

## GENOCIDE: PREVENTION THROUGH NONMILITARY MEASURES

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*Genocide is the ultimate crime and the gravest violation of human rights it is possible to commit.*<sup>2</sup>

*Genocide is horrible, an abomination of our species, and totally unacceptable. It is an obscenity—the evil of our time that all good people must work to eradicate.*<sup>3</sup>

### I. Introduction

Genocide is the vilest, most abhorrent form of aggression.<sup>4</sup> It should be a word of antiquity, not a vexing plague in our modern, civilized world. Yet millions of innocent men, women, and children have been slaughtered in this century.<sup>5</sup> In fact, in the last decade alone, almost one million lives were lost to genocide.<sup>6</sup> It is astonishing that with a technologically and

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2. Benjamin Whitaker, Special Rapporteur, Review of Further Developments in Fields with Which the Sub-Commission Has Been Concerned, Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide, Prepared by Mr. B. Whitaker, U.N. ESCOR, Human Rights Sub-Commission on the Prevention of Discrimination and Protection of Minorities, 38th Sess., at 5, U.N. Doc. E/CN.4/Sub.2/1985/6 (1985) [hereinafter 1985 Special Rapporteur].

3. R.J. RUMMEL, DEATH BY GOVERNMENT 31 (1994).

socially advanced world, the international community has not yet found a solution to genocide.

Significant efforts to prevent genocide germinated with the creation of the United Nations (U.N.),<sup>7</sup> which was established to promote peace and prevent conflict.<sup>8</sup> Shortly after the U.N. was organized, the General Assembly drafted a Convention for the prevention of genocide, the Convention on the Prevention and Punishment of the Crime of Genocide

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4. Genocide is defined as: "The deliberate and systematic extermination of an ethnic or national group." The word is derived from Latin *genus* or Greek *yévos* [birth or race] and French *cide* or Latin *cida* [cutter, killer, or slayer]. THE COMPACT OXFORD ENGLISH DICTIONARY (2nd ed. 1998). Genocide is also defined in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention], available at <http://www.unhchr.ch/html/menu3/b/treaty1gen.htm>. See *infra* Appendix (providing the complete text of the Genocide Convention). See also *infra* notes 30-32 and accompanying text. A comparison of these sources demonstrates that the Genocide Convention's definition of genocide is far more expansive than the *Oxford English Dictionary's*. This broader definition of genocide will be explained in Section II of this article.

5. RUMMEL, *supra* note 3, at 4. The author estimates that genocide caused over thirty-eight million deaths in this century. Excluding war dead, when politicide and mass murder are added into the number of dead, the numbers killed exceeds 169 million people in this century alone. *Id.*

6. ALISON DES FORGES, LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA 1, 15 (1999) (estimates 500,000 to 800,000 Tutsi killed in Rwanda); Philip J. Cohen, *The Complicity of Serbian Intellectuals in Genocide in the 1990's*, in THIS TIME WE KNEW: WESTERN RESPONSES TO GENOCIDE IN BOSNIA 46 (Thomas Cushman & Stjepan G. Meštrović eds., 1996) [hereinafter THIS TIME WE KNEW] (estimating the number of victims by Serbs into the tens of thousands).

7. Boutros Boutros-Ghali, *Challenges of Preventive Diplomacy: The Role of the United Nations and Its Secretary-General*, in PREVENTIVE DIPLOMACY: STOPPING WARS BEFORE THEY START 16 (Kevin M. Cahill, M.D. ed., 1996) [hereinafter PREVENTIVE DIPLOMACY]. "Since the end of the Cold War, preventive action has become a top priority for the United Nations." *Id.* See U.N. CHARTER art. 1, para. 3. The purpose of the U.N. is "[t]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace . . ." *Id.* The General Assembly is responsible for initiating studies and recommending solutions to "promote international cooperation" in political, economical, social, cultural, educational, and health fields. *Id.* art. 13, para. 1. Moreover, "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." *Id.* art. 25.

8. U.N. CHARTER art. 1, para. 3.

(Genocide Convention), dated 9 December 1948.<sup>9</sup> The Genocide Convention entered into force on 12 January 1951.<sup>10</sup>

Although the Genocide Convention was a positive step<sup>11</sup>—over 132 nations have signed or acceded to it—neither it nor the U.N. has been able to prevent genocide.<sup>12</sup> In fact, three recent genocides in Cambodia,<sup>13</sup> Yugoslavia,<sup>14</sup> and Rwanda<sup>15</sup> occurred in U.N.-member countries that had signed or acceded to the Genocide Convention.<sup>16</sup> Even though the Genocide Convention and the U.N. have been unable to prevent genocide, nei-

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9. Genocide Convention, *supra* note 4.

10. *Id.* The United States signed the Genocide Convention on 11 December 1948, as one of the original signatories. *Id.* The United States Senate, however, did not give its advice and consent to ratify the Genocide Convention until 10 February 1986. The Senate included two reservations, five understandings, and one declaration. Marian Nash Leigh, *Contemporary Practice of the United States Relating to International Law*, 80 AM. J. INT'L L. 612 (1986) (citing 132 CONG. REC. S1377-78 (daily ed. Feb. 19, 1986)). The Genocide Convention Implementation Act of 1987 (the Proxmire Act) outlines the basic offense and the maximum punishments that may be imposed. 18 U.S.C. § 1091 (2000).

11. See Vratislav Pechota, *Establishing Criminal Responsibility and Jurisdiction for Genocide*, in GENOCIDE WATCH 198 (Helen Fein ed., 1992).

12. Matthew Lippman, *The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later*, 15 ARIZ. J. INT'L & COMP. LAW 415 (1998). See United Nations, *Genocide Convention*, at <http://www.unhchr.ch/html/menu3/b/treaty1gen.htm> (last modified Oct. 9, 2001) (providing an updated list of the original parties and states that have acceded to the Genocide Convention and their reservations).

13. Genocide Convention, *supra* note 4. Cambodia acceded to the Convention on 14 October 1950 without making any reservations. *Id.*

14. *Id.* The Socialist Federal Republic of Yugoslavia was one of the original Contracting Parties to the Genocide Convention by signing it on 11 December 1948. The Republic of Yugoslavia made no reservations either before or after the succession of Slovenia, Croatia, and Bosnia and Herzegovina, except that on 15 June 1993, the U.N. Secretary-General received a communication from the Republic of Yugoslavia that said the following:

Considering the fact that the replacement of sovereignty on the part of the territory of the Socialist Federal Republic of Yugoslavia previously comprising the Republic of Bosnia and Herzegovina was carried out contrary to the rules of international law, the Government of the Federal Republic of Yugoslavia herewith states that it does not consider the so-called Republic of Bosnia and Herzegovina a party to the [said Convention], but does consider that the so-called Republic of Bosnia and Herzegovina is bound by the obligation to respect the norms on preventing and punishing the crime of genocide in accordance with general international law irrespective of the Convention on the Prevention and Punishment of the Crime of Genocide.

*Id.*

ther is a futile idea.<sup>17</sup> In truth, both are essential ingredients of the solution.<sup>18</sup>

This article proposes the use of nonmilitary measures to prevent genocide. Military intervention can end genocide; however, offense-oriented armed intervention by the U.N. or under authorization of the U.N. generally does not occur until after thousands or hundreds of thousands of people have been slaughtered.<sup>19</sup> The key to preventing genocide is to quash it at its embryonic stage.<sup>20</sup>

To prevent genocide without military intervention, one must ascertain its causes and indicators. When the indicators are known, information gathering and assessment will be more efficient and timely, and this will enhance the effectiveness of an early warning system.<sup>21</sup> A properly functioning early warning system will permit the international community to intervene, with nonmilitary measures, at the nascent stage of genocide or soon thereafter to extinguish its flame before it becomes a conflagration.<sup>22</sup>

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15. *Id.* Rwanda was first a party to the Genocide Convention on 13 March 1952 as a trust territory of Belgium. After Rwanda became a nation-state, it acceded to the Convention on 16 April 1975. *Id.*

16. *Id.* Cambodia became a member of the U.N. on 14 December 1955, the Socialist Federal Republic of Yugoslavia became a member on 19 October 1945 (Bosnia and Herzegovina became a member of 22 May 1992 by General Assembly Resolution A/RES/46/237), and Rwanda became a member on 18 September 1962. *Id.* See also United Nations, *U.N. Membership*, at <http://www.un.org/Overview/unmember.html> (last modified 18 December 2000).

17. LEO KUPER, *THE PREVENTION OF GENOCIDE* 15, 210 (1985).

18. *Id.* at 18.

19. See DES FORGES, *supra* note 6, at 692-701.

20. SUSAN L. WOODWARD, *BALKAN TRAGEDY: CHAOS AND DISSOLUTION AFTER THE COLD WAR* 274 (1995).

The most serious failure of existing international and regional institutions with regard to the war in Bosnia-Herzegovina was their inability to prevent it . . . . This is particularly important to emphasize because the perception that the war inevitable grew as the ferocity and duration of the war increased and as outsiders sought to absolve themselves from any responsibility.

*Id.*

21. Ted Robert Gurr, *Early-Warning Systems: From Surveillance to Assessment to Action*, in *PREVENTIVE DIPLOMACY*, *supra* note 7, at 123.

22. *Id.*

In addition, action by the international community must be quick, effective, and occur wherever the problem of genocide exists.

To formulate a nonmilitary solution, this article discusses and analyzes the Genocide Convention, the U.N., and the genocides in Bosnia and Herzegovina (Bosnia-Herzegovina) and Rwanda.<sup>23</sup> Section II reviews the vital elements of the Genocide Convention. Section III briefly outlines the U.N. and discusses its ability to alter or control conduct of leaders in sovereign nations. This is important because the ironic tragedy of genocide is that it is almost always caused by its victims' political or military leaders.<sup>24</sup> Section IV examines the recent genocides in Bosnia and Rwanda. It reviews the underlying rationale for the genocides, describes the U.N.'s efforts to prevent and terminate the genocides, and explains how or why the genocides ended. Section V provides a list of distinctive characteristics or events that caused the genocides in Bosnia and Rwanda and explains why the Genocide Convention and the U.N. were ineffective in preventing them. Section VI uses the above information to advocate how and why a protocol to the Genocide Convention would help prevent or significantly reduce genocide.

## II. The Genocide Convention

The Genocide Convention is a relatively short document that embodies four general principles.<sup>25</sup> It strongly condemns genocide,<sup>26</sup> defines genocide,<sup>27</sup> encourages nations to enact legislation prohibiting and punishing genocide,<sup>28</sup> and recognizes and encourages criminal jurisdiction either in local courts or in an international criminal tribunal.<sup>29</sup>

First, in its preamble, the Contracting Parties remind themselves and the world of the immense toll genocide has inflicted on mankind.<sup>30</sup> They

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23. This article only focuses on the genocides in Bosnia-Herzegovina and Rwanda. It does not intend to minimize or diminish other genocides or suggest that they did not occur. The genocides in Bosnia-Herzegovina and Rwanda were chosen for their recency and world-wide interest.

24. RUMMEL, *supra* note 3, at 1.

25. Genocide Convention, *supra* note 4. The Genocide Convention consists of only nineteen Articles. *Id.* arts. 1-19.

26. *Id.* art. 1.

27. *Id.* arts. 2, 3.

28. *Id.* art. 4.

29. *Id.* art. 6.

30. *Id.*

also recognize and declare that genocide will be eliminated only with the combined efforts of the international community.<sup>31</sup> In Article 1, the Contracting Parties reinforce the principles set forth in the preamble by stating their conviction that genocide is a crime under international law, whether in times of war or peace.<sup>32</sup>

Second, having declared genocide a crime, Article 2 defines genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group.”<sup>33</sup> This definition excludes isolated murders or even mass murders if the killer has no intent to destroy, in whole or in part, a stated group, thus elevating genocide above random killings. Although the definition seems to cover all groups, it excludes political groups.<sup>34</sup> This void is significant because its perpetrators often use genocide to eliminate a particular group who are also members of an opposing political party.<sup>35</sup>

The methods that constitute genocide are surprisingly broad. Most people consider genocide as only the act of killing members of a group. The Convention’s definition of genocide, however, includes many levels of injustice committed against a group, in whole or in part: “killing members of the group,” “causing serious bodily or mental harm,” “deliberately inflicting . . . conditions . . . calculated to bring about [the group’s] physical destruction,” “imposing measures intended to prevent births,” and even “forcibly transferring children of the group to another group.”<sup>36</sup> In Article 3, punishable “acts of genocide” include: “conspiracy,” “direct and public incitement,” “attempt,” and “complicity” in genocide.<sup>37</sup> The Convention’s broad definitions could stop genocide before the killing begins, provided nations enact implementing legislation and actually enforce the law.

Third, the Contracting Parties agree to prevent and punish genocide.<sup>38</sup> In Article 5, the Contracting Parties agree to “undertake to enact” legisla-

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31. *Id.*

32. *Id.*

33. *Id.* art. 2.

34. William A. Schabas, *International Law Weekend Proceedings: Groups Protected by the Genocide Convention: Conflicting Interpretations from the International Criminal Tribunal for Rwanda*, 6 *ILSA J. INT’L & COMP. L.* 375, 377 (2000). See Lippman, *supra* note 12, at 455; KUPER, *supra* note 17, at 15.

35. KUPER, *supra* note 17, at 100.

36. Genocide Convention, *supra* note 4, art. 2.

37. *Id.* art. 3.

38. *Id.* art. 1.

tion to prevent and punish genocide or any of the acts of genocide.<sup>39</sup> In Article 4, the Contracting Parties agree to punish all perpetrators of genocide, whether they are political leaders, officials, or individuals.<sup>40</sup>

Fourth, the Contracting Parties agree to try individuals accused of committing genocide or one of the acts of genocide in the country where the act is committed.<sup>41</sup> If no criminal legal action is taken there, the Parties also recognize that an international criminal tribunal could have jurisdiction, but only if the specific Contracting Party accepts the court's jurisdiction.<sup>42</sup> In addition, the Parties agree that genocide is not a political crime and, therefore, will not prevent extradition of an accused.<sup>43</sup>

### III. The United Nations and Its Ability to Control Actions of Sovereign Nations

During World War II, the United States, the United Kingdom, the Soviet Union, and other Allies made agreements and combined as "United Nations" to defeat the Axis nations.<sup>44</sup> Toward the end of the war, the overwhelming devastation and incalculable human suffering caused by the war weighed heavily on the Allied leaders. In an effort to prevent future wars, they formed an organization that would, with the exception of defense, claim a monopoly on the collective use of force.<sup>45</sup>

On 24 October 1945, with fifty-one original members, the U.N. was formally established.<sup>46</sup> The U.N. may not have commenced with universal

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39. *Id.* art. 5.

40. *Id.* art. 4.

41. *Id.* art. 6.

42. *Id.* The Genocide Convention did not establish a criminal court nor has the U.N. established a permanent international criminal court. KUPER, *supra* note 17, at 19, 102.

43. *Id.* art. 7.

