Kofi Annan served as the 7th Secretary-General of the United Nations from 1997 to 2006. He shares the 2001 Nobel Peace Prize with the United Nations for his and the organization's "work for a better organized and more peaceful world."² Two of his works, *Interventions* and *We The Peoples: A UN for the 21st Century*, offered a candid look into the actions taken by those at the United Nations that worked toward upholding the aims of the Genocide Convention and other humanitarian international

² "The Nobel Peace Prize 2001". *Nobelprize.org*. Nobel Media AB 2014. Web. 11 Jun 2015.
<http://www.nobelprize.org/nobel_prizes/peace/laureates/2001/index.html>

laws and peace efforts. Annan aims to reassure his readers that the United Nations is a useful organization and that it is being developed to better address the issues of the times. His insight on preventing genocide specifically details the ways in which the UN will address the problem of genocide and who it views the organization's part in upholding the Convention.

A Brief history of The Term Genocide and of The Convention On The Prevention and Punishment of The Crime of Genocide

The term Genocide, coined by lawyer Raphael Lemkin, provided the foundation for the Convention. The experiences of the Armenian Genocide, that of the Assyrians in the Simele Massacre in Iraq, and the Holocaust inspired Lemkin to create a name for the heinous actions taken against populations.³ The word Genocide was first used in Lemkin's book, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress*, in which the new word is defined as, "the destruction of a nation or of an ethnic group."⁴ Genocide is further explained, "genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of

³ Raphael Lemkin, *"Axis Rule in Occupied Europe"*, (New Jersey: The Law book Exchange, LTD, 1944), 79-82

⁴ Lemkin, *"Axis Rule in Occupied Europe"*, (1944), 79

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.”⁵

Lemkin describes the means to committing the crime of genocide by separating it into two steps. The first step is to destroy the national pattern of the oppressed group, which is to alienate that group from the rest of the nation. The second step is to impose upon that group a desired national pattern.⁶ Systematic premeditated attacks on civilian groups with the intent of destroying those groups physically, mentally or otherwise was certainly inhumane, but until Lemkin made his argument genocide was not an international or domestic crime. Genocidal acts, Lemkin proposed, was something that should be seen as criminal in the eyes of the world and in the eyes of international law. He made the prevention and punishment of the crime of genocide his life’s work and began lobbying for the United Nations and the United States to take a stand on the matter.

Using Hitler and Nazi Germany as the model for how destructive genocide is to humankind, Lemkin outlined the eight ways in which genocide impacts a population. Politics was a major tool used in the areas that Hitler seized. He completely removed each individual government and its form of governance and imposed German forms of governance. The

⁵ Ibid, 79

⁶ Ibid, 79-82

Nazis forced all remaining political leaders and officials to change their names to German names. They even went so far as to change the names of towns to German names to remove all remnants of the former political order.⁷

The Nazi party made sure to gain full control of the social norms in the places that they annexed. Hitler removed members of the clergy and the intelligentsia from the rest of society so as to prevent any resistance to the newly imposed order. In Poland in particular members of the clergy were among the leaders of resistance and posed a serious threat to the regime. SS soldiers would capture these priests and transport them to labor camps to keep them from leading the people of Poland against them.⁸ Everything in the lands Hitler occupied would be refocused to support the war effort by the Nazi regime. All materials and goods were expropriated from the locals and given to the soldiers. In many cases, those who were allowed to stay in their homes had no choice but to allow visiting soldiers to live with them while they were stationed in that particular area. This would affect not only the households that the soldiers occupied but it would sometimes also change the social makeup of the entire community.

⁷ Ibid, 82

⁸ Ibid, 83

Along with the social norms cultural norms too had been replaced. Hitler implemented a language policy that mandated for German to be made the national language and the only language allowed for use both in Germany and in occupied territories. Hitler banned the teaching of other languages and went so far as to replace non-German schoolteachers with German ones who taught only the prescribed coursework. Liberal arts studies were prohibited all throughout grade school and National Socialism was a mandated study for children. All media was regulated to only promote Nazi propaganda.⁹ In conducting genocide stripping the victims of their culture is next to physically harming them perhaps the most impactful components of the crime because as time goes on it becomes extremely difficult to realign with cultural practices. For example there were an estimated 11 million Yiddish speaking Jews in the world. Now it is estimated that only about 600,000 of the world's Jewish population can speak Yiddish.¹⁰

One of the most memorable of the cultural control tactics used by the Nazis was the burning of books. Any literary work that was deemed contrary to the Nazi agenda was confiscated, thrown in a large pile, usually in an open area, and burned. Among those burned were works by Jewish authors, any literature regarding Marxism or communism, books

⁹ Ibid, 85

¹⁰ “*Yiddish Facts*”, last modified: 2015, <http://jewishstudies.rutgers.edu/yiddish/102-department-of-jewish-studies/yiddish/159-yiddish-faqs>

about sex education, and works considered pacifist or liberal. One instance of a Nazi soldier destroying the library of a Jewish seminary in Poland tells just how much it meant to the Nazis to remove these forms of culture:

“For us it was a matter of special pride to destroy the Talmudic Academy which was known as the greatest in Poland.... We threw out of the building the great Talmudic library, and carted it to market. There we set fire to the books. The fire lasted for twenty hours. The Jews of Lublin were assembled around and cried bitterly. Their cries almost silenced us. Then we summoned the military band and the joyful shouts of the soldiers silenced the sounds of the Jewish cries.”¹¹

Religious and moral restrictions also played a major role. The clergy and religious leaders were targeted for having the following and trust of the oppressed group(s) to incite resistance and to help retain faith that liberation will come. Removing them also removes their belief and their connection to God and the mainstream society. Imposing the beliefs of the oppressor minimalizes faith, forcing the oppressed to obey only in the will of the oppressor. Hitler imposed a ban on public displays of Judaism and had children over the age of fourteen renounce their religious affiliation and enroll in the youth Nazi organizations.¹² Some Jews even

¹¹ Lemkin, *Axis Rule in Occupied Europe*, (1944), 85

¹²Ibid, 89

found themselves serving as informants for the Nazi soldiers, alerting them to any violations of the rules.

To attack the moral condition of the oppressed group the oppressor promotes immoral behaviors. For example, the Nazis made the price of food higher while keeping the price of alcohol relatively cheap in order to encourage consumption.¹³ Without realizing it the oppressed public will become more susceptible to Nazi propaganda and will still be in fear of their oppressor but less willing to fight. This tactic is also intended to draw the attention of the oppressed peoples to the most basic instincts. This would keep their minds off of the larger issue of obtaining freedom or regaining their nationality.

