Bystanders No More: The Expanding Role of Third-Party States in Preventing Genocide

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Abstract 681
I. Introduction 682
II. Historical Foundations and Drafting of the Genocide Convention 684
III. The Obligation to Prevent Genocide under International Law 686
A. The Legal Architecture of the Obligation to Prevent 686
B. Interpreting the Obligation to Prevent through Custom and Purpose 689
IV. The Role of Third-Party States in Genocide Prevention 691
A. Extraterritorial Duties of Prevention.................................... 691
B. Interventions Under Articles 63 and 62 of the International Court of Justice Statute 693
V. Practical Implementation: Balancing Prevention and Non-Intervention 695
VI. Punishment, Accountability, and Their Interplay with Prevention.... 699
A. State Responsibility 699
B. Individual Criminal Responsibility...................................... 700
C. State Responsibility Versus Individual Responsibility......... 702
VII. Current Challenges and Prospects for Reform 703
A. Enduring Challenges to Prevention and Enforcement.......... 703
B. Prospects for Reform and Improvement.............................. 705
VIII. Conclusion 708

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ABSTRACT

This article offers a comprehensive examination of the legal and practical dimensions of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (commonly referred to as the Genocide Convention). Building on a historical overview of the Genocide Convention's post-World War II origins, the analysis explores the evolving jurisprudence of international courts—particularly the International Court of Justice (ICJ)—that has shaped modern understandings of genocide. Central to the discussion is the dual mandate articulated in Article I of the Genocide Convention, which requires States not only to punish genocide after it occurs but also to undertake proactive measures to prevent it. Key sections examine how the obligation to prevent has been construed to extend beyond a State's borders, compelling third-party States with no direct stake in a conflict or situation to respond when they become aware of a credible risk of genocide. This emerging erga omnes obligation is evidenced by the notable surge in ICJ interventions brought by States under Articles 63 and 62 of the ICJ Statute. This shift underscores a growing acceptance among States that the prevention of genocide is a shared concern rather than a purely bilateral or localized matter. At the same time, the article acknowledges recurring obstacles—including geopolitical considerations, the prohibition on the use of force, sovereignty issues, and evidentiary challenges—that hinder the implementation of the Genocide Convention. The discussion, therefore, addresses possible reforms, ranging from more robust early-warning systems and refined United Nations Security Council procedures to enhancements to domestic legal frameworks. The article concludes that, while the Genocide Convention's normative force is widely affirmed, its efficacy depends on whether States, international institutions, and civil society can transform legal obligation into sustained collective action—ultimately bridging the gap between principle and practice.

I. INTRODUCTION

In the decades since the adoption of the Genocide Convention in 1948,[1] international law has evolved considerably in its response to atrocities committed against protected groups. What began as a reaction to the mass crimes of the Holocaust has grown into a complex legal regime encompassing obligations to prevent, punish, and suppress one of the most grievous offenses known to humankind.[2] Yet genocide, often described as the "crime of crimes,"[3] continues to recur in various forms,[4] raising persistent questions about whether international law has effectively lived up to the Genocide Convention's promise of "Never Again."[5]

Against this backdrop, the Genocide Convention plays a pivotal role in articulating the shared moral and legal commitment to protect national, ethnic, racial, and religious groups from extermination. At its heart, the Genocide Convention stipulates not only that genocide must be punished after the fact, but also that States have an active obligation to prevent such atrocities in the first place.[6] Embodied in Article I of the Genocide Convention, this dual obligation has become the focus of expanded interpretation and litigation in recent years, especially as the international community grapples with modern crises[7] bearing alarming resemblances to historical mass violence.

This article examines the legal and practical contours of the Genocide Convention's prevention and punishment mandates, with an emphasis on how these norms have been interpreted, applied, and occasionally contested. While the Genocide Convention's central provisions are widely recognized as reflective of peremptory norms,[8] the precise parameters of States'

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1 Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

2 *See* WILLIAM A. SCHABAS, GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES 1 (2nd ed. 2009).

3 Prosecutor v. Kambanda, ICTR-97-23-S, Judgment and Sentence, ¶ 16 (Sept. 4, 1998), https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-97-23/MSC14050R0000529818.PDF [https://perma.cc/JL5B-FBVU].

4 *See* UNITED NATIONS OFFICE ON GENOCIDE PREVENTION AND THE RESPONSIBILITY TO PROTECT, FRAMEWORK OF ANALYSIS FOR ATROCITY CRIMES: A TOOL FOR PREVENTION 4 (2014), https://www.un.org/en/genocideprevention/documents/about-us/Doc.3_Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf [https://perma.cc/4SKL-BQ6D] [hereinafter Atrocity Crimes].

5 "Never Again" is a popular slogan usually mentioned in the context of the remembrance of the horrors of the Holocaust, with the goal of never letting such atrocities happen again. This goal is embodied in the preambular provisions of the Genocide Convention. *See* Genocide Convention, *supra* note 1, pmbl.

6 Genocide Convention, *supra* note 1, art. I.

7 *See, e.g.*, Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.); Allegations of Genocide under Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ. Fed.); Application of Convention on Prevention and Punishment of Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.).

8 Armed Activities on Territory of Congo (Dem. Rep. Congo v. Rwanda), Judgment, 2006 I.C.J. 6, ¶ 64 (Feb. 3).

obligation to prevent remain uncertain. Building upon landmark judgments of the International Court of Justice (ICJ) and the work of international criminal tribunals, as well as scholarly commentary, jurists have offered various readings of how far these obligations extend beyond a State's own borders.[9] The debate revolves around the following questions: To what extent should States intervene—diplomatically, economically, or otherwise—when credible indications of genocide emerge in foreign territories? Does the Genocide Convention authorize or even require extraterritorial action in the face of an unfolding atrocity? And how do these preventive obligations reconcile with long-established principles of state sovereignty and the prohibition on the use of force?

The article also addresses a corollary dimension of prevention: the involvement of "third-party" States that have no immediate territorial or national stake in a conflict or a situation but are nonetheless parties to the Genocide Convention. In many readings, the obligation to prevent genocide has taken on an *erga omnes* character[10]—obligating all States to act, or at least not to remain passive, when faced with a clear risk of genocide, even in parts of the world far removed from their own borders. Recent cases before the ICJ[11] illuminate a trend in which States increasingly seek to intervene under Articles 62 and 63 of the ICJ Statute, underscoring the view (and perhaps, an emerging binding, customary international law) that interpretation of the Genocide Convention is of concern to *all* Contracting Parties (and perhaps, to all States), not just the directly affected disputants.

To shed further light on these developments, the article analyzes of States' growing propensity to intervene in proceedings that implicate the Genocide Convention, a trend that suggests that States today treat genocide prevention as a universal responsibility rather than a narrow national concern. Although the number of relevant ICJ cases remains limited, the visible shift in intervention practice highlights important developments in State conduct and in *opinio juris*.

Despite the Genocide Convention's robust moral authority and the clarifications offered by international courts, multiple challenges persist. The tension between the urgency to act and the foundational norm prohibiting the use of force can constrain decisive interventions in practice. Political considerations, resource constraints, and evidentiary hurdles may delay recognition or labeling of an ongoing atrocity as genocide. Even after genocide has been formally identified, mobilizing meaningful action—

9 *Infra* Section 3.

10 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 1996 I.C.J. 595, ¶ 31 (July 11); Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Provisional Measures, 2020 I.C.J. 3, ¶ 41 (Jan. 23).

11 *Supra* note 7, and all accompanying texts.

especially within the United Nations Security Council—can be stymied by vetoes, political calculations, or competing strategic interests. These real-world constraints underscore the difficulty of translating legal norms into timely, effective prevention on the ground.

With these complexities in mind, the article is structured to provide a broad yet detailed overview of the Genocide Convention's key aspects. Following this *Introduction*, *Chapter 2* recounts the historical impetus for the Genocide Convention's adoption. *Chapter 3* analyzes the legal architecture of the obligation to prevent and traces its interpretation, including through the ICJ's jurisprudence and the object and purpose of the Genocide Convention. *Chapter 4* examines the emerging concept of extraterritorial obligations and the growing number of interventions under Articles 62 and 63 in genocide-related cases. *Chapter 5* discusses practical challenges in implementing the duty to prevent, particularly the balance between taking action and respecting the prohibition on the use of force. *Chapter 6* then considers the punishment and accountability regime under the Genocide Convention, examining both state and individual criminal responsibility and how punishment complements prevention. *Chapter 7* assesses current obstacles to the Genocide Convention's effectiveness and explores prospects for reform. Finally, *Chapter 8* offers concluding reflections on whether the Genocide Convention's promise can be better realized in a world still fraught with the risk of genocidal violence.

Taken as a whole, this article aims to illuminate the persistent—and at times widening—gap between the international community's aspirations to end genocide and the practical realities that often delay or undermine decisive action. Through legal analysis and jurisprudential survey, it provides a comprehensive exploration of how States, international courts, and other stakeholders interpret and fulfill (or fail to fulfill) their duty to prevent and punish genocide. By weaving together doctrinal insights and real-world implementation patterns, the discussion seeks to clarify the evolving legal landscape and identify ways the Genocide Convention might more effectively safeguard vulnerable groups from the ultimate crime.

II. HISTORICAL FOUNDATIONS AND DRAFTING OF THE GENOCIDE CONVENTION

The Genocide Convention emerged from the immediate post-World War II era, when the international community sought to codify norms to prevent a recurrence of the atrocities witnessed during that conflict. The term "genocide" itself was coined in 1944,[12] combining the Greek *genos* ("race" or "tribe") with the Latin *cide* ("killing") to denote the deliberate

12 RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT, PROPOSALS FOR REDRESS 79 (Carnegie Endowment 1944).

destruction of a group's existence. The crimes committed by Nazi Germany—targeting Jews, Romani, Slavs, and other groups—provided the impetus for a treaty dedicated to preventing and punishing genocide as a crime under international law.[13]

In December 1946, the UN General Assembly (GA) passed a resolution affirming that genocide is a crime under international law and that civilized nations condemn its practice.[14] This landmark resolution paved the way for detailed negotiations, culminating in the GA's adoption of the Genocide Convention on December 9, 1948. The Genocide Convention defines genocide as any of several prohibited acts—such as killing members of a group, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to destroy the group, imposing measures intended to prevent births, or forcibly transferring children—when committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.[15] This definition was carefully negotiated and remains the authoritative legal definition of genocide in international law.