44. Adam Roberts & Benedict Kingsbury, *Introduction: The U.N.'s Roles in International Society Since 1945*, in UNITED NATIONS, DIVIDED WORLD: THE U.N.'S ROLES IN INTERNATIONAL RELATIONS 6 (Adam Roberts & Benedict Kingsbury eds., 2nd ed. 1993) [hereinafter UNITED NATIONS, DIVIDED WORLD].

45. U.N. CHARTER art. 1.

46. UNITED NATIONS, DIVIDED WORLD, *supra* note 44, at 6. At the beginning, the U.N. was widely known as the United Nations Organization. The name distinguished this new organization from the original association of the Allied Nations that joined to defeat the Axis countries in World War II. *Id.*

authority or a worldwide mandate, but it has since become a universal organization.<sup>47</sup> Currently, almost every nation has joined the U.N.<sup>48</sup>

The U.N.'s foundational document is its Charter.<sup>49</sup> The Charter describes the U.N.'s underlying purpose, authority, and structure. The U.N.'s basic purpose or mission, as described in the preamble, is to achieve and maintain international peace and respect for the human rights of all people without distinction of race, religion, sex, or nationality.<sup>50</sup>

The U.N. Charter addresses both sovereign rights and international intervention.<sup>51</sup> The Charter recognizes the inherent authority of nation-states to handle their domestic or internal affairs without interference from the U.N.<sup>52</sup> This hesitation to enter internal conflicts is based on the belief that each country is responsible for its domestic concerns, and no country wants an outside organization interfering with its internal affairs.<sup>53</sup> On the other hand, the Charter was written and is interpreted to allow the U.N. to intervene into the affairs of sovereign nations under certain circumstances.<sup>54</sup> It allows the U.N. Security Council to breach a country's domestic shield under the enforcement measures of Chapter VII.<sup>55</sup> For example, an internal conflict may threaten the peace and security of the region when it expands beyond the states' borders.<sup>56</sup> Thus, the U.N.'s

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47. *Id.* at 6-7.

48. *Id.* The only nation-states that are not members of the United Nations are Switzerland and Taiwan, and the entities of Western Sahara, Palestine, and Northern Cyprus, which are not considered states. *Id.*

49. U.N. CHARTER.

50. *Id.* pmbl., art. 1. The Preamble and Article I provide the purposes and the principles of the Charter. The Charter declares as its goal: "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging *respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion . . .*" *Id.* art. 1, para. 3 (emphasis added).

51. *Id.* art 2, para. 7. The Charter is a non-interventionist treaty. *See id.*

52. *Id.*

53. Kenneth Dadzie, *The U.N. and the Problem of Economic Development*, in UNITED NATIONS, DIVIDED WORLD, *supra* note 44, at 297.

54. U.N. CHARTER chs. VI-VII.

55. *Id.*

56. LINDA B. MILLER, WORLD ORDERS AND LOCAL DISORDERS, THE UNITED NATIONS AND INTERNAL CONFLICTS 18 (1967).

foremost concern, as the Charter clearly expresses, is to prevent and remove threats of peace, suppress acts of aggression, and promote peace.<sup>57</sup>

The Charter created six separate suborganizations or “organs” to accomplish its mission: the Security Council, the General Assembly, the Secretariat, the International Court of Justice, the Trusteeship Council, and the Economic and Social Council.<sup>58</sup> Each has specific responsibilities and authority.<sup>59</sup> For its specific purpose, this article details the Security Council, but only briefly mentions the other U.N. organs.

The Security Council consists of representatives from fifteen U.N. member states.<sup>60</sup> Five nations are permanent members: the United States, United Kingdom, France, Russia, and China.<sup>61</sup> The General Assembly elects the ten other members as temporary or non-permanent members of the Security Council. Non-permanent members rotate every two years.<sup>62</sup>

When making decisions, each member of the Security Council has one vote.<sup>63</sup> Nine votes determine a decision on procedural matters. Substantive matters require nine sustaining votes, and all five permanent mem-

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57. U.N. CHARTER art. 1.

58. *Id.* art. 7.

59. *See id.* chs. IV (The General Assembly), V (The Security Council), X (Social Council), XII & XIII (the Trusteeship Council), XIV (the International Court of Justice), XV (the Secretariat). *Id.*

60. *Id.* art. 23.

61. *Id.* The actual language of the Charter is: “The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America.” *Id.* The seat for the Soviet Union was changed to the Russian Federation after 1989 when the Soviet Union divided, and Taiwan was removed in 1971 for the People’s Republic of China. UNITED NATIONS, DIVIDED WORLD, *supra* note 44, at 7.

62. U.N. CHARTER art. 23. The non-permanent members are supposed to be chosen based on the member’s contribution “to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.” *Id.* As of January 2001, the non-permanent members are Tunisia, Ukraine, Bangladesh, Mali, and Jamaica (until 31 December 2001), and Colombia, Mauritius, Singapore, Ireland, and Norway (until 31 December 2002). United Nations, *Security Council Membership (2001)*, at <http://www.un.org/documents/scinfo.htm> (last modified 30 January 2001).

63. U.N. CHARTER art. 27.

bers must either concur or abstain.<sup>64</sup> If one permanent member vetoes a decision, it cannot be approved.<sup>65</sup>

The Security Council's primary responsibility is to maintain international peace and security.<sup>66</sup> The type of assistance or "intervention" it authorizes depends on the situation. The U.N. Charter defines two categories of international disturbances.<sup>67</sup> The lesser is a "dispute," and the more serious is a "threat to the peace, breach of the peace, or act of aggression" (collectively referred to as "threat to the peace").<sup>68</sup>

The Security Council's authority focuses on non-intrusive measures. It arises when disputes between U.N. members, or between members and non-members, would likely jeopardize international peace and security if prolonged.<sup>69</sup> This authority includes: investigating any dispute; calling upon parties to settle disputes through negotiations, arbitration, or other peaceful means; and when all parties agree, recommending a peaceful settlement method.<sup>70</sup>

When a threat to the peace occurs, the U.N. Charter grants the Security Council greater authority to "maintain or restore international peace."<sup>71</sup> The Security Council, however, generally uses nonmilitary measures before implementing military measures.<sup>72</sup> For nonmilitary measures, the Security Council may call on the parties to comply with provisional resolutions; sever diplomatic relations; interrupt, partially or completely, economic relations of the parties, to include rail, sea, air, communications; or call upon other members of the U.N. to take such measures.<sup>73</sup> Interrupting economic relations includes the concept of sanctions.<sup>74</sup> The U.N. rarely used sanctions before 1990, but has used

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64. *Id.*

65. *Id.* Under Article 25 of the Charter, members of the United Nations agree to execute the decisions of the Security Council. Other U.N. organs only make recommendations that the member states may follow, but technically, if the Security Council makes a decision, all members of the U.N. must follow that decision. *Id.*

66. U.N. CHARTER art. 24, para. 1.

67. *Id.* arts. 33, 39.

68. *Id.*

69. *Id.* arts. 33-38.

70. U.N. CHARTER ch. VI; Anthony Parsons, *The U.N. and the National Interests of States*, in UNITED NATIONS, DIVIDED WORLD, *supra* note 44, at 123.

71. U.N. CHARTER art. 39.

72. *See id.* arts. 33-42

73. *Id.* arts. 39-40.

them frequently since then.<sup>75</sup> Sanctions imposed by the Security Council may require all member states to comply.<sup>76</sup>

If the Security Council believes that nonmilitary measures would be or are inadequate to end the threat to the peace, it may take military action “as may be necessary to maintain or restore international peace and security.”<sup>77</sup> “Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”<sup>78</sup>

Other preventive measures available to the U.N. include public diplomacy or condemnation by the General Assembly. The General Assembly

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74. N.D. WHITE, *KEEPING THE PEACE: THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 106-07 (1997).

75. SWISS FEDERAL OFFICE FOR FOREIGN ECONOMIC AFFAIRS DEPARTMENT OF ECONOMY, *EXPERT SEMINAR ON TARGETING U.N. FINANCIAL SANCTIONS* 208 (1998) [hereinafter *Interlaken 2*], available at <http://www.smartsanctions.ch/Papers/I2/2finrep.pdf>. States may impose sanctions against another nation on their own accord, but this is an individual act and not a collective measure as provided when the Security Council mandates a sanction. *Id.*

76. U.N. CHARTER art. 25, 39, 41; WHITE, *supra* note 74, at 107.

77. *Id.* art. 42.

78. *Id.* The United Nations Web site provides a brief description of the mission and authority of the Security Council when disputes lead to conflicts:

When a dispute leads to fighting, the Council’s first concern is to bring it to an end as soon as possible. On many occasions, the Council has issued cease-fire directives which have been instrumental in preventing wider hostilities. It also sends United Nations peace-keeping forces to help reduce tensions in troubled areas, keep opposing forces apart and create conditions of calm in which peaceful settlements may be sought. The Council may decide on enforcement measures, economic sanctions (such as trade embargoes) or collective military action.

A Member State against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly on the recommendation of the Security Council. A Member State which has persistently violated the principles of the Charter may be expelled from the United Nations by the Assembly on the Council’s recommendation.

United Nations, *Security Council*, at <http://www.un.org/documents/scinfo.htm> (last modified Jan. 30, 2001). Nations value their membership in the U.N. No government has withdrawn its membership from the U.N. in protest for actions taken by the U.N. or with a belief that withdrawal would be more advantageous. South Africa remained a member during the years when it was pressured to end apartheid. Iraq has suffered under significant U.N. sanctions, yet still remains a member of the U.N. In fact, no state has withdrawn its membership from the U.N. Parsons, *supra* note 70, at 104.

and the Social and Economic Council may also investigate specific matters and forward a report to the Security Council.<sup>79</sup> The U.N. may involve its financial subsidiaries, the International Monetary Fund and the World Bank, as tools to persuade the disputing parties.<sup>80</sup> In addition, private diplomacy of the “good offices of the Secretary-General have apparently been confidential, impartial, and successful.”<sup>81</sup> The Secretary-General has also sent individuals from outside the Secretariat on “missions” of fact-finding or goodwill.<sup>82</sup>

Internal crises, which sometimes include genocide, have historically been considered the responsibility and interest of the sovereign state; however, the U.N. has increasingly intervened.<sup>83</sup> By characterizing genocide as an international crisis that was a threat to international peace and security, the Security Council has authorized intervention into sovereign states where genocide was being committed.<sup>84</sup> Where “the measures of Article 41 would be inadequate or have proved to be inadequate,” the U.N. is permitted to implement “any and all measures necessary to maintain and restore international peace and security.”<sup>85</sup>

The U.N. is the international organization recognized to address and resolve disputes and threats to the peace. The U.N. has increasingly intervened throughout the world to end crises, including genocide, that cause a threat to the peace.<sup>86</sup> The U.N. has many tools at its disposal to prevent genocide and other threats to the peace. At the very least, the U.N. will monitor civil unrest. It may also deploy observers, humanitarian workers,

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79. Nicole M. Procida, *Notes: Ethnic Cleansing in Bosnia Herzegovina, A Case Study: Employing United Nation Mechanisms to Enforce the Convention on the Prevention and Punishment of the Crime of Genocide*, 18 SUFFOLK TRANSNAT'L L. REV. 655, 671 (1995) (explaining the U.N. Charter, the organs of the U.N., and their ability to investigate and deter genocide, including a brief history of the genocide in Bosnia and the U.N. response).

80. See U.N. CHARTER art. 41.

81. Parsons, *supra* note 70, at 105.

82. Marrack Goulding, *Observation, Triage, and Initial Therapy: Fact-Finding Missions and Other Techniques*, in PREVENTIVE DIPLOMACY, *supra* note 7, at 146.

83. KUPER, *supra* note 17, at 104.

84. S.C. Res. 713, U.N. SCOR, 3009th mtg., U.N. Doc. S/Res/713 (1991) (justifying its decision by citing a rapid loss of human life and widespread material damage as a threat to the international peace and security); David M. Malone, *The Security Council in the 1990s: Inconsistent, Improvisational, Indispensable?*, in NEW MILLENNIUM, NEW PERSPECTIVES: THE UNITED NATIONS, SECURITY, AND GOVERNANCE 27 (Ramesh Thakur & Edward Newman eds., 2000).

85. U.N. CHARTER art. 42; WHITE, *supra* note 74, at 59.

86. UNITED NATIONS, DIVIDED WORLD, *supra* note 44, at 538-41 (providing a chronological list of U.N. peacekeeping and observer forces).

or peacekeepers. The following historical accounts of the genocides in Bosnia-Herzegovina and Rwanda describe the U.N.'s actions in specific crises, thus providing a basis to consider whether the U.N. should have intervened sooner, and if so, how and when.

#### IV. The Genocides in Bosnia-Herzegovina and in Rwanda

##### A. Bosnia-Herzegovina

The history of the Balkans provides vital background information to understand the true cause of the genocide in Bosnia-Herzegovina. Either for simplicity or because of ignorance, officials, politicians, and the media believed "ancient hatred" caused the genocide in Bosnia-Herzegovina.<sup>87</sup> However, just as smoldering coals do not relight themselves, something had to fan a dormant hatred to re-ignite the flames of genocide in Bosnia-Herzegovina.<sup>88</sup>

Slavic tribesmen, including Croats and Serbs, originally conquered and settled the area of the Balkan region now known as Croatia, Bosnia, and Serbia.<sup>89</sup> Religious conflict between the Catholics in the west and the Orthodox Christians in the east divided the groups. To the west, the Croats converted to Roman Catholicism, and to the east, the Serbs became Orthodox Christians.<sup>90</sup> Both Croats and Serbs populated the region of Bosnia, which lies in between the regions of Croatia and Serbia.<sup>91</sup>

On the 28th day of June 1389, the Ottoman army (Muslims from the area now known as Turkey) conquered the Serbs in Kosovo.<sup>92</sup> About seventy-five years later, the Ottoman army conquered the country of Bosnia.<sup>93</sup> Over the next several hundred years, thousands of the Serbs and Croats in Bosnia converted to Islam.<sup>94</sup> Many joined to gain the economic and social

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87. RICHARD HOLBROOKE, *TO END A WAR* 22 (1998).

88. *Id.* at 23. "Yugoslavia's tragedy was not foreordained. It was the product of bad, even criminal, political leaders who encouraged ethnic confrontation for personal, political, and financial gain." *Id.*

89. CHUCK SUDETIC, *BLOOD AND VENGEANCE: ONE FAMILY'S STORY OF THE WAR IN BOSNIA* 8 (1998).

90. *Id.*

91. *Id.*

92. *Id.* at 9.