To further distract the oppressed groups from focusing on their liberation, the oppressor interferes or removes the group's ability to participate in economics. Without financial investment in the state the group is even less of a member of that state in the eyes of the oppressor. Hitler imposed terrible standards of living while seizing the assets of the Jewish population. He forced them into ghettos in which they were forced to barter for goods. In many cases those imprisoned in ghettos had to use a form of money that differed even from that of the German mark. The Nazis took over the banks and restricted use of those banks only to those

¹³ Ibid, 90

who had converted themselves into the German culture.¹⁴ This was a luxury not usually afforded to the Jewish population no matter the circumstance.

Lastly physical and biological regulations were imposed to bring about the physical end of the oppressed groups. Marriage and procreation within the group is banned to try and limit the growth of the population. It was even made illegal for a German to procreate with a Jewish person, specifically with a Jewish woman being that the Jewish bloodline is considered to be matriarchal. In Poland, the Nazis would separate the males from their wives and send them to labor camps to keep them from producing more children.¹⁵ Many times it would not be to labor camps but instead to gas chambers and crematoria to be killed in large masses. If they did make it to a labor camp many of those imprisoned would be shot down in the middle of the camp for frivolous accusations such as not working hard enough or simply for stopping between duties.

Hitler's reign of terror brought to light the threat of genocide. Intentional systematic killing became an issue that humanity could no longer ignore. The Armenian genocide had gone relatively unnoticed until Hitler and the Nazi party mirrored and built upon the tactics used by the Turks against the Armenians. Thankfully, those at the United Nations

¹⁴Ibid, 85

¹⁵Ibid, 86

were able to see that if nothing were to be done to stop Hitler that he would continue his deadly campaign throughout the rest of the world. One such person at the UN was Raphael Lemkin.

Lemkin had been a witness to the early stages of the Holocaust. He escaped from Poland during Hitler's takeover of Europe and made his way to Switzerland and then to New York where he would begin his lobbying for an international ban on genocide. However, it would not come as easy as stating what he knew was well underway in Europe. Lemkin would have to impress the United Nations and its member States with a proposal that truly warranted the signing of an international law.

Lemkin took his proposal for an international ban on genocide to the Fifth International Conference for the Unification of Penal Law in 1933. He proposed that two crimes be added to the international law code and that perpetrators of such crimes should be prosecuted wherever they are. The first was the crime of barbarity, which included destructive actions directed at individuals and groups. The second was the crime of vandalism, which included destructive actions against works of art and cultural objects.¹⁶ He also proposed that a convention be created to maintain the new laws. Lemkin included in his proposal that each state that agrees to add these crimes to the international law code should make provisions to their domestic law codes that support and mirror that of the

¹⁶Ibid, 91

international code. In doing so States denounce the crimes both at home and abroad, giving criminals no place to hide.¹⁷ It would also give the Contracting Parties the ability to intervene when necessary.

Unfortunately Lemkin's proposal did not receive much support at the Conference. It wouldn't be until after the Holocaust ended that the world would begin to heed his warnings about the oppressive regimes like the one created by Hitler, who, if not preempted, would spread the terror of genocide throughout Europe and beyond. Despite being a living testament to Hitler's brutalities Lemkin still had little support from the United States for the passing of his proposal. It would take until 1946 for the proposal to gain enough support to make it to a vote, and in 1948, after having to edit and re-edit the proposal the General Assembly passed the proposal unanimously. In 1950 Lemkin was able to convince the 20 countries he needed to have the Convention passed into law, and in October of that year the Convention on the Prevention and Punishment for the Crime of Genocide became internationally recognized.

The text of the Genocide Convention has been subjected to much criticism. For many reasons the Convention's text has both inspired hope in some and doubt in others. The Convention is supposed to be a monumental step in mankind's effort to preserve civility and human life,

¹⁷ Ibid, 93

however, as some critics have pointed out, the need for such a law also identifies the disregard for humanitarian laws already in place. To understand any criticism or praise of the Convention it is necessary to understand its text.

The Most Impactful Articles of The Genocide Convention

The preamble of the Convention sets the tone for its contracting parties and for the future of the Convention itself. It states, “Recognizing that all periods of history genocide has inflicted great losses on humanity; and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required.”¹⁸ First, it recognizes genocide not as a new crime but as something that has plagued mankind throughout all periods of history. By stating this the United Nations as a representative of the civilized world, is taking responsibility for having allowed genocide to occur until now. It acknowledges that mankind as a whole has suffered the effects of genocide and that now is the time to end it. The preamble also requires international co-operation. It doesn’t ask for co-operation, nor does it suggest co-operation, it requires global co-operation, effectively making the Convention null and void without that most important ingredient.

¹⁸ United Nations General Assembly, “*The Convention on the Prevention and Punishment of the Crime of Genocide*”, (Paris, France, 1946), 174

The actual text of the Convention is comprised of nineteen articles. Of those nineteen the most important for understanding the purpose and applicability of the Convention are Articles I, II, III, V, VI, and VIII. Article I states, “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.”¹⁹ This is the second most important statement. It differentiates the crime of genocide from war crimes. This is a key separation because it keeps defense lawyers from arguing that their clients (on trial for acts of genocide) were acting under the context of war. Article I also binds the contracting States by the obligation to prevent genocide and the obligation to punish those who commit the crime. Again, the Convention’s strong language leaves no room for interpretation.

Article II outlines the actions that constitute as acts of genocide. The acts are listed as “killing members of the group, causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part,” or any other harmful action taken with the intention to eliminate and or prevent the livelihood of a particular

¹⁹ United Nations, “*Genocide Convention*”, (1946), 174

group.²⁰ The element of intent part of what makes the crime of genocide so uniquely different from war crimes and acts of terror.

In Article III the acts that shall be punishable under the Convention are outlined. Those acts are listed as, “genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide.”²¹ Through Article III every relation to the crime of genocide is encompassed. Everyone that is responsible for the execution of the crime, even those that do not prevent the crime, are accounted for and will share the punishment for the crime. Article IV confirms that anyone found guilty of any of the acts in Article III will be punished, “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.”²² It confirms that no person has immunity from punishment for the crime of genocide, not even Presidents or other forms of Heads of State.

Article V is, effectively, what gives the international law domestic applications. It reads, “The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation

²⁰Ibid, 174

²¹Ibid, 175

²²Ibid, 175

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.”²³ Though the Convention should have an overarching authority over the prevention and punishment of genocide it is most certainly not as strong bind than that of the constitutions of its contracting parties. When domestic laws mirror those of international laws it further validates the international law.