The Genocide Convention obliges States Parties "to prevent and to punish" genocide.[16] During the drafting, this phrase attracted immediate attention for imposing an active obligation on States to use the means available to them to stop genocide from occurring, not merely to punish it after the fact.[17] Delegates, haunted by the fresh memory of the Holocaust, widely agreed that States should take steps to ensure such atrocities never happen again.[18] However, the final text did not specify the precise extent of the obligation to prevent, the forms of intervention permitted, or how responsibilities might operate if genocide were threatened in another State's territory. These ambiguities were largely left to subsequent interpretation.[19]

The negotiating history also reflects compromises on the Genocide Convention's scope. Certain proposals—such as whether to include political or cultural groups as protected categories[20]—were not adopted, due in part to concerns that a broader definition could infringe too deeply on national sovereignty or be misused in international politics.[21] The drafters focused on the groups most clearly targeted by Nazi policies (national, ethnic, racial, and religious groups), and left other contexts to be possibly

13 Genocide Convention, *supra* note 1, pmbl.; SCHABAS, *supra* note 2.

14 G.A. Res. 96 (I), The Crime of Genocide (Dec. 11, 1946).

15 Genocide Convention, *supra* note 1, art. II.

16 *Id.* art. I.

17 *See* 2 HIRAD ABTAHI & PHILIPPA WEBB, THE GENOCIDE CONVENTION: THE TRAVAUX PRÉPARATOIRES 6–7 (2008).

18 *Id.* at xxvii.

19 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶¶ 162–65 (Feb. 26).

20 *Id.* ¶ 194.

21 ABTAHI & WEBB, *supra* note 17, at 503–05.

addressed by future instruments.[22] The result was a text that, while groundbreaking, still left important questions unresolved, particularly regarding how States in practice should implement the obligation to prevent genocide beyond their own borders.

In the ensuing decades, the Genocide Convention garnered broad acceptance and came to be seen as reflecting universal values. Yet for many years, the Genocide Convention's provisions were invoked only sporadically.[23] Notably, during the Cold War, international enforcement of the Genocide Convention was rare, and instances of genocide (or genocide-like mass atrocities), such as in Cambodia,[24] were addressed, if at all, outside the framework of the Genocide Convention. It was only in the 1990s, after the genocides in Rwanda and the former Yugoslavia, where

concerted international efforts to enforce the Genocide Convention's principles began to take shape, including the establishment of international criminal tribunals.[25] These historical episodes set the stage for a renewed focus on what exactly the obligation to prevent genocide entails.

III. THE OBLIGATION TO PREVENT GENOCIDE UNDER INTERNATIONAL LAW

A. The Legal Architecture of the Obligation to Prevent

The obligation to prevent genocide, as set out in Article I of the Genocide Convention, forms a cornerstone of the Genocide Convention's dual mandate.[26] This obligation operates alongside the obligation to punish genocide and has a broad normative reach. However, the Genocide Convention's text provides no detail on how or when a State must act to fulfill its obligation to prevent. Over time, judicial interpretations and state practice have helped fill in some of these gaps.

Of special importance is the ICJ's jurisprudence, since Article IX of the Genocide Convention confers upon the ICJ jurisdiction to resolve disputes relating to a State's responsibility for genocide or related acts.[27] In the case of *Bosnia v. Serbia*, the ICJ made several critical pronouncements on the

22 SCHABAS, *supra* note 2, at 117–18.

23 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Application Instituting Proceedings, 1993 I.C.J. 91 (Mar. 20); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Yugoslavia), Application Instituting Proceedings, 1999 I.C.J. 118, (July 2).

24 BEN KIERNAN, THE POL POT REGIME: RACE, POWER, AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975–79, 460–62 (3rd ed. 2008).

25 SCHABAS, *supra* note 2, at 112–15.

26 Genocide Convention, *supra* note 1, art. I.

27 *Id.* art. IX.

obligation to prevent genocide.[28] The Court concluded that the obligation to prevent arises the moment a State learns of, or should normally have been aware of, a serious risk that genocide may occur.[29] Moreover, the Court clarified that States are under a duty to employ all means reasonably available, within the bounds of international law, to forestall the commission of genocide.[30] This due diligence obligation is proportionate to the State's capacity to influence the situation. It depends on factors such as the geographical distance of a third-party State from the site of the potential genocide, the strength of political or other links to the scene, and the State's available resources and leverage.[31]

Notably, the ICJ in *Bosnia v. Serbia* emphasized that the obligation to prevent is not territorially confined.[32] Serbia was found in breach of its obligation to prevent the genocide that occurred at Srebrenica in July 1995, despite that atrocity taking place outside Serbia's own territory.[33] By holding Serbia responsible for failing to act against genocidal acts committed by Bosnian Serb forces,[34] the Court confirmed that a State can incur responsibility for omissions beyond its borders if it had the means to help avert genocide. The exact standard of "all means reasonably available" is context-dependent; some jurists argue that it requires States to do everything in their power (short of violating the UN Charter's prohibition of unilateral force) to prevent impending genocide.[35] In other words, the standard, while robust, cannot mandate actions that would themselves breach fundamental international norms.

The ICJ's approach in *Bosnia v. Serbia* has been echoed or elaborated in subsequent jurisprudence. For example, in its 2007 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the ICJ underlined the concept of obligations *erga omnes*,[36] noting that all States are obligated not to recognize serious

28 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43 (Feb. 26).

29 *Id.* ¶¶ 431–32.

30 *Id.* ¶ 430.

31 *Id.*

32 *Id.* ¶ 438.

33 *Id.*

34 *Id.*

35 Eyal Mayroz, *The Legal Duty to 'Prevent': After the Onset of 'Genocide'*, 14 J. GENOCIDE RSCH. 79, 83 (2012).

36 *Erga omnes* is a Latin legal term meaning "towards all," and under international law it is used to describe legal obligations that apply to all States, and not just the parties that happen to be involved in a specific matter, such as the prohibitions against genocide, slavery, and torture.

breaches of *jus cogens* (peremptory)[37] norms.[38] Genocide, being a *jus cogens* violation, implies that States should not recognize or acquiesce in genocidal situations. More directly on point, the Court, in *Gambia v. Myanmar*, highlighted the common interest of all States Parties in ensuring compliance with the Genocide Convention, indicating that every State Party has standing to invoke the obligation to prevent in relation to any other State.[39] This underscores that the obligation to prevent is owed to the international community as a whole, not just to any one affected State, people, or group.

Decisions and remarks from other international courts and tribunals have complemented this understanding. For instance, judgments at the International Criminal Tribunal for Rwanda (ICTR)[40] and the International Criminal Tribunal for the former Yugoslavia (ICTY) have reinforced the importance of early action to stop genocidal processes.[41] Though those tribunals focus on individual criminal guilt rather than state responsibility, their factual findings support the notion that prevention is a continuous obligation once a credible risk is known.

By the early twenty-first century, a consensus emerged in international legal discourse that once a State is aware of a serious risk of genocide anywhere, it must do what it can to contribute to preventing it, within the lawful means at its disposal.[42] Failure to do so may invoke its international responsibility, even if the genocide occurs outside its territory and even if that State did not directly perpetrate or support the genocidal acts.[43] What has not been established is what exactly constitutes "awareness," as well as

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37 Peremptory norms, or *jus cogens*, are fundamental principles of international law whose status is so elevated that no derogation is allowed, such as the prohibitions against genocide, slavery, and torture.

38 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 159 (July 9).

39 Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Order, 2020 I.C.J. 3, ¶ 41 (Jan. 23); Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Judgment, 2022 I.C.J. 477, ¶¶ 106–07 (July 22).

40 Prosecutor v. Nahimana, Case No. ICTR 99-52-T, Judgement and Sentence, ¶¶ 1013–15 (Dec. 3, 2003) (emphasizing the inchoate nature of incitement to genocide, stressing that its risky potential is enough to justify prosecuting it even if it did not manifest into an actual genocide, showing the importance of preventing a genocide at an early stage such as the stage of incitement).

41 Prosecutor v. Krstić, Case No. IT-98-33-T, Judgment, ¶ 33 (Int'l Crim. Trib. for the Former Yugoslavia Aug. 2, 2001) (observing that the fall of Srebrenica was facilitated by the "absence of any significant reaction from the international community," suggesting that earlier or stronger international action might have prevented the takeover and subsequent genocide); Prosecutor v. Karadžić, Case No. IT-95-5/18-T, Judgment, ¶ 3500 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 24, 2016).

42 Björn Schiffbauer, *The Duty to Prevent Genocide under International Law: Naming and Shaming as a Measure of Prevention*, 12 GENOCIDE STUD. & PREVENTION: AN INT'L J. 83, 84, 86, 90 (2018).

43 Marco Longobardo, *Genocide, Obligations Erga Omnes, and the Responsibility to Protect: Remarks on a Complex Convergence*, 19 INT'L J. HUM. RTS. 1199, 1200–01 (2015).

the precise contours of this obligation[44]—its triggers, its limits, and the evaluation of what measures are "reasonably available"—which remain subject to case-by-case assessment.[45]

B. Interpreting the Obligation to Prevent through Custom and Purpose

Although the obligation to prevent is treaty-based, its interpretation has been significantly informed by customary international law and the object and purpose of the Genocide Convention. The Genocide Convention was drafted in the wake of World War II, but mass atrocities in the decades since[46] (e.g., Cambodia in the 1970s, Rwanda in 1994, Bosnia in the 1990s) have forced the international community to continually revisit what "Never Again" should mean in practice. As States and international bodies grappled with these crises, a broader understanding of the obligation to prevent began to crystallize, one that goes beyond the strict letter of the 1948 text.