93. *Id.* In the 1300's, the Bosnians apparently had not followed either the Roman Catholic or the Eastern Orthodox religions, but followed a local religious belief. *Id.*

94. *Id.*

advantages enjoyed by first-class, Islamic citizens.<sup>95</sup> The years under Ottoman reign were relatively peaceful.<sup>96</sup>

In the early twentieth century, as the Ottoman Empire faded, the region's religious and ethnic divisions ignited World War I.<sup>97</sup> The Croats cooperated with the Austrians and Germans in an alliance that they would repeat in the next world war.<sup>98</sup> After WWI, the region enjoyed about twenty years of peace. During WWII, the Croats again aligned themselves with the Austrians and Germans while the Serbians united with the Russians.<sup>99</sup> As WWII progressed, many Croats and some Muslims created an organization called the *Ustashe*.<sup>100</sup> This military group became extremely brutal in its quest to punish the Serbs.<sup>101</sup> The *Ustashe* death squads "raided Serb villages all over Croatia and Bosnia and killed their inhabitants, often by locking the peasants inside their homes or churches and setting them afire."<sup>102</sup> Near the end of the war, as the Serbs took control of different

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95. *Id.* at 10. "Conversion to Islam brought reduced taxes and the full benefits of citizenship in a vigorous, overarching power that seemed predestined to conquer the continent." *Id.*

96. *Id.* Other than periodically being forced to give a male child to the sultan to serve in his imperial army, the period was reasonably peaceful for the Christians living in Bosnia. *Id.*

97. *Id.* at 21.

98. *Id.*

99. *Id.* at 25.

100. *Id.* But see Serbian Unity Congress, *Setting the Record Straight, War in Former Yugoslavia*, at [http://www.suc.org/politics/war\\_crimes/srebrenica/ustashi.html](http://www.suc.org/politics/war_crimes/srebrenica/ustashi.html) (last visited 22 March 2001) [hereinafter *Setting The Record Straight*]. The Serbian United Congress is a group that supports the cause of Serbians. It claims that the *Ustashe* was not a minority group of Croats, but was actually supported by the Croatian leadership. The Web site quotes a high ranking Croatian state official, Mile Budak. According to the site, Mr. Budak declared on 22 July 1941:

We shall slay one third of the Serbian population, drive away another [third], and the rest we shall convert to the Roman Catholic faith and thus assimilate into Croats. Thus we will destroy every trace of theirs, and all that which will be left, will be an evil memory of them . . . .

*Id.* The Serbian United Congress also claims that the newly independent country of Croatia has adopted the same symbols as the *Ustashi* Nazi state during WWII, and that in many instances its military and paramilitary units have adopted the same uniforms of the 1941-45 *Ustashi* Black Legions. *Id.*

101. SUDETIC, *supra* note 89, at 26.

102. *Id.* The *Ustashe* also took entire families into concentration camps where they were massacred with clubs or knives. Apparently, to save bullets, the *Ustashe* did not use its guns. *Id.*

areas in Bosnia, the Muslims became victims of retaliatory “blood vengeance.”<sup>103</sup>

Ironically, during times of brutality, individuals sometimes acted in kindness.<sup>104</sup> Moreover, sandwiched between the brief periods of genocide were years of peace and friendship, if only superficial.<sup>105</sup> After WWII, Josip Broz Tito, a heavy-handed leader who was half-Croat and half-Slovene, took control of Yugoslavia.<sup>106</sup> Yugoslavia then consisted of six large republics: Serbia, Slovenia, Croatia, Bosnia-Herzegovina, Montenegro, Macedonia, and the two autonomous provinces of Kosovo and Vojvodina.<sup>107</sup> For thirty-five years, Tito forced the ethnic groups to live in harmony.<sup>108</sup> In fact, many Croats, Serbs, and Muslims in Bosnia intermarried.<sup>109</sup>

Tito died in May 1980.<sup>110</sup> Soon after his death, the simmering coals of nationalism and hate were stirred again. Some of the propaganda that fueled the flame of hate began with the Serbs.<sup>111</sup> In 1986, the Serbian Academy of Science and Art issued a memorandum expressing the necessity to expand Serbia.<sup>112</sup> The Serb media also published pieces suggesting that Croatians and Muslims hated the Serbian people.<sup>113</sup> In 1987, Slo-

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103. *Id.* at 31-32. The author described a specific incident in which local Serbs rounded up Muslim men. The Muslims were bound and gagged and were marched up the rocky trail of a nearby mountain. At the end of their two-hour hike, the Serbs forced them towards the opening of a deep mineshaft. The Serbs then shot some and cut the throats of the others. The bodies of the innocent Muslims were then pushed down into the shaft. *Id.*

104. HOLBROOKE, *supra* note 87, at 23.

105. Jasminka Udovički, *Introduction*, in *BURN THIS HOUSE: THE MAKING AND UNMAKING OF YUGOSLAVIA* 8 (Jasminka Udovički & James Ridgeway eds., 2000) [hereinafter *BURN THIS HOUSE*].

106. SUDETIC, *supra* note 89, at 26, 36; Mirko Tepavac, *Tito: 1945-1980*, in *BURN THIS HOUSE*, *supra* note 105, at 64-65.

107. Tepavac, *supra* note 106, at 65.

108. *Id.* Tito's slogan was “Brotherhood and Unity.” Tito treated nationalism and fascism as national crimes. He was so successful that within a few years after taking power, Yugoslav citizens could travel from one side of the country to the other, without regard to nationality or religious beliefs. *Id.* See SUDETIC, *supra* note 89, at 36. “Anyone who dared utter an unkind word to someone of another nationality would sit for ten days in jail; if the unkind word was about someone's mother, the sentence would be for three months.” *Id.*

109. HOLBROOKE, *supra* note 87, at 23.

110. LAURA SILBER & ALLAN LITTLE, *YUGOSLAVIA: DEATH OF A NATION* 29 (1995).

111. *Id.* at 23-24. *But see* Setting The Record Straight, *supra* note 100 (stating that the Serbs believe that the conflict was the result of the republics seeking independence).

112. Roy Gutman, *Serb Author Lit Balkan Powder Keg*, *NEWSDAY*, June 28, 1992, at 1, *cited in* Cohen, *supra* note 6, at 40.

113. Cohen, *supra* note 6, at 39; HOLBROOKE, *supra* note 87, at 23-24.

bodan Milosevic, a communist leader, emerged on the political scene to become President of the Serb Republic.<sup>114</sup> He spoke of Serbian strength and expressed strong nationalistic views, alarming the other Yugoslavian republics with his comments and opinions.<sup>115</sup> In 1989, the Serbian Orthodox Church published several articles to remind the Serbian people of World War II and the atrocities committed against the Serbs by Croatians.<sup>116</sup>

Animosity deepened and nationalism increased in 1990, when the Republic of Croatia overwhelmingly voted Franjo Tudjman as its president.<sup>117</sup> Serbs living in Croatia feared they would be mistreated as they were in WWII.<sup>118</sup> At the same time, Croats feared that Serbia was planning to annex the Croatian region of Krajina as part of a "Greater Serbia."<sup>119</sup>

Tension significantly increased in early 1991, when Serbian separatists in Croatia killed Croatian civilians.<sup>120</sup> In May 1991, in the town of Borovow Selo, a group of Serbians captured twelve Croatian police officers and several civilians.<sup>121</sup> The Serbs tortured their captives in the cruelest manner, beating them, plucking out their eyes, and cutting off their limbs and genitalia before finally killing them. The Croatians' bodies, some of them decapitated, were thrown onto the town square.<sup>122</sup>

In 1991, Slovenia, Croatia, and Bosnia pressed for independence. The leader of Serbia, Slobodan Milosevic, strongly opposed the succession.<sup>123</sup> The Serbs, who controlled the Yugoslav Federal Army, threatened

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114. Jaskinka Udovički & Ivan Torov, *The Interlude: 1980-1990*, in BURN THIS HOUSE, *supra* note 105, at 83.

115. *Id.* at 84.

116. Cohen, *supra* note 6, at 42; Udovički & Torov, *supra* note 114, at 89-90.

117. Udovički & Torov, *supra* note 114, at 83.

118. *Id.* at 95.

119. *Id.*

120. Cohen, *supra* note 6, at 45-46.

121. *Id.* at 42-43.

122. *Id.* (The author of the book requests readers to examine a book prepared by the Croatian government that documents some of the atrocities committed against the Croatian civilians in 1991-92.). See MASS KILLING AND GENOCIDE IN CROATIA 1991-92: A BOOK OF EVIDENCE (Ivan Kostović and Miloš Judaš eds., 1992)). *But see* Setting The Record Straight, *supra* note 100, at <http://www.suc.org/politics/chronology/chron91.html> (last visited Mar. 22, 2001). The detailed chronology identifies problem in Borovow Selo as an armed conflict between Serbians and the Croatian police. It does not mention that any police died nor does it describe any atrocity committed. *Id.*

123. Procida, *supra* note 79, at 670.

to use its power to prevent the break up.<sup>124</sup> In May 1991, the Croatian electorate voted for independence,<sup>125</sup> and on 25 June 1991, Croatia and Slovenia declared independence.<sup>126</sup> Two days later, the Yugoslav Army commenced fighting.<sup>127</sup>

The battle began near Slovenia, the northernmost republic, but the Yugoslav Army quickly withdrew.<sup>128</sup> Historians believe that the Yugoslav Army retreated for two basic reasons. First, the Yugoslav Army units in that area underestimated the Slovenian forces.<sup>129</sup> Second, and more importantly, Milosevic had no nationalistic interest to keep Slovenia because few Serbs lived there.<sup>130</sup> Instead, he focused his military efforts in Croatia where thousands of Serbs lived.<sup>131</sup> The Yugoslav Army and local Serb militias quickly seized one-third of Croatian territory.<sup>132</sup> The Serbs then established “labor” camps in Croatia where civilians were tortured and killed.<sup>133</sup>

In 1991, the European Community and the United Nations lethargically began to address the troubles in Yugoslavia. The European Union focused on diplomatic measures, sending observers and helping implement several cease-fire agreements.<sup>134</sup> On 5 July 1991, the European Community imposed an arms embargo on all parties in the conflict.<sup>135</sup> On

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124. *Id.* at 671.

125. Cohen, *supra* note 6, at 43.

126. *Id.*

127. *Id.*

128. *Id.*

129. Stipe Sikavica, *The Army's Collapse*, in *BURN THIS HOUSE*, *supra* note 105, at 140. The Yugoslav Federal Army was unprepared to fight in Slovenia. Even though it had over twenty thousand troops in Slovenia, it used less than one tenth to prevent the secession. It used only a few tanks and no artillery or air support. In addition, the Yugoslav Federal Army soldiers who fought were experienced. In less than thirty days, the Yugoslav Army withdrew from Slovenia. *Id.*; see also Cohen, *supra* note 6, at 43.

130. Cohen, *supra* note 6, at 43. Slovenia is ninety-six percent Slovene. Almost no Serbs lived in Slovenia. *Id.* See JONATHAN EYAL, *EUROPE AND YUGOSLAVIA: LESSONS FROM A FAILURE* 3 (1993).

131. Cohen, *supra* note 6, at 44.

132. *Id.*

133. *Id.* at 46.

134. EYAL, *supra* note 130, at 30. See also S.C. Res. 713, *supra* note 84 (taking note of the cease-fire agreements signed on 17 and 22 September 1991 and strongly urging all parties to abide by the cease-fire agreements); S.C. Res. 721, U.N. SCOR, 3018th mtg., U.N. Doc. S/Res/721 (1991) (referring to another cease-fire agreement that was signed in Geneva on 23 November 1991).

135. Cohen, *supra* note 6, at 44.

25 September 1991, the Security Council passed its first resolution on the Balkans situation, strongly urging all parties to abide by cease-fire agreements, and banning the sale of weapons and military equipment to anyone in Yugoslavia.<sup>136</sup> These efforts did not stop the killing.

On 3 March 1992, Bosnia declared itself an independent state.<sup>137</sup> Yugoslav forces and Bosnian-Serbs immediately attacked cities in Bosnia to carve out a large section of territory for the Serbs.<sup>138</sup> The Bosnian-Serbs then began to “cleanse” their territory of Croats and Muslims.<sup>139</sup> Muslims and Croats were beaten, tortured, raped, and killed as the Bosnian-Serbs forced them to leave.<sup>140</sup> Muslim homes were destroyed and hundreds of mosques and Catholic churches were razed.<sup>141</sup> Croats and Muslims later responded with their own genocidal acts, though not in the magnitude committed by the Bosnian-Serbs.<sup>142</sup> “Ethnic cleansing” soon became the *mode d’affair* of the war.<sup>143</sup>

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136. S.C. Res. 713, *supra* note 84. Many scholars believe that this facially neutral measure actually helped the well-armed, Serbian-controlled Yugoslav Army. In addition, most of the weapons factories were in Serbia. Cohen, *supra* note 6, at 44; HOLBROOKE, *supra* note 87, at 30.

137. Jasminka Udovički & Ejub Šitkovic, *Bosnia and Hercegovina: The Second War*, in BURN THIS HOUSE, *supra* note 105, at 179. In the Plebiscite, the vote in favor of independence was almost unanimous. The percentage was abnormally high because the Bosnian-Serbs refused to vote to protest the independence movement. Bosnian-Serbs, comprising about thirty-five percent of the population, vehemently opposed being subject to a Croatian or Muslim-led government. *Id.*

138. See EYAL, *supra* note 130, at 64. The Croatians also claimed sections of Bosnia. Many battles ensued between the Croats and Serbs over the ownership of cities and territories. In addition, Bosnian-Serbs declared their own republic, the Republic of Srpska. Udovički & Šitkovic, *supra* note 137, at 182, 186. It is believed that the Serb forces in Bosnia received orders from Slobodan Milosevic. Michael T. Kaufman, N.Y. TIMES, July 18, 1992, at A1, *cited in* THIS TIME WE KNEW, *supra* note 6, at 3.

139. Udovički & Šitkovic, *supra* note 137, at 186. The Serbian paramilitary unit called the Tigers, led by Zeljko Raznjatović-Arkan, committed some of the worst atrocities. *Id.*

140. Cohen, *supra* note 6, at 45.

141. *Id.* at 47. In the city of Banja Luka, Bosnia, Serb forces destroyed 200 of 202 mosques and razed or damaged ninety-six percent of the Catholic churches. *Id.*

142. Cohen, *supra* note 6, at 15 (asserting that Bosnian-Serbs committed over ninety percent of the region’s genocide).

143. Thomas Cushman & Stjepan G. Meštrović, *Introduction*, in THIS TIME WE KNEW, *supra* note 6, at 14-15. The general public may believe that the battle was between armies, but most of the destruction and death was committed by military forces against civilians. *Id.* at 4.