To enforce the law it takes more than the presence of the law, it also needs a court to determine the guilt or innocence of the accused. Article VI provides the guidelines for trying those accused of committing the crime of genocide, “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.”²⁴

For cases where a crime was committed in one of the Contracting States by a person or by persons who are citizens of another one of the Contracting States, the drafters thought it wise to include directions on extradition. Article VII outlines the responsibility of States in these cases. It reads, “Genocide and the other acts enumerated in article III shall not

²³Ibid, 175

²⁴Ibid, 175

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.”²⁵

Article VIII gives each State the “power” to call upon the United Nations when combating or preventing genocide. The article reads, “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.”²⁶

Though “Lemkin’s law” had finally been passed, it would take some time before it was truly put into use. The concepts set forth by the Convention required a level of cooperation that the world wasn’t ready to commit to. It was evident in the time it took to bring Lemkin’s proposal to an actual vote despite what Hitler and the Nazis were doing in Europe. The United States Senate as well as President Eisenhower refused to support ratification of the Convention. It would take 38 years after the Convention became law for the United States to ratify. The reluctance shown by the U.S. and other Member States to ratify shows just how important it is for the security of mankind to have the Convention in place. Without the Convention the protected groups of the world would be

²⁵Ibid, 175

²⁶Ibid, 175

vulnerable to genocidal acts with little prospects of security from their country.

Criticisms of the Convention

Despite being a major step toward a safer world, the Genocide Convention has undergone great scrutiny since it's drafting. Critics question the applicability of the Convention for various reasons. Some are blinded by their need for instant gratification and others critique solely on historical facts. Nonetheless, those who have read the text of the Convention and have offered their critiques either via lecture or by way of their own work, typically have strong opinions on its drafters and the Contracting Parties for having agreed to it. However, like all great movements of change it cannot be immune to scrutiny if it intends to improve and actually make change.

One of the arguments against the Convention's text and purpose is that its aims do not support each other and that instead the obligation to punish feeds off of the failure to meet the obligation to prevent. The two aims of the Convention are stated in Article I as if to be two parts of one whole, but skeptics of the Convention's practicality, like Paola Gaeta,

make the point that the obligation to punish is contingent on the failure of the obligation to prevent.²⁷ She argues that:

“The missing link between prevention and punishment is commission: when situated on a timeline, punishment gives evidence to commission which, in turn, indicates the failure of prevention.”²⁸

She goes on to say:

“Given that the eradication of this ‘odious scourge’ requires the willingness, indeed the commitment, to set up strong preventive mechanisms engaging, when necessary, the use of force, the preference for post-factum criminal processes, while not surprising, is disappointing: insofar as punishment indicates the failure of prevention, it would appear that the drafters inserted a duty to prevent that was designed to be honored by its breach.”²⁹

What can be expected of a law that is vague when it comes to punishment? Who would abide by that law if they could get away with breaking it? People break laws all of the time until they get caught and are reprimanded. Though they could potentially break those very same laws again they would think twice before doing so recognizing the threat of imprisonment or death.

²⁷ Paola Gaeta, *“The UN Genocide Convention: A Commentary”*, (New York: Oxford University Press, 2009), 29-30

²⁸ Gaeta, *“The UN Genocide Convention: A Commentary”*, 29

²⁹ *Ibid*, 30

The joined concepts of the Convention work together in the same way. The two compliment each other and one would lose its applicability without the other. Though genocide could be prevented without having to resort to punishment, punishment still looms over those who consider committing the crime of genocide. The idea of crime and punishment exists for that very reason. Without punishment there would be no weight to the law. That is why domestic laws and other international laws include sanctions for those that do not adhere to them because one cannot be taken seriously without the other. The same idea is applied to The Convention. To ask nations to prevent genocide without including punishments is to ask them to support a weightless law.

Gaeta's argument is, however, supported by the continuous failure of states to meet the obligation to prevent, leaving them no choice but to resort to punishment. After the Convention became international law the crime began to occur more often. Just twenty years after the Convention the Khmer Rouge began their reign of terror in Cambodia. Five years later the Iraqi government began killing its Kurdish population. In 1994 hundreds of thousands of Tutsi were massacred in Rwanda at the hands of their rival tribe, the Hutu, and their state collaborators. Around that same time the killing of Croatians and Muslims broke out in Bosnia-

Herzegovina. It took until 1998 for the first conviction for the crime of genocide; even then only one of these cases saw justice.³⁰

What is widely believed to be a major flaw in the drafting of the Genocide Convention is that the drafters intentionally neglected to make States legally liable contributors to genocide. Dr. Gaeta makes this argument in her work, “The UN Genocide Convention: A Commentary”, “Some of the drafters criticized an amendment proposed by the UK and forcefully and repeatedly supported by the British delegate, Gerald Fitzmaurice. This amendment was directed to add a provision stating that acts of genocide could be submitted to the ICJ [International Court of Justice] even in cases where it was alleged that genocide was an ‘act of the State itself or Government itself or any organ or authority of the State or Government’. The criticisms (primarily by the US, France, the Philippines, but also by Canada, Ecuador, and China) and the consequent withdrawal by the UK of its amendment, clearly show that the authors of the Convention intended only to deal with individual’ criminal liability for genocide.”³¹

The fact that the U.S. and other nations tried and succeeded in debasing the proposal of UK delegate Fitzmaurice makes debunking her

³⁰ “*Genocide Timeline*”, last modified April 13th, 2015,

<http://www.ushmm.org/wlc/en/article.php?ModuleId=10007095>

³¹ Paola Gaeta, “*The UN Genocide Convention: A Commentary*”, (New York: Oxford University Press, 2009), 532

argument much more complicated, and to a degree she is correct in her conclusion. However there was a subtle mention of State responsibility in a 1947 resolution to the draft Convention that may suggest otherwise. It read, “Reaffirming its resolution 96 (I) of 11 December 1946 on the crime of genocide; declaring that genocide is an international crime entailing a national and international responsibility on the part of individuals and States;”³² Though it doesn’t dismiss Gaeta’s point it does suggest that the Contracting Parties drafted the Convention with State responsibility in mind and that it was an understanding among the Contracting Parties that the Convention applied to each State itself.

After learning of the Armenian Genocide and the gory details of the Holocaust, which are the two of the major influences of the Convention, that were both carried out by representatives of their respective States, it left many skeptical of the true applicability of the Convention as well as the intention of its drafters when there was seemingly a lack of direct language towards state responsibility. There is no denying that the wording of the Convention is certainly geared toward the individual, so critics are right to question the intentions of its drafters. For example Article IV states that,

³² “*Resolution 180 (ii), Draft Convention*”, last modified: n/a, [http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/180\(II\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/180(II))

“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.”³³

Scholars who prescribe to this critique look to the Nuremburg trials and to the nature of most cases of genocide and believe that the General Assembly made a terrible decision by individualizing the crime.