Importantly, the Genocide Convention does not impose an explicit territorial limitation on the obligation to prevent. Article I speaks generally of an undertaking "to prevent and to punish" genocide, without mentioning territory or implying its relevance.[47] This silence has facilitated a reading that the obligation to prevent is not exclusively domestic.[48] The concept of obligations *erga omnes* supports this interpretation. In other words, every State has a legal interest in the prevention of genocide, and not merely a moral or political one.

State practice, coupled with *opinio juris*, also supports an expansive view. Over time, numerous States have made official statements and supported resolutions that reflect an understanding of genocide prevention as a collective responsibility.[49] While such statements are not always followed by action, they contribute to an *opinio juris* that genocide prevention is an obligation of universal character.

The purpose of the Genocide Convention likewise guides its interpretation. The overriding aim of the treaty is to protect the existence of

44 IRENE PIETROPAOLI, OBLIGATIONS OF THIRD STATES AND CORPORATIONS TO PREVENT AND PUNISH GENOCIDE IN GAZA 2, 4, 12, 22 (2024).

45 *Id.* at 4–5; Andrea Gattini, *Breach of the Obligation to Prevent and Reparation Thereof in the ICJ's Genocide Judgment*, 18 EUR. J. INT'L L. 695, 700 (2007).

46 *See, e.g.*, events in Cambodia during the 1970s, Bosnia during the 1990s, Rwanda in 1994.

47 *Compare* Genocide Convention, *supra* note 1, art. I, *with* Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶¶ 153, 183–84 (Feb. 26).

48 *Id.*

49 G.A. Res. 75/277 (May 21, 2021) (adopting the responsibility to protect and the prevention of genocide, among other crimes, with broad state support of 115 States in favor); G.A. Res. 60/1, World Summit Outcome (Oct. 24, 2005) [https://perma.cc/7XBB-BD4Y]); Alex J. Bellamy, *The Responsibility to Protect—Five Years On*, 24 ETHICS & INT'L AFF. 143, 147 (2010); Alex J. Bellamy, *The Responsibility to Protect Turns Ten*, 29 ETHICS & INT'L AFF. 161, 161–62 (2015).

human groups from annihilation.[50] Additionally, the preparatory works of the Genocide Convention reflect what was sought after by the drafters: "The parties to this protocol agree to make effective use of every means at their disposal, acting separately or in co-operation to prevent and penalize genocide."[51]

Reading Article I narrowly—such as limiting prevention obligations only to a State's own territory or own nationals—would arguably defeat this purpose, given that genocide often unfolds in a context where those able to help are third-party States. A teleological interpretation, consistent with the Vienna Convention on the Law of Treaties,[52] thus gives Article I a broad scope under which all States Parties should act in the face of genocide threats, to the extent they can.

Still, this evolving interpretation shaped by custom and purpose is not without controversy. Some States have historically been wary of acknowledging too broad a preventive obligation, fearing it could be used to justify interference in internal affairs; in other words, the principle of non-intervention and respect for sovereignty remains a counterweight.[53] However, the development of doctrines like the Responsibility to Protect (R2P) suggests that sovereignty is no longer seen as a license to ignore genocide elsewhere.[54] Instead, sovereignty entails responsibility, and when a State manifestly fails to prevent or stop genocide, that responsibility may shift outward to the international community.

Guided by both customary law and the Genocide Convention's object and purpose, the obligation to prevent genocide today is understood as a binding legal obligation that extends beyond a State's immediate sphere of interests.[55] It obliges States, whether acting in concert or individually, to address the threat of genocide wherever it arises, provided they have the means to influence the outcome.[56] This interpretive evolution sets the stage for examining how third-party States have begun to fulfill, or at times fall short of, this obligation in practice.

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50 Genocide Convention, *supra* note 1, pmbl.

51 ABTAHI & WEBB, *supra* note 17, at 7.

52 Vienna Convention on the Law of Treaties art. 31, ¶ 1, May 23, 1969, 1155 U.N.T.S. 331.

53 Luke Glanville, *The Responsibility to Protect Beyond Borders*, 12 Hum. Rts. L. Rev. 1, 12–14 (2012); Marko Milanović, *State Responsibility for Genocide*, 17 Eur. J. Int'l L. 553, 570–71 (2006); Paola Gaeta, *On What Conditions Can a State Be Held Responsible for Genocide*, 18 Eur. J. Int'l L. 631, 638–39 (2007).

54 *See infra* Part 5.

55 Application of Convention on Prevention and Punishment of Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), Order, 2024 I.C.J. 3, ¶ 33 (Jan. 26).

56 *Id.*

IV. THE ROLE OF THIRD-PARTY STATES IN GENOCIDE PREVENTION

A. Extraterritorial Duties of Prevention

A central question in applying the obligation to prevent is how to bind States that are neither perpetrators nor direct victims of genocide. Should a State be obliged to help prevent genocide in a country where it has no direct stake? The emerging answer from both legal doctrine and practice is *yes*, to a certain extent.

Under an expansive interpretation, the moment a State knows or should know, within its capabilities and means, of a grave risk of genocide, it must consider what preventative steps it can take, even if the crisis is outside its borders.[57] While these steps will vary case-by-case, they generally include diplomacy, economic measures, humanitarian efforts, legal measures, or, perhaps, military intervention.[58] The obligation is one of means, not guaranteed results,[59] meaning that a State is not required to succeed in preventing genocide, but it must try in good faith, within its capabilities.[60]

Several legal and moral justifications underpin this extraterritorial dimension. One rationale is the universal condemnation of genocide and recognition that it is an affront to all humankind, thus making its prevention a shared burden of the international community.[61] Another rationale focuses on the concept of due diligence: a State's duty arises in proportion with its capacity to influence the situation without breaching other international laws; for instance, a great power with significant economic ties or military alliances in a region might have more tools at its disposal than a small, distant State with little influence.[62] A third rationale involves the collective security framework; the Genocide Convention should be read in harmony with the UN Charter, which entrusts primary responsibility for maintaining international peace and security to the UN Security Council.[63] Thus, third-

57 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶¶ 183, 430–31 (Feb. 26). *See also Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, [2001] 2 Y.B. INT'L L. COMM'N 31, arts. 41, 48, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2) [hereinafter ILC *State Responsibility*].

58 G.A. Res. 60/1, *supra* note 49, ¶ 138–39.

59 Bosn. & Herz. v. Serb. & Montenegro, 2007 I.C.J. 43, ¶ 430.

60 *Id.*

61 Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain), Judgment, 1970 I.C.J. 3, ¶¶ 33–34 (Feb. 5); Reservations to the Convention on Genocide, Advisory Opinion, 1951 I.C.J. 15, at 12 (May 28).

62 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶ 430 (Feb. 26); ILC *State Responsibility*, *supra* note 57, art. 14. *See also* Marko Milanović, *State Responsibility for Genocide: A Follow-Up*, 18 Eur. J. Int'l L. 669, 686–87 (2007).

63 U.N. Charter art. 24(1).

party efforts to prevent genocide ideally should be coordinated through collective mechanisms to ensure legitimacy and effectiveness.

ICJ case law has gradually reinforced these ideas. Beyond *Bosnia v. Serbia*, the ICJ was engaged in subsequent disputes where genocide allegations arose.[64] These cases indicate a growing acceptance that third-party States are neither exempt nor irrelevant when genocide looms elsewhere.[65] Although it is important to note that the enforceability of this idea is inconsistent, the ICJ can only act when cases are brought before it, and the political will to litigate is selective. Notably, the ICJ often calls on *all* States Parties to the Genocide Convention to cooperate in the prevention of genocide,[66] signaling that the obligation is collective.

Scholars have discussed what preventive measures are "feasible" or "reasonably available" for third-party states. For example, if genocide threats emerge in a country with which a third-party State has strong trade relations, that State could leverage trade by threatening or applying economic sanctions to pressure the perpetrators.[67] If a State has a close diplomatic relationship or alliance with the regime in question, it might use those channels to dissuade the regime from pursuing genocidal policies or to rally international attention.[68] Where multiple States coordinate (through regional organizations or the UN), more robust steps become possible.

Of course, the effectiveness of such measures is not guaranteed. There have been instances where third-party States, despite knowing of escalating risks, failed to act or acted too timidly, leading to catastrophic outcomes.[69]

64 *See* the situations unfolding in the Gaza Strip, Ukraine, and Myanmar and their respective International Court of Justice cases.

65 Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), I.C.J., Declarations of intervention (Art. 63), https://www.icj-cij.org/case/178/intervention (last visited Oct. 11, 2025) [https://perma.cc/GNA3-5CSC] (listing declarations by Canada, Denmark, France, Germany, Netherlands, United Kingdom, Maldives, Slovenia, Democratic Republic of Congo, Belgium, and Ireland); Allegations of Genocide under Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ. Fed.), I.C.J., Declarations of intervention (Art. 63), https://www.icj-cij.org/case/182/intervention (last visited Oct. 11, 2025) [https://perma.cc/GNA3-5CSC] (listing declarations by Denmark, United Kingdom, Bulgaria, Austria, Czech Republic, Finland, Slovenia, Germany, Australia, Estonia, Spain, Luxembourg, Sweden, New Zealand, Latvia, Lithuania, Poland, Liechtenstein, Cyprus, Slovakia, Canada, Netherlands, Belgium, Norway, Malta, Croatia, Greece, Portugal, Ireland, Italy, Romania, and United States); Application of Convention on Prevention and Punishment of Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), I.C.J., Declarations of intervention (Art. 63) & Applications for permission to intervene (Art. 62), https://www.icj-cij.org/case/192/intervention (last visited Oct. 11, 2025) [https://perma.cc/2GY2-FGY5] (listing declarations and applications for permission to intervene by Colombia, Libya, Mexico, Palestine, Spain, Türkiye, Chile, Maldives, Bolivia, Ireland, Cuba, Belize, Brazil).

66 Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Order, 2020 I.C.J. 3, ¶ 41 (Jan. 23); Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Judgment, 2022 I.C.J. 477, ¶¶ 106–07 (July 22).