The Serbian leadership very competently used the media to garner support and sympathy for their cause.<sup>144</sup> The government-controlled media in Serbia cleverly portrayed Serbs as victims. The Serb people were convinced that the genocide was “justified,” and many believed that nothing could be or should be done to stop it.<sup>145</sup> This message was so masterfully presented that the U.N. hesitated and postponed intervention.<sup>146</sup> On 22 May 1992, the General Assembly admitted the Republics of Slovenia, Croatia, and Bosnia-Herzegovina as members of the United Nations after considering the recommendation of the Security Council that these republics be admitted.<sup>147</sup>

In an effort to halt the genocide, the Bosnian government requested assistance from the U.N.<sup>148</sup> The Security Council knew of the continuing human rights abuses in Bosnia-Herzegovina, and in July 1992, it passed a resolution that reaffirmed individual responsibility for perpetrators who breached humanitarian law.<sup>149</sup> After receiving more reports of human rights violations, the Security Council strongly condemned ethnic cleansing and demanded that all parties end the practice.<sup>150</sup> Reports of ethnic cleansing included the murder of thousands of unarmed Muslim detainees, the use of artillery and snipers to kill innocent civilians in unguarded cities, destruction of Muslim homes, and the killing or expelling of Muslims.<sup>151</sup>

Three months later, in October of 1992, the Security Council requested from the Secretary-General a commission of experts to collect evidence of human rights abuses.<sup>152</sup> Not until February 1993, however, did the Security Council condemn ethnic cleansing as “a threat to international peace and security.”<sup>153</sup> Other than condemn the atrocities, the Security Council failed to do anything of consequence to stop the acts of

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144. *Id.* at 16, 25.

145. HOLBROOKE, *supra* note 87, at 23.

146. *See id.* at 28-30.

147. Admittance for the Republic of Slovenia is found in G.A. Res. 236, U.N. GAOR, 46th Sess., Supp. No. 49A at 5, U.N. Doc. 46/236 (1992); for the Republic of Croatia, G.A. Res. 238, U.N. GAOR, 46th Sess., Supp. No. 49A at 5, U.N. Doc. 46/238 (1992); and for the Republic of Bosnia and Herzegovina at G.A. Res. 237, U.N. GAOR, 46th Sess., Supp. No. 49A at 5, U.N. Doc. 46/237 (1992).

148. *See also* Letter dated 13 July 1992 from the Permanent Representative of Security Council, U.N. SCOR, U.N. Doc. S/24266 (1992) (explaining the Bosnian plea for U.N. intervention to prevent genocide), *cited in* Procida, *supra* note 79, at 675.

149. Procida, *supra* note 79, at 675.

150. S.C. Res. 780, U.N. SCOR. 3119th mtg., at 1, U.N. Doc. S/Res/780 (1992).

151. SUDETIC, *supra* note 89, at 229-30.

152. S.C. Res. 780, *supra* note 150, at 1.

genocide. While the Security Council established an international criminal tribunal on 22 February 1993,<sup>154</sup> the tribunal had no preventive effect on the continuing genocide.

In April 1993, the Security Council created safe areas in Bosnia designed to allow Muslims to live free from Bosnian-Serb aggression.<sup>155</sup> These safe areas, however, simply became easy targets for the Bosnian-Serb military forces.<sup>156</sup> The cycle of ethnic cleansing, cease-fire agreements, further ethnic cleansing, and international condemnations continued until August 1995 when the North Atlantic Treaty Organization (NATO) used significant force to end the genocide.<sup>157</sup>

The NATO air attacks compelled the Serbs to genuinely negotiate a peace agreement. Until the bombings, the Serbs had no reason to bargain; they were winning the battles. On 14 December 1995, the Serbs, Croats, and Muslims officially signed the Dayton Peace Accords.<sup>158</sup> The Peace Accords permitted NATO to deploy peace-enforcement forces into the region. Since then, murders against civilians have not completely stopped, but they have been drastically reduced.<sup>159</sup>

## B. Rwanda

Like the genocide in Bosnia-Herzegovina, the genocide that reddened Rwanda's soil in 1994 was based on a complex history and an unscrupulous desire of leaders to retain their power. The countries may be thousands of miles apart and have ethnic and religious differences, but they share parallel historical experiences that caused both genocides.<sup>160</sup>

Rwanda is a very small, but densely populated country in the heart of Africa. With seven million people, it has the highest population density in

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153. S.C. Res. 808, U.N. SCOR. 3175th mtg., at 2, U.N. Doc. S/Res/808 (1993). These words are significant because they place the world on notice that the Security Council believes it has the right to use its Article VII authority to intervene. *See* U.N. CHARTER art. 39.

154. S.C. Res. 808, *supra* note 153, at 2.

155. S.C. Res. 836, U.N. SCOR, 3228th mtg., U.N. Doc. S/Res/836 (1993) (reaffirming creation of safety-zones).

156. Procida, *supra* note 79, at 677.

157. HOLBROOKE, *supra* note 87, at 99-104. On 30 August 1995, Operation Deliberate Force used more than sixty aircraft to bomb pre-selected Bosnian-Serb targets. *Id.*

158. *Id.* at 321-22.

159. *Id.* at 334-59.

Africa.<sup>161</sup> Three main groups constitute Rwanda's people: the Hutu with approximately eighty-five percent of the population, the Tutsi with fifteen percent, and the Twa with the small remainder.<sup>162</sup> About 400 years ago, the Tutsi established a feudal system.<sup>163</sup> Tutsi kings ruled with absolute power. The king divided the land into different districts, and each district was sub-ruled by chiefs having three distinct responsibilities: chief of the land, chief of the agriculture (pastures), and chief of the men/soldiers.<sup>164</sup> Tutsi chiefs governed the land and men, but the Hutu were often appointed as chiefs over the agriculture.<sup>165</sup> Their system united both Tutsi and Hutu through mutual responsibilities and obligations. They lived together, spoke a common language, and even intermarried.<sup>166</sup> Their mythology and tribal religion deepened this unity and created a delicate, yet peaceful balance that lasted hundreds of years.<sup>167</sup>

The Germans, and later the Belgians, colonized Rwanda or Rwanda-Urundi as the Germans referred to it.<sup>168</sup> This colonization began to destroy the delicate balance between Tutsi and Hutu.<sup>169</sup> Both European nations believed the Tutsi to be the more intelligent and racially advanced group.<sup>170</sup> When the Tutsi began to accept Catholicism, they were given greater educational opportunities, and the Belgians favored them even

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160. MARIO I. AGUILAR, *THE RWANDA GENOCIDE AND THE CALL TO DEEPEN CHRISTIANITY IN AFRICA* (1998). In the Balkans and in many other circumstances of genocide and war, religious intolerance, competition, and hatred are at the base. Aguilar notes, however, that seventy percent of the Rwandan population was Catholic and that Christians were killing Christians. He asserts that true believers of Christianity would not commit these heinous acts of brutality and murder. Moreover, he submits that those committing acts of genocide in Rwanda only professed to be Christian, but they were not truly converted to Christ. *Id.*

161. GUY VASSALL-ADAMS, *RWANDA: AN AGENDA FOR INTERNATIONAL ACTION* 11 (1994).

162. DES FORGES, *supra* note 6, at 37.

163. VASSALL-ADAMS, *supra* note 161, at 7. The Tutsi kings governed the land area now known as Rwanda and Burundi. Burundi is directly south of Rwanda. *Id.*

164. GERARD PRUNIER, *THE RWANDA CRISIS: HISTORY OF A GENOCIDE* 11 (1995). In peaceful areas, one chief could govern the three responsibilities. In rebellious areas, three chiefs were appointed. *Id.*

165. *Id.* at 12.

166. *Id.* at 5.

167. VASSALL-ADAMS, *supra* note 161, at 7. In their mythology, Tutsi Kings were ordained from the Gods, infallible, and had to be obeyed, and the Tutsi people were superior in intelligence. *Id.*

168. *Id.* When the Germans colonized the area, they considered Rwanda and Burundi as a single state. They called the entire area Rwanda-Urundi. *Id.*

169. *Id.*

more.<sup>171</sup> Over time, Tutsi chiefs replaced all Hutu chiefs.<sup>172</sup> This and other seemingly minor changes caused a great division among them.<sup>173</sup>

In the 1950's, the U.N. pressured the Belgians to allow the people of Rwanda to elect their own government.<sup>174</sup> The Tutsi recognized that as a small minority of the population, they would most likely lose the election.<sup>175</sup> Hundreds of deaths marred the resulting elections in 1960 as the Tutsi resisted change.<sup>176</sup> Because the Hutu comprised almost eighty-five percent of the population, many were voted into office.<sup>177</sup> The newly elected Hutu mayors began to persecute the Tutsi, causing tens of thousands to flee Rwanda.<sup>178</sup> Several times over the next ten years, the Tutsi fought and lost in their pursuit to regain control.<sup>179</sup> Hutu gangs, angered by Tutsi aggression, killed many Tutsi civilians and again caused tens of thousands to flee the country.<sup>180</sup> In 1973, General Juvenal Habyarimana, a Hutu, led a military coup to overthrow a Hutu president.<sup>181</sup> The Tutsi

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170. PRUNIER, *supra* note 164, at 7. Apparently, it is easy to distinguish the Hutu—a generally short, stocky group—from the Tutsi, usually tall and thin. Mr. Prunier provides descriptions of the Hutu, Tutsi, and Twa from accounts written in the early 1900's. The description of the Tutsi is one of a superior being: "Gifted with a vivacious intelligence, the Tutsi displays a refinement of feelings which is rare among primitive people. He is a natural-born leader, capable of extreme self-control and calculated good will." *Id.* at 6.

171. *Id.* at 31. Over time when the Hutu began to join the Catholic faith, they quickly outnumbered the Tutsi in membership and number of clergy. *Id.* at 75.

172. VASSALL-ADAMS, *supra* note 161, at 8.

173. *Id.* The Belgians created labor camps. The Tutsi were supervisors and the Hutu were the laborers. The Belgians conducted a census and classified everyone with ten cows or less as Hutu. The Belgians also established a requirement that everyone have identity cards. A person's ethnic group was written on the identity card. *Id.*

174. *Id.*

175. *Id.*

176. DES FORGES, *supra* note 6, at 39.

177. PRUNIER, *supra* note 164, at 51-53.

178. *Id.* at 7. By 1964, about 336,000 Tutsi were forced to flee to neighboring countries. *Id.*

179. *Id.* at 56-58.

180. *Id.* at 74. The forced exodus of Tutsi from Rwanda caused significant pressure on the fragile governments that surrounded Rwanda. Over the years, this refugee population in the surrounding countries caused several problems. First, many Tutsi wanted to return to Rwanda, even if by force. Second, when the foreign government committed violence against the visiting Tutsi, massive numbers of Tutsi returned to Rwanda at one time. Third, the international community pressured President Habyarimana to allow the Tutsi refugees to return, which forced him to introduce unwanted change into his government. *Id.* at 73-74 and 121-58.

181. *Id.* at 75.

lost all remaining political authority under General Habyarimana,<sup>182</sup> who also strongly opposed the return of Tutsi refugees.<sup>183</sup>

Several factors increased tension in Rwanda. First, in nearby Burundi, the Tutsi-lead military retaliated against Hutu civilians causing hundreds of thousands of Hutu to flee north to Rwanda. Second, Tutsi refugees in Uganda wanted to return to Rwanda. Third, the economy in Rwanda drastically declined.<sup>184</sup>

Burundi, the southern half of Rwanda-Urundi, was another battleground between the Tutsi and Hutu. In 1962, a Tutsi military coup toppled the government and declared Burundi an independent nation.<sup>185</sup> The Tutsi were the minority in Burundi, but because they controlled the military, they controlled the government.<sup>186</sup> In 1972, a Hutu group attacked Tutsi civilians, killing 2000.<sup>187</sup> The Tutsi army retaliated and killed between 80,000 to 300,000 Hutu.<sup>188</sup> President Pierre Buyoya of Burundi, a Tutsi, initiated political reforms in 1991, and even allowed a presidential election in 1993.<sup>189</sup> His Hutu opponent, Melchior Ndadaye, won the election, but Ndadaye was then killed in a military coup.<sup>190</sup> The ensuing conflict caused from 50,000 to 200,000 Hutu and Tutsi deaths, and approximately 300,000 Hutu refugees fled to Rwanda.<sup>191</sup>

In neighboring Uganda, the police and military brutality assaulted and harassed the Tutsi refugees.<sup>192</sup> This compelled many Tutsi to devise a way to return to Rwanda.<sup>193</sup> In 1990, several thousand Rwandan Tutsi exiles formed a military group called the Rwandese Patriotic Front (RPF).<sup>194</sup> The

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182. *Id.* Under the former Hutu President, the Tutsi were able to hold a few minor offices in the government. *Id.*

183. VASSALL-ADAMS, *supra* note 161, at 10.

184. PRUNIER, *supra* note 164, at 159-62. The war in Rwanda consumed most of the local resources and forced imports and therefore debt to significantly increase. *Id.*

185. LINDA MELVERN, *A PEOPLE BETRAYED: THE ROLE OF THE WEST IN RWANDA'S GENOCIDE* 21 (2000). Before 1962, the large republics of Burundi and Rwanda were treated as one country. *Id.*

186. *Id.*

187. VASSALL-ADAMS, *supra* note 161, at 18.

188. MELVERN, *supra* note 185, at 21.

189. VASSALL-ADAMS, *supra* note 161, at 19.

190. *Id.*

191. *Id.* at 19.

192. DES FORGES, *supra* note 6, at 48.

193. *Id.*

194. PRUNIER, *supra* note 164, at 73.

RPF invaded northern Rwanda with the goal of reaching the capital city of Kigali, but they were unable to penetrate very far south.<sup>195</sup> In less than a month, they were beaten back to Uganda.<sup>196</sup>

The RPF attack caused several problems for the Tutsi living in Rwanda. First, President Habyarimana and extremist Hutus took advantage of the Hutu fear that the RPF would invade again.<sup>197</sup> Government propaganda constantly reminded the Hutu not to allow another invasion.<sup>198</sup> The propaganda also claimed that every Tutsi living in Rwanda conspired with the RPF.<sup>199</sup> All Tutsi were labeled “the enemy within.”<sup>200</sup> Second, the French government sent soldiers to Kigali in support of the Hutu Presidency.<sup>201</sup> This and other incidents caused President Habyarimana to believe that France, a permanent member of the Security Council, would support the Hutu no matter what happened.<sup>202</sup> Third, President Habyarimana increased his army from 5200 on 1 October 1990, to 30,000 by the end of 1991, and to 50,000 by mid-1992.<sup>203</sup> He also purchased a significant amount of military equipment and weapons.<sup>204</sup> Fourth, the president helped establish the Coalition for the Defense of the Republic (CDR), a Hutu organization that believed in Hutu supremacy.<sup>205</sup> The government

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195. *Id.* at 96.

196. *Id.*

197. *Id.* at 108. The Habyarimana government arrested over eight thousands supposed RPF supporters. In reality, they arrested educated Tutsi and conservative Hutu. These detainees were beaten, raped, and even killed. Only a few were ever charged with a crime, and only a handful received trials. *Id.* at 108-09.

198. DES FORGES, *supra* note 6, at 66. Government-controlled Radio Rwanda was the only radio station in Rwanda until 1990. It was actively involved in the anti-Tutsi propaganda. *Id.* See MELVERN, *supra* note 185, at 85. After 1990, Radio-Télévision Libre des Mille Collines (RTLNC), another government-controlled radio station was established and broadcast propaganda. *Id.*

199. *Id.* at 74. The propaganda also alleged that Tutsi were “infiltrating” into Hutu political parties, and that Tutsi civilians were taking Hutu jobs. *Id.*

200. VASSALL-ADAMS, *supra* note 161, at 23.

201. PRUNIER, *supra* note 164, at 106.

202. *Id.*

203. *Id.* at 113.