The decision has led to a feeling among scholars and state officials that the states involved with the drafting of the Convention had only themselves in mind and sought to establish the law while being exempt from it. Professor Bassiouni gave an interesting perspective regarding the matter:

“Nuremberg’ focused on individual criminal responsibility for conduct that was the product of state policy and for which collective responsibility and state responsibility could have been assessed. Those who established the IMT were careful to avoid the notions of state and collective responsibility, except with respect to criminal organizations, namely the SS, SD, and SA. The simple reason is that these governments did not want to establish a principle that could one day be applied to them.”³⁴

The United States, for example greatly benefited from the individualization of the crime of genocide and from having major influence in the United Nations. In 1951, the Civil Rights Congress, an

³³ United Nations, “*Genocide Convention*”, (1946), 175

³⁴ Caroline Fournet, “*The Crime of Destruction and the Law of Genocide: Their Impact on Collective Memory*”, (England: Ashgate Publishing Limited, 2007), 76

American civil rights organization, drafted a petition entitled "*We Charge Genocide: The Crime of Government Against the Negro People*". The petition was presented to members of the United Nations accusing the United States Government of having been complicit and for directly committing acts of genocide against the "negro people". The CRC claimed that the Government committed heinous and degrading acts against the African American population for being "negro", with the intent to destroy the entire population both in whole and in part, which according to the Genocide Convention, qualified as acts of genocide.

Among the evidence supporting the CRC's claims was the Jim Crow Laws, which supported segregation of whites from blacks in every facet of American life and encouraged white Americans to inflict physical, psychological and economic harm on African Americans. As a result of these laws and the culture they created it had become a normal practice in business to systematically disenfranchise African Americans by deliberately not hiring them. In situations where blacks were hired they were only allowed to have the lowest paying positions. Legislation was passed in some states to keep blacks from being eligible to vote. For example state polls implemented literacy tests, which would prove to be a challenge to the African American voting population because most of

them, to that point, had received low quality education and in many cases could not read at all.³⁵

Blacks were forced to live in ghettos with substandard housing accommodations. Lynchings of African Americans had become public spectacles where an entire town would attend to witness the horrible occasion. Between 1882 and 1929 approximately 3,306 African Americans had been lynched nation wide with the majority of occurrences happening within the confederate states.³⁶ Blacks faced violent treatment by the police across the nation and there was a major lack of medical care and access to education for majority of the African American population.³⁷

The United States Government and the media fought the petition. The Department of Defense even requested that the NAACP publicly denounce the petition, which the organization almost did but decided against it due to the fact that the organization was cited as one of the sources in the petition. Lemkin objected to the petition on the basis of the birth rate of African Americans. His view was that the plight of Blacks in America was nothing like the mass atrocities happening in Europe. The

³⁵ “White Only: Jim Crow in America”, last modified: NA, <http://americanhistory.si.edu/brown/history/1-segregated/white-only-1.html>

³⁶ “Jim Crown Statistics”, last modified: 2015, <http://www.shmoop.com/jim-crow/statistics.html>

³⁷ “*We Charge Genocide*”, last modified: 2015, <http://www.blackpast.org/we-charge-genocide-historic-petition-united-nations-relief-crime-united-states-government-against>

United Nations has no record of the petition and it is believed to be because neither of the U.S. delegates at the time would take the petition seriously enough to speak on its behalf. However the petition did make it to Britain and other European countries. In Europe the public embraced the document and showed outspoken skepticism of the U.S. Government for having misused its influence by keeping the petition from reaching the Convention floor.

By keeping the petition from reaching the tables of U.N. representatives the United States never had to take responsibility for its compliance and execution of genocidal acts directed at its African American population. Perhaps if there was stronger language included in the text of the Convention at that time regarding State responsibility other nations would have stepped up and pushed for the petition to be officially reviewed by the General Assembly. Instead the "*We Charge Genocide*" petition is nothing more than a dead document drafted by a disbanded organization.

Addressing The Criticism

Professors Gaeta and Bassiouni's points are strong regarding the reasoning behind states electing to individualize the crime of genocide. However, instead of directly solving the issue of not making states

directly responsible their points only lead to more questions; can an entire State be complicit in the crime of genocide or if it should only be the individuals who undertook to commit the crime that should be held legally responsible? The problem with holding an entire State responsible for the crime of genocide is that it could throw a State's political and economic make up into disarray. For instance if an entire branch, or the leadership of every office within the U.S Government that signed off on a decision that was found to be complicit in or active in committing the crime of genocide was to be held responsible for the crime of genocide it is likely that the Republic itself would implode. In a democracy like the one practiced in the U.S. the line of command would essentially be exhausted if the current leaders were removed from their positions, leaving the nation without a government until the lengthy process of elections were completed.

Nonetheless, the fact is that without aid from a government or some branch or organization funded by the government genocide is almost impossible to commit. It truly seems unjust to leave states out of the wording of the Convention knowing the amount of resources it would take to perpetrate such a crime. Taking an "individual approach" to establishing the international criminal law of genocide left a large gap in the law itself. If a single person or a small group can commit the crime of genocide then why could a nation not do the same? Comparing the ability

to commit the crime between individuals and nations leaves a truly lopsided argument. Given the fact that governments have played major roles in all of the known genocides it would be not just helpful to include specific language regarding state responsibility, it is absolutely necessary to do so if the crime of genocide is to be punishable.

The very idea that a single person could commit something so elaborate is far-fetched. Surely one man or woman could take actions to commit the crime, however, it would take a great deal of time, man power, and resources, all of which would more than likely lead to the discovery of their plan before they could actually complete it. A small cohort of people would have the man power to make pulling it off somewhat easier but would still require access to the necessary resources. The only way for small groups of people to commit the crime of genocide is to be at the helm of a nation or to have the support of a nation or its representatives.

For example the genocide of the Tutsi population in Rwanda was far less likely to have happened if not for the earlier involvement and mishandling of the situation by the German and Belgian colonial officials. Tutsi and Hutu clans traditionally distinguished themselves from one another based on class and not ethnicity. Belgian missionaries sent to Rwanda to oversee the governance of the State implemented the idea of racial superiority by introducing foolish criteria such as the length of ones

nose as a means to distinguish aristocracy.³⁸ Only with the influence and support of the Belgian officials did the Tutsi begin to discriminate against the Hutu by forcing them into menial jobs, keeping them out of political positions and forcing them to carry identification cards describing their ethnic background. This would be the precursor to the backlash from the Hutu majority once they able to acquire political power, which was also supported by Belgian officials, that lead to the slaughter and displacement of over 200,000 members of the Tutsi clan.