67 Jinan Bastaki, *The "Capacity to Influence", State Responsibility, and the Obligation to Prevent Genocide*, OPINIOJURIS (Mar. 30, 2024), https://opiniojuris.org/2024/03/30/the-capacity-to-influence-state-responsibility-and-the-obligation-to-prevent-genocide/ [https://perma.cc/2VCX-DNRQ].

68 *Id.*

69 Mayroz, *supra* note 35, at 85–87.

Conversely, there could be instances where timely third-party pressure helps de-escalate situations.[70] The mixed record of the international community highlights both the potential and the limitations of third-party action.

Be that as it may, extraterritorial duties to prevent genocide are now an integral part of the legal understanding of Article I. A State Party cannot simply assert "not our problem" when confronted with evidence of genocide abroad. Each State must assess what lawful measures it can take to fulfill its share of responsibility in averting the crime of genocide—and then take those measures. The next sub-chapter illustrates one concrete way in which States have begun to operationalize this sense of responsibility, through interventions in ICJ proceedings under Articles 62 and 63 of the ICJ Statute.

B. Interventions Under Articles 63 and 62 of the International Court of Justice Statute

One of the clearest indications of the shift toward a more active understanding of the obligation to prevent genocide is the recent surge in third-party interventions before the ICJ, pursuant to Articles 63 and 62 of the ICJ Statute.[71] The former provides that if a case before the ICJ involves the interpretation of a multilateral treaty, any other State Party to that treaty has the right to intervene in the proceedings as of right, for the purpose of that interpretation;[72] the latter provides that States can request to intervene in a case in which they have an interest in its legal consequences.[73] In essence, these Articles allow States not directly involved in a dispute to have a say when the Court is interpreting a treaty they have signed or is just addressing an issue that might be of interest to them.

For many decades, Articles 63 and 62 were sleeping provisions; States rarely exercised their right to intervene or requested them to intervene, especially in cases where they had no immediate stake. Traditionally, States were cautious about intervention, perhaps to avoid offending the disputing States or out of concern that intervening might inadvertently expose them to future legal obligations or adverse precedents.[74] In cases concerning the Genocide Convention prior to 2019, no third-party interventions were made.

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70 Eric Melander, *Selected To Go Where Murderers Lurk?*, 26 CONFLICT MGMT. & PEACE SCI. 389, 394 (2009); Matthew Krain, *International Intervention and the Severity of Genocides and Politicides,* 49 INT'L STUD. Q. 363 (2005); Hyeran Jo & Beth A. Simmons, *Can the International Criminal Court Deter Atrocity?*, 70 INT'L ORG. 443, 450 (2016); North Atlantic Treaty Organization [NATO], *Kosovo Air* Campaign (Oct. 21, 2024), https://www.nato.int/cps/en/natohq/topics_49602.htm [https://perma.cc/E7PL-CMUV]; S.C. Res. 1270 (Oct. 22, 1999); *Assessing the Deterrent Effects of the ICC*, INT'L PEACE INST. (IPA) (Mar. 10, 2015) [https://www.ipinst.org/2015/03/assessing-the-deterrent-effects-of-the-icc#1 [https://perma.cc/AJS6-EDZ5]; S.C. Res. 1509 (Sept. 19, 2003).

71 Statute of the International Court of Justice arts. 62–63, June 26, 1945, 59 Stat. 1055, 22 U.N.T.S. 993 [hereinafter ICJ Statute].

72 *Id.* art. 63.

73 *Id.* art. 62.

74 *Id.* art. 63(2).

The long-running *Bosnia v. Serbia* saw zero interventions; the same was true for *Croatia v. Serbia*. This caution reflected a mindset that genocide disputes were essentially bilateral matters for the states directly involved, while others remained bystanders.

In recent years, however, this pattern has changed dramatically. Since 2019, a series of cases implicating the Genocide Convention has prompted a wave of interventions by numerous States with no direct territorial or national interest in the disputes. *Gambia v. Myanmar* opened the floodgates: by 2025, no fewer than 11 States from various regions had filed declarations of intervention in that case under Article 63.[75] Similarly, in *Ukraine v. Russia*, a remarkable 33 States moved to intervene, with 32 admitted by the ICJ, signaling an extraordinary level of global engagement in a case concerning the Genocide Convention.[76] Another case, *South Africa v. Israel*, has seen 22 interventions so far.[77]

This trend represents a fundamental shift. States now appear willing, and even eager, to be heard in genocide-related cases even when they are third-party States. By intervening, these States effectively assert that the outcome of such cases affects them, in the sense that the ICJ's interpretation of the Genocide Convention will shape the contours of their own rights and obligations under that treaty. In other words, they recognize that what the Court says about the obligation to prevent does not merely bind the parties to the dispute; it has implications *erga omnes partes*.

The reasons behind this change are likely multifaceted. *Ethically*, there is greater global awareness that genocide anywhere is a threat to humanity's values everywhere, creating pressure on governments to do something when atrocities occur. *Legally*, decades of dialogue on human rights and international justice have lowered the bar for States to engage in issues beyond their traditional national interests. *Politically*, the high-profile nature of recent cases, mostly documented in the news and social media, has

75 *See generally* Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), I.C.J., Declarations of intervention (Art. 63), https://www.icj-cij.org/case/178/intervention (last visited Oct. 11, 2025) [https://perma.cc/GNA3-5CSC] (listing declarations by Canada, Denmark, France, Germany, Netherlands, United Kingdom, Maldives, Slovenia, Democratic Republic of Congo, Belgium, and Ireland).

76 *See generally* Allegations of Genocide under Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ. Fed.), I.C.J., Declarations of intervention (Art. 63), https://www.icj-cij.org/case/182/intervention (last visited Oct. 11, 2025) [https://perma.cc/GNA3-5CSC] (listing declarations by Denmark, United Kingdom, Bulgaria, Austria, Czech Republic, Finland, Slovenia, Germany, Australia, Estonia, Spain, Luxembourg, Sweden, New Zealand, Latvia, Lithuania, Poland, Liechtenstein, Cyprus, Slovakia, Canada, Netherlands, Belgium, Norway, Malta, Croatia, Greece, Portugal, Ireland, Italy, Romania, France, and United States).

77 *See generally* Application of Convention on Prevention and Punishment of Crime of Genocide in the Gaza Strip (S. Afr. v. Isr.), I.C.J., Declarations of intervention (Art. 63) & Applications for permission to intervene (Art. 62), https://www.icj-cij.org/case/192/intervention (last visited Oct. 11, 2025) [https://perma.cc/2GY2-FGY5] (listing declarations and applications for permission to intervene by Colombia, Libya, Mexico, Palestine, Spain, Türkiye, Chile, Maldives, Bolivia, Ireland, Cuba, Belize, Brazil, Comoros, Belgium, Paraguay, Netherlands, Iceland, Namibia, United States, Hungary, and Fiji).

galvanized public opinion and civil society, which in turn influenced governments to take an active stance. States have also, perhaps, become more familiar with the ICJ's procedures over time and more confident that intervention under Article 63 or 62 is a neutral, narrowly tailored act that will not drag them fully into a dispute.

From a customary international law perspective, these interventions contribute to state practice and *opinio juris* regarding genocide prevention.[78] They send a message that States increasingly accept a legal duty to participate in the clarification and enforcement of the Genocide Convention beyond their own borders. Each intervention can be seen as an affirmation that the States Parties believe they have an interest—and arguably a responsibility—in ensuring the Genocide Convention is properly interpreted and applied, because genocide prevention is a collective concern. The cumulative effect of dozens of such interventions is to reinforce the normative foundation for a more proactive construction of the obligation to prevent genocide. It aligns with the broader shift in international law that treats genocide prevention as an obligation owed to all, diminishing the old notion that sovereignty permits inaction in the face of others' atrocities.

In practical terms, these interventions also have immediate effects. When many States intervene in a case, the ICJ hears a wide array of views on the treaty's interpretation, which can lead to a richer, more universalist judgment. The very act of intervention demonstrates that States are willing to be bound by whatever legal clarifications emerge. That willingness implies a confidence that stronger genocide prevention norms are in the common interest.

V. PRACTICAL IMPLEMENTATION: BALANCING PREVENTION AND NON-INTERVENTION

The most vexing issue in implementing the obligation to prevent genocide is reconciling decisive action with the foundational principles of state sovereignty and the prohibition on the use of force. International law generally forbids States from using force against the territorial integrity or political independence of other States,[79] except in self-defense[80] or with the authorization of the UN Security Council.[81] Thus, even if a State strongly suspects that genocidal massacres are imminent or underway in another country, it cannot unilaterally send troops without breaching the UN Charter

78 ICJ Statute, *supra* note 71, art. 38(1)(b).
79 U.N. Charter art. 2(4).
80 *Id.* art. 51.
81 *Id.* art. 42.

(absent the target State's consent)[82] The obligation to prevent genocide, therefore, operates within these important constraints.

In practice, many argue that genocide prevention should rely primarily on non-violent tools.[83] Diplomatic pressure, economic sanctions, arms embargoes, public condemnation, humanitarian aid to threatened populations, and referrals to international judicial bodies are all means to influence events without resorting to force.[84] Collective action through the UN, such as Security Council resolutions under Chapter VII to deploy peacekeepers or to impose sanctions, has the advantage of being lawful and potentially more effective, given broad support.[85] Indeed, in situations like *Darfur*, a combination of sanctions and an African Union (AU) and UN peacekeeping mission was employed (albeit with mixed results).[86] However, one cannot ignore the grim scenario where all non-forceful measures fail or prove too slow, and genocide is unfolding rapidly. This is where the debate intensifies around doctrines like R2P.