204. VASSALL-ADAMS, *supra* note 161, at 27. It is estimated that the Rwandan government purchased over \$12 million dollars worth of arms. *Id.*

205. *Id.* at 23. *But see* DES FORGES, *supra* note 6, at 52-53 (stating the belief that the CDR was established without President Habyarimana’s assistance, but later supported him).

encouraged this group and another Hutu political organization to form militias.<sup>206</sup>

Human rights abuses inflicted upon the Tutsi by the Habyarimana government did not go unnoticed. In 1992, several human rights non-governmental organizations (NGOs) wrote about numerous human rights violations committed by the Habyarimana government.<sup>207</sup> Amnesty International documented the extrajudicial execution of over 1000 Tutsi civilians.<sup>208</sup> Even after other atrocities were committed, no one was prosecuted for the human rights abuses.<sup>209</sup>

International pressure “forced” President Habyarimana and the RPF to meet and subsequently sign a peace accord, the Arrusha Accords, in August 1993.<sup>210</sup> The Arrusha Accords required the Rwandan government to implement significant reforms.<sup>211</sup> Some of these included the requirement that Tutsi and members of the RPF be integrated into the government and the military.<sup>212</sup> The pro-nationalist Hutus did not gladly accept the Accords.<sup>213</sup>

In response to the Secretary-General’s request that the U.N. help implement the Accords, the Security Council passed Resolution 872 on 5 October 1993, creating the U.N. Assistance Mission for Rwanda (UNAMIR).<sup>214</sup> The UNAMIR was given the mission to monitor the situation in Rwanda, provide minor security, assist repatriation of refugees, clear mines, coordinate humanitarian assistance, and investigate non-com-

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206. *Id.*

207. VASSALL-ADAMS, *supra* note 161, at 25. African Watch and Amnesty International listed numerous human rights violations since 1990. *Id.*

208. DES FORGES, *supra* note 6, at 91.

209. VASSALL-ADAMS, *supra* note 161, at 25.

210. MELVERN, *supra* note 185, at 52. It took over thirteen months to convince the parties to sign the Arrusha Accords in August 1993. The success occurred because of combined efforts of the United States, Belgium, and the Organization of African Unity. *Id.*

211. *Id.*

212. *Id.* The Arrusha Accords required the creation of a transitional government that would include leaders from the RPF. This commission would oversee the return of refugees and ensure their protection. *Id.* See VASSALL-ADAMS, *supra* note 161, at 24. The Accords also provided that the RPF would be integrated into the armed forces with forty percent of the new soldiers and fifty percent of the commanders. Legislative and parliamentary elections were to be held in 1995. *Id.*

213. MELVERN, *supra* note 185, at 53-55. The Accords troubled many Hutu. Colonel Theoneste Bagosora, a Hutu army colonel who had attended the negotiations, was especially angered and left the negotiations early. *Id.*

214. S.C. Res. 872, U.N. SCOR. 3288th mtg., at 2, U.N. Doc. S/Res/872 (1992).

pliance.<sup>215</sup> When the U.N. troops arrived in October 1993, it was clear that many of the provisions of the Accord were not being followed.<sup>216</sup> In addition, radio stations partly owned by the Habyarimana family and the CDR continued broadcasting that all Tutsi in Rwanda deserved to die because they supported the RPF's treacherous return.<sup>217</sup>

In 1993 and 1994, the Habyarimana military began to equip and train Hutu militias.<sup>218</sup> It also formulated death lists.<sup>219</sup> By March 1994, the UNAMIR consisted of 2539 soldiers.<sup>220</sup> Despite the U.N.'s presence, the violence increased, and actions by pro-Hutu forces prevented UNAMIR from accomplishing its mission.<sup>221</sup> In April 1994, the six-month mission of UNAMIR was to end. Even though violence was increasing and the UNAMIR commander, General Romeo Dallaire, warned his superiors of the potential massacre, the Security Council sought to reduce the UNAMIR forces to save money.<sup>222</sup>

Propaganda and unchecked violence by Hutu militias continuously fueled the suffocating atmosphere of anger and hate, making the situation ripe for catastrophe.<sup>223</sup> On 6 April 1994, two anti-aircraft missiles shot down the plane carrying President Habyarimana and the Burundi President

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215. *Id.*

216. VASSALL-ADAMS, *supra* note 161, at 29. Neither the new government nor the Parliament was in place.

217. *Id.* A new radio station called the RTLMC pronounced messages of anti-Tutsi and anti-Arusha messages. Its propaganda argued that the Tutsi must die. Several Belgian officials, including the Belgian Ambassador in Kigali, recognized the destructive nature of the messages. MELVERN, *supra* note 185, at 70-72.

218. VASSALL-ADAMS, *supra* note 161, at 30; DES FORGES, *supra* note 6, at 104-09. After the genocide, a small book of Colonel Bagosora's was found. It described the methodology of his "civilian self-defense" plan in which the local police officers were to train militias. Colonel Bagosora even listed the number of weapons and hand grenades needed for each group. *Id.*

219. VASSALL-ADAMS, *supra* note 161, at 30; DES FORGES, *supra* note 6, at 205. The leaders notified the militias to kill specific individuals, both Tutsi and Hutu, and Tutsi in general. The targeted individuals were those who had certain authority or ability to stop the massacres. DES FORGES, *supra* note 6, at 205.

220. *Id.* Over twenty-four countries provided soldiers. Bangladesh provided the most with 942, and Ghana was second with 843. *Id.*

221. MELVERN, *supra* note 185, at 96; PRUNIER, *supra* note 164, at 204-09.

222. VASSALL-ADAMS, *supra* note 161, at 31; *see* DES FORGES, *supra* note 6, at 18, 141-79 (describing in detail a chronology of events occurring from November 1993 to April 1994 before the genocide ignited). Vassall-Adams strongly believes that the warning signals were evident and recognized, and that the Secretary-General and the Security Council were notified of the warnings before 7 April. *Id.*

223. DES FORGES, *supra* note 6, at 18, 141-79.

just before it landed in Kigali.<sup>224</sup> The perpetrator's identity was and remains unknown; however, the Hutus immediately blamed the Belgians and the RPF.<sup>225</sup> Rwandan media broadcast that the RPF killed the president and was planning to kill the Hutu people.<sup>226</sup> In Kigali, the Hutu militias went immediately from house-to-house to find and kill Tutsi.<sup>227</sup> Tutsi men, women, and children were butchered with machetes and clubs.<sup>228</sup> No Tutsi was spared.<sup>229</sup> Even Hutu were killed if they tried to protect a Tutsi.<sup>230</sup> The RPF tried to protect the Tutsi civilians, but their numbers in Kigali were few<sup>231</sup> because their main presence was in the north.<sup>232</sup>

After ten Belgian peacekeepers were killed, Belgium removed all its UNAMIR soldiers and civilians from Rwanda.<sup>233</sup> On 21 April 1994, the Security Council reduced UNAMIR to 270 troops.<sup>234</sup> The United States and the United Kingdom may have played a role in the reduction because they constantly strived to cut or reduce the resources for the mission.<sup>235</sup> Numerous human rights organizations and many of the African nations opposed the decision to reduce the U.N. troops.<sup>236</sup> With only one-tenth of their original number, the UNAMIR troops were given the impossible mission to attempt to secure a cease-fire, act as intermediaries between the RPF and the Hutu, and monitor the safety and security of Rwandans who sought refuge with the UNAMIR.<sup>237</sup> The massacres increased and began to spread to the south and west.

The systematic genocide continued in an eerie, robotic-like manner.<sup>238</sup> The propaganda of hate and fear worked.<sup>239</sup> Murderous gangs combed the cities and countryside to search for Tutsi and to loot.<sup>240</sup> As the situation grew increasingly dim, the Security Council passed Resolution

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224. *Id.* at 181.

225. PRUNIER, *supra* note 164, at 205-12; VASSALL-ADAMS, *supra* note 161, at 32.

226. PRUNIER, *supra* note 164, at 220-23.

227. *Id.* at 224; DES FORGES, *supra* note 6, at 208.

228. DES FORGES, *supra* note 6, at 207-14. *See* PRUNIER, *supra* note 164, at 231 (noting that even priests and nuns were killed if they tried to stop the killing).

229. PRUNIER, *supra* note 164, at 231.

230. *Id.*

231. *Id.* at 223.

232. VASSALL-ADAMS, *supra* note 161, at 34.

233. *Id.* at 35.

234. PRUNIER, *supra* note 164, at 275. *See also* S.C. Res. 912, U.N. SCOR. 3368th mtg., at 2, U.N. Doc. S/Res/912 (1994).

235. MELVERN, *supra* note 185, at 93, 133.

236. VASSALL-ADAMS, *supra* note 161, at 36.

237. S.C. Res. 912, *supra* note 234, at 2.

918 to create UNAMIR II.<sup>241</sup> At its inception, however, none of the permanent five members of the Security Council provided troops for this new mission.<sup>242</sup> With little support, UNAMIR II floundered and additional U.N. forces did not arrive until after the genocide was over.

The genocide in Rwanda ended due to military intervention, but the military force was not from the U.N., the United States, or the European Union.<sup>243</sup> The RPF, who the Habyarimana government had demonized, launched a major offensive from the north that ended the slaughter.<sup>244</sup> By the time the RPF forces were finally able to stop the genocide, the Hutu militias had butchered over 600,000 unarmed Tutsi civilians.<sup>245</sup> The geno-

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238. ROSAMOND HALSEY CARR, *LAND OF A THOUSAND HILLS: MY LIFE IN RWANDA* 207 (1998). Carr had several Tutsi workers, and Hutus came to her house to find and kill the Tutsi workers. At first they found none, so they left. They later returned and asked for only one person because they had already killed the other workers. Ms. Carr said, "You don't mind killing old women. If you want to kill someone, here I am. Kill me. They looked at me in horror and said, 'Oh, no. Madame!'" *Id.*

239. VASSALL-ADAMS, *supra* note 161, at 33. The author provides one eyewitness account of a lady who worked in a Catholic mission. When she tried to reason with several Hutus to stop the killings, the Hutu militiamen explained their mission. "The Tutsi had murdered the President and were trying to take over the country by force, so Tutsi had to die." *Id.*

240. *Id.*

241. VASSALL-ADAMS, *supra* note 161, at 43; S.C. Res. 918, U.N. SCOR. 3377th mtg., at 2, U.N. Doc. S/Res/918 (1994).

242. VASSALL-ADAMS, *supra* note 161, at 44. In September 1994, when UNAMIR II forces reached 4167 personnel in Rwanda, it consisted of 606 soldiers from the United Kingdom, but no soldiers were sent from the United States, Russia, China, or France. France, however, coordinated troops from several African countries for its own humanitarian mission. *Id.*

243. DES FORGES, *supra* note 6, at 692.

244. *Id.* The RPF saved thousands more from being slaughtered. The RPF targeted Hutu, but were focused more on ending the massacre than inflicting revenge. *Id.* at 692-98.

245. DES FORGES, *supra* note 6, at 15. The number of Tutsi slaughtered represents almost seventy-five percent of the Tutsi living in Rwanda. VASSALL-ADAMS, *supra* note 161, at 44. Extremist Hutus labeled the thousands of Hutu moderates that were also killed in the slaughter as co-conspirators with the Tutsi. The Hutu beat, tortured and murdered their victims with guns, machetes, rocks, and clubs. *Id.*

cide took less than 100 days.<sup>246</sup> Not even the gas chambers and crematoriums of the Holocaust annihilated human life so quickly.<sup>247</sup>

## V. Analysis

### A. Similarities and Distinctive Characteristics of the Genocides in Bosnia and Rwanda

To formulate a solution to genocide, it is necessary to discern the common causes and distinctive characteristics that preceded the killings.<sup>248</sup> The precursors to the genocides in Bosnia and Rwanda were very similar. The likelihood of preventing genocide increases if the international community recognizes and understands these indicators, and then intervenes in a timely and appropriate manner.

#### *1. The Existence of Distinctive Groups that Generally Vote or Believe as a Group*

The existence of distinct groups that generally vote or believe as groups provides a very basic indicator that cannot be overlooked.<sup>249</sup> If racial or ethnic groups become so intertwined with the general population that they do not vote or believe independently, then conflicts between groups are unlikely to occur. On the other hand, even if racial or ethnic

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246. DES FORGES, *supra* note 6, at 1.

247. MELVERN, *supra* note 185, at 4. The rate of slaughter was five times greater in Rwanda than in Nazi Germany during the holocaust. *Id.* "It was the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki." PHILIP GOUREVITCH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA* 3 (1998).

248. Gurr, *supra* note 21, at 136 (providing basic principles to identify risks, and citing additional sources that have conducted statistical analyses and case studies).

249. The conjunction "or" is specifically used in this sentence because many nations will not permit their citizens to vote. *See* RUMMEL, *supra* note 3, at 1. Genocide definitely occurs in nations where the citizens may not vote. In fact, the greatest number of deaths due to genocide occurred in non-democratic nations. *Id.* *See* Gurr, *supra* note 21, at 139-40.

groups vote or believe as one, this does not necessarily mean that genocide will occur. It only connotes that defined demarcations exist.<sup>250</sup>

In Bosnia-Herzegovina, even though the Muslims, Croats, and Serbs intermarried, a large portion of each group existed separately.<sup>251</sup> They may have descended from the same racial lineage, but they distinguished themselves by religion, and that became the ethnic division. This religious fervor clearly divided them, and as seen in the plebiscites for independence, the groups voted along their religious and ethnic lines. When the parliament of Croatia voted for independence, the Croat representatives voted unanimously for it while the Serb representatives left the meeting in protest.<sup>252</sup> In Bosnia-Herzegovina's vote for independence, the Muslims and the Croats overwhelmingly approved the idea.<sup>253</sup> The Bosnian-Serbs passionately opposed it, and refused to vote.

In Rwanda, the ethnic and physical differences between the Tutsi and Hutu were clearly evident. Even foreigners could distinguish them from afar.<sup>254</sup> Some intermarried, but overall they remained in separate groups. Their political differences were unmistakable.<sup>255</sup> The Hutu wanted a Hutu-lead government, while the Tutsi sought Tutsi leadership. One significant difference between Bosnia and Rwanda was that in Rwanda, the Hutu and Tutsi shared similar religious affiliations. Over seventy percent of the Rwandan population was Catholic.<sup>256</sup>

## 2. *A History of Genocide or Hatred Between the Groups (Whether Recent or Ancient)*

A history of genocide, whether recent or ancient, can be a powerful tool for those planning to commit or orchestrate genocide. Perpetrators of genocide build support for their cause by reminding their group of past atrocities committed against them. By constantly focusing on past brutality and injustice, the perpetrators foster feelings of fear and anger. These strong emotions can then be forged into forceful nationalistic feelings that

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250. See Gurr, *supra* note 21, at 139-40.