Prior to the arrival of colonial masters the people of Rwanda did not oppress each other. There was certainly no build-up to armed conflict and much less toward the genocide of any of the three populations that inhabited the country. Though the Hutu and Tutsi had their differences it was Belgian officials that created racial issues between the two clans. It was Belgian officials that allowed one clan to oppress the other, creating major tensions, and then not balancing out the political arena once the oppressed population gained political power. The Rwandan genocide was very much the product of the German and Belgian colonialism.

Offenses that could be attributed to a single individual are the more “secondary” means such as conspiring to commit the crime of genocide, direct and public incitement to commit genocide, and complicity in

³⁸ “The Rwandan Genocide”, last modified: 2015, <http://www.history.com/topics/rwandan-genocide>

genocide.³⁹ Even then the individuals being accused of these crimes must poses a certain amount of power before any sane minded person would take them seriously enough to assist them in committing genocide. This does not mean that individuals within State parties cannot commit the crime of genocide. Professor Bassiouni put it best when he stated:

“In all cases, individuals commit crimes. What is called ‘state action’ and ‘state favoring policy’ does not alter the fact that one or more individual authors are involved. The characterizations of ‘state action and ‘state favoring policy’ refer to collective decision making and actions by individuals who develop a policy or who execute a policy or carry out acts which constitute international crimes under legal authority.”⁴⁰

However, if those individuals use the apparatus of the State to commit the crime then the State must bear some responsibility.

There should be exceptions made for those persons who attempted to prevent and or stop the criminal acts, as they have clearly shown no complicity to the crime. There should also be constraints on how the entire state would be punished so as not to stifle the freedom or prosperity of the state. Despite the inhumane nature of the crime punishment should not exclude the eventual rehabilitation, forgiveness, and reconciliation. If even one of these principles were left out the authority handing out the punishment would be no better than the perpetrators of the crime.

³⁹ The Contracting Parties, *“The Convention on the Prevention and Punishment of the Crime of Genocide”*, (Paris, France: The United Nations General Assembly, 1948), 174-175

⁴⁰ Caroline Fournet, *“The Crime of Destruction and the Law of Genocide: Their Impact on Collective Memory”*, (2007), 75

Gaeta makes another argument that is perhaps a bit “picky” on the wording of the Convention. She makes the claim that the Convention does not prohibit the Contracting States from committing the crime of genocide.⁴¹ Suffice it to say that it is important to include every possible outcome when drafting a law. In doing so one encompasses every possibility for committing the crime that the law seeks to prevent. However, it can be, and most likely was assumed by the United Nations that a Contracting Party would refrain from committing the crime of genocide if they are pledging to prevent and punish those who do. Those Parties who confirm the text of the Convention by doing so also agree not to commit the crime.

Her mentioning this point is, though unnecessary, is not completely frivolous. As mentioned States are capable of carrying out an act of genocide. It would make a more compelling argument to suggest that the Convention is predicated on something that is hard to guarantee: international cooperation, prevention at the State level, and punishment at every level. The Preamble of the Convention all but demands that the Contracting Parties cooperate when it states that international cooperation is required to win the war on genocide.⁴² How then does the United

⁴¹ Gaeta, “*Genocide Convention*”, (2009), 532

⁴² The Contracting Parties, “*The Convention on the Prevention and Punishment of the Crime of Genocide*”, (1948), 174

Nations make sure that these demand are met? History says simply that it cannot while the future assures that it can and will.

The Scope of Prevention

To gauge the limitations on the United Nations to guarantee that the Convention will be upheld by its Member States it helps to understand the three requirements placed upon the Contracting Parties. Preventing genocide has been one the most challenging goals to meet for the United Nations. Most scholars see the Convention as a failed and useless international law because prevention has eluded the Contracting Parties ever since it came into force. There has been much progress in providing and implementing preventative measures to intercept criminals and to quell conflicts before they reach the point of genocide. Nonetheless there is still much more to be done to assure that preventative measures have a lasting effect wherever and whenever they are implemented.

The concept of prevention is hard to articulate, especially when it comes to armed conflict. It is a concept that includes such elements like control, force, and in many cases intervention- all of which make world leaders extremely uncomfortable. The idea of prevention has tested the world's commitment to the international safety from the very conception

of the Convention and has proven to be one of, if not the major roadblock. Political leaders fear that their sovereignty will be denigrated, that their citizens and their neighbors will no longer believe in their nation's ability to protect its people if they allow other nations to have instant authority on their shores, even in the special circumstances of preventing genocide.

The truth is that no nation is impermeable to the horrors of genocide. Even when it occurs in other nations it affects us all as a civilized society of human beings. In the battle to end armed conflict, specifically genocide, the fact that this fear of losing power is still driving wedges between nations is proof that the Convention has had mostly conditional priority to our leaders. Former Secretary General of the United Nations Kofi Annan has dealt with these fears first hand. He waded through them during his time in office and notes that our leaders still have yet to overcome that fear. In his presentation on the Carnegie Commission on the subject of preventing deadly conflict, he shared his disappointment with the lack of international collaboration:

“And yet we seem never to learn. Time and again differences are allowed to develop into disputes and disputes allowed to develop into deadly conflicts. Time and again, warning signs are ignored and pleas for help overlooked. Only after the deaths and the destruction do we intervene, at a far higher human and material

cost and with far fewer lives to save. Only when it is too late do we value prevention.”⁴³

History has proven the former Secretary General right; nations do not value prevention as much as they should. It begs the question then: if our leaders don't value prevention then why would they agree to the terms set forth by the Convention? Perhaps the issue isn't so much that we don't value prevention but that we don't yet know how to prevent genocide; we certainly didn't when the Convention was made into law. When the leaders of our nations signed on to the Genocide Convention it is possible that they were acting out of impulse. For some countries this was an opportunity to seek the security needed to help stabilize their governments. For others it was peer pressure or fear of missing out on an opportunity to have a say during the development of a monumental convention.

Though the Holocaust was not the first time mankind had fallen victim to the horrors of genocide it had yet to be identified as an international crime. This new crime therefore demanded of the world leaders something that they had always seemed to avoid: unselfish international collaboration. Winston Churchill described it as “a crime

⁴³ Kofi Annan, *We The Peoples: A UN for the 21st Century*, (Colorado: Paradigm Publishers, 2014), 87

without a name.”⁴⁴ Before Lemkin genocide was seemingly an anomaly that left the world powers with an extremely difficult decision to make. Do they stand by the claim that nations have the right to sovereignty over their domestic affairs, even when they threaten the security of their minority populations? Or do foreign nations have a responsibility to band together to assure that all people everywhere can count one another to come to their aid when their own governments cannot or refuses to? Lemkin’s argument eventually won over the parties of the U.N. but that was only a third of the battle.