R2P, endorsed in principle by all UN Member States at the 2005 World Summit, holds that States have a responsibility to protect their populations from genocide and other mass atrocity crimes, and that the international community should assist and, if necessary, step in when a State is manifestly failing to protect its population.[87] R2P is not a binding law per se, but a political commitment.[88] Crucially, R2P affirms that collective action, including as a last resort the use of force through the UN Security Council, may be taken in such cases. R2P, it seems, does *not* purport to create a new exception to the prohibition on the use of force beyond what the UN Charter already allows; rather, it seeks to galvanize timely and decisive action (diplomatic, humanitarian, and if authorized, military) in situations of atrocity.[89] In essence, R2P complements the Genocide Convention by providing a framework for mobilizing the international community's

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82 Laura Visser, *Intervention by Invitation and Collective Self-Defence: Two Sides of the Same Coin?*, 7 J. ON USE FORCE & INT'L L. 292, 294–95, 309 (2020). *See also* Visser's respective footnotes.

83 G.A. Res. 60/1, *supra* note 49, ¶ 139.

84 *Id.*

85 *Id.*

86 S.C. Res. 1591 (Mar. 29, 2005); S.C. Res. 1769 (July 31, 2007); *see also* Robert P. Barnidge Jr., *The United Nations and the African Union: Assessing a Partnership for Peace in Darfur,* 14 J. CONFLICT & SEC. L. 93, 98–99 (2009); Adam Keith, *The African Union in Darfur: An African Solution to a Global Problem?*, 18 PRINCETON J. INT'L AFF. 149, 152 (2008).

87 G.A. Res. 60/1, *supra* note 49.

88 R2P lacks the formal requirements of a treaty and has not yet achieved the status of customary international law. While it is a powerful global "norm," it does not create new legal obligations for States beyond those already found in existing treaties. *See, e.g.*, the language in the aforementioned ¶ 139 of the World Summit Outcome, where it is stated that the international community is "prepared to take" collective action on a "case-by-case basis." Additionally, the text does not mandate action but rather affirms that States are *prepared* to consider it through the Security Council. This leaves the decision to use force entirely at the political discretion of the UN Security Council.

89 G.A. Res. 60/1, *supra* note 49.

response to genocide and similar crimes, even though it does not override existing law on how that response must occur.

Some States and scholars have attempted to push the envelope further, suggesting there might be a moral—if not strictly legal—justification for unilateral humanitarian intervention in extreme cases to stop genocide. They often cite NATO's 1999 intervention in Kosovo (to stop ethnic cleansing, albeit not formally labeled genocide) as an example of unauthorized force taken for humanitarian ends.[90] However, this remains deeply controversial and is neither endorsed by the UN Charter nor by the vast majority of States.[91] Thus, while the obligation to prevent genocide is a legal obligation, it does not nullify the legal limits on the use of force. In practice, then, the emphasis is on doing everything short of unauthorized force.

This tension means that, in many real scenarios, third-party States must operate through influence rather than direct intervention. For instance, during the Rohingya crisis in Myanmar, States advocating for prevention had to resort to tools like diplomatic pressure on Myanmar's government, supporting a fact-finding mission and an independent investigative mechanism, and later supporting Gambia's case at the ICJ,[92] since military intervention was neither feasible nor legal. In Rwanda, arguably, had there been political will, States could have reinforced the UN peacekeeping mission or conducted a Security Council-approved operation to stop the killing; the failure was not legal inability but lack of will. Today, mechanisms like the UN's Framework of Analysis for Atrocity Crimes and various early-warning networks exist to flag risks of genocide.[93] The challenge is translating warnings into action under the prevailing legal framework.

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90 Fernando R. Tesón, *Kosovo: A Powerful Precedent for the Doctrine of Humanitarian Intervention,* 1 AMSTERDAM L. F. 42, 43 (2009); Peter Ørebech, *From Dangerous, to Preventive, Protective and Quiet Diplomacy: The Downturn in State Sovereignty at the Expense of International Human Rights Enforcement,* 4 CROATIAN Y.B. EUR. L. & POL'Y 286, 293–95 (2009); Press Release, General Assembly, Failure of NATO to Act in Kosovo Would Have Risked Discrediting UN Principles, Says U.S. President to General Assembly, U.N. Press Release GA/9599 (Sept. 21, 1999).

91 *See* U.N. Charter art. 2, ¶ 4. This is the primary legal obstacle to unilateral intervention. This provision requires all Member States to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state (with the exceptions of self-defense and military action authorized by the Security Council). *See also* Christian J. Tams, *Humanitarian Intervention* 7 (GCILS Working Paper Series, Paper No. 9, 2021), https://gcils.org/wp-content/uploads/2021/02/9-Tams-Updated-1.pdf (last visited Mar. 7, 2026) [https://perma.cc/9WLM-AP3U].

92 Rep. of the Human Rights Council, ¶¶ 14–18, 85–89, U.N. Doc. A/HRC/39/64 (Sept. 12, 2018); Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Provisional Measures, Order, 2020 I.C.J. 3, ¶¶ 1–5 (Jan. 23).

93 *See, e.g.,* Atrocity Crimes, *supra* note 4, at iii, 5; Rebecca Hamilton, *Atrocity Prevention in the New Media Landscape*, 113 AJIL UNBOUND 262, 263 (2019); Phuong N. Pham & Patrick Vinck, *Technology, Conflict Early Warning Systems, Public Health, and Human Rights*, 14 HEALTH & HUM. RTS. 106, 106–08, (2012).

The advent of R2P has somewhat clarified that the *collective* use of force by the UN for humanitarian purposes is legitimate if certain criteria are met (e.g., massive loss of life, last resort, proportionality).[94] What remains problematic is when the UN Security Council is paralyzed, such as by a veto from a permanent Member. In those cases, the obligation to prevent will come up against a dead end at the UN level.[95] Short of amending the Charter or abolishing the veto, the focus has shifted to encouraging voluntary restraint in the use of the veto in atrocity situations. France and Mexico have championed a political declaration for the permanent five Members (P5) to abstain from using the veto in mass atrocity contexts,[96] and around 100 States have supported a code of conduct with similar aims.[97] If such normative pressure gains traction, it could alleviate one of the biggest obstacles to collective genocide prevention.

Implementing the obligation to prevent requires a careful balance. States must use all peaceful means at their disposal to mitigate or halt emerging genocidal situations. They should exhaust diplomatic and economic avenues, rally international institutions, and support judicial accountability—all of which are clearly legal under international law.[98] If those measures fail, the hope is that multilateral security mechanisms can be activated to use force as necessary.[99] Hence, unilateral forceful action remains off the table legally, which can be a source of frustration when genocide is ongoing and the UN Security Council is impotent. This is where political creativity and will are needed. Coalitions of states, regional organizations, or *ad hoc* arrangements might step in under UN authorization or in support of regional peacekeeping to fill the void.

94 G.A. Res. 60/1, s*upra* note 49.

95 *See, e.g.,* the situation in Xinjiang China regarding the Uyghurs. If China—a veto holder—would ever be targeted by a Security Council resolution, it can use its veto power and negate it.

96 *Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities*, GLOB. CTR. FOR THE RESP. TO PROTECT (Aug. 1, 2015), https://www.globalr2p.org/resources/political-declaration-on-suspension-of-veto-powers-in-cases-of-mass-atrocities/ (last visited Oct. 11, 2025) [https://perma.cc/MRA2-5H73]; U.N. GAOR, 78th Sess., 70th plen. Mtg., U.N. Doc. A/78/PV.70 (Apr. 23, 2024).

97 Permanent Representative of Liechtenstein to the U.N., Letter dated Dec. 14, 2015 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General, U.N. Doc. A/70/621–S/2015/978 (Dec. 14, 2015) [https://perma.cc/XHW9-JTPC]; *Code of Conduct Regarding Security Council Action Against Genocide, Crimes Against Humanity or War Crimes*, GLOB. CTR. FOR THE RESP. TO PROTECT (Dec. 14, 2015), https://www.globalr2p.org/resources/code-of-conduct-regarding-security-council-action-against-genocide-crimes-against-humanity-or-war-crimes/ [https://perma.cc/H6WL-352J].

98 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶ 430 (Feb. 26). *See also* G.A. Res. 60/1, s*upra* note 49.

99 U.N. Secretary-General, *Implementing the Responsibility to Protect,* ¶ 40, U.N. Doc. A/63/677 (Jan. 12, 2009).

VI. PUNISHMENT, ACCOUNTABILITY, AND THEIR INTERPLAY WITH PREVENTION

Article I of the Genocide Convention couples the obligation to prevent genocide with an equally important obligation: to *punish* genocide. "Punishment" in this context operates on two levels: *First*, States themselves can be held responsible under international law if they commit genocide or fail to prevent it; *second*, individuals who perpetrate genocide must be punished through criminal proceedings, whether in domestic courts or international tribunals. Both levels of accountability are crucial, and ultimately serve a preventive function by deterring future atrocities and affirming the rule of law.

A. State Responsibility

Under the Genocide Convention, States can be brought before the ICJ for disputes related to the Genocide Convention, including allegations that a State has breached its obligations to prevent or punish genocide.[100] The ICJ's judgment in *Bosnia v. Serbia* stands as a testament to this route. There, the Court held Serbia responsible for failing to prevent genocide, while not responsible for committing genocide in that case.[101] When a State is found responsible for such a breach, the legal consequences include an obligation to cease the wrongful act (if ongoing) and to offer assurances against repetition.[102] In theory, reparations could be due if a failure to prevent is linked to damage,[103] though quantifying "damage" in the context of genocide, namely, the destruction of human life and communities, is extraordinarily difficult.[104] More commonly, the outcome is declaratory: an authoritative determination of breach that carries moral and political weight.[105] It also sets a precedent that can influence other States' behavior. The mere prospect of international accountability can encourage governments to take threats of genocide more seriously, lest they face legal proceedings or condemnation.

100 Genocide Convention, *supra* note 1, art. IX.

101 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶ 430–38 (Feb. 26).

102 *Id.* ¶¶ 465–66.

103 *Id.* ¶ 460.

104 Cristián Correa, Julie Guillerot & Lisa Magarrell, *Reparations and Victim Participation: A Look at the Truth Commission Experience*, *in* REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 385, 387, 391 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., 2009).