251. See *supra* notes 104-09 and accompanying text.

252. Ejub Štitkovic, *Croatia: The First War*, in BURN THIS HOUSE, *supra* note 105, at 160.

253. See *supra* note 137.

254. See *supra* note 170.

255. See *supra* notes 174-83 and accompanying text.

256. See *supra* note 160.

lead to genocide based on “self-defense” (kill them before they kill us) or revenge.

In Bosnia-Herzegovina, the Catholic Croats and the Muslims fought the Orthodox Serbs in the distant and recent past.<sup>257</sup> The Serbs focused their hatred on their infamous defeat by the Muslims on 28 June 1389, and on the atrocities committed by the Croats and Muslim *Ustashe* during WWII. The Croats and the Muslims remembered the Serbs’ cruelty at the end of WWII when the Serbs carried out their “blood vengeance” against Croats and Muslims.

In Rwanda, the Tutsi and Hutu lived together peacefully for hundreds of years.<sup>258</sup> It was not until the late nineteenth and early twentieth centuries that their ethnic differences collided. In the last forty years, the ethnic clashes have caused the deaths of over one million Hutu and Tutsi. In fact, enormous numbers of Hutu and Tutsi were killed only two to three years before the massive genocide of 1994.<sup>259</sup>

A history of genocide or extreme aggression against another group, however, should not paralyze the response of the international community. This bloody history should be recognized as an indicator of genocide, not an excuse for inaction.<sup>260</sup>

### 3. *One Group Desires Independence*

Independence movements create significant disputes between the group in power and the group seeking independence.<sup>261</sup> The situation can lead to crisis and possibly have a genocidal outcome if either side uses weapons.<sup>262</sup> If the seceding group uses no military force and the government engages military forces to oppose and extinguish the secession, the military may end up killing civilians. Though this may not be genocide, it could lead to genocide or genocidal acts if the military systematically tries to destroy the group.<sup>263</sup> The volatility and danger of the situation significantly escalates when the “rebellious” minority seeks independence

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257. See *supra* notes 89-103 and accompanying text.

258. See *supra* note 167.

259. See *supra* notes 174-91 and accompanying text.

260. KUPER, *supra* note 17, at 56.

261. *Id.* at 44.

262. Gurr, *supra* note 21, at 142-43.

263. Genocide Convention, *supra* note 4, art. 2.

through military means.<sup>264</sup> Both sides may then try to win through genocide.

In the Balkans, the republics of Slovenia, Croatia, and Bosnia all voted for independence. None of them wanted to remain a subordinate unit of the Serbian-lead Republic of Yugoslavia. To diffuse the rebellion, the Yugoslav Army attacked and killed civilians.<sup>265</sup> In Bosnia, the Muslims and the Croats wanted independence, but the Bosnian-Serbs vehemently opposed it.<sup>266</sup> The Serbian separatists initiated an independence movement within the Bosnian independence movement,<sup>267</sup> and the Bosnian-Serbs claimed a specific territory and called it "Srpska." To create an "ideal" Republic of Srpska, they systematically used genocide to cleanse their new country of Muslims.<sup>268</sup>

In Rwanda, the struggle for political power was undeniable. The Tutsi may not have voted for independence in Rwanda, but they did create the independent nation of Burundi.<sup>269</sup>

#### 4. *An Economic Recession or Imbalance*

Economic instability may cause a strain on the racial or ethnic relationships. It was not a significant indicator in the Bosnian genocide, but it did play a role in Rwanda. Rwanda is an extremely small country, and the economy was not functioning well.<sup>270</sup> The government-controlled radio station warned the Hutu that the Tutsi would try to take their jobs.<sup>271</sup> In addition, the influx of hundreds of thousands of Hutu from Burundi placed a great strain on their fragile economy.

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264. Gurr, *supra* note 21, at 141-42 (containing a list of "Rebellious Groups at Highest Risk of Victimization").

265. *See supra* note 133.

266. Udovički & Štitkovic, *supra* note 137, at 180.

267. *Id.* at 186.

268. *Id.*

269. *See supra* notes 185-91 and accompanying text.

270. MELVERN, *supra* note 185, at 7.

271. *See supra* note 199.

5. *The Group in Power Publishes Messages of Hate and the Need to Kill the Other Group*

The media has a substantial effect; it can influence people for good and for evil.<sup>272</sup> Propagating hate is extremely divisive, and if it encourages genocide, it is a punishable act under the Genocide Convention.<sup>273</sup>

The Serbs claimed that they did not publish messages of hate in the media.<sup>274</sup> They discernibly disseminated the idea of a greater Serbia, however, and they often reminded the Serb people that the Croats and Muslims were going to treat them like the *Ustashe* did during WWII.<sup>275</sup> This constant reminder created a fear that definitely affected the Serb population. The Serb people apparently believed the messages printed by their government, and they seemingly supported the cold-blooded murders of civilian women and children.<sup>276</sup>

In Rwanda, the government's propaganda of hate and the necessity to kill the Tutsi was obvious.<sup>277</sup> The government-controlled radio station frequently instilled hate and fear in the Hutu, telling them that the Tutsi were the cause of their problems. The Hutu seemed convinced that if they did not kill the Tutsi first, the Tutsi would kill them. The propaganda indelibly implanted the message of fear; when the President's plane was shot down, the Hutu believed the Tutsi caused it, so the Tutsi deserved to die.<sup>278</sup> Hutu militiamen were so convinced that they even killed Hutu who tried to stop

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272. Michael J. O'Neill, *Preventive Diplomacy and the Media*, in PREVENTIVE DIPLOMACY, *supra* note 7, at 75. An example of the influence media has on people and political leaders relates to the Kurds in Northern Iraq. The plight of the Kurds has been around for years, yet after the Gulf War, the media focused on the difficulties the Kurds faced as the Iraqis attacked them and forced them to leave their homes. Television constantly displayed their tragedy. In a short time, the world pressured the Western leaders to intervene, even if reluctantly. The United States then deployed troops to Northern Iraq to help protect the Kurds. *Id.*

273. Genocide Convention, *supra* note 4, art. 3(c). See also 1985 Special Rapporteur, *supra* note 2, at 23 (detailing how propaganda to incite genocide is punishable and that many national laws also prohibit public statements to incite hatred towards a racial, ethnic, or religious group).

274. ZIVOYA IVANOVIĆ, *MEDIA WARFARE: THE SERBS IN FOCUS* (1995). The Serbians considered the conflict a civil war and that the murders, or "ethnic cleansings," were not caused by one ethnic group alone, but by individuals of each warring faction. They also believed that Western media was completely biased against the Serbs. *Id.*

275. See *supra* note 116 and accompanying text.

276. *Id.*

277. See *supra* notes 198-200 and accompanying text.

278. See *supra* notes 224-26 and accompanying text.

the genocide. One commentator wrote of the government's propaganda effort:

But the willingness of the ordinary rank-and-file person to enter the deadly fray cannot be accounted for by material interests. Ideas and myths can kill, and their manipulation by elite leaders for their own material benefit does not change the fact that in order to operate they first have to be implanted into the souls of men.<sup>279</sup>

*6. Genocide First Occurs on a Small Scale, as if to See if the International Community Will Intervene*

Perpetrators often systematically kill a small portion of the hated group, then they pause. If their government or the international community does nothing substantial to stop the crimes, the murders recommence and the death toll rapidly escalates. This is a significant early warning indicator.

The Serbs "tested the water" in 1991 when they tortured and killed Croats in so-called labor camps. In 1992, when the Bosnian-Serbs instigated their ethnic cleansing campaign against the Muslims, the Serbs began to torture, rape, and kill innocent civilians. The atrocities brought no international wrath and no painful sanctions, only verbal condemnations. Because the Muslims and the Croats were unable to stop the Bosnian-Serbs, and the international community did not seem to care, the genocide simply accelerated.<sup>280</sup>

For over three years in Rwanda, small militias and Hutu thugs beat, tortured, and killed Tutsi civilians and stole their goods.<sup>281</sup> Yet the government of Rwanda did nothing.<sup>282</sup> Even if Rwandan laws did not specifically prohibit genocide, its criminal code would surely have prohibited assault, rape, and murder. No Hutu was arrested, however, and no Hutu was tried for committing obvious criminal misconduct.<sup>283</sup> The Security Council voiced its grave concern about the violence in March 1993, but its resolu-

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279. PRUNIER, *supra* note 164, at 40.

280. *See supra* notes 128-54 and accompanying text.

281. DES FORGES, *supra* note 6, at 87.

282. *Id.* at 91.

283. *Id.*

tion did nothing more.<sup>284</sup> For Hutu thugs, who relished killing Tutsi civilians, the Security Council's expression of concern had no effect. The killings continued.

### 7. *Failure of the National and Local Governments*

National governments commit or contribute to genocide in three significant ways. First, the government leader may be the architect of the genocide. This scenario is more likely to occur when the government leader has total control over all aspects of the government.<sup>285</sup> In fact, genocide most often occurs when the head of state has complete control of the government as with communist or totalitarian regimes.<sup>286</sup> Second, the government may acquiesce to genocide because it neither aids the murders nor stops them, but this situation occurs infrequently. Third, the national government may be either inexperienced or inept, and therefore unable to arrest and prosecute the perpetrators of genocide. This happens when the government is newly formed or unable to control the military or police force, and when the nation has a nonfunctioning judiciary.<sup>287</sup>

In Bosnia-Herzegovina, the Serb leadership supported the ethnic cleansing.<sup>288</sup> In addition, the newly formed government of Bosnia-Herzegovina was unable to prevent or arrest the Bosnian-Serb forces committing the ethnic cleansing.<sup>289</sup> In Rwanda, President Habyarimana's government and his political party clearly planned and orchestrated the genocide.

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284. S.C. Res. 812, U.N. SCOR. 3183rd mtg., at 1, U.N. Doc. S/Res/812 (1993).

285. Gurr, *supra* note 21, at 139. Democratic societies are less likely to commit acts of genocide. They may discriminate against a minority, but they tend to resolve problems through a generally peaceful political process as minorities join to form political coalitions. *Id.* See KUPER, *supra* note 17, at 102.

286. RUMMEL, *supra* note 3, at 2.

Power kills; absolute Power kills absolutely . . . . The more power a government has, the more it can act arbitrarily according to the whims and desires of the elite, and the more it will make war on others and the more it will make war on others and murder its foreign and domestic subjects . . . . [T]otalitarian communist governments slaughter their people by the tens of millions; in contrast, many democracies can barely bring themselves to execute even serial murderers.

*Id.* at 1-2

287. See Udovički & Šitkovic, *supra* note 137, at 180, 186.

288. *Id.* at 180.

289. See *id.* at 186.

Colonel Bagorosa of the Rwandan military was one of the leading architects of the slaughter by the Hutus.<sup>290</sup> Moreover, even if the government did not specifically coordinate some murders, it did not arrest or prosecute any of the perpetrators either.<sup>291</sup>

#### B. The Genocide Convention: Why It Failed to Prevent Genocide in Bosnia-Herzegovina and in Rwanda and Why It Will Fail in the Future if Not Modified

Several commentators have written about the effectiveness and deficiencies of the Genocide Convention.<sup>292</sup> This section focuses on the Convention's shortcomings when a government causes genocide or acquiesces to genocide through its inaction.

The Genocide Convention encourages states to enact anti-genocide legislation, yet it lacks authority to enforce either local or international criminal jurisdiction. Thus, when governments cause genocide, the Genocide Convention falls short.<sup>293</sup> The international community must understand this deficiency and find a solution because the military of the victim's own country, with the clear support of the government, most often commits genocide.<sup>294</sup>

Condemning genocide and preventing it are two completely different issues. The Genocide Convention effectively condemns genocide and acts of genocide, but it places the responsibility on states to pass laws that prohibit genocide and punish perpetrators. The Convention does not require states to enact laws condemning and punishing perpetrators of genocide.<sup>295</sup>

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290. MELVERN, *supra* note 185, at 61-68.

291. DES FORGES, *supra* note 6, at 91.

292. Lippman, *supra* note 12, at 45; Lawrence J. LeBlanc, *The United Nations Genocide Convention and Political Groups: Should the United States Propose an Amendment?*, 13 YALE J. INT'L L. 268, 269 (1988) (voicing concern that the Genocide Convention does not include political groups as one of the stated groups in the definition of genocide).

293. See KUPER, *supra* note 17, at 195-208.

294. *Id.*

295. *Id.* at 14. It should be remembered that most countries have penal codes that prohibit murder, rape, and torture. If used, these laws would condemn a perpetrator of genocide because the perpetrator commits murder, rape, battery, and related crimes. See generally *id.* at 15. The United States did not enact anti-genocide legislation until 1986. See *supra* note 10.

Even if all states enacted laws prohibiting genocide, however, this is not enough. The Genocide Convention cannot enforce local law. If state officials and their judiciary do not enforce domestic laws, the Convention remains impotent.<sup>296</sup> The Convention does not require police to arrest individual perpetrators of genocide, nor is it able to force judges to hear cases of genocide or to adjudicate them correctly.

The Genocide Convention also has no authority to compel a nation to accept jurisdiction of an international court or to compel its citizens to accept the jurisdiction of an international criminal court.<sup>297</sup> It is unlikely that a political leader will freely submit to the jurisdiction of an international criminal court while in power. When wide-scale genocide occurs, it suggests that the perpetrators are winning. A leader who incites anger and hatred that causes his people to commit unthinkable atrocities against another group is not going to suddenly stop and admit wrongdoing. Moreover, the Genocide Convention does nothing to coerce or convince the leader to stop and submit to the jurisdiction of an international court.

In Bosnia and Rwanda, no invading foreign force committed the genocide; military forces from within their respective countries committed the atrocities. The Federal Republic of Yugoslavia was one of the original parties of the Genocide Convention. Yugoslavia specifically notified the U.N. that Bosnia could not be a party to the Genocide Convention, but considered it bound by the Convention's requirements. Still, Serb military forces committed genocide.<sup>298</sup> Rwanda acceded to the Genocide Convention in 1975. In Rwanda, Hutu militias and gangs murdered thousands of innocent Tutsi civilians before the massive genocidal slaughter in 1994. President Habyarimana knew that the genocide and acts of genocide were desecrating his country. He did nothing to stop it, and the Genocide Convention was unable to prevent it, require prosecution, or help prosecute anyone. Perpetrators thus ignore the Convention with impunity due to its lack of any enforcement mechanism.

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296. KUPER, *supra* note 17, at 14.

297. *See generally* Genocide Convention, *supra* note 4.

298. *See supra* note 13.

C. Deficiencies in the Current Process Used by the U.N. and Security Council to Prevent Genocide

Many writers and political officials blame the U.N. and the West for their failure to intervene in a timely and effective manner to prevent the deaths in Bosnia and Rwanda.<sup>299</sup> Analyzing the events leading up to the genocides in Bosnia and Rwanda reveals six basic factors that delayed and weakened the U.N.'s intervention.