Applying Preventative Measures

Preventing genocide would be an even bigger challenge than expected. The U.N. was tasked with creating measures that would intercept the crime before it happened. Which begged the question: how do you identify genocide in the making? What factors or actions should be seen as preparation to carry out the crime of genocide? Developing a model for preventing genocide would take years and still has yet to be perfected. However the strides towards accomplishing prevention have been great.

⁴⁴ “*Prime Minister Winston Churchill’s Broadcast to the World about the Meeting with President Roosevelt*”, last modified N/A, <http://www.ibiblio.org/pha/policy/1941/410824a.html>

The United Nations has received much assistance from the Carnegie Corporation of New York, who has established a Commission on Preventing Deadly Conflict. In 1999 they were able to help identify a “formula” or strategies for accomplishing the task of preventing genocide that if implemented could greatly reduce the threat of armed conflicts that have the potential to escalate into genocide. The Commission breaks genocide prevention into two categories: the first is “operational prevention” and the second is “structural prevention”.⁴⁵ The “operational preventive strategy” includes early warning, preventative diplomacy, preventative deployment and early humanitarian action.⁴⁶ The “structural strategy” includes preventative disarmament, development and peace building.⁴⁷ Both categories of strategies offer the potential for a great amount of good, however many of the strategies rest upon faulty foundations.

Preventative deployment, which is the deployment of UN troops along and within the borders of nations that show signs of rising armed conflict for the purpose of monitoring those conflicts and trying to

⁴⁵ Kofi Annan, *We The Peoples: A UN for the 21st Century*, (Colorado: Paradigm Publishers: 2014)

⁴⁶ Annan, *We The Peoples*, 87

⁴⁷ Ibid, 87

contain them, has proven to be a successful strategy.⁴⁸ Particularly in the Former Yugoslav Republic of Macedonia preventative deployment helped the newly independent state obtain stability. The UN troops were stationed there from 1995 until 1999 and helped keep out any illegal flow of small arms that might have aided NLA or KLA rebels in toppling Macedonia's stride toward independence and recognition.⁴⁹ The presence of the troops may have also kept the fighting in Albania from spreading over into Macedonia, which at the time consisted of a one fourth Albanian population.⁵⁰

Preventative diplomacy, the most common method of preventing any armed conflict, has been increasingly effective over the past two decades. The United Nations has committed itself to creating opportunities for conflicting parties to engage in discussion in order to seek a resolution to their differences. Through its Department of Political Affairs in 2006, a Mediation Support Unit has been created to send mediators to places of possible conflict to help direct the process of

⁴⁸ Samuel Totten and Paul Bartrop, *Dictionary of Genocide*, (Connecticut: Greenwood Press, 2008), 342-343

⁴⁹ *United Nations Peacekeeping Operations*, Last updated March 16th, 1999, http://www.un.org/Depts/DPKO/Missions/unpred_p.htm

⁵⁰ Power, *A Problem from Hell: America and the Age of Genocide*, (2002), 448

establishing peace. The Department has even established a standby team of mediators who are “on call” at the need of the mediators on site.⁵¹

Humanitarian action, the last of the “structural prevention” strategies is also a common method used by nations attempting to quell conflict, specifically in the developing world. The UN and NGOs typically are the ones contributing to these efforts but some nations, on occasion, have been willing to provide assistance to allies and those in need. In many cases where civilians are under threat of becoming collateral damage, or when they are directly attacked, the international community is very quick in their response to helping the victims. Today’s rapid stream of media amplifies the pressure for governments to assist in humanitarian efforts, which greatly contributes to a nation’s willingness to assist long term.

The “structural” preventative measures too have had positive applications in the war on genocide. Preventative disarmament is a key strategy in calming a quickly rising conflict. Simply put, if a killer has no weapon he is more likely to either run from the conflict or become open to the idea of resolution. In either case the armed phase of the conflict has ended and it is likely that there will be far less if any casualties at all.

⁵¹ “*Department of Political Affairs*”, Last updated March 20th, 2015, http://www.un.org/wcm/content/site/undpa/main/issues/peacemaking/mediation_support

Development and peace-building though set as separate strategies in the Commission's evaluation are in fact part of the same phase of preventing genocide and other forms of armed conflict. Genocide can occur anywhere but specifically in "third-world countries" often economics and hardship are paired with age-old religious and ethnic rivalries. Class prejudice, religious and racial differences have been the root of many armed conflicts. Aiming directly at those core issues not only stops armed conflict while it is happening but it can certainly be a powerful tool for preventing it.

In 2014 the United Nations improved upon the Carnegie Commission's efforts. It released a publication entitled "Framework of Analysis for Atrocity Crimes: A Tool for Prevention"⁵² that gives one of the most comprehensive outlines for identifying risk factors that could lead to genocide. The publication divides the risk factors into two sections: the first being common risk factors and the second being specific risk factors.⁵³ The common risk factors are factors that affect the entirety of the state while the specific risk factors pertain to situations that directly involve or target specific groups.

⁵² "Framework of Analysis for Atrocity Crimes: A Tool for Prevention", last modified July 2014, http://www.un.org/en/preventgenocide/adviser/pdf/framework%20of%20analysis%20for%20atrocity%20crimes_en.pdf

⁵³ "Framework of Analysis for Atrocity Crimes: A Tool for Prevention" (2014), 9

The common risk factors, when identified and intercepted, could be the best means of preventing genocide. Of the common risk factors armed conflict or other forms of instability are among the most common. These kinds of situations are ones that place the State under duress and can create an environment conducive to armed and unarmed conflict. An example of this situation would be that of the collapse of Yugoslavia and the outbreak of fighting that would eventually lead to the Bosnian genocide. A way to detect the potential for armed conflict is to review a record of serious violations of international human rights and humanitarian law. If a State has a history of treating its citizens, in whole or in part, in an inhumane way it is quite likely that the State could potentially either commit or become complicit in genocidal activity.

The example of the former Yugoslavia is also a case where there was a major weakness in the state structure. Circumstances such as the disbanding of the former Yugoslavia are circumstances that negatively affect the ability of a State to prevent atrocity crimes that could potentially result in armed conflicts and genocide. Without a stable or willing government it is very likely that this State could see a high level of conflict. In Srebrenica Bosniaks and Bosnian Croats were left defenseless against the Serbian Army. Neither the State nor the United Nations troops could (or would) protect them. Even when refugees made it

to the compound only about 2,500 were to be allowed in. Sadly even those who made it in would be released to face their deaths.