105 Gattini, *supra* note 45, at 695, 706–07, 711.

B. Individual Criminal Responsibility

Parallel to state responsibility, the Genocide Convention obliges States to enact legislation to give effect to the instrument[106] and to prosecute genocide perpetrators in their own courts or to extradite them for trial elsewhere.[107] The Genocide Convention famously provides that persons committing genocide shall be punished "whether they are constitutionally responsible rulers, public officials or private individuals,"[108] rejecting any notion of official immunity for genocide. In the wake of World War II, this principle was already foreshadowed by the Nuremberg trials (though "genocide" as a term was not used, the prosecution of Nazi leaders covered what we now understand as genocide).[109]

Throughout the late 20th and early 21st centuries, a robust framework for individual accountability for genocide evolved. The *ad hoc* ICTY and ICTR, established by the UN in the 1990s, prosecuted and convicted individuals for genocide, thereby operationalizing the Genocide Convention's punishment aspect. For example, the ICTR's *Prosecutor v. Akayesu* was a landmark case that delivered the first conviction for genocide by an international court, clarifying key elements, including the definition of protected groups and the requirement of *dolus specialis* (specific intent to destroy).[110] The ICTY likewise indicted high-level figures for genocide, including heads of state.[111] These trials sent a powerful message that perpetrators cannot act with impunity. They also contributed to the jurisprudence interpreting the Genocide Convention's terms in a criminal law context.

Building on these precedents, the establishment of the International Criminal Court (ICC) in 2002 provided a permanent institution with jurisdiction over genocide.[112] The ICC's Rome Statute incorporates a definition of genocide virtually identical to the Genocide Convention's and empowers the Court to prosecute individuals if States are unwilling or unable to do so themselves.[113] Yet so far, only one ICC case has included charges of genocide.[114]

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106 Genocide Convention, *supra* note 1, art. V.

107 *Id.* art. VI.

108 *Id.* art. IV.

109 KEVIN JON HELLER, THE NUREMBERG MILITARY TRIBUNALS AND THE ORIGINS OF INTERNATIONAL CRIMINAL LAW 278 (2011).

110 Prosecutor v. Akayesu, ICTR-96-4-T, Judgment, ¶¶ 498–521 (Sept. 2, 1998).

111 Prosecutor v. Karadžić, IT-95-5/18-T, Judgment, (Mar. 24, 2016); Prosecutor v. Milošević, IT-99-37, Indictment (May 22, 1999).

112 Rome Statute of the International Criminal Court, art. 6, July 17, 1998, 2187 U.N.T.S. 3.

113 *Id.* art. 17, ¶¶ a–b.

114 Prosecutor v. Omar Hassan Ahmad Al Bashir, Case No. ICC-02/05-01/09, Warrant of Arrest (Mar. 4, 2009).

National courts also play a role, sometimes exercising universal jurisdiction over genocide. Universal jurisdiction allows a State to prosecute certain grave crimes regardless of where they were committed and regardless of the nationality of the perpetrators or victims. Several countries have laws permitting genocide prosecutions even for crimes abroad.[115] Such cases remain relatively rare, but they are growing as awareness and political will increase. Universal jurisdiction serves as a safety net: if neither the territorial State nor an international court will act, another State's courts might, ensuring there is ultimately no safe haven for genocidaires.

The interplay between prevention and punishment is evident. By punishing past genocides, the international community aims to deter future ones. When individuals know they could face life imprisonment (or even the death penalty in some domestic systems) for orchestrating genocide, it may factor into their calculus. There is anecdotal evidence that indicting leaders can stigmatize them and reduce their legitimacy, sometimes pressuring them to negotiate or exit power.[116] However, deterrence is not foolproof; ideology, perceived existential threats, or raw political ambition can overwhelm legal fear.

Punishment also fulfills a moral imperative and provides a measure of justice to victims. This is crucial for post-conflict reconciliation. Knowing that perpetrators were held to account can help shattered communities heal and rebuild trust in the rule of law.[117] In turn, stable post-conflict societies are less likely to relapse into cycles of violence, thereby preventing future

115 LUC REYDAMS, UNIVERSAL JURISDICTION: INTERNATIONAL AND MUNICIPAL LEGAL PERSPECTIVES xxiii–xxiv (2003).

116 Payam Akhavan, *The Rise, and Fall, and Rise, of International Criminal Justice,* 11 J. INT'L CRIM. JUST. 527, 538–540 (2013).

117 U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,* U.N. Doc. S/2004/616 (Aug. 23, 2004); *see also* U.S. AGENCY FOR INT'L DEV., GUIDE TO RULE OF LAW COUNTRY ANALYSIS: THE RULE OF LAW STRATEGIC FRAMEWORK 32 (2010); MARGARET URBAN WALKER, MORAL REPAIR: RECONSTRUCTING MORAL RELATIONS AFTER WRONGDOING 108 (2006) (illustrating how mass violence and political crimes—falling under "serious wrongdoing"—require accountability, in the form of "acknowledgment and assurance"); Charlotte Fiedler & Karina Mross, *Dealing With the Past for a Peaceful Future? Analyzing the Effect of Transitional Justice Instruments on Trust in Postconflict Societies,* 17 INT'L J. TRANSITIONAL JUST. 303 (2023) (demonstrating how victim restitution plus amnesties or truth- or bridge-building processes is associated with higher post-conflict social trust than accountability tools used in isolation, and how reparations and recognition are linked to civic trust, social solidarity, and healing when they publicly acknowledge harms and address material and psychological losses); Charlotte V. O. Witvliet et al., *Apology and Restitution: Offender Accountability Responses Influence Victim Empathy and Forgiveness,* 48 J. PSYCH. & THEOLOGY 88 (2020) (showing how restorative justice practices that include apology, restitution, and voluntary confession reduce unforgiveness and increase empathy and forgiveness among victims); Jonas Musengimana, *Restorative Justice and Post-Genocide Reconciliation: Ethical Implications and Community Healing in Rwanda,* 5 J. ETHICS HIGHER EDUC. 241 (2024); Adebobola Omowon & Alaba Samson Kunlere, *Restorative Justice Practices: Bridging the Gap Between Offenders and Victims Effectively,* 24 WORLD J. ADVANCED RSCH. & REVS. 2768 (2024) (portraying how community-based, dialogic mechanisms can strengthen social bonds and collective healing).

genocidal situations.[118] Thus, punishment and prevention are two sides of the same coin.

C. State Responsibility Versus Individual Responsibility

It is important to note that holding a State responsible for genocide and prosecuting individuals for genocide are not mutually exclusive; they can and do occur in parallel. For instance, while the ICJ handles the question of Myanmar's state responsibility *vis-à-vis* the Rohingya, the ICC is investigating individuals for atrocity crimes against the Rohingya.[119] Each process addresses a different aspect of justice. State responsibility addresses failures of governance and breaches of international obligations, whereas individual criminal responsibility addresses personal guilt.

From a legal standpoint, a State's responsibility for genocide or failure to prevent it is not negated by the prosecution of individuals; nor does punishing individuals absolve a State of its own obligations. The Genocide Convention envisions both: it binds States[120] and it obligates them to deal with individuals.[121] The ICJ acknowledged in *Bosnia v. Serbia* that Serbia's international responsibility was engaged even though it was individuals (Bosnian Serb leaders) who committed the physical acts.[122] Serbia failed in its obligation to prevent those individuals, over whom it had influence, from committing genocide.[123] Conversely, an individual can be convicted of genocide even if their State has not been judged responsible.[124]

Therefore, the enforcement regime of the Genocide Convention, through state responsibility and individual accountability, is a critical

118 *See* Cyanne E. Loyle & Benjamin J. Appel, *Conflict Recurrence and Postconflict Justice: Addressing Motivations and Opportunities for Sustainable Peace,* 61 INT'L STUD. Q. 690 (2017) (presenting evidence of how post-conflict justice mechanisms that address grievances—reparations, comprehensive trials, some amnesties—significantly reduce conflict recurrence by lowering motivations to rebel); Claire Greenstein & David Muchlinski, *Reducing Mass Atrocities Through Transitional Justice,* 24 J. HUM. RTS. 254 (2025) (illustrating how transitional justice—trials, truth commissions, purges, exile—implemented soon after mass killing lengthens the time until the next mass atrocity by roughly a factor of four compared with doing nothing); PAYAM AKHAVAN, BEYOND IMPUNITY: CAN INTERNATIONAL CRIMINAL JUSTICE PREVENT FUTURE ATROCITIES? (2017); Linda M. Woolf & Michael R. Hulsizer, *Psychosocial Roots of Genocide: Risk, Prevention, and Intervention,* 7 J. GENOCIDE RSCH. 101 (2005) (clarifying how international and hybrid criminal tribunals can stigmatize atrocity crimes and contribute to reconciliation, potentially deterring future violence).

119 *Compare* Application of Convention on Prevention and Punishment of Crime of Genocide (Gam. v. Myan.), Provisional Measures, Order, 2020 I.C.J. 3 (Jan. 23) *with* Situation in People's Republic of Bangladesh/Republic of Union of Myanmar, ICC-01/19, Decision Pursuant to article 15 of the Rome Statute (Nov. 14, 2019).

120 Genocide Convention, *supra* note 1, art. I.

121 *Id.* arts. IV–VI.

122 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶¶ 430–38 (Feb. 26).

123 *Id*.

124 Prosecutor v. Akayesu, ICTR-96-4-T, Judgment, ¶¶ 471–75, 498–501 (Sept. 2, 1998); Prosecutor v. Krstić, IT-98-33-T, Judgment, ¶¶ 599–640 (Aug. 2, 2001); Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-09-1, Warrant of Arrest, ¶¶ 1–3, 7–9 (Mar. 4, 2009).

component of the international legal order's response to genocide. It reinforces the preventive norm: by showing that neither states nor individuals can escape consequences, thereby aiming to change behavior. However, as the next section discusses, the effectiveness of these mechanisms is hampered by many challenges, and the international community's commitment to *enforcing* the law is tested by political and practical obstacles.