*1. Personal Interests of the Members of the Security Council*

The Security Council consists of representatives from fifteen different nations. Each nation has different goals, beliefs, agendas, and treaties.<sup>300</sup> Each nation has unique allies, economic partners, and other ties. A member of the Security Council is much more likely to veto a decision if it will adversely affect one of its allies.<sup>301</sup> Unanimous decisions or consensus on many complicated issues have been difficult to obtain.<sup>302</sup>

In Bosnia-Herzegovina, members of the Security Council stood by their historical allies. In World War II, Russia and the West allied themselves with the Serbs, and Russia has been a close ally with the Serbs ever since. On the other hand, Croatia was Germany's ally. Even though Germany is not a permanent member of the Security Council, it is an influential member of the European Union. Both France and England, permanent members of the Security Council, are members of the European Union. Many considered Germany's influence the motivating force that con-

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299. MELVERN, *supra* note 185, at 236; Jean Baudrillard, *When the West Stands for the Dead*, in *THIS TIME WE KNEW*, *supra* note 6, at 87-89. See also Cushman & Meštrović, *supra* note 143, at 20.

300. KUPER, *supra* note 17, at 55. Kuper gives an example of the Security Council's inability to agree on a solution to end the conflict between India and Pakistan in 1971 and 1972. This was based on conflicted interests between the permanent members of the Security Council. The United States favored Pakistan, the Soviet Union had a treaty with India, and China was antagonistic toward both the Soviet Union and India. *Id.*

301. *Id.* at 55.

302. *Id.* at 53, 57.

vinced the Security Council, and thus the U.N., to grant official nation-state status to Croatia and Bosnia-Herzegovina.<sup>303</sup>

In Rwanda, France personally involved itself by sending troops to Rwanda. It supported President Habyarimana's government. This influence may have caused the Security Council to focus more on the Tutsi RPF forces invading Rwanda than on the Hutu militias committing genocide.

### *2. Disinterest of the Members of the Security Council*

If the Security Council is not interested in a nation, little will be done to prevent or end genocide that occurs there. Disinterest exists for several reasons.<sup>304</sup> In general, most nations do not worry about problems that occur far from their borders.<sup>305</sup> Some authors argue that the West is unconcerned when conflict arises in African nations or that the Security Council is ambivalent if Muslims are the victims of the genocide.<sup>306</sup> Rwanda is a small African nation far away from all permanent Security Council members. Even if an enormous battle engulfed Rwanda, it would have little to no effect on the nations comprising the Security Council.

### *3. Aversion to Intervene in Internal Matters of a Sovereign Nation*

The U.N. Charter recognizes that each state has rights to sovereignty and should manage its domestic issues without international intervention.<sup>307</sup> The governing bodies of the U.N. clearly understand the principle of sovereignty.<sup>308</sup> Most nations do not want the U.N. or any international body to intervene unless requested.<sup>309</sup> Nevertheless, the Charter allows the

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303. HOLBROOKE, *supra* note 87, at 31.

304. Mohammed Bedjaoui, *Preventive Diplomacy: Development, Education, and Human Rights*, in PREVENTIVE DIPLOMACY, *supra* note 7, at 38-39.

305. *Id.* at 39.

306. Cushman & Meštrović, *supra* note 143, at 4-5.

307. U.N. CHARTER art. 2, para. 7.

308. Kenneth Hackett, *The Role of International NGO's in Preventing Conflict*, in PREVENTIVE DIPLOMACY, *supra* note 7, at 22.

309. KUPER, *supra* note 17, at 98. One reason the United States did not ratify the Genocide Convention was a fear of international interference into domestic issues. *Id.*

Security Council to intervene under the enforcement provisions in Chapter VII of the Charter.<sup>310</sup>

*4. Belief that the Groups Were Reciprocating Deeply Engrained Hatred or Prior Genocidal Acts*

Both Bosnia-Herzegovina and Rwanda have histories of genocide. In Bosnia-Herzegovina, genocide last occurred in the 1940's, and the news media from Serbia and the West reminded the world of this fact in the 1990's. Some leaders incorrectly believed that the hatred was so deeply engrained that no outside force could end the bloodshed.<sup>311</sup> In addition, the media mentioned a few current minor atrocities committed against the Serbs.<sup>312</sup> This caused the world to question who was at fault.<sup>313</sup> In Rwanda, by comparison, genocide happened only a few years earlier. In that case, the Tutsi killed Hutu civilians.

It is important for the U.N., especially the Security Council, to recognize that prior genocidal acts presage future genocide. Evidence of past genocides, however, should not confuse or paralyze U.N. actions. If the Security Council intervenes, it can end the cycle of genocide; otherwise, continuing mass atrocities simply enrage the victims and cause them to seek revenge.

*5. Desire to End the Conflict Peacefully as a "Neutral" Intermediary*

The basic purposes of the U.N. are to maintain international peace, prevent threats of peace, and end acts of aggression.<sup>314</sup> The U.N. Charter

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310. U.N. CHARTER art. 2, para. 7.

311. HOLBROOKE, *supra* note 87, at 23. The author quoted Lawrence Eagleburger, former American Ambassador to Yugoslavia:

I have said this 38,000 times, and I have to say this to the people of this country as well. This tragedy is not something that can be settled from outside and it's about damn well time that everybody understood that. Until the Bosnians, Serbs, and Croats decide to stop killing each other, there is nothing the outside world can do about it.

*Id.*

312. See Cushman & Meštrović, *supra* note 143, at 21-27.

313. *Id.* at 21.

314. U.N. CHARTER art. 1.

clearly recommends that these purposes be accomplished “by peaceful means.”<sup>315</sup> When describing the authority of the Security Council, the Charter also begins with and focuses on peaceful means to end disputes.<sup>316</sup> Therefore, the Security Council carefully analyzes a crisis before deploying forces into a sovereign nation.

Initially, the U.N. attempted diplomatic actions in Bosnia, and it carefully avoided the appearance of taking sides in the conflict. When the U.N. arms embargo was initiated, it prevented arms from being sold to any of the parties. When the U.N. finally deployed peacekeeping troops to protect several areas, their mandate required neutrality. When the Bosnian-Serbs attacked these “safe-areas,” the U.N. soldiers were concerned for their own safety as well as the noncombatants’.<sup>317</sup> The U.N. “neutrality” definitely did not help the situation, and meaningful negotiations with the Serbs were difficult to obtain as a result. The Serbs had no reason to negotiate or comply with the U.N. because they were winning. Only the later NATO bombardments could force the Serbs to the negotiation table.<sup>318</sup>

Rwanda suffered the same fate because U.N. neutrality seemed to cause more harm than good. The resulting genocide was worse, however, because the U.N. reduced UNAMIR forces instead of increasing them when the Rwandan crisis erupted.<sup>319</sup>

Lessons can be drawn from both genocides. In Bosnia and Rwanda, the identity of the murderers and their political sources was evident. Political leaders who orchestrated the genocides in both nations either would not sign agreements or would not fulfill those they had signed as long as genocide was serving their purposes. Nor would the leaders submit voluntarily to international authority. If the leaders were concerned for their citizens, of course, the genocides would not have happened in the first place. Therefore, the U.N. cannot remain neutral in the face of genocide; that luxury must wait until after the parties comply with peace accords. Significant measures must be applied against the perpetrators of genocide before the killings begin. If the international community withholds an effective

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315. *Id.*

316. *Id.* art. 6.

317. Udovički & Štitkovic, *supra* note 137, at 197, 237-38.

318. *See supra* notes 155-59 and accompanying text.

319. Michael N. Barnett, *The Politics of Indifference at the United Nations and Genocide in Rwanda and Bosnia*, in *THIS TIME WE KNEW*, *supra* note 7, at 128-30.

response until after extensive numbers of the targeted group are killed, then offensive military intervention may be the only remaining option.

#### 6. *Inadequate Funding*

The cost of deploying and maintaining a military force, whether peacekeeping or peace-enforcing, is extremely expensive.<sup>320</sup> In Rwanda it was clear that the Security Council wanted to reduce the UNAMIR forces because of the cost.<sup>321</sup> The United States sought to keep UNAMIR's costs to about \$10 million dollars per month.<sup>322</sup>

### VI. Proposed Solution: Negotiate a Protocol to the Genocide Convention

The Genocide Convention is a valuable document that offers a foundation on which to build an effective mechanism to prevent genocide. The U.N. remains the principal organization to maintain international peace and security, including intervention to resolve disputes that could lead to genocide. A protocol to the Genocide Convention is needed, however, to correct the deficiencies of the Genocide Convention and eliminate the inabilities of the U.N. to prevent genocide.

To do this, the protocol must contain five essential concepts. First, it must re-emphasize the devastation of genocide. Second, the signatories must agree that automatic measures will be implemented if certain genocidal indicators occur. Third, it must create the Department for the Prevention of Genocide within the Secretariat. Fourth, it must create an effective early warning system for genocide. Finally, it must designate the specific automatic measures that will be implemented when genocidal indicators occur.

If the members of the U.N. negotiate such a protocol to the Genocide Convention, it will correct the deficiencies of the Genocide Convention and the U.N. regarding the prevention of genocide. Negotiating a protocol

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320. Boutros-Ghali, *supra* note 7, at 17. From 1986 to 1993, the U.N.'s annual costs of peacekeeping rose from \$234 million to \$2.984 billion U.S. dollars. The U.N. figures do not include individual costs that states incurred when they directly deployed their troops. *Id.*

321. MELVERN, *supra* note 185, at 93, 133.

322. *Id.* at 85. The UNAMIR operated on a very limited budget. The mission lacked many essential personnel, ammunition, fuel, and other necessary items. *Id.*

will also demonstrate a greater resolve within the international community—by signing the protocol, nations would be agreeing to a stated methodology on how to prevent genocide. This addresses many third world countries' concern that the U.N. simply represents a continuation of imperialism.<sup>323</sup> It would also increase support for Security Council action to prevent genocide.<sup>324</sup>

#### A. Re-Emphasize the Devastation of Genocide

The starting point to prevent genocide is for leaders, especially those of states who are members of the Security Council, to express their abhorrence of genocide and agree that it must be prevented.<sup>325</sup> This expression must make clear that genocide, the deliberate and systematic extermination of an ethnic, religious, or national group, is the world's most repugnant crime. Moreover, it must be agreed that measures to prevent genocide will apply indiscriminately, whether the targeted group is Muslim, Jewish, Christian, Tutsi, Cambodian, or Indian.

#### B. Statement of Understanding

A phrase in the preamble of the protocol should declare that the parties to the protocol understand that genocide and mass murders have been committed in the past and neither the parties to the protocol nor the U.N. can erase past atrocities. It must go on to state that evidence of a previous genocide, acts of genocide, or mass murder does not justify future genocide in retaliation. Moreover, the parties must agree that genocide is so repugnant and destructive that it is unacceptable conduct by any nation for any reason. Therefore, to prevent and eradicate genocide, the parties must understand and agree that the automatic measures set forth in the protocol will take effect unless the subject state takes corrective actions.

This Statement of Understanding would eliminate the U.N.'s hesitation to respond due to historical acts of genocide, as in Bosnia-Herzegov-

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323. Roberts & Kingsbury, *supra* note 44, at 45.

324. *See id.* "Perceptions that the U.N. is dominated by particular states can have serious consequences. They have led to refusals to make contributions to various parts of the U.N. budget; to disregard of General Assembly resolutions; and to mixed support for Security Council enforcement initiatives." *Id.*

325. KUPER, *supra* note 17, at 1. "The emphasis on human rights would be quite meaningless without the survival of living subjects to be the carriers of these rights." *Id.*

ina. It would also place all states on notice that preventive, automatic measures will occur in any state wherever genocide occurs.

C. Establish the Department for the Prevention of Genocide Within the Secretariat

Essential to a workable U.N. system to prevent genocide is the ability to efficiently and effectively communicate necessary information to the Secretary-General and the Security Council. The best way to accomplish this would be to create a genocide prevention department within the Secretariat, and more specifically, within the Department of Political Affairs.<sup>326</sup> This department would be called the Department for the Prevention of Genocide (DPG).<sup>327</sup> As described in greater detail below, the DPG would identify and gather information about nations that meet the requisite criteria, assess and analyze underlying causes that could contribute to genocide, formulate preventive plans, and ascertain the occurrence of triggering criteria that activates corresponding automatic measures to prevent genocide.<sup>328</sup> The DPG would communicate this information to the Secretary-General who would then communicate it to the Security Council.<sup>329</sup>

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326. Boutros-Ghali, *supra* note 7, at 23. In 1992, all political departments of the Secretariat were placed in this department to effectively monitor political activities. *Id.*

327. 1985 Special Rapporteur, *supra* note 2, at 43 (showing that support exists for the creation of an international body to handle genocide). The United Nations has previously created sub-organizations to monitor and protect human rights. Two examples are the Commission on Human Rights and the U.N. High Commissioner for Refugees. C.V. NARASIMHAN, *THE UNITED NATIONS: AN INSIDE VIEW* 250, 262 (1988).

328. Article 99 of the U.N. Charter provides, "The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security." U.N. CHARTER art. 99. While infrequently used, Article 99 seems to allow the Secretary-General the authority to gather information to bring to the Security Council. *See generally* SYDNEY D. BAILEY & SAM DAWS, *THE PROCEDURE OF THE UN SECURITY COUNCIL* 111 (3d ed. 1998). Gathering information and notifying the Security Council of potential situations that may threaten international peace and security would not negate the right of the Security Council to determine the existence of any threat to the peace as provided by Article 39. *Id.*

329. James S. Sutterlin, *Early Warning and Conflict Prevention: The Role of the United Nations*, in *EARLY WARNING AND PREVENTION CONFLICT* 122 (1998) [hereinafter *EARLY WARNING*]. "For purposes of the United Nations, early warning must be understood as having three elements: information, analysis, and a communication channel." *Id.*

#### D. Create an Effective Early Warning System

To successfully prevent genocide, the protocol must establish an effective early warning system. Ideally, this system would be managed by the DPG who would monitor countries according to certain categories, which correspond with the indicators of genocide. The DPG would also identify and monitor nations that are clearly moving towards internal conflict against a distinct group, even if the indicators of genocide were not present.<sup>330</sup>

To be effective and efficient, the DPG would need assistance to gather information. Therefore, the DPG would coordinate with other organs of the U.N., obtain information or complaints from individual states or groups, and communicate with NGOs.<sup>331</sup> Often, human rights observers in NGOs, like Amnesty International and Human Rights Watch, first recognize and document the early warning indicators of potential genocide.<sup>332</sup>

Suspect states would be classified into five early warning categories based on the indicators of genocide:

Category I. This category would include states having the foundational indicators of distinct groups that vote or believe as a group and a history of genocide.<sup>333</sup> The DPG would maintain a file on each state containing a brief historical account of any past genocide, including its causes, the perpetrators' identity, how the genocide ended, efforts made by international organizations to prevent or end the genocide, and the effectiveness of such efforts. The DPG would assess this information, as well as relevant government policies during the period of genocide, to predict potential future cycles of genocide.<sup>334</sup> In addition to collecting this initial information, the DPG would monitor the coun-

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330. Gurr, *supra* note 21, at 137.