Motives or incentives are sometimes tough to identify early enough but they remain a key factor in identifying a crime as genocide. These are the reasons that perpetrators of genocide use to justify the use of violence against protected groups. In the case of Germany after WWI, it was relatively easy for Hitler and the Nazi Party to convince the dispirited German public to support the Party's aims after having lost in the war and in the midst of a deep economic crisis. The Nazi Party created an "other" out of the Jews and every so-called "non-Arian" and used their creation to fuel hatred throughout the nation, resulting in the enslavement, displacement, and death of approximately six million.

Another major risk factor used to identify and prevent possible armed conflict is to monitor the capacity of a state or other actors to commit atrocity crimes. It is not enough for a state or group of actors to be motivated to commit an atrocity crime; they must also have the capacity to commit the crime. Though Germany was doomed to pay for their participation in WWI, Hitler was able to galvanize manpower through propaganda and by removing outside influence from public view. By doing so he manufactured the support of the entire country. Those who didn't support the ideals of the party were made to work in factories to

make the weapons that would be used against other decenters and “non-Arians”.

When there is the absence of mitigating factors or when the State’s armed forces lack in numbers, equipment or training, or the State does not have the ability to call upon forces that could prevent armed conflicts then it is more likely that genocide will occur in that state. States must be willing to ask for and allow other nations with respectable armed forces to assist them in cases of armed conflict, especially in matters of preventing and stopping genocide. The United Nations does make itself a beacon in regards to matters of genocide, but where the organization is sometimes flawed is in situations where peacekeepers are sent to areas in need of soldiers.

In the case of Rwanda, UN peacekeepers were sent to oversee the conflict rather than intervene, costing thousands of lives. They were under strict orders to simply keep watch over the area and ensure that the Hutu and Tutsi were adhering to the Arusha Declaration. Despite the fact that many aspects of the Declaration were clearly being violated, the peacekeepers could nothing about the mass killing they saw as per their orders. These are just some of the common risk factors. As the study of genocide grows and more perpetrators of genocide and atrocity crimes are

brought to justice the more the world will learn and the better able forces will be at preventing genocide.

The combined analysis of the Carnegie Commission and the U.N. Framework is proof of the progress made toward prevention. Their reports encompass all of the pathways to genocide and address all of the links to armed conflict, which have the highest potential to reach the point of genocide. Unfortunately it took more instances of genocide in order to collect the data needed to compose the guidelines. Thanks to the Genocide Convention organizations like the Carnegie Commission have been able to bring to the dangers of genocide to the forefront of global security and humanitarian efforts.

The Obligation To Punish

The obligation to prevent genocide has certainly proven to be a challenge to uphold. The obligation to punish those who commit the crime of genocide or any of the other punishable acts in Article III of the Convention has not been any easier to meet. Unfortunately the United Nations and the Contracting Parties to the Convention have come up short on this obligation many times, leaving the survivors of the post-Convention era without much closure on their hellish experiences. It wasn't until 2014 that the victims of the Cambodian Genocide saw justice

for the crimes committed against them. Thirty-five years after the Pol Pot's gruesome rule over Cambodia ended, two of the only remaining perpetrators of the Cambodian Genocide, Khieu Samphan who was 83 at the time, and Nuon Chea who was 88, stood trial in Cambodia, which was held by a joint United Nations and Cambodian tribunal The Extraordinary Chambers in the Courts of Cambodia. They were both convicted of having committed the crime of genocide and crimes against humanity.⁵⁴

Although the two criminals were brought to trial and convicted, was justice really served? Some survivors struggle to find closure even after the verdict was reached. One survivor, Sokha Ten Meyer, was asked to share her reaction to the verdicts of the Khmer Rouge trial. Amidst her anger from the nightmares she still has from the dreadful experience, she also asked the obvious question of, "Why did it take so long?"⁵⁵ It took thirty-five years to bring the murderers to trial.

Both men were sentenced to life in prison but were in their eighties by the time a verdict was reached. Pol Pot himself was never brought to trial because he'd already died in 1998. *Washington Post* Journalist

⁵⁴ Extraordinary Chambers in the Courts of Cambodia, "TRANSCRIPT OF PROCEEDINGS PUBLIC Case File N° 002-01/19-09-2007-ECCC/TC 7 August 2014", (Cambodia: August 2014), 36
Pronouncement of the Judgment in Case 002/01

⁵⁵ "Convictions in the Killing Fields of Cambodia", last modified: September 1st, 2014,
<http://www.chicagotribune.com/news/opinion/editorials/ct-cambodia-killing-fields-pol-pot-conviction-edit-20140830-story.html>

Elizabeth Becker spent time with Pol Pot while he was in power, covering him for the paper. She too had mixed feelings about the length of time it took to convict the criminals of the Pol Pot regime, “As Khmer Rouge leader Pol Pot’s brother-in-law, Ieng Sary was part of the movement from the beginning, and had intimate knowledge of it, But this is what happens when you wait 30 years to bring people to trial—this [his death before he could be brought to justice] should never have happened. Cambodians have been deprived of justice. Justice delayed is justice denied,”⁵⁶

These are all strong and justified sentiments. The Genocide Convention had been in force for almost thirty years when Pol Pot and his followers took over the capital city of Phnom Penh. Again the question could be asked, “Why did it take so long?”⁵⁷ The fact isn’t, however, that the Convention itself has failed numerous victims. Its text provides for the required participation of the international community to aid in the effort to prevent and punish for the crime of genocide. The blame for the Convention’s shortcomings belongs to the Contracting parties and the United Nations for allowing minimal action on the part of other States, as well as for allowing such an extended period before the trial.

⁵⁶ “*Deaths Cheat Justice in Cambodia*”, last modified: March 15th, 2013, <http://www.ushmm.org/confront-genocide/preventing-genocide-blog/genocide-prevention-blog/death-cheats-justice-in-cambodia>

⁵⁷ “*Convictions in the Killing Fields of Cambodia*”

Hope

Yet, even in its shortcomings, there is still great potential for the Convention and the guidelines it has helped to create for preventing and punishing for the crime of genocide. The analysis can help to set the precedence for identifying criminals with genocidal intent before and or after they have committed the crime. Article III of the Convention labels “conspiracy to commit genocide” and “direct and public incitement to commit genocide” as punishable acts.⁵⁸ These are actions that, if identified and preempted, could both prevent genocide and help rein in potential criminals before lives are lost.

Without the third obligation of international cooperation none of the analysis or actions plans would matter. Without the willingness of the Contracting Parties to work together there essentially is no Convention and therefore no stopping the monster that is genocide. The fact that the Convention needed twenty States to agree to its drafting in the first place, and that the Convention will no longer exist without the support of at least sixteen States,⁵⁹ shows that without the dedication of multiple States the law itself cannot be upheld.