VII. CURRENT CHALLENGES AND PROSPECTS FOR REFORM

A. Enduring Challenges to Prevention and Enforcement

Despite the strong legal framework of the Genocide Convention and related doctrines such as R2P, real-world outcomes often fall short of the ideal of prompt prevention and effective punishment. A host of challenges account for the gap between principle and practice.

First, States often hesitate to label ongoing violence as "genocide" due to the heavy implications of that word.[125] A genocide determination creates pressure to act; failure to act invites moral opprobrium. Hence, governments and international institutions may use euphemisms or stress uncertainty about intent to buy time, or avoid commitment. Such reluctance can stem from self-interest (not wanting to intervene or upset alliances) or from genuine caution (fear of acting on incomplete information). Additionally, many states are wary of establishing precedents that could justify interference in their own internal conflicts and situations down the line. Particularly in the Global South, there can be suspicion that humanitarian intervention is a pretext for neo-imperialism, given the history of colonialism.[126] This makes consensus on collective action difficult, especially if a great power shields the State in question.

Second, the UN Security Council is the body empowered to take decisive measures (economic sanctions, arms embargoes, or military intervention) in genocide crises.[127] However, its effectiveness is only as

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125 *See* Karen E. Smith, *Avoiding an Emotions-Action Gap? The EU and Genocide Designations,* 46 J. EUR. INTEGRATION 615 (2024); Action Memorandum from George E. Moose, Assistant Sec'y of State for African Affairs et al., to the Sec'y of State, *Has Genocide Occurred in Rwanda?* (May 21, 1994), *in* THE US AND THE GENOCIDE IN RWANDA 1994: EVIDENCE OF INACTION (William Ferroggiaro ed., Nat'l Sec. Archive, 2001), https://nsarchive2.gwu.edu/NSAEBB/NSAEBB53/rw052194.pdf [https://perma.cc/86CS-LEP5] (reporting on U.S. policy during the 1994 Rwanda genocide, claiming U.S. officials shunned the term "genocide," for fear of being obliged to act).

126 ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY AND THE MAKING OF INTERNATIONAL LAW (2004) (demonstrating that international law was born from the colonial encounter and that modern concepts like "sovereignty as responsibility" are contemporary iterations of the 19th-century "civilizing mission"). This is an example of what is being called "Third World Approaches to International Law (TWAIL)," which is a critical school of legal thought that views the current international legal order as a mechanism for the domination of the Global South by the North. TWAIL scholars argue that the doctrine of humanitarian intervention reinforces colonial hierarchies.

127 *See* U.N. Charter, ch. VII.

good as the unity of its permanent Members. Time and again, vital initiatives have been blocked by one or more vetoes.[128] This structural issue means that the international community's response is inconsistent. It is strong in cases where great powers agree, but weak or nonexistent where they do not.

Third, legally, genocide requires specific intent,[129] which can be hard to establish early on. By the time intent is undeniable, much damage can be done. Intelligence and human rights reports may warn of the risk of genocide, but skeptics can always argue that the situation has not met the strict definition yet. This wait-and-see approach can fatally delay action. Early-warning mechanisms do exist,[130] but translating warnings into preventative diplomacy is a challenge; namely, States may cling to uncertainty as an excuse for inaction. Meanwhile, those planning atrocities may camouflage their intent, using coded language or propaganda that only thinly veils their aims, until it is too late.

Fourth, preventing genocide and prosecuting it after the fact both require resources. Deploying peacekeepers, funding tribunals, and supporting humanitarian operations all demand political will to commit funds and personnel. Many States show rhetorical support for prevention but seem unwilling to invest, say, in a standby rapid deployment force or to significantly bolster peacekeeping budgets.[131] On the justice side, international courts rely on State cooperation for arrests and the provision of evidence.[132] If key States do not hand over suspects, justice is delayed or denied.[133] Domestic courts in post-conflict societies often need international

128 *UN Security Council: Vetoes Betray Syrian Victims: In Face of Mounting Pressure, Russia, China Block ICC Referral*, HUM. RTS. WATCH (May 22, 2014), https://www.hrw.org/news/2014/05/22/un-security-council-vetoes-betray-syrian-victims [https://perma.cc/D8BR-6JLH]; Simon Adams, *Failure to Protect: Syria and the UN Security Council*, GLOB. CTR. RESPONSIBILITY TO PROTECT (Mar. 5, 2015), https://www.globalr2p.org/wp-content/uploads/2020/07/syriapaper_final.pdf; [https://perma.cc/9ALS-HZMH]; *UN Security Council: Historic Censure of Myanmar Junta*, HUM. RTS. WATCH (Dec. 21, 2022), https://www.hrw.org/news/2022/12/21/un-security-council-historic-censure-myanmar-junta [https://perma.cc/EMD6-CSSJ].

129 Genocide Convention, *supra* note 1, art. II.

130 *See, e.g.*, Atrocity Crimes, *supra* note 4 .

131 Jennifer Welsh, *The Responsibility to Prevent: Assessing the Gap Between Rhetoric and Reality,* 51 COOP. & CONFLICT 216 (2016) (noting that Member States offer universal support for R2P in language but demonstrate widely inconsistent application and a lack of investment in the structural tools needed for prevention).

132 Nadia Banteka, *Mind the Gap: A Systematic Approach to the International Criminal Court's Arrest Warrants Enforcement Problem,* 49 CORNELL INT'L L. J. 521, 527 (2016); Steven D. Roper & Lilian A. Barria, *State Co-Operation and International Criminal Court Bargaining Influence in the Arrest and the Surrender of Suspects,* 21 LEIDEN J. INT'L L. 457, 458 (2008); Hawthrone Ripley, *Standards of Admissibility for U.S. Intelligence as Evidence in International Criminal Proceedings,* 38 HARV. HUM. RTS. J. 167, 171(2017).

133 Press Release, Int'l Bar Ass'n, IBA Hague Office Calls for Renewed State Cooperation and Support for the ICC at 24th Assembly of States Parties (Dec. 18, 2025), https://www.ibanet.org/IBA-Hague-Office-calls-for-renewed-state-cooperation-and-support-for-the-ICC-at-24th-Assembly-of-States-Parties [https://perma.cc/9CNN-2WM2].

assistance to handle complex cases; however, the international community's support has sometimes fallen short.[134]

Fifth, implementing the Genocide Convention also involves navigating local contexts. In some post-genocide societies, the priority may be reconciliation rather than retribution; hence, pushback can occur against external efforts to hold trials.[135] Striking the right balance between justice and peace is delicate. Moreover, external actors can sometimes be viewed with suspicion or accused of bias, undermining the legitimacy of their preventive or punitive actions.

These challenges mean that each genocide-related crisis tends to produce a familiar refrain: expressions of resolve, belated or insufficient action, and *post hoc* regret and inquiry into a failure to prevent. The persistence of this pattern suggests that legal norms alone are not enough; political reforms and innovations are needed to better fulfill the Genocide Convention's objectives.

B. Prospects for Reform and Improvement

Considering the obstacles outlined, various reforms and proposals have been put forward to strengthen the international community's capacity to prevent genocide and hold perpetrators accountable.

One proposal is to create more robust early-warning systems that directly trigger action. For example, establishing an independent "atrocity alert" mechanism that, when certain risk indicators reach a critical level, automatically prompts discussion in forums such as the Security Council or among a coalition of concerned States.[136] Alongside this, there are calls for a dedicated UN civilian or military rapid reaction capability that could be deployed preventively.[137] While these ideas have existed for decades, they have a new urgency in light of ongoing failures. Regional organizations have also been developing early warning centers and standby forces,[138] which could be supported and expanded.

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134 DIANE F. ORENTLICHER, INT'L CTR. FOR TRANSITIONAL JUST., THAT SOMEONE GUILTY BE PUNISHED: THE IMPACT OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA IN BOSNIA 109 (2010).

135 Geneviève Parent, *Reconciliation and Justice after Genocide: A Theoretical Exploration,* 5 GENOCIDE STUD. & PREVENTION 277 (2010) (addressing how the "one-size-fits-all" approach of international criminal justice can undermine local healing).

136 U.S. ARMY PEACEKEEPING AND STABILITY OPERATIONS INST., MASS ATROCITY PREVENTION AND RESPONSE OPTIONS (MAPRO): A POLICY PLANNING HANDBOOK, at B2 (2012), https://pksoi.armywarcollege.edu/wp-content/uploads/2020/07/MAPRO_handbook_final.pdf [https://perma.cc/53LK-X7W5].

137 GARETH EVANS & MOHAMED SAHNOUN, THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY 53–54 (2001).

138 Kevin Clements, *Early Warning and Response Capability, in* CSCAP REGIONAL SECURITY OUTLOOK 42, 43, 47 (Brian L. Job & Erin Elizabeth Williams eds., 2011); AFRICAN UNION, HANDBOOK 27–44 (2014); U.N. Secretary-General, *Responsibility to Protect: State Responsibility and Prevention,* ¶ 69, U.N. Doc. A/67/929–S/2013/399 (July 11, 2013).

Another proposal is limiting the veto in atrocity situations. As noted, there is a growing movement to restrain the use of veto in cases of genocide, war crimes, and crimes against humanity. In 2015, France and Mexico led an initiative for P5 voluntary restraint in such situations,[139] and a separate Code of Conduct spearheaded by the Accountability, Coherence, Transparency (ACT) group of States urges all Security Council Members not to vote against credible draft resolutions aimed at preventing or ending atrocity crimes.[140] Over a hundred States have endorsed this Code. If even one permanent Member were to actually abstain from veto use based on this principle in a concrete case, it could create moral pressure on others. While not an overall solution, this norm change could unlock collective action in some instances that are currently stymied.

On the accountability side, measures include universalizing the ICC's jurisdiction, namely, encouraging more States to join the Rome Statute, so that fewer situations fall outside its reach. Some have proposed amendments to the Genocide Convention or new protocols to clarify obligations.[141] This criticism could justify the issuance of an advisory opinion by the ICJ on the obligation to prevent, which could further clarify States' legal obligations and perhaps prod action by outlining what must be done in each scenario.

On top of that, modern prevention efforts recognize that not only States, but also other actors, have roles. As incitement is itself prohibited by the Genocide Convention,[142] media and tech companies can be encouraged or required to monitor and curb incitement to genocide on their platforms; financial institutions can flag or freeze assets if being used to fund genocidal campaigns; and in terms of corporate responsibility, there is discussion of extending due diligence obligations to companies operating in conflict zones to ensure they are not complicit in genocidal schemes.[143]

139 *Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities*, GLOB. CTR. RESPONSIBILITY TO PROTECT (Aug. 1, 2015), https://www.globalr2p.org/resources/political-declaration-on-suspension-of-veto-powers-in-cases-of-mass-atrocities/ [https://perma.cc/MRA2-5H73].

140 *Code of Conduct Regarding Security Council Action Against Genocide, Crimes Against Humanity or War Crimes*, GLOB. CTR. RESPONSIBILITY TO PROTECT (Dec. 14, 2015), https://www.globalr2p.org/resources/code-of-conduct-regarding-security-council-action-against-genocide-crimes-against-humanity-or-war-crimes/ [https://perma.cc/H6WL-352J].

141 Yonah Diamond & John Packer, *Reviving the Genocide Convention's Preventive Purpose,* 18 GENOCIDE STUD. & PREVENTION: INT'L J. 26, 43 (2024); MITSUE INAZUMI, UNIVERSAL JURISDICTION IN MODERN INTERNATIONAL LAW: EXPANSION OF NATIONAL JURISDICTION FOR PROSECUTING SERIOUS CRIMES UNDER INTERNATIONAL LAW 72–73 (2005).

142 Genocide Convention, *supra* note 1, art. III.

143 ANITA RAMASASTRY & ROBERT C. THOMPSON, COMMERCE, CRIME AND CONFLICT: LEGAL REMEDIES FOR PRIVATE SECTOR LIABILITY FOR GRAVE BREACHES OF INTERNATIONAL LAW 6 (2006); Special Representative of the Secretary-General, *Report on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises,* ¶ 6, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011).

Also, many States have incorporated the Genocide Convention into their domestic law by criminalizing genocide and related acts.[144] Continuing to universalize such legislation is key, as is encouraging States to exercise jurisdiction when perpetrators are found on their soil. Diplomatic initiatives can help countries build the judicial and investigative prowess to handle these sensitive cases, reducing reliance on international courts.

Finally, in the long run, preventing genocide is helped by fostering a global political culture that is intolerant of identity-based mass violence. For example, international and regional organizations sponsor training for military and civilian officials about their responsibilities under the Genocide Convention.[145] Public commemoration of past genocides and education about the Genocide Convention can maintain awareness among younger generations and policymakers alike.

While these reforms are all gradually being pursued, their success hinges on political will. Many proposals falter when faced with the hard reality of national interests. Nonetheless, there have been modest advances: for example, the UN Human Rights Council's investigative mechanisms have introduced new ways of collecting evidence for future prosecutions;[146] the ACT Code of Conduct on veto restraint has moral authority, even if not yet tested; and domestic courts have recently prosecuted individuals for atrocities in Syria.[147] These incremental steps suggest an international community that, while still far from perfectly effective, is learning and evolving.

Ultimately, meaningful reform likely requires a convergence of moral pressure, enlightened leadership, and at times, tragedy that spurs change. The Genocide Convention remains a powerful symbol and tool. Its principles are sound, but the mechanisms for enforcing them need continual strengthening. If States can incrementally improve cooperation, forgo narrow interests in critical moments, and invest in prevention infrastructure and education, the gap between the Genocide Convention's promise and practice might gradually narrow.

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144 LUC REYDAMS, UNIVERSAL JURISDICTION: INTERNATIONAL AND MUNICIPAL LEGAL PERSPECTIVES xxiii–xxiv (2003).

145 Atrocity Crimes, *supra* note 4, at 4.

146 Rep. of the Independent Investigative Mechanism for Myanmar, 42nd Sess., Sept. 9–27, 2019, ¶ 14, U.N. Doc. A/HRC/42/66 (Aug. 7, 2019).

147 Prosecutor v. Anwar Raslan, Higher Reg'l Ct. (OLG) Koblenz (Jan. 13, 2022); Prosecutor v. Eyad al-Gharib, Higher Reg'l Ct. (OLG) Koblenz (Feb. 24, 2021); *Germany: Conviction for state Torture in Syria*, HUM. RTS. WATCH (Jan. 13, 2022), https://www.hrw.org/news/2022/01/13/germany-conviction-state-torture-syria [https://perma.cc/RFX8-EF6B].

VIII. CONCLUSION

The Genocide Convention stands as both a moral and legal cornerstone in the effort to eradicate the "crime of crimes."[148] From its origins in the aftermath of World War II, its premise has been that States must not merely condemn genocide but actively commit to preventing it and to punishing those responsible. Over the decades, the jurisprudence of the ICJ and the work of international and hybrid criminal tribunals have expanded and refined our understanding of what these obligations entail. Nonetheless, the world has continued to witness episodes of genocidal violence, indicating that the Genocide Convention's goals remain only partially realized.

A major theme in contemporary practice is the growing emphasis on prevention as an obligation distinct from, yet intrinsically linked to, punishment. The obligation to prevent obligates States to act when they become aware or should reasonably be aware of a serious risk of genocide. The ICJ has made clear that States cannot remain passive in the face of credible indications of looming genocide.[149] This reinforces the notion that prevention requires a proactive stance grounded in due diligence and is an obligation owed *erga omnes partes*. At the same time, the obligation to punish—implemented via national courts, *ad hoc* tribunals, and the ICC—complements prevention by deterring perpetrators and providing justice, thereby aiming to break cycles of violence.

The practical expression of these principles has been vividly illustrated by the recent rise in Articles 62 and 63 interventions in ICJ cases concerning genocide, as well as by international prosecutions of genocidaires. The dramatic jump from zero interventions in older cases to dozens in recent ones underscores a shift in State behavior. States increasingly view genocide not as a distant tragedy but as a common concern that demands engagement. Likewise, the expansion of accountability mechanisms—from the ICTY and ICTR to the ICC and national trials under universal jurisdiction—signals that the punishment of genocide has been institutionalized within the international order. Together, these developments suggest an evolving *opinio juris*: a collective acknowledgment that preventing and responding to genocide transcend traditional notions of sovereignty and non-interference.

Yet formidable obstacles remain on the path to more consistent and effective genocide prevention. Political will is often the missing ingredient, as States still weigh national interests against humanitarian imperatives, and the former too often prevail until horrors are well underway. The structure

148 *See* Prosecutor v. Akayesu, ICTR-96-4-T, Judgment (Sept. 2, 1998); Prosecutor v. Krstić, IT-98-33-T, Judgment (Aug. 2, 2001).

149 Application of Convention on Prevention and Punishment of Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. 43, ¶¶ 430–32, 436 (Feb. 26).

of international institutions, especially the UN Security Council veto, can impede united action even when the will exists, and high evidentiary thresholds for confirming genocide can delay lifesaving measures. In short, a persistent gap endures between the legal and moral imperative to act and the operational reality on the ground.

Encouragingly, there are signs of progress that warrant cautious optimism. More States have incorporated genocide prevention strategies into their foreign policies and joined initiatives to restrain the veto in mass atrocity cases.[150] Domestic legislation punishing genocide is becoming universal, and courts around the world are increasingly willing to prosecute perpetrators found in their jurisdiction.[151] Civil society and international networks are adept at documenting unfolding atrocities in real time, making it harder for the world to say, "we did not know." Each time a perpetrator is brought to justice, a precedent is reinforced that may deter others. Each time a coalition of States intervenes diplomatically (through sanctions), legally (through Articles 62 and 63), or, where authorized, with force to halt atrocities, it strengthens the norm of collective responsibility.

Looking ahead, initiatives to bolster early-warning systems, improve coordination within the UN system, and clarify States' responsibilities under doctrines like R2P could gradually strengthen the Genocide Convention's preventive regime. Such reforms, while incremental, may, over time, reduce the likelihood of political paralysis. Equally important is nurturing a global ethos that prioritizes human dignity: leaders and citizens alike must internalize that "Never Again" is not merely a slogan but a call to action that may require sacrifice or courage in the moment.[152]

In essence, the Genocide Convention is a testament to humanity's collective will to protect groups from annihilation. Realizing its promise requires translating that will into collective action. The legal norms are in place and have been strengthened over time; the challenge is implementation. By fostering a culture of early action, strengthening international and regional cooperation, and holding States and individuals accountable for failures, the international community can better honor its promise of "Never Again" and its obligation to be *bystanders no more*. Soon, the measure of success should be whether warnings of genocide

150 Anne Peters, *The War in Ukraine and Legal Limitations on Russian Vetoes*, 10 J. ON USE OF FORCE & INT'L L. 162, 163 (2023); Sigar Aji Poerana & Irawati Handayani, *Establishing the Status of Responsibility to Protect (R2P) as Customary International Law and Its Role in Preventing Mass Atrocities*, 5 PADJADJARAN J. INT'L L. 55, 64–68 (2021).

151 *See generally* Marcelo Marques, *Universal Jurisdiction over Genocide and the Making of Transnational Justice (1961–2025): Prosecutions and a Tiered Typology of Institutional Designs*, J. GENOCIDE RSCH. (2026).

152 Referring to previous discussions in this article regarding political price that States (and, as a result, citizens) have to pay, first in the form of naming an atrocity "genocide," and, as a result, agreeing to fund activities meant to prevent genocide outside of their borders, and later providing diplomatic and financial support in prosecuting the perpetrators of such crimes.

trigger immediate and effective responses. Ultimately—and ideally—the goal must be that such atrocities, which have scarred human history, become relics of the past through sustained, generational education. One day, hopefully, genocide will be studied as a historical concept, one from which humanity has fully transcended, as it did with slavery, witch hunts, and colonial conquest.