331. *Id.* at 126-29. The book provides a valuable table of organizations that gather information regarding human rights violations, armed conflicts, and refugee situations. See Howard Adelman, *Difficulties in Early Warning: Networking and Conflict Management*, in EARLY WARNING, *supra* note 329, at 51-82 (Adelman effectively describes the benefits and challenges of gathering information through NGO's or other organizations.).

332. See generally Gurr, *supra* note 21, at 124.

333. *Id.* at 138-39. Minorities are at risk in 112 countries. However, not all of these countries have histories of genocide. *Id.*

334. *Id.* at 141.

tries in this category, and provide bi-annual or annual updates to the Secretary-General.

Category II. This category would consist of states having Category I characteristics and either one or more groups actively seeking autonomy or a severe economic recession.<sup>335</sup> The DPG's additional efforts for this category would include assessing the current situation in the state, ensuring the U.N. had credible fact-gatherers in the state to monitor adverse changes, and coordinating with other U.N. organs or subcommittees to formulate contingency plans to help the state avoid internal conflicts. In addition, the DPG would provide its assessment, contingency plans, and updates to the Secretary-General.<sup>336</sup>

Category III. A state in Category III would include the additional criterion that the state's government or a significant political party is publishing messages encouraging hate, murder, or rape against members of a distinct group.<sup>337</sup> In addition, if the DPG believed that a non-state actor or minor political party is publishing such genocidal messages, the DPG would confer with the Secretary-General to determine if the state should be placed in Category III. The DPG would continue its information gathering, formulating assessments, and making recommendations for contingency plans, but it would also immediately notify the Secretary-General when a state meets the criteria of Category III. The Secretary-General, in turn, would immediately notify the

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335. *Id.* at 124.

At the beginning of 1996, forty communal (national, ethnic, religious) groups were enmeshed in violent conflicts with governments over issues of autonomy and collective rights. International bodies were committed to containing some of them, as in Bosnia and Iraq, but most were ignored. Another ninety communal groups throughout the world were targeted by discriminatory public policies that substantially and selectively limited their political, economic, or cultural rights.

*Id.*

336. *Id.* at 138.

337. O'Neill, *supra* note 272, at 77. O'Neill describes a survey that was conducted of 187 countries to determine how many countries truly allowed the press and media to publish without restraint. Sixty-two countries had freedom, sixty-two were partly free, and the remaining sixty-three countries had no freedom of the press. Therefore, he concludes, most of the media in the world is controlled by state governments. *Id.*

Security Council because automatic preventive measures would be implemented for Category III states.

Category IV. A state in Category IV would be on the verge of genocide. This would include states in which, on a small scale, the government's military or police force either murders or commits acts of genocide against a particular group. It would also include states where the government is unwilling to prevent, arrest, or prosecute individuals who murder, rape, or commit acts of genocide against a particular group. The DPG would continue fact-gathering, assessing, and planning, and would still communicate through the Secretary-General to the Security Council. The DPG would also determine the severity of the situation in Category IV states, and divide those states into three classes: Class 1 – when the government is unable to arrest or prosecute individuals murdering or committing acts of genocide against a particular group, and when the incidents are infrequent and minor. Class 2 – when the government is unwilling to arrest or prosecute individuals murdering or committing acts of genocide against a particular group, and when the incidents are infrequent and minor. Class 3 – when the government orchestrates murder or other acts of genocide against a particular group, or when the government is either unable or unwilling to prevent and prosecute, but the incidents are frequent, yet not substantial. The DPG would forward this information through the Secretary-General to the Security Council, which would implement automatic preventive measures.

Category V. These states would be clearly implementing or allowing genocide or acts of genocide on a substantial level. The DPG would continue fact-gathering, assessing, and planning, and would communicate through the Secretary-General to the Security Council. As with Category IV, the Security Council would implement automatic preventive measures to stop the genocide.

#### E. Require Automatic Action upon Occurrence of Certain Events

All U.N. actions would be premised on a requirement to attempt first to assist the state to overcome its challenges without U.N. intervention. Hopefully, through peaceful and positive measures, animosity or unrest

would cease before it expands. If it became obvious that the state's government was the root of the problem or was unwilling to halt the criminal conduct of its citizens, however, the protocol should authorize the U.N. to implement automatic measures to prevent genocide.<sup>338</sup>

The U.N. would initiate automatic measures within a specified time and manner when a state entered Categories III, IV or V. This would ensure that potential genocides are handled appropriately and timely no matter where they occur. The automatic measures would include all options available to the Secretary-General, the General Assembly, and the Security Council except for the deployment of military forces, whether peacekeeping or peace-enforcing.<sup>339</sup> The protocol would specifically state the automatic measure for each of the five categories.<sup>340</sup>

To implement these measures effectively, the Security Council must have authority to increase the scope of the automatic measures. The Security Council, however, must not have authority to reduce or eliminate the measures unless nine of its members, including all five permanent members, either concur or abstain in the decision.<sup>341</sup> If one of the permanent

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338. See Robert Skidelsky & Edward Mortimer, *Economic Sanctions as Means to International "Health"*, in PREVENTIVE DIPLOMACY, *supra* note 7, at 155 (concluding that sanctions are going to be used more frequently to prevent conflict in its embryonic stage).

339. See Boutros-Ghali, *supra* note 7, at 17. Deployment of military forces, whether for peacekeeping or peace-enforcement, is extremely expensive and invasive. *Id.* In addition, automatic deployment of military forces may not be the preferred or desired solution to members of the United Nations, or more specifically, the members of the Security Council. Moreover, because military intervention is so intrusive, if it were one of the automatic measures, the Security Council and many of the states of the United Nations may not agree to the protocol.

340. It is understood that this proposal conflicts with Article 39 of the U.N. Charter. Article 39 designates the Security Council as the U.N. organ that makes recommendations and decides what measures shall be taken to maintain or restore international peace and security. U.N. CHARTER art. 39. This conflict could be resolved through an amendment to the U.N. Charter, specifically for matters of genocide, but an amendment is difficult to obtain. See BAILEY & DAWES, *supra* note 328, at 379-80; U.N. CHARTER arts. 108-109 (Article 108 states that amendments come into force only when "adopted by a vote of two thirds of the Members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, *including all the permanent members of the Security Council.*" (emphasis added)). If an amendment is not obtainable to resolve the conflict between the proposal and Article 39, the automatic proposals could simply be recommendations to the Security Council. Recommendations, however, would not correct the deficiencies of the Security Council to prevent genocide. See *supra* notes 299-322 and accompanying text.

341. It may be easier for permanent members of the Security Council to allow implementation of automatic measures than to initiate preventive action against an ally.

members vetoes the request to reduce or eliminate an automatic measure, the measure would still occur. This reverse veto would force implementation of preventive measures unless all permanent members of the Security Council concur that it is the wrong action for a specific situation.<sup>342</sup> A reverse veto would also resolve several of the previously noted failings of the Security Council during past genocides.<sup>343</sup>

For example, if a state is in Category III because the government or a significant political party publishes messages of hate, the DPG would notify the Secretary-General and provide suggested preventive plans. The Secretary-General and the Security Council would then have a specific period in which to convince the government to end the harmful media publications before automatic measures are executed.<sup>344</sup> With the assistance of the DPG, the good offices of the Secretariat could make the first attempts at ending the malevolent media by quietly initiating a dialogue with the head of state. If the DPG and the Secretary-General believe that this effort is or would be insufficient, then the Secretary-General may attempt other negotiation measures such as sending a respected envoy on a goodwill or fact-finding mission or coordinating with the General Assembly to formulate an appropriate solution. When the specific period has ended or if the Secretary-General believes that the state will not end the publications, automatic measures would be implemented.

The automatic measures must be significant so that the head of state ends the genocidal propaganda, but not so severe as to cause permanent

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342. This “reverse veto” proposal directly targets several deficiencies of the Security Council when dealing with genocide. It effectively implements measures to stop genocide even if several permanent members of the Security Council do not want actions taken against an ally or if they have no interest in the group being destroyed by genocide. *See supra* notes 299-306 and accompanying text. Because this proposal modifies the voting arrangements of the Security Council, an amendment to the U.N. Charter is required. *See* U.N. CHARTER art. 27. The likelihood of the Security Council modifying the voting arrangement, even to prevent genocide, is low. *See* BAILEY & DAWS, *supra* note 328, at 379. This is one reason why this article does not propose deployment of military forces as an automatic measure. None of the permanent members of the Security Council would ratify an amendment if military forces were automatically deployed. In addition, the amendment might be adopted and ratified if proposed during or soon after another tragic genocide.

343. *See supra* notes 299-322 and accompanying text.

344. It is understood that the international community should not “punish” a country for every type of genocidal statements published. In the United States of America, the Constitution mandates freedom of speech. This allows individuals to print or pronounce words of hate. A distinction must be recognized, however, when it is promoted or sanctioned by a country’s federal, provincial, or state governments, or by one of the country’s significant political groups.

economic damage to the state. The automatic measures could include measures such as withholding financial assistance by the World Bank or International Monetary Fund.<sup>345</sup> As was evident in the genocides of Bosnia-Herzegovina and Rwanda, the head of state either had complete or at least significant control over the media. In both situations, the leaders engaged in genocidal speech themselves or promoted it on the government-controlled media. Therefore, automatic measures would be most effective if they target the interests of the head of state and the government-controlled media.

If a state is in Category IV, Class 1, because the government fails to arrest or prosecute murders or rapes committed against members of a distinct group, the DPG would notify the Secretariat, present preventive plans, and remind the Secretary-General about the time limit before the Security Council must implement automatic measures. The offices of the Secretariat would then offer to assist the government to overcome their inability to prosecute the crimes. The country's legal system may have shortcomings, and the government may need assistance to train impartial judges or otherwise enhance its legal system. The U.N. could send legal experts to teach and train to address the systemic weaknesses. Moreover, if automatic measures were previously implemented because the state was in Category III, they would not abate until the government complied with the purpose of the automatic measures.

If the government is unwilling to prosecute criminals, this Category IV, Class 2, situation would require different measures. The DPG would notify the Secretary-General of this situation. The Secretary-General and the Security Council would then have a specific period—for example sixty days with one possible sixty-day extension—to implement necessary proposals to convince the state to correct the situation before a substantial crisis erupted. When the time elapsed, the Security Council would implement the automatic measures.

Once again, if the government is unwilling to arrest and prosecute the perpetrators of genocide, the automatic measures must be tailored toward the governmental officials. The Security Council could require freezing of the political leaders' personal assets. Any costs involved to freeze the

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345. DES FORGES, *supra* note 6, at 91-92. President Habyarimana knew that his country desperately needed financing from the international community, and he tried to maintain some respectability in order to receive financial support from the World Bank and the European Union. *Id.*

assets would be paid by the asset, or real property could be sold to pay for the associated costs. Other automatic measures could include economic sanctions against the state. These sanctions must be narrowly tailored to the cause of the problem, however, and not designed to affect the general population unless absolutely necessary.<sup>346</sup> Overbroad sanctions could worsen the situation, rather than acting as an effective prophylactic measure. Additional sanctions could include “boycotts, embargoes, and capital controls.”<sup>347</sup>

Automatic time constraints and measures would be initiated against states classified in Category IV, Class 3, and Category V. For states in these categories, the U.N. would seek assistance from local regional organizations to formulate preventive plans and conduct preventive diplomacy.<sup>348</sup> If the circumstances reach these levels, however, the automatic measures must be stringent. Moreover, if the automatic measures fail to prevent the escalation of events beyond this point, the Security Council should be planning direct military intervention.

## VII. Conclusion

The U.N. can better prevent genocide by implementing preventive measures when the indicators of genocide first arise, long before genocide devastates its target group. Not only would this prevent death, rape, and other acts of genocide, but it would also cost significantly less than deploying thousands of troops or sending the necessary humanitarian aid required after genocide occurs. In addition, when genocide is not stopped, each succeeding death deepens the victims’ hatred and instills within them a desire for revenge. This considerably increases the difficulty and cost of any subsequent peacekeeping mission.

A protocol to the Genocide Convention offers the most effective tool to prevent genocide. It would correct the Genocide Convention’s deficiencies and address the mistakes made during previous U.N. efforts to prevent

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346. Skidelsky & Mortimer, *supra* note 338, at 173.

347. *See id.* at 155. “Capital sanctions restrict or suspend lending to, and investments in, the target state, and may involve the freezing of foreign assets and restrictions on international payments.” *Id.*

348. *See* Gilbert M. Khadiagala, *Prospects for a Division of Labour: African Regional Organizations in Conflict Prevention*, in *Early Warning*, *supra* note 329, at 131-61; Salim Ahmed Salim, *Localizing Outbreaks: The Role of Regional Organizations in Preventive Action*, in *PREVENTIVE DIPLOMACY*, *supra* note 7, at 101.

genocide. The protocol would recommit states to the principles of the Genocide Convention, and it would foster international agreement on how to best prevent the devastation of genocide. Moreover, such consensus would lessen the Security Council's concerns about intervening into the internal affairs of a sovereign state on the verge of genocide.

The automatic measures of the protocol would also ensure its timely, universal, and equal application to any country where genocide dawns. Preventive, automatic measures that commence upon the occurrence of certain events would require action by the Security Council even if the permanent members of the Security Council have no political or security interest in the state or region confronting genocide. Automatic actions would also lessen the divisive debate about appropriate U.N. actions in response to genocide. In addition, the measures would eliminate the belief that Security Council action is unlikely if it is uninterested in the state or if its members are on opposing sides of the debate to take action to prevent genocide. It would also ensure that Security Council action reflects the principle that all states are equal sovereigns.<sup>349</sup> Finally, the protocol's automatic measures would guarantee that all potential genocides are presented to and considered by the Security Council.

The U.N. may not be able to solve every problem, but genocide is so destructive that the nations of the world should be able to agree on a protocol to prevent it. There are no simple answers to genocide. Each complex situation presents unique ethnic divisions, economic challenges, and nationalistic tendencies. Genocide does not occur in a vacuum, and it never will.

If the genocides in Bosnia-Herzegovina and Rwanda taught any lesson, it is that, when certain indicators of genocide are present, the international community must quickly gather facts and implement an effective response. The U.N. clearly knew the tension in Rwanda could explode into genocide. In both Bosnia and Rwanda, individual soldiers and civilians did not simply wake up one day and decide to slaughter a group of people without some preceding acts or events. Rather, the path to genocide usually begins with and is fueled by government-produced genocidal propaganda to enflame one ethnic group against another.

A protocol to the Genocide Convention could prevent genocide before a machete is lifted or a gun is aimed against a group targeted for

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349. Roberts & Kingsbury, *supra* note 44, at 55.

genocide, whether in Europe, Africa, Asia, or the Americas. A protocol mandating specific and automatic U.N. action could stop genocide before the murders begin. Genocide may not be completely preventable, but the genocides in Bosnia-Herzegovina and Rwanda suggest the best solution to reduce its occurrence: a protocol to the Genocide Convention. One would think an effective protocol would allow our “advanced” and “civilized” world to better prevent genocide, the most destructive human rights violation, without resort to intervention by international military forces.