⁵⁸ The Contracting Parties, “*The Convention on the Prevention and Punishment of the Crime of Genocide*”, (1948), 175

⁵⁹Ibid, 176

We have seen multiple instances of how humanity suffers when there is little to no international cooperation in preventing and punishing genocidal criminals. With each case of post-Convention genocide in Rwanda, Bosnia-Herzegovina, and Darfur, there was a lack of participation by the Contracting Parties as a whole. Few times were their major joint efforts by the Parties, which may have quelled the violence sooner rather than later.

The rise of global terrorism has posed a unique challenge to the willingness of the Contracting Parties to cooperate. Terrorist groups like ISIS, HAMAS, and Al-Qaeda have in many ways violated the laws of the Convention, yet these groups and organizations are thriving and seem to add more to their ranks everyday. The Islamic State in Iraq and Syria (ISIS) has rooted itself in the northern regions of Iraq and Syria and remains in control of those areas. The group intends to spread terror and to establish jihadist nation states around the globe to usher in what radical jihadist refer to as the “Caliphate” or the “Global Islamic State”.⁶⁰

This violent and relentless drive to make the world over in the image of the so-called “New Caliphate”, poses a threat to every to all including other Muslims. In most cases conversion isn’t an option, and when it is but victims refuse they are subjected to torture and death. Other

⁶⁰ Jay Sekulow, *“Rise of ISIS: A Threat We Can’t Ignore”*, (New York: Howard Books, 2014), 16

Muslims especially Shiite Muslims, who disagree with the tactics of these groups, are also at risk. When these groups invade towns and cities they force the Muslim and Christian citizens to join their ranks. One CNN reporter interviewed a teenager in a Syrian prison who tells the reporter that, “They captured my village and gave me a choice: either join ISIS or be beheaded.”⁶¹

ISIS and its “affiliates” have been responsible for a number of human rights violations throughout the last three decades. One of the group’s most recent acts was the public beheading of American Journalist James Foley. An ISIS fighter stood over a kneeled Foley who forcibly read a prompt, which was most likely written by his captors, condemning the United States for having interfered with ISIS activity in Iraq.⁶² After finishing the prompt Foley was beheaded, live and in front of the world. Another American Journalist, Joel Sotloff, was brought in front of the camera by the masked knifeman who then threatened to take Sotloff’s life too if American President Barack Obama did not call off American air strikes in Iraq.⁶³ If left unchecked these groups could grow even larger and amass the weapons and support necessary to commit acts of genocide.

⁶¹ “*Breaking news November 2014 ISIS ISIL DAESH mass killings now target Iraqi tribe*”, last modified: November 4th, 2014, https://www.youtube.com/watch?v=E76_m3Xov9g

⁶² Sekulow, “*Rise of ISIS: A Threat We Can’t Ignore*”, (2014), 1

⁶³ “*Video shows ISIS beheading U.S. journalist James Foley*”, last modified: August 20th, 2014, <http://www.cnn.com/2014/08/19/world/meast/isis-james-foley/>

Hamas, the organization of the Islamic resistance movement, has been just as brutal toward its target: Israel. Much like ISIS Hamas seeks to help usher in the so-called “new Caliphate” and directly targets Jews and Christians in Israel. In 2001 a Hamas fighter walked into a Sbarro in Jerusalem and self detonated a bomb, which was surrounded by nails and other sharp metal objects. The suicide bomber injured one hundred and thirty people and killed seven.⁶⁴ Hamas is dedicated to attacking, torturing and killing Jews even if it means sacrificing the lives of its own followers. In the Preamble of Hamas’ Charter the organizations declares its intent to rid the Jerusalem of Jews, “Our battle with the Jews is long and dangerous, requiring all dedicated efforts. It is as phase which must be followed by succeeding phases, a battalion which must be supported by battalion after battalion of the divided Arab and Islamic world until the enemy is overcome, and the victory of Allah descends.”⁶⁵

These groups have launched missiles at Israeli civilians and their homes almost weekly. They’ve built underground tunnels that lead next to and into public buildings such as schools, mosques, and temples in order to deploy their “soldiers” throughout civilian neighborhoods. These terrorists have resorted to using human shields, many times not caring about whether or not the person is Jewish or Muslim. Christian civilians

⁶⁴ Sekulow, “*Rise of ISIS: A Threat We Can’t Ignore*”, (2014), 44

⁶⁵Ibid, 43

and travelers have been kidnapped and publicly beheaded by members of these organizations and the footage of these vicious occurrences has often been made public via the Internet. Still somehow the powers of the United Nations have not found a way to prevent these horrible events from happening. Again, if these acts aren't stopped, and these organizations aren't dismantled, genocide may be the next step in achieving their goals.

Global jihadist terrorism is a threat that neither prevention nor punishment can outright cure. ISIS and Hamas insurgents have pledged to fight until the Caliphate rules the world. How then do you prevent them from doing so? Diplomacy will not stop them because to them there is no compromise to be made. If they will continue to commit crimes against humanity how will the Contracting Parties go about punishing the members of these groups? Many of the jihadists have threatened to commit suicide upon being detained. Sitting them in a courtroom and putting them into prison cells doesn't stop them or their organizations. If anything it only antagonizes them and inspires them to capture, torture, and kill more innocent people. From their perspective, even upon being imprisoned or killed while waging jihad, they aren't being punished. They consider themselves to be serving God.

The one silver lining amidst the global threat of genocide is that it forces international cooperation. Countries have to share intelligence with

one another to fight back against Hamas, ISIS and their affiliates. As it stands the Genocide Convention and the support offered for preventing genocide by organizations like the Carnegie Commission haven't won the battle against global terrorism. Nonetheless much progress has been and will continue to be made.

The Genocide Convention is not perfect in text or in practice; no law is nor is it intended to be. However virtuous laws, including the Convention, are intended to be proponents of justice and civility. The text itself has inspired global awareness of the threat of genocide and has created the opportunity for an elevated level of international cooperation. It is the interpretation of the law by its Contracting Parties along with the Supervision of the United Nations that has at times failed to prevent and or punish for the crime of genocide. They too are not perfect and do not claim to be. What is certain is that the Convention has the potential to stifle the threat of genocide given that its Contracting Parties improve their efforts to collaborate with one another. The public too has a role in the success or the failure of the Convention. We all must continue to be critical of the Convention and of those Parties associated with it if we intend to one day find a permanent solution to the "problem from hell".⁶⁶

⁶⁶ Power, *"A Problem From Hell"*, (2002)